

THE NAMIBIA DISPUTE: THE TRANSITIONAL GOVERNMENT OF NATIONAL UNITY AND THE PROBLEM OF ENFORCING RESOLUTION 435

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1. *Introduction.*

June 1985 witnessed two developments in the Namibia¹ dispute which highlighted the tension between the legal framework governing progress towards the decolonization of Namibia and the realities of South Africa's continued occupation of the territory in defiance of international law. On June 17th South Africa installed the Transitional Government of National Unity. Two days later the United Nations Security Council passed Resolution 566 which warned that international sanctions would be imposed against South Africa if it did not co-operate in the immediate implementation of the United Nations independence plan for Namibia embodied in Security Council Resolution 435 of 1978. At the beginning of 1985 Australia began a two year period on the United Nations Security Council and therefore has an important role to play in the continuing saga over Namibia's struggle for independence.

The legal status of South Africa's occupation of Namibia has changed over time, but nothing has changed South Africa's de facto control of the territory. At present South Africa has 100,000 troops in Namibia, and the northern part of the country has been declared a security zone as a result of the protracted guerrilla war waged by the South West Africa People's Organization (SWAPO)² against South Africa.

South Africa's seventy year occupation of Namibia began in 1915 when the Union of South Africa, acting at the request of the British as part of the Allied war effort, invaded the territory, a German colony since 1884. In the negotiations between the Allied powers following Germany's relinquishing of her

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¹ Namibia is a vast territory in the South-Western part of Africa, hence its colonial name 'German South West Africa' or, under South African occupation, 'South West Africa'. Since 1968 South Africa has used the joint name South West Africa/Namibia in its negotiations with the United Nations. Wherever possible this article will refer to the territory as Namibia, in accordance with United Nations General Assembly Resolution 2372 (12 June 1968).

² Formed in 1960, SWAPO's central objective is the liberation of the Namibian people from colonial oppression and exploitation in all its forms. It has pursued this objective through negotiations, mass organization inside Namibia, international campaigning and, since 1966, armed struggle. There is little doubt that SWAPO has the support of most Namibians (a fact acknowledged privately by South Africa: *The Times* (London), 22 June 1985). Since 1975, the United Nations has recognized SWAPO as 'the authentic representative of the Namibian people': General Assembly Resolution 3399, 26 November 1975.

colonies at the Treaty of Versailles, the United States President Woodrow Wilson's sensitivity to the concept of self-determination prevented South Africa from annexing the territory. The compromise was that South West Africa become a Class C mandate under the League of Nations Mandate system. The mandatory power was conferred, on behalf of Great Britain, on the Union of South Africa and was subject to the supervision of the League of Nations. South West Africa was to be 'administered under the laws of the mandatory as an integral part of its territory',³ and the well being of the territory was to be a 'sacred trust of civilization'.⁴ The Union of South Africa was under an obligation to 'promote to the utmost the material and moral well being and the social progress of the inhabitants of the territory'.⁵ The issue of South Africa's administration of the mandate has resulted in proceedings before the International Court of Justice on no fewer than six occasions between 1950 and 1971.⁶ At the conclusion of this litigation, the issue of jurisdiction over Namibia in international law has been resolved in favour of the United Nations General Assembly. By 1971 the International Court of Justice had determined that the status of Namibia in international law was as follows:⁷

1. Although South Africa had been given the League of Nations Mandate over Namibia in 1920, and had continued to hold the mandate subject to the supervision of the General Assembly of the United Nations until 1966, South Africa had no power to change the status of Namibia unilaterally, and competence to determine and modify the international status of Namibia rested with South Africa acting with the consent of the United Nations.⁸
2. The Mandate had been validly⁹ terminated in 1966 by United Nations General Assembly Resolution 2145¹⁰ on the grounds that South Africa had failed to fulfil its obligations under the Mandate agreement and had failed to ensure the moral and material well being of the indigenous inhabitants of Namibia.¹¹

³ *Covenant of the League of Nations*, cl. 6, art. 22, and *The Mandate for South West Africa*, art. 2.

⁴ cl. 1, art. 22.

⁵ *The Mandate for South West Africa*, art. 2.

⁶ The Advisory Opinions on the *International Status of South West Africa* 1950 I.C.J. Reports 128, on *Voting Procedure* [1955] I.C.J. Reports 67, and the *Admissibility of Hearings of Petitioners* [1956] I.C.J. Reports 23, the *Preliminary Objections and Merits* of the contentious cases brought by Ethiopia and Liberia against South Africa in the *South West Africa Cases*, [1962] I.C.J. Reports 319 and [1966] I.C.J. Reports 6 and the Advisory Opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)* [1971] I.C.J. Reports 16.

⁷ See generally Austin, R.H.F., 'Namibia and Zimbabwe: Decolonisation and the Rule of International Law' (1982) *Current Legal Problems* 203, and Dugard, J., *The South West Africa/Namibia Dispute* (1973).

⁸ *International Status of South West Africa* [1950] I.C.J. Reports 128.

⁹ [1971] I.C.J. Reports 16.

¹⁰ 27 October 1966.

¹¹ This was endorsed by the United Nations Security Council in Resolution 264 (20 March 1969).

3. Until the territory could be brought to self-government and independence, the government of Namibia would be conducted on behalf of its inhabitants by the United Nations Council for Namibia.¹²
4. The Mandate having been validly terminated, South Africa has no legal right to be in Namibia and must withdraw its administration. As long as it occupies Namibia, South Africa's presence in the territory is illegal.¹³
5. Consequently, all South Africa's acts in Namibia since 1966 are invalid.¹⁴ South Africa is thus liable for its illegal actions in relation to the territory and would be required to compensate an independent Namibia.
6. Member states of the United Nations are obliged to refuse to recognise South Africa's illegal acts in relation to Namibia, and might also be internationally responsible to an independent Namibia for injury resulting from relations with the illegal South African régime in Namibia.¹⁵

By 1971, therefore, an overwhelming majority of the members of the international community had accepted this, albeit controversial,¹⁶ resolution of the issue of the status of Namibia in international law. Austin¹⁷ notes that while the legal status of Namibia was subject to the original Mandate on to which had been 'grafted a lush growth of norms and guidelines for the ending of colonialism, racism and associated threats to peace which the United Nations had been created to eliminate',¹⁸ the Mandate was also 'modified by the realities of its actual control by a state which largely rejected the idea of governing subject to restraints imposed by international law.'¹⁹ These two conflicting strands have dominated the dispute over Namibia and have cruelly exposed the problems of enforcing solutions to conflicts in international law.

Thus by 1971 the scene had been set for the battle to give reality to this legal framework by decolonizing Namibia and enabling it to reach independence. Primary responsibility for this lay with the United Nations.

¹² United Nations General Assembly Resolution 2248 (S-V) (19 May 1967). At present the Council has thirty-one members, including Australia. Although the General Assembly has established the Council as the legal administering authority of Namibia, this task has been frustrated by South Africa's refusal to vacate the territory. The Council's functions include helping Namibian refugees, organizing a training programme for Namibians, issuing travel documents and establishing an emergency programme to render economic and technical assistance to Namibia.

¹³ [1971] I.C.J. Reports 16. South Africa has not, to date, relinquished its de facto control over Namibia and is still in occupation of the territory.

¹⁴ [1971] I.C.J. Reports 16. United Nations Security Council Resolution 276, January 1970. See also United Nations Council for Namibia *Decree No. 1 for the Protection of the Natural Resources of Namibia* which prohibits the exploitation of the natural resources of Namibia without the permission of the Council for Namibia. The decree is discussed in Schermers, H.G., 'The Namibia Decree in National Courts' (1977) 26 *International and Comparative Law Quarterly* 81.

¹⁵ [1971] I.C.J. Reports 16, United Nations Security Council Resolution 301 (26 October 1971).

¹⁶ For an excellent survey of all the legal issues involved in the Namibia dispute see Dugard, *op. cit.* Succinct summaries of the dispute are to be found in the United Nations publication, *A Trust Betrayed: Namibia* (1974) and in Watts, N.H.Z., 'The Roots of the Controversy' in *Namibia Political and Economic Prospects*, Rotberg, R.L., (ed.) (1983).

¹⁷ *Op. cit.* 205.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

2. Resolution 435: The United Nations Independence Plan For Namibia.

In February 1972 the United Nations Security Council authorized²⁰ the Secretary-General to enter into discussions with all the relevant parties to bring Namibia to independence. By 1973 these negotiations proved unsuccessful and the United Nations discontinued its policy of dialogue with the South African government. While the General Assembly continued to pass resolutions on the Namibian issue,²¹ in January 1976 the Security Council unanimously adopted Resolution 385 condemning South Africa's illegal occupation of Namibia, the brutal oppression of its people and the aggressive military build up in the area,²² and demanding free elections under United Nations supervision. South Africa's defiance of this resolution led to demands by the African states for the imposition of full economic sanctions against South Africa, but these demands were repeatedly vetoed by the United States, Great Britain, and France.²³

It was in this context that the Western Nations on the Security Council, the United States, France, Great Britain, the Federal Republic of Germany and Canada, offered to help negotiate terms for the independence of Namibia, on the basis of free territory-wide elections under the aegis of the United Nations. This unofficial, self-constituted 'Contact Group' held talks and negotiations during 1977 and early 1978, separately meeting the South African government, the Namibian internal parties and SWAPO. They put forward a 'Proposal for a Settlement for Namibia' on 30 March 1978, based on Resolution 385 and containing the main principles agreed to in the negotiations.

The proposal called for:

1. the release of all Namibian political prisoners and detainees and the return to Namibia of all Namibian refugees and other Namibians outside the territory, before the elections began;
2. the cessation of all hostile acts by all parties to the dispute;
3. the restriction to base of all SWAPO and South African armed forces and the phased withdrawal of all but 1,500 South African troops who would finally be withdrawn one week after the certification of the elections;
4. a South African appointed Administrator-General to be installed in Namibia until independence with the responsibility of repealing all discriminatory

²⁰ Resolution 309 (4 February 1972).

²¹ e.g. Resolutions A/31/146-153 (20 December 1976) and Resolution 3399 (26 November 1975).

²² From 1966 South African paramilitary police were deployed in Namibia to counter the guerrilla war being waged by SWAPO, who had turned to armed struggle after the controversial decision of the International Court of Justice in 1966 which denied Ethiopia and Liberia locus standi to bring contentious proceedings against South Africa over Namibia. In 1975 the South African Defence Force took over the military role in Namibia. South Africa has tried to establish indigenous Namibian security forces to try to distance itself from the violence in Namibia. In 1974 Tribal battalions were created, and in 1980 the South West Africa Territory Force (SWATF) was established: see *infra* p.346. For a detailed discussion of the role of the South African military in Namibia see International Defence and Aid Fund, *Apartheid's Army in Namibia: South Africa's Illegal Military Occupation* (1982).

²³ The three Western Permanent members of the United Nations Security Council.

and repressive legislation. Primary responsibility for maintaining law and order during the transition period was to remain with the existing (South African) police forces;

5. the appointment of a United Nations Special Representative, who would share responsibility for the interim administration of Namibia together with the Administrator-General, to ensure that conditions were established for free and fair elections which would be conducted over a seven month period and would be based on an impartial electoral process;
6. the establishment of a United Nations Transition Assistance Group (UNTAG), with a military and civilian component, to ensure that the above provisions were observed by all parties.

A subsequent report²⁴ by the Secretary-General provided that implementation of the plan was to be in three stages:

1. cessation of all hostile acts by all parties, and the withdrawal, restriction or demobilization of the various armed forces;
2. the conduct of free and fair elections to the Constituent Assembly;
3. the formulation, adoption and implementation of a Constitution for Namibia by the elected Assembly.

On 29 September 1978, the Security Council passed Resolution 435 approving the Secretary-General's report. The resolution established UNTAG and declared that all unilateral measures taken by the illegal administration in Namibia in relation to the electoral process were null and void.

The South African Government accepted the independence proposal in principle on 19 October 1978,²⁵ and on 22 December 1978, after renewed threats concerning the question of unilateral elections,²⁶ informed the Secretary-General that it had decided to co-operate in the expeditious implementation of Resolution 435.²⁷

In theory, at least, Resolution 435, by providing a formula for the negotiations of Namibian independence, was the final link in the comprehensive code for the peaceful decolonization of Namibia. Yet at the time of writing South Africa is still illegally occupying Namibia, and looks to be as firmly entrenched as ever. South Africa's defiance of the internationally accepted legal framework for Namibian independence is a fascinating example of the role of *real-politik* in enforcing international law.

3. Obstacles To The Implementation Of Resolution 435.

Why is it that, despite the apparently firm resolve of the international community, South Africa still illegally occupies Namibia? The obvious obstacle has been South Africa's refusal to leave the territory but this merely begs the question. Why has South Africa not been forced to leave Namibia? The answer to

²⁴ Published on 30 August 1978.

²⁵ Letter of the Government of South Africa, dated 19 October 1978, 33 UN SCOR supp. (Oct-Dec. 1978) at 36, UN Doc., S/12900 (1978).

²⁶ For a brief account of the elections in December 1978 see *infra* p.350.

²⁷ Letter dated 22 December 1978 from the representative of South Africa to the Secretary-General, 33 UN SCOR Supp. (Oct-Dec 1978) at 113, UN Doc., S/12983 (1978).

this lies in the tacit collaboration and co-operation with South Africa of the nations in the Western bloc, particularly the permanent members of the Security Council.

Since the adoption of Resolution 435, all South Africa's efforts have been directed to avoiding its implementation. The Contact Group has been happy to limit the pressure on South Africa so that South Africa only makes sufficient concessions to prevent a complete breakdown of negotiations, but not to produce the final breakthrough.²⁸

Twice, South Africa has frozen negotiations when a breakthrough appeared imminent. In May 1978 after its early agreement to the principle of Resolution 435, South Africa raided the Kassinga refugee camp in Angola killing over 600 people, mainly women and children, in an attempt to force SWAPO to withdraw from negotiations. In 1981, 'pre-implementation' talks held in Geneva were effectively sabotaged by South Africa's invasion of Angola and its subsequent refusal to sign a ceasefire.

Another South African strategy has been to raise new issues, or exaggerate existing issues, just as other issues have been resolved. A favourite fall back issue is South Africa's complaint that the United Nations is partial towards SWAPO. This issue was raised at the 1981 Geneva talks to stall proceedings. More serious is the requirement by South Africa that the implementation of Resolution 435 be tied to the withdrawal of Cuban troops from Angola.

This issue of 'linkage', which has currently deadlocked the negotiations, is an interesting example of the role that the Reagan administration's policy of 'constructive engagement' is playing in Southern Africa. Prior to 1981 there was no mention in Resolution 435, or in any negotiations, of the presence in Angola of Cuban troops. Then in June 1982 the United States,²⁹ the Contact Group³⁰ and South Africa³¹ all raised the issue of linkage. It appears that the issue was first suggested to South Africa by the United States in June 1981 to try to counter South Africa's objections to elections supervised by the United Nations, which South Africa perceived to be leaning heavily towards SWAPO. South Africa took up the issue, believing it was a way to reduce 'communist influence' in South Africa and to weaken SWAPO's main backers, the People's Movement for the Liberation of Angola (MPLA) Government in Angola, while joining South Africa and the United States in a joint anti-Soviet initiative.³² Although intended by the United States to speed up the implementation of Resolution 435, the 'linkage' issue implies that the independence of

²⁸ See Geldenhuys, E., *The Diplomacy of Isolation* (1984) 224. Geldenhuys points out that South Africa's concessions include accepting the role of the Contact group, dropping the Turnhalle constitutional plans and accepting Resolution 435. He suggests that keeping the negotiations going for seven years shows a degree of flexibility on South Africa's part. Like most South African commentators, Geldenhuys seems to ignore the fact that South Africa's occupation of Namibia is illegal.

²⁹ *Financial Times* (London), 5 June 1982.

³⁰ *Contact Group Memorandum* of 17 June 1982, reproduced in a SWAPO Press Communique in June 1982.

³¹ *Windhoek Advertiser*, June 18, 1982. See also Cullinan, S., 'Military Policy and the Namibian Dispute', *South African Review* 1 (1983) 33, 34.

³² *Economist* (London), 30 March 1985.

Namibia is to take a back seat to a 'settlement' in Angola favourable to South Africa and the West.³³

Cuban troops arrived in Angola in response to the MPLA's decision in 1975 to call for international assistance to repel South Africa's invasion on the eve of Angolan independence. Angola argues that the Cubans play an entirely defensive role in Angola in accordance with Article 51 of the United Nations Charter, and that Cuba's presence in Angola is an issue between Angola and Cuba only. Angola has stressed that they will retain Cubans in Angola for as long as South Africa, which has invaded Angola six times since 1975, threatens to invade its territory.³⁴ Angola's position is supported by a large proportion of the international community, including the Front-line States,³⁵ and the United Nations.³⁶

Since 1980 South Africa and the Contact Group have attempted to alter the legal framework for Namibian independence³⁷ to ensure an outcome favourable to their interests.³⁸ Two instances are worthy of mention. In October 1981 the Contact Group proposed that the parties negotiate over constitutional principles *prior* to elections for a Constituent Assembly, thereby effectively reversing the steps implementing Resolution 435. Resolution 435 included no pre-determined constitutional principles, and envisaged that the first stage would be elections to a Constituent Assembly which would have a free hand in drawing up a constitution for independence. A key principle in the 1981 proposal specified that the future constitution of an independent Namibia, and any amendments thereto, would have to be approved by a two-thirds majority of the Constituent Assembly.³⁹ Another principle specified that the electoral system would give each voter two votes, one to be counted at the level of a

³³ South Africa has rejected a joint offer by Cuba and Angola that Cuban troops leave Angola once South African troops have unilaterally withdrawn from Angola. Resolution 435 has been fully implemented and South Africa ceases to assist UNITA or any other Angolan insurgents.

³⁴ Statement issued by the MPLA Political Bureau, 2 September 1982. In April 1985 South Africa withdrew from Angola, under the Lusaka Accord, signed with Angola in February 1984. Within weeks, however, it was learnt that seventy South African troops had remained in Angola to guard a dam and hydro-electric plant. Then late in May 1985, one South African soldier was captured, and two soldiers killed, in an attempt to sabotage a Gulf Oil installation in Angola's northern Cabinda province. This would seem to have destroyed any possibility of even a small scale Cuban withdrawal from Angola: *Windhoek Advertiser*, 30 May 1985, *Observer* (London) 26 May 1985, *Windhoek Advertiser*, 12 June 1985. Despite the events in Cabinda, Angola has reaffirmed its interest in negotiating with South Africa over the consolidation of the Lusaka Accord and the 'linkage' issue: *The Times* (London) 22 June 1985.

³⁵ Zambia, Zimbabwe, Mozambique, Tanzania, Botswana.

³⁶ Communiqué issued by the Front Line States Summit Meeting in Lusaka on September 4, 1982.

³⁷ *New York Times*, 9 February 1983.

³⁸ Austin *op. cit.* 216 suggests that this is a reaction by the West to the use of force in the decolonization of Angola and Mozambique, a process which took place outside the control of the Western states. He suggests that the Contact Group, spurred on by the constitutional restrictions imposed on an independent Zimbabwe by the Lancaster House agreement, have tried to modify the norms of Namibian independence to try to control the outcome. Western interests in Namibia are both strategic (to counter Soviet influence) and economic.

³⁹ *Survey of Race Relations in South Africa 1982* (1983) 602.

single national constituency and the other on the basis of the voter's local constituency.⁴⁰ The proportional representation provision would favour the smaller Namibian parties and perhaps make it difficult for SWAPO to get the requisite two-thirds majority.⁴¹

A similar question intruded into the negotiations in 1981, namely the subsequent foreign policy and regional alignment of an independent Namibia. This was introduced by the diplomatic device of a 'non-paper' made available to all parties by the Contact Group in October 1981.⁴² The basic proposal was that Namibia would commit itself not to allow its territory to be used for guerrilla activities against South Africa, and South Africa would commit itself not to interfere in Namibia's internal affairs, all with reference to the United Nations Charter.

The existence of the proposal seemed to suggest that the Western powers believe that the best solution would be a substantial modification of Resolution 435 to meet South Africa's desire for a Namibia which would distance itself from the war of national liberation being waged inside South Africa.⁴³ One of South Africa's great fears is that if SWAPO came to power in Namibia it would support the guerilla struggle being fought against the South African government by the African National Congress. The proposal in the 'non-paper' was designed to prevent this occurring.

South Africa has also been able effectively to exploit a loophole in the settlement proposal to impose another unilateral amendment. Neither Resolution 435 nor any of the subsequent proposals deals with the composition of the defence force of an independent Namibia. In 1980 South Africa embarked upon a policy of 'Namibianizing' its armed forces, and created the South West Africa Territory Force (SWATF). Since 1982 all Namibian citizens have been subject to conscription to SWATF, despite widespread opposition. SWATF is being built up as an alternative, or at least competition, to SWAPO as the defence force in the post independence period. It has the additional role of diverting world attention from the illegality of South Africa's occupation of Namibia.

By 1983 the Contact Group had lost the confidence of SWAPO, the Frontline States and the United Nations agencies.⁴⁴ Some of the reasons have been outlined above, but probably the most important reasons were the West's unwillingness to impose mandatory sanctions on South Africa in order to ensure that South Africa implemented the independence plan, and its failure to censure South Africa's aggression in Angola.

What slow progress there has been in the negotiations to date has been due to the modest pressure placed on South Africa by the West. But the Western powers seem unwilling to suffer any of the consequences of economic sanctions

⁴⁰ *Guardian* (London) 27 October 1981, *Telegraph* (London), 27 October 1981.

⁴¹ *Guardian* (London), 18 December 1981, *The Times* (London), 18 December 1981, Austin *op. cit.* 225-27.

⁴² *The Non-Paper on Namibia*, 26 October 1981, reprinted in Austin *op. cit.* 219.

⁴³ Austin *op. cit.* 221.

⁴⁴ *New African* June 1983.

against South Africa.⁴⁵ It is implicit in the factual record of Pretoria's manoeuvres to block the implementation of Resolution 435 that effective pressure on the South African regime, from those forces best placed to exert it,⁴⁶ has been absent.

The Western powers, by vetoing Security Council Resolutions doing anything more than condemning South Africa's aggression in Namibia and Angola, have effectively suspended the provisions in Chapter VII of the United Nations Charter which prohibit the use of force. During the last decade South Africa has invaded Angola six times, supported the right-wing National Union for the Total Independence of Angola (UNITA) movement in its effort to topple the Angolan Government, conducted raids into Lesotho and Mozambique, considerably weakened the Mozambiquan government by supporting the 'anti-communist' Resistencia Nasional Mocambicana (MNR) and has given support to dissident factions in Zimbabwe. In June 1985 South Africa raided Botswana, allegedly in 'hot-pursuit' of African National Congress guerrillas. As a result the Front-line States are being undermined, and their ability to stand behind demands for the immediate implementation of Resolution 435 weakened. It would appear that the Western powers are prepared to allow South Africa to use its military power to pressure the Front-line States and SWAPO into altering the rules governing Namibian independence.

4. *Why does South Africa hang on to Namibia?*

At this point it is worth considering why South Africa is stalling over the implementation of Resolution 435. While it is undoubtedly correct that South Africa desires to hold on to Namibia for its economic wealth and its strategic significance in relation to Angola and the struggle to liberate South Africa, other political considerations probably have a greater bearing on why South Africa is stalling in the implementation of Resolution 435.

It is clear that South Africa does not want a SWAPO government in an independent Namibia, but desires one amicably disposed to Pretoria, and one with which South Africa could, amongst other things, reach an agreement over the future of Walvis Bay.⁴⁷ No doubt Pretoria realizes that SWAPO would win an imminent independence election. South Africa's procrastination is designed to give the internal parties other than SWAPO an opportunity to become more

⁴⁵ The West, especially the United States, Great Britain, France and the Federal Republic of Germany, have extensive economic interests in South Africa. See Child, C., *Apartheid, Economic Collaboration, and the Case for the United Nations Comprehensive Mandatory Sanctions Against South Africa* (1984).

⁴⁶ It was believed in the 1970's that the five members of the Contact Group would be the most influential parties to negotiate with South Africa, because of their relatively conservative political outlooks.

⁴⁷ Walvis Bay, the only deep-water port in Namibia, was annexed by Great Britain in 1879 and in August 1884 was proclaimed to be part of the Cape Colony. From 1922 Walvis Bay was administered as part of the mandated territory. In September 1977, Walvis Bay was incorporated into the Cape Province by a South African proclamation to take it outside the ambit of the negotiations for the independence of Namibia. The issue of Walvis Bay is well canvassed in Moorsom, R., *Walvis Bay: Namibia's Port* (1984).

credible within Namibia and thus more competitive with SWAPO in an election to implement Resolution 435.

South Africa may be holding out for a more favourable settlement, or it could be hoping that, over time, SWAPO will be damaged militarily and lose its negotiating strength. Indeed, as General Magnus Malan, the South African Defence Minister, remarked to the United States Assistant Secretary of State for African Affairs, Chester Crocker:

'The longer it takes to solve the Namibia question, the less South African presence will be required there. We will reach a stage where internal forces in Namibia can internally defeat SWAPO.'⁴⁸

South Africa's tactics indicate that military pressure on the Front-line States will be maintained until they are prepared to abandon SWAPO and accept almost any solution to end the war. In fact, the most intensive action of the Namibian war has been in the period after the adoption of Resolution 435. South Africa's refusal to implement the plan, combined with its military action in Southern Africa, has enabled South Africa to demand, and obtain, important changes in the United Nations plan. An initiative in 1980 by Angola's President Neto resulted in the independence plan being altered to establish, in its first phase, a fifty kilometre demilitarized zone on both sides of Namibia's border. South Africa managed to negotiate twenty South African bases inside the demilitarized zone, while totally excluding SWAPO from the zone. Five of the UNTAG's seven batalions would be situated inside the zone.

Alternatively, South Africa's concern could be with the way SWAPO achieves power. South Africa could soften the domestic political impact of a SWAPO election victory by manipulating a position where the internal parties appear to the South African electorate to have agreed to a settlement package out of their own volition.⁴⁹

A third possibility is that South Africa is not sure of its own position and is therefore stalling to keep its options open. It is possible that the South African Government is divided over its policy on Namibia. If so, it is unlikely that the Namibian issue will be resolved until the divisions are breached, or the faction ready to negotiate gains full control. South Africa may actually be paralyzed, rather than stalling.⁵⁰

A final alternative may be that South Africa believes it can avoid a settlement based on Resolution 435 by succeeding in its attempt unilaterally to give Namibia independence. If this strategy succeeds, it would be a bitter blow to the credibility of international law in general and United Nations law in particular. South Africa has continually tried to undermine the United Nations' special authority in international law for Namibia, and thus legitimize its continuing occupation of the territory.

⁴⁸ Quoted in Austin *op. cit.* 211.

⁴⁹ Geldenhuys, E., *op. cit.* 229.

⁵⁰ Leeuwenburg, J., 'Reaction to Revolution: Why South Africa Hangs on in Namibia' (an unpublished paper presented to the African Studies Conference, Canberra, June 1983) 1.

5. The Early Attempts at an Internal Settlement: The Turnhalle and its successors.

It will be recalled that in its 1950 Advisory Opinion on the *International Status of South West Africa* the International Court of Justice held that South Africa did not have the power to alter the status of Namibia without the consent of the United Nations General Assembly. With the termination of the Mandate in 1966, South Africa lost any legal right it may previously have had to effect a change in the status of Namibia. However, its de facto occupation of Namibia, illegal as it is, has enabled South Africa to have an enormous impact on the territory's future. While ostensibly agreeing to a compromise with the United Nations based on Resolution 435, South Africa's real intentions for Namibia have been demonstrated in its search for an internal solution which by-passes the United Nations.

For a long time South Africa has tried to incorporate Namibia into its own territory. During the First World War, Great Britain and South Africa agreed that South Africa could annex Namibia, but this was thwarted by President Wilson's predilection for self-determination and the rise of the left in Europe. After the Second World War and the demise of the League of Nations, South Africa again tried to annex Namibia, but this was prevented by the wishes of the General Assembly of the United Nations and ultimately by the International Court in the 1950 Advisory opinion. Nevertheless, in 1949 white voters in Namibia elected six members to South Africa's House of Assembly, and in 1977 the powers of the white Legislative Assembly, which since 1925 had dealt with matters relating to whites in the territory, was transferred, by the South West Africa Affairs Act 1959, to the South African Parliament.

By the mid 1970's South Africa had realized that its dream of annexing Namibia was over, and changed its strategy. The search was on for an internal settlement outside the United Nations framework. The first attempt came with the convening of the Constitutional Conference at the Turnhalle in September 1975. The Conference, based on the *apartheid* framework for Namibia,⁵¹ eventually adopted a draft constitution in March 1977. The constitution proposed an interim government on the basis of a three tier structure designed to perpetuate the racial divisions and white privileges in Namibian society.⁵²

South Africa agreed to abandon the Turnhalle Constitution as part of the negotiations leading up to the Contact Group's independence proposal. On 1 September 1977 South Africa installed an Administrator-General in Namibia

⁵¹ Legislation to segregate race groups was introduced into Namibia by South Africa from the early 1920's and gradually the system of *Apartheid* was established in Namibia. The Odendaal Report of 1964 streamlined the Apartheid system in Namibia by advocating the creation of ten 'homelands', comprising 40% of the territory's poorest land, to be inhabited by Namibia's black population, who constitute 89% of the total population. This was implemented in the late 1960's. The only leaders admitted to the Turnhalle Conference were those who accepted the initial tribal and racial divisions laid down in the Odendaal Report.

⁵² For full details of the Turnhalle proposals see International Defence and Aid Fund, *Namibia: The Constitutional Fraud* (1981).

according to the agreement reached with the Contact Group. While the Administrator-General's brief was to prepare for the holding of United Nations supervised elections in Namibia, in practice he was to implement South Africa's strategy in the territory, and was vested with extensive legislative powers.

On 20 September 1978 South Africa rejected the Secretary-General's Report and held elections to a Constituent Assembly in Namibia from 4 to 8 December 1978, without United Nations supervision. The elections were condemned by the international community, the results rejected by the United Nations, and international negotiations continued on the basis of South African assurances that these internal structures would not impede future elections supervised by the United Nations. The Administrator-General was instrumental in South Africa's strategy of using this apparent transfer of power to the internal government to deflect international condemnation of its illegal occupation of Namibia. From September 1977 there was a gradual transfer of governmental departments from South African control to the Administrator-General, until by 1980 all departments except foreign affairs, defence and security were under his control.

From March 1979 the Administrator-General established directorates with responsibility for some executive functions with the territory,⁵³ and in July 1980 the Government Service Act setting up an 'independent' government service in Namibia came into effect. The existing directorates were renamed 'government departments'.⁵⁴

In May 1979, Proclamation AG21 transformed the Constitutional Assembly into a National Assembly, with largely illusory powers because all legislation required the assent of the Administrator-General.⁵⁵ Both the Administrator-General and the South African State President retained the power to pass laws by proclamation.⁵⁶

In June 1979, the Administrator-General appointed an Advisory Council to act as a quasi-cabinet. At first its powers were purely advisory, but on 1 July 1980 it became the Council of Ministers,⁵⁷ in the first tier of a three tier government based on the Turnhalle proposals.⁵⁸ The Administrator-General was head of the executive authority, and retained overall control over the Council of Ministers through his ability to make laws by proclamation, veto legislation and executive decisions, and to act, in certain circumstances, without the Council of Ministers.⁵⁹

⁵³ *Windhoek Advertiser*, 23 March 1979.

⁵⁴ *Windhoek Advertiser*, 24 June 1980.

⁵⁵ The National Assembly had no legislative power over law and order, defence, foreign affairs, security, its own status, competence and composition and the international status of the territory.

⁵⁶ *Windhoek Advertiser*, 4 July 1979.

⁵⁷ Proclamation AG 19, 12 June 1980.

⁵⁸ The first tier of government drew representatives from each of the tribal groups, the second tier consisted of 11 Legislative Assemblies, Executive Committees and Civil Services, for each of the 11 'tribal groupings'. The third tier consisted of local municipal authorities. The second tier 'tribal homeland' government elections were held in 1979.

⁵⁹ *Windhoek Advertiser*, 3 June 1980.

In 1981 moves to install an alliance of some of Namibia's internal parties, the Democratic Turnhalle Alliance,⁶⁰ as the government of Namibia intensified with the granting of executive control to the Council of Ministers, all of whom were members of the Democratic Turnhalle Alliance. The quid pro quo for this was that the Democratic Turnhalle Alliance broaden its support. In 1981, however, the Democratic Turnhalle Alliance collapsed after the resignation in February of its president Peter Kalangula.

At this stage the South African Defence Force started playing a prominent role in administration and policy making. Some sources⁶¹ suggest that it was South Africa's State Security Council⁶² that decided to drop the Democratic Turnhalle Alliance and to establish a new interim government that would be 'more effective and more representative', and would consist of various 'ethnic' leaders. The responsibility for reorganising the interim government was given to senior military advisors, seconded to the office of the Administrator-General.⁶³ The strategy was to install a new interim government that would represent, not only the internal political parties of Namibia, but also other Namibian interest groups, such as the private sector. This scheme failed to get off the ground.⁶⁴

Shortly thereafter, the members of the Council of Ministers all resigned,⁶⁵ the Council of Members was dissolved and the Turnhalle proposals were finally put to rest. The Administrator-General took over all central government functions and disbanded the National Assembly.⁶⁶ An attempt to form a nominated State Council to work out a system of government for Namibia was stillborn due to lack of support.⁶⁷

6. *The Transitional Government of National Unity: South Africa's latest attempt at an Internal Settlement.*

The latest internal initiative originated in 1983 when the internal parties, led by SWAPO Democrats⁶⁸ and SWANU,⁶⁹ but excluding SWAPO, continued

⁶⁰ The Democratic Turnhalle Alliance was formed by a number of the groups which had participated in the Turnhalle Conference and, led by Mr. Dirk Mudge, the white leader of the Republican Party, won 41 out of the 50 seats in the 1978 election. The Democratic Turnhalle Alliance maintained a strong anti-SWAPO line, and wished to see the National Assembly become the legislative and executive body of Namibia.

⁶¹ *Financial Mail* (Johannesburg), 8 October 1982, *Windhoek Advertiser*, 7 September 1982, Cullinan, S., 'Military Policy and the Namibian Dispute' *South African Review* 1 (1983) 32, 35.

⁶² Since the late 1970's the State Security Council has played an increasingly important role in South Africa's policy making and government. See generally National Union of South African Students, *Total War in South Africa: Militarisation and the Apartheid State* (1982)

⁶³ Cullinan, *op. cit.* 35.

⁶⁴ South African Institute of Race Relations, *Survey of Race Relations in South Africa 1983* (1984) 602.

⁶⁵ *Ibid.*

⁶⁶ *Ibid* 603

⁶⁷ Weaver, T., 'Namibian Review', *South African Review* 2 (1984) 21, 212. The main reason for the rejection of the State Council was that it was seen as a South African sponsored initiative.

⁶⁸ Formed in June 1978 as a breakaway from SWAPO, whom they strongly oppose, the SWAPO-Democrats reject the armed struggle.

⁶⁹ South West African National Union, originally a Maoist party, but since 1982 a moderate voice in Namibian internal politics. It is essentially a small group of intellectuals whose support comes from the Herero people.

talks in an attempt to launch an 'original Namibian initiative' which would 'lead to a common political course of action that will hasten the process of Namibian independence'.⁷⁰ In September of that year they issued a joint statement of intent to form the Multi-Party Conference, declaring that it was 'painfully obvious that international negotiations are not bringing the goal of Namibian independence any closer' and that the responsibility to 'pave the way for internationally recognised independence is now left to the people'.⁷¹ The Multi-Party Conference was launched, with much anti-South African rhetoric, on 12 November 1983.

In subsequent weeks the Multi-Party Conference's credibility, already low because of the absence of SWAPO, was further diminished by three factors. The first was the withdrawal after one week of a disillusioned Hans Rohr, leader of the Namibian Christian Democratic Party. Then followed the announcement of the right wing white National Party that it wished to join proceedings as a full participant. The final blow came with the high level of importance attached to the Multi-Party Conference by South African Prime Minister P. W. Botha in late January 1984, when he included them in talks with the United States and singled them out as leaders in the search for a solution in Namibia.⁷²

The Multi-Party Conference was included in the Lusaka negotiations over the implementation of Resolution 435 in May 1984, but the talks came to nothing when it was clear that South Africa was using the occasion to promote Namibia's internal parties. The Multi-Party Conference delegation subsequently visited the conservative African leaders of Gabon, Ivory Coast, Togo, and Senegal, visited the United States and paid a courtesy visit to the United Nations Secretary-General. During this time SWAPO refused to negotiate with the Multi-Party Conference. The Multi-Party Conference then called for a conference with all other 'significant political parties', including SWAPO, to 'promote national reconciliation and independence'.⁷³ The Multi-Party Conference resolved, on 30 October 1984, that if the conference failed to materialize, they would 'begin negotiations with the South African government about the appropriate manner in which to promote the independence of South West Africa/Namibia'.⁷⁴

The Conference never got off the ground and the Multi-Party Conference began formulating their proposals on 15 January 1985, and delivered them to the South African State President on 27 March 1985.

The Multi-Party Conference requested that an Act of the South African Parliament or a Proclamation of the South African State President set up a Transitional Government for Namibia. The Transitional Government, consist-

⁷⁰ Multi-Party Conference launching statement, 30 September 1983.

⁷¹ *Rand Daily Mail* (Johannesburg), 1 October 1983.

⁷² Weaver, *op. cit.* 213-4.

⁷³ *MPC Proposals on the Issue of the Independence of South West Africa/Namibia*. (Windhoek, 27 March 1985), 3.

⁷⁴ *Ibid.*

ing of an executive authority and a legislative authority, would 'be invested with the powers and capacities which the Administrator-General for South West Africa presently exercises',⁷⁵ but would be subject to certain procedural requirements.⁷⁶ The proposal stated that the Transitional Government should be 'composed in accordance with a formula on which the parties in the Multi-Party Conference have already decided',⁷⁷ and it was therefore 'unnecessary to have an election precede the institution of the government.'⁷⁸

A Constitutional Council would be set up for a maximum of eighteen months, *inter alia*, to draw up an 'independence constitution for the country'.⁷⁹ Once again, the Multi-Party Conference itself decided the composition of the Constitutional Council, and consequently neither the Transitional Government nor the Constitutional Council has been approved by the Namibian electorate.

The Multi-Party Conference requested certain assurances from South Africa to assist the success of the proposal. These included continued budgetary assistance from South Africa, defence agreements between the South African government and the Transitional Government, and an undertaking that the South African government would cease to negotiate on behalf of Namibia with members of the Contact Group, the Front-line States or the United Nations regarding the implementation of Resolution 435. Such negotiations were to be conducted by the Transitional Government.⁸⁰

It was not clear whether the Multi-Party Conference intended to move towards a unilateral declaration of independence or be part of international negotiations over Resolution 435. One spokesman, Mr. Dirk Mudge, said that the Multi-Party Conference was determined to take over the government and then negotiate with the rest of the world to try and find an internationally acceptable solution.⁸¹ Another delegate, Mr. Kuaima Riruako said Resolution 435 could not be ruled out, but may be by-passed because it was old and outdated.⁸² Mr. Eben Van Zijl of the National Party said that the Multi-Party Conference did not intend a unilateral declaration of independence, but would do all it could to persuade the rest of the world that this process was democratic and the best path to independence.⁸³

The Multi-Party Conference proposal, which had the South African State President's advance blessing,⁸⁴ met worldwide opposition. From within Namibia, SWAPO, the left faction of SWANU, the Damara Council, the Mbanderu Council, the Nudo Progressive Party and the People's Party of

⁷⁵ *Ibid.* 4.

⁷⁶ *Ibid.* 4-9.

⁷⁷ *Ibid.* 4.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.* 7.

⁸⁰ *Ibid.* 10-11.

⁸¹ *Windhoek Advertiser*, 25 March 1985.

⁸² *Ibid.*

⁸³ *Ibid.* This is in spite of the fact that neither the Multi-Party Conference nor the Constitutional Council is an elected body.

⁸⁴ *Guardian* (London), 3 April 1985.

Namibia all strongly rejected the initiative as a tactic to stall the implementation of Resolution 435.⁸⁵ The United States, which had just attempted a new initiative on Namibian independence, and the other members of the Contact Group all rejected the proposal and remain committed to the implementation of Resolution 435.⁸⁶

On 18 April 1985 the South African President announced that South Africa would establish a transitional government in Namibia along the lines of the Multi-Party Conference proposals, but with restricted powers.⁸⁷ Whereas the Multi-Party Conference reduced the Administrator-General's role to rubber stamping legislation, the South African plan required all legislation to be approved by the Administrator-General who would thus be able to veto legislation.⁸⁸ In addition, the South African government would retain its control over defence and foreign affairs, it would continue negotiations over the implementation of Resolution 435 and it would not 'act in a manner irreconcilable with the international settlement plan'.⁸⁹ While South Africa would remain responsible for the war against SWAPO, the new administration would assume responsibility for internal security and would technically command the 20,000 troops in SWATF. Any constitution drafted by the Constitutional Council would be subject to the proviso that it be submitted to the Constitutional Assembly elected pursuant to Resolution 435.

In short, the initiative of 18 April falls well short of the Multi-Party Conference proposals and South Africa maintains greater control than it did just prior to the abandonment of the Turnhalle dispensation.

South Africa's plans for an interim government in Namibia were slated by SWAPO,⁹⁰ the Roman Catholic Church in Namibia,⁹¹ the Council of Churches in Namibia, which emphasized that the Multi-Party Conference had 'no democratic electoral mandate nor support from the Namibian people',⁹² the United Nations Secretary-General,⁹³ the United States,⁹⁴ the other members of the Contact Group,⁹⁵ the Organisation of African Unity⁹⁶ and all members of the Non-Aligned Movement.⁹⁷ Strong opposition was expressed from within Namibia by the newly formed People's Consultative Conference, which alleged that South Africa had 'hijacked' the Multi-Party Conference for its own purposes.⁹⁸ It has been estimated that the Multi-Party Conference enjoys the support of no more than 15% of the Namibian people.⁹⁹

⁸⁵ *Windhoek Advertiser*, 26 March 1985.

⁸⁶ *Ibid.*, *Guardian* (London), 19 April 1985.

⁸⁷ *Guardian* (London), 19 April 1985.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ *Rand Daily Mail* (Johannesburg), 13 April 1985.

⁹² *Guardian* (London), 19 April 1985.

⁹³ *International Herald Tribune*, 19 April 1985.

⁹⁴ *The Times* (London), 17 April 1985 and 20 April 1985, *Guardian* (London), 19 April 1985.

⁹⁵ *Economist* (London), 27 April 1985.

⁹⁶ *Business Day* 20 June 1985.

⁹⁷ *The Times* (London), 22 April 1985.

⁹⁸ *Rand Daily Mail* (Johannesburg), 1 April 1985.

⁹⁹ *Economist* (London), 27 April 1985.

Nevertheless, on 17 June 1985, the new administration, called the Transitional Government of National Unity, was installed in Namibia, amongst much fanfare. A protest rally organised by SWAPO and its allies was held at Katura in Windhoek, and was attended by 10,000 people, despite the intimidation of the military.¹

What strategies lie behind this 'Transitional Government'? The initiative seems to be part of South Africa's attempt to strengthen the position of the internal parties as an alternative to SWAPO. It is also clear that South Africa wants to promote the internal parties in the settlement negotiations in order to underplay its own illegal occupation of Namibia. Some commentators have suggested the interim government is merely another stalling device, while giving the impression of flexibility and movement for the benefit of the Contact Group.²

It is possible that South Africa is using the Transitional Government, and perhaps even the threat of unilateral independence, to pressure the United States and Angola into removing the Cuban presence from Angola. Recent United States moves seem to suggest that they are watering down the 'linkage' idea to allow some Cubans to remain to protect Luanda, and other key points in Angola, from UNITA guerrillas.³ South Africa may be trying to create the impression that unless Angola accedes to the 'linkage' issue, it will succumb to the Multi-Party Conference's demand for a unilateral declaration of independence.⁴ There is an outside possibility that the Front-line States, severely battered by South Africa's military 'destabilisation' of Southern Africa during recent years, may be pressured into accepting such a dispensation.⁵ This cannot be discounted, as South Africa has a strong aversion to negotiating Namibian independence with an 'impartial' United Nations.

An alternative formulation⁶ is that the Transitional Government is part of a South African strategy to by-pass Resolution 435 and to impose a regional settlement in its place. This involves increasing South African aid⁷ to UNITA rebels so that they could eventually negotiate a place in the Angolan government. The UNITA presence in the Angolan government would then pressure SWAPO to abandon its guerrilla struggle and switch to a political campaign through the Transitional Government structure. If SWAPO were to do this, South Africa would drop the 'linkage' issue. The net effect would be agreement by SWAPO to an independence format falling short of Resolution 435,

¹ *Cape Times* (Cape Town) 18 June 1985.

² *The Times* (London), 17 April 1985. This is unlikely in view of the Contact Group's opposition to the initiative.

³ *Economist* (London), 27 April 1985. The National Union for the Total Independence of Angola (UNITA) is a South African backed movement trying to topple Angola's MPLA government.

⁴ *Ibid.* But see also *Guardian* (London) 19 April 1985 and *The Times* (London), 17 April 1985.

⁵ *The Times* (London), 17 April 1985.

⁶ *Observer* (London), 16 June 1985, *The Times* (London) 22 June 1985.

⁷ It is believed that the attempt in May 1985 by a South African commando unit to sabotage Angola's oil installation in the northern province of Cabinda was part of this plan. This would have crippled Angola's depleted economy and disrupted its army: *Observer* (London) 16 June 1985, *The Times* (London) 22 June 1985.

and which would result in a SWAPO-led coalition with a restraining constitution. It is believed that South Africa has given itself two years to co-opt SWAPO in this manner.⁸ This implies that South Africa will try to delay the implementation of Resolution 435 for at least another two years.

Apart from these hypotheses, it is difficult to see any benefit to South Africa, or to the Multi-Party Conference, in the latest move. The Transitional Government seems to be in an even worse position than the 1982 Turnhalle regime, both in terms of governmental powers and popular support. International hostility, with the exception of a handful of African states, remains unabated. South Africa once again has to deal with potentially difficult internal politicians who have been given a modicum of power and who will be keen to show their political independence of Pretoria.⁹ South Africa's strategy therefore depends on its ability to wear down SWAPO and the Front-line States, particularly Angola, so that these internal problems are overtaken by a new settlement which can be forced on to the international community.

7. *What is to be done?*

The latest Transitional Government of National Unity dispensation has had the benefit of forcing the Contact Group to declare, once again, their support of an independence settlement on the basis of Resolution 435. It seems generally accepted by the world community that Resolution 435 should remain the basis of negotiations for the decolonisation of Namibia.¹⁰

The principal issue would seem to be how to enforce the implementation of Resolution 435. Ultimately this becomes an issue of the enforcement of international law, or more particularly, United Nations law. The General Assembly, the Security Council and the International Court of Justice have decided that South Africa's occupation of Namibia is illegal, and the Security Council, in Resolution 435, has set out the independence plan. Although South Africa is clearly not bound by the 1971 advisory opinion, South Africa and the member states of the United Nations are bound by Security Council Resolutions 264, 278 and 435. South Africa has flouted all these decisions.

All member nations of the United Nations are obliged 'to accept and carry out the decisions of the Security Council'.¹¹ All member nations must therefore do their utmost to implement Resolution 435. The Security Council may call upon member states to apply suitable measures to give effect to its decisions, and these measures may include 'complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations'.¹²

⁸ *The Times* (London) 22 June 1985.

⁹ *Economist* (London), 27 April 1985.

¹⁰ It should be noted that a recent report by four British Conservative Members of Parliament has suggested that Resolution 435 be modified, even replaced, by a new independence plan. This view has been strongly criticised: see *New African* 3 April 1985, 30.

¹¹ *Charter of the United Nations*, Art. 25.

¹² *Ibid.*, art. 41.

In municipal legal systems flagrant refusals to comply with the law are either tolerated, in which case no action is taken, or the matter is resolved by the courts, and ultimately by contempt proceedings. United Nations law has no contempt proceedings, but the Security Council can take action under Article 41. It is submitted that it has no choice but to do so in relation to Namibia. Sanctions should be aimed to stop South Africa's aggression in Southern Africa, to obtain the immediate implementation of Resolution 435, and to dismantle *apartheid* completely in South Africa.¹³ The Security Council should not allow United Nations law to be undermined any further.

Numerous attempts have been made by the Security Council to implement mandatory sanctions against South Africa, but, apart from the 1977 arms embargo,¹⁴ none has been successful.¹⁵ This has been due to the use of the veto power by the United States, Great Britain and France, all of which have large commercial interests in South Africa and Namibia. The United States and Great Britain have preferred to adopt policies of 'constructive engagement' with South Africa in order to use their economic leverage to bring about change in Southern Africa through contact and dialogue. It is clear that, in 1985, 'constructive engagement' has failed.¹⁶

On 19 June 1985, two days after the investiture of the Transitional Government of National Unity, the Security Council passed Resolution 566 warning South Africa that failure to co-operate with United Nations moves to bring genuine independence to Namibia pursuant to Resolution 435 would prompt a further meeting of the Security Council to consider the adoption of 'appropriate measures' under the United Nations Charter. Such measures might include measures under Chapter VII of the Charter. The Resolution urged member states in the meantime to consider taking 'appropriate and voluntary measures' against South Africa which could include stopping new investments, breaking maritime and aerial relations with South Africa, prohibitions on the sale of Krugerrands, and restrictions on sport and cultural relations. The United States and United Kingdom abstained from voting. This was a significant break with their tradition of exercising their vote to block sanctions, indicated that they joined the general condemnation of South Africa's actions and gave warning to South Africa to move to implement Resolution 435.¹⁷

What of Australia's position? Since January 1975 Australia has been a member of the United Nations Council for Namibia, and since January 1985 a member of the Security Council. The Hawke Government therefore has a very

¹³ United Nations Security Council Resolution 418 (November 1977).

¹⁴ For a discussion of legal issues involved in economic sanctions against South Africa see Madrey, W.C., 'Economic Sanctions Against South Africa: Problems and Prospects For Enforcement of Human Rights Norms', (1982) 22 *Virginia Journal of International Law* 345.

¹⁵ For the history of United Nations Action on Namibia, see *Namibia: A Unique UN Responsibility: Highlights of United Nations Action in Support of Freedom and Independence for Namibia* (1983).

¹⁶ *Economist* (London), 30 March 1985. *Guardian* (London), 2 April 1985.

¹⁷ *Age* (Melbourne), 21 June 1985. SWAPO and the Front Line States accepted this watered down version of their call for immediate mandatory sanctions against South Africa, when it was clear that both the United States and United Kingdom would once again veto such a resolution.

special responsibility for Namibia. It has announced¹⁸ that it will support a Security Council Resolution calling for mandatory sanctions against South Africa, although it will not act unilaterally to cut economic links with South Africa.¹⁹ Australia was one of the thirteen members of the Security Council to support Security Council Resolution 566.

It is submitted that Australia's responsibilities towards Namibia require a stronger foreign policy response. Australia should use all its influence to persuade the United States and the United Kingdom not to exercise their veto power on the Security Council, and to support a resolution calling for mandatory sanctions. Australia cannot hope to exercise such influence if it continues to allow unrestricted Australian investment in, and trade with, South Africa. Indeed, Australia's support of Security Council Resolution 566 suggests that it should seriously consider some forms of unilateral economic sanctions against South Africa. Australia should be looking at unilaterally cutting economic, cultural and diplomatic links with South Africa to complement its sports policy. These measures are also necessary in order to stop Australia's collaboration with South Africa's *apartheid* economy.²⁰

Economic sanctions are likely to have unwelcome side effects if certain policy measures are not taken. Australia should therefore consider taking action to soften the impact of sanctions on Australia's domestic employment and on the Front-line States, whose economies are heavily dependent upon the South African economy.²¹

While domestic employment may suffer if Australia stops exporting to South Africa,²² this will be counteracted by the jobs created by producing goods formerly imported from South Africa.²³ A vigorous policy of seeking alternative markets for Australian exports will also lower the unemployment figure.

Australian trade, investment and foreign aid should be directed to the Front-line States in order to help them wean themselves away from their economic

¹⁸ *Age* (Melbourne), 19 April 1985, *The Times* (London), 19 April 1985, *Age* (Melbourne), 3 June 1985.

¹⁹ United Nations Security Council Resolution 569 (26 July 1985), supported by Australia, urges United Nations members voluntarily to implement sanctions against South Africa. The Resolution recommends the suspension of new investment in South Africa; the prohibition of sales of kruggerands and other coins minted in South Africa; the restriction of sports and cultural ties; the suspension of guaranteed export loans; the banning of new nuclear contracts and the prohibition of sales of computer equipment which may be used by the South African army or police. The United States and United Kingdom abstained from voting on the Resolution.

²⁰ For cogent arguments in favour of economic sanctions against South Africa, see Child, *op. cit.*

²¹ It is this economic dependence, together with the drought and famine in Africa, that has given Southern African states second thoughts about a trade embargo against South Africa: *The Times* (London), 21 June 1985.

²² The likely impact of sanctions on employment in Australia is grossly exaggerated in the Australian business community and, based on a calculation in relation to 1977 British exports to South Africa in Rogers, B., and Bolton, B., *Sanctions against South Africa: Exploding the Myths* (1981), chs. 7 and 8, it is unlikely that the figure will exceed 1,700 jobs. This assumes no reduction in unemployment from curbing South African imports, and no attempt to find alternative markets. Australian exports to South Africa in 1983-4 were valued at \$281 million, but \$110 million of this is accounted for by the re-exporting to the South African Government of a drilling platform: *Age* (Melbourne), 18 May 1985.

²³ Australian imports from South Africa were valued at \$132 million in 1983-4, and are composed of items easily produced in Australia, such as fish, steel, coal, wine and gold coins.

dependence on South Africa, a process already begun by the Southern African Development and Co-ordination Conference.²⁴ These measures are crucial to ensure that South Africa's military and economic power does not drive the Front-line States into forcing SWAPO to accept a premature settlement.

Australia's position on the Security Council should be used to ensure that the Security Council takes over the conduct of negotiations to implement Resolution 435, and that extraneous issues, such as 'linkage', be kept off the negotiating agenda. It is important that United Nations supervised elections be held as soon as possible, and that South Africa's illegal occupation of Namibia should not lead to a unilateral declaration of independence outside the United Nations framework.

SWAPO will also need Australian financial support, not only in Southern Africa to ensure that its negotiating position is not unfairly prejudiced by South Africa's intransigence over the implementation of Resolution 435, but also in Australia, where the Australian Government should provide funds for the SWAPO Information Office.²⁵ Public education is necessary to gain support for all the above policy measures, and while the South African Embassy is active in Canberra, SWAPO's voice is affected by lack of resources.

The Fraser Government received a great deal of credit for its role in the negotiation of the independence of Zimbabwe in 1980. The Hawke Government should seek to emulate this by looking for a role in the immediate decolonisation of Namibia, Africa's last colony.

²⁴ SADCC was formed in 1979 and is a regional economic alliance comprising Angola, Botswana, Lesotho, Malawi, Mozambique, Zimbabwe, Zambia, Swaziland and Tanzania. See generally Jaffee, G., 'The Southern African Development Co-ordination Conference', *South African Review* 1 (1983) 23.

²⁵ Australia has often expressed unease about the compatibility of SWAPO's armed struggle with the provisions of the United Nations Charter: see, for example, Australia's reservations regarding the Bangkok Declaration and Programme of Action on Namibia in *Report of the United Nations Council for Namibia: Thirty-Ninth Session* (1984) 284. SWAPO's information office in Australia clearly has nothing to do with the armed struggle. If Australia is going to condemn 'violence' it should ensure that it does all within its power (including sanctions) to discharge its responsibility to Namibia so as to ensure that the Namibian people do not have to resort to 'self help'.