

Ever since it became a League of Nations mandated territory in 1919, Namibia's progress towards self-determination and independence has been marred by the tension between the International Law framework for its eventual decolonisation and the realities of its continued illegal occupation by South Africa.¹ For a quarter of a century after the demise of the League of Nations the legal status of Namibia was uncertain, and was only resolved by the International Court of Justice in 1971. For the next seven years the international community struggled to find a framework for Namibia's independence, and appeared to resolve this problem with the format set out in United Nations Security Council Resolution 435 of 1978. It was not until ten years after Resolution 435 was heralded as the vehicle for the decolonisation of Namibia that there was any real progress towards independence. Recent developments in Namibia seem to suggest that Resolution 435 has more flaws than were apparent to its sponsors. South Africa's illegal occupation of Namibia since 1971 has both exploited these flaws in Resolution 435 and exposed its deepest cracks. This article, focusing as it does on the tensions between the legal framework for the independence of Namibia and South Africa's illegal occupation of the territory is, therefore, a case study in international dispute resolution, particularly through the medium of the United Nations.

1. *The Origins of the United Nations Independence Plan*

After the First World War Namibia (then South West Africa) became a Class C mandate under the League of Nations. The mandatory power was conferred, on behalf of Great Britain, on the Union of South Africa, subject to the supervision of the League of Nations.² At the end of the Second World War, South Africa refused to transfer South West Africa to the United Nations trusteeship system, which replaced the mandate system. There followed consideration of Namibia's status over twenty-five years in the International Court of Justice. The outcome of the International Court's deliberations was that:

(i) since the demise of the League of Nations South Africa's mandate had been held subject to the supervision of the General Assembly of the United Nations;

(ii) as a consequence South Africa had no power to change the status of Namibia unilaterally, but could only do so with the consent of the United Nations;³

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¹ This tension has been outlined in Austin, R. H. F., 'Namibia and Zimbabwe: Decolonisation and the rule of International Law' (1982) *Current Legal Problems* 203, and Johnstone, R. S., 'The Namibia Dispute: The Transitional Government of National Unity and the Problem of Enforcing Resolution 435' (1985) 15 *M.U.L.R.* 339. This paper is a companion piece to the latter article, which sets out background material essential to the understanding of the situation in Namibia.

² See generally Wright, Q., *Mandates under the League of Nations* (1930).

³ *International Status of South West Africa* [1950] I.C.J. Reports 128.

(iii) the mandate had been validly terminated in 1966 by the United Nations General Assembly. South Africa thus had no legal right to be in Namibia, and it should withdraw its administration from the territory. Consequently;

(iv) all South Africa's acts in Namibia since 1966 had been invalid, and member states of the United Nations were bound not to recognise them.⁴

The next major development was the formulation, in the mid 1970s, of the so called United Nations independence plan for Namibia, embodied in United Nations Security Council Resolution 435 of 1978.⁵ The plan was the result of negotiations between the Western 'Contact Group'⁶ and South Africa. In brief, the plan was as follows.

The first stage envisaged:

(i) a cease fire, the restriction to base of all SWAPO⁷ and South African armed forces, and the phased withdrawal of all but 1500 South African troops who would finally be withdrawn one week after the certification of the elections to the Constituent Assembly. All citizen forces, commandoes and ethnic forces were to be demobilised, and their command structures dismantled;

(ii) the release of all Namibian political prisoners and the opportunity for all Namibians in exile to return to Namibia, and be registered;

(iii) the installation of a South African appointed Administrator General and a United Nations Special Representative to share responsibility for the interim administration of the territory until independence; and

(iv) the establishment of a United Nations Transition Assistance Group (UNTAG), with a civil and military component.

The second stage of the plan involved the conduct of free and fair elections to a Constituent Assembly, under the supervision of the United Nations Special Representative and UNTAG. Every adult Namibian was to be eligible, without discrimination or fear of intimidation, to vote, campaign, and stand for election to the Constituent Assembly, and voting was to be by secret ballot.

The third stage involved the formulation and adoption of a constitution for Namibia by the elected Assembly. The Assembly was to start its work immediately after the certification of election results, and was to finish its work as soon as possible. The Constitution was to determine the organisation and powers of all levels of government. The actual date of independence would fall within the competence of the Constituent Assembly.

The final stage was to involve the entry into force of the constitution and the consequent achievement of independence in Namibia.

⁴ For more detail, see Johnstone *op. cit.* 339-41, and the references cited therein. See also McDougall, G. J., 'International Law, Human Rights, and Namibian Independence' (1986) 8 *Human Rights Quarterly* 443.

⁵ *Ibid.* 342-3. As will become apparent during the following discussion the independence plan is a composite of a number of Security Council resolutions, the 1978 report of the Secretary General, and the Western Settlement Plan.

⁶ The Contact Group was made up of the five Western members of the Security Council at the time, the United States, Great Britain, France (permanent members) and the Federal Republic of Germany and Canada.

⁷ The South West African Peoples Organisation (SWAPO) was formed in 1960 with the objective of liberating the Namibian people from colonial oppression and exploitation in all its forms.

What was the exact role of the United Nations as envisaged by Resolution 435? And what was the role of the Administrator General? It appears that these issues were never defined with any precision in Resolution 435 and the resolutions and reports which preceded it. Security Council Resolution 385⁸ called for free elections under the control of the United Nations, and required adequate time, to be decided upon by the Security Council, for the United Nations to establish the necessary machinery within Namibia to supervise and control such elections. It also demanded that South Africa urgently make a solemn declaration accepting these provisions for the holding of free elections in Namibia under United Nations supervision and control, and undertaking to comply with 'the resolutions and decisions of the United Nations.'

In their settlement proposal⁹ the 'Contact Group', noting the terms of Resolution 385, called, *inter alia*, for the appointment of a Special Representative whose central task would be 'to make sure that conditions were established for free and fair elections based on an impartial electoral process.'¹⁰ The Special Representative would be assisted by UNTAG. In carrying out his responsibilities the Special Representative was to work together with the South African appointed Administrator General 'to ensure the orderly transition to independence'. This working arrangement was in no way to 'constitute recognition of the legality of the South African presence in and administration of Namibia'.¹¹ The Western Settlement Plan made it clear that the election was 'under the supervision and control of the United Nations in that, as a condition to the conduct of the electoral process, the elections themselves, and the certification of their results, the United Nations Special Representative [would] have to satisfy himself at each stage as to the fairness and appropriateness of all measures affecting the political process at all levels of administration before such measures take effect.'¹² The official electoral campaign was only to commence after the Special Representative had satisfied himself as to the fairness and appropriateness of the electoral procedures, and the implementation of the electoral process had to be to his satisfaction.¹³

The Western Settlement Plan envisaged that the Administrator General would repeal all discriminatory and restrictive laws, and would make arrangements for the release, prior to the beginning of the electoral campaign, of all Namibian political prisoners or political detainees held by the South African authorities, and any disputes in this regard were to be resolved to the satisfaction of the Special Representative.¹⁴

The Plan envisaged that the military section of UNTAG was to make sure that the provisions of the agreed solution was observed by all parties.¹⁵ 'Primary

⁸ 30 January 1976.

⁹ Western Settlement Plan, United Nations Security Council Document S/12636, 10 April 1978.

¹⁰ *Ibid.* para. 2.

¹¹ *Ibid.* para. 4.

¹² *Ibid.* para. 5.

¹³ *Ibid.* para. 6.

¹⁴ *Ibid.* para. 7.

¹⁵ *Ibid.* para. 8.

responsibility for maintaining law and order in Namibia during the transition period' was to 'rest with the existing police forces.' The Administrator General, to the satisfaction of the Special Representative, was to ensure the good conduct of the police forces and was to take 'the necessary action to ensure their suitability for continued employment during the transition period.'¹⁶

Taking note of this Western settlement proposal, the Security Council, in Resolution 431,¹⁷ requested the Secretary General of the United Nations 'to appoint a Special Representative for Namibia in order to ensure the early independence of Namibia through free elections under the supervision and control of the United Nations'. It also requested the Secretary General to submit at the earliest possible date a report containing his recommendations for the implementation of the proposal in accordance with Security Council Resolution 385.

Mr Martti Ahtisaari was appointed as the Special Representative and visited Namibia in August 1978 for the purposes of surveying matters pertaining to the implementation of the proposal in accordance with Resolution 385. He consulted the South African Administrator General and the Namibian people over the whole range of issues covered by the Settlement Plan.¹⁸

The first stage of the independence plan involved the 'establishment of effective monitoring by the United Nations and an adequate period for electoral campaigning.'¹⁹ The Secretary General's Report recommended the establishment of UNTAG, which would be under the direction of the Special Representative. The Special Representative would report to the Secretary General, who would report in turn to the Security Council.²⁰ In carrying out its operations UNTAG was to act with 'complete impartiality', and it was expected that 'the Administrator General and all other officials from within the territory will exhibit the same impartiality'.²¹ The Report also envisaged that for UNTAG to carry out all its tasks effectively it needed 'the full support and backing of the Security Council' and 'it must operate with the full co-operation of all parties concerned, particularly with regard to the comprehensive cessation of all hostile acts'.²² It would 'proceed on the assumption that all the parties concerned will operate with it and take all the necessary steps for compliance with the decisions of the Security Council.'²³

The military component of UNTAG was to monitor the cessation of hostile acts by all parties; the restriction of South African and SWAPO armed forces to base; the phased withdrawal of all except the specified number of South African forces and the restriction of the remainder to specified locations; the prevention

¹⁶ *Ibid.*

¹⁷ 27 July 1978.

¹⁸ *Report of the Secretary General Submitted Pursuant to Paragraph 2 of the Security Council Resolution 431 (1978) Concerning the Situation in Namibia*, 29 August 1978, United Nations Security Council Document S/12827, para. 7.

¹⁹ *Ibid.* para. 14.

²⁰ *Ibid.* para. 9.

²¹ *Ibid.* para. 11.

²² *Ibid.* para. 12.

²³ *Ibid.* para. 19.

of infiltration as well as the surveillance of the borders of the territory; and the monitoring of the demobilisation of citizen forces, commandoes and ethnic forces, and the dismantling of their command structure.²⁴ It was considered that, in order properly to fulfil its responsibilities, the military component should have the strength of seven infantry battalions, totalling approximately 5000 persons, plus 200 monitors and, in addition, command, communications, engineer, logistic and air support elements totalling 2300. The infantry battalions were to be self-sufficient.²⁵

The civilian component was to consist of two elements. The civil police were to take measures against any intimidation or interference with the electoral process from whatever quarter, accompanying the existing police forces, when appropriate, in the discharge of their duties and assisting in the realisation of the function of the Administrator General, to the satisfaction of the Special Representative, of ensuring the good conduct of the existing police forces.²⁶ It was estimated that 360 experienced police officers were required to perform this task, and it was hoped that these could be seconded from the police forces of member states of the United Nations.²⁷

The non-police element of the civilian component of UNTAG was to have the function of assisting the Special Representative in implementing the Western Settlement Plan, in particular:

- (a) the supervision and control of all aspects of the electoral process, considering the fairness and appropriateness of the electoral procedures, monitoring the balloting and counting of votes, in order to ensure that all procedures were strictly complied with, and the reception and investigation of complaints of fraud or challenges relating to the electoral process;
- (b) advising the Special Representative as to the repeal of discriminatory or restrictive laws, regulations or restrictive measures which may abridge or inhibit the objective of free and fair elections;
- (c) ensuring the absence of, or investigating complaints of, intimidation, coercion or restrictions on freedom of speech, movement or peaceful political assembly which may impede the objective of free and fair elections;
- (d) assisting in the arrangements for the release of all Namibian political prisoners or detainees and for the peaceful, voluntary return of Namibian refugees or Namibians detained or otherwise outside Namibia;
- (e) assisting in any arrangements which may be proposed by the Special Representative to the Administrator General and implemented by the Administrator General to the Special Representative's satisfaction intended to inform and instruct the electorate as to the significance of the election and the procedures for voting.²⁸

²⁴ *Ibid.* para. 21.

²⁵ *Ibid.* para. 26.

²⁶ *Ibid.* para. 29.

²⁷ *Ibid.* para. 30.

²⁸ *Ibid.* para. 31.

It was estimated that approximately 300 professional officers, and the necessary support staff, would be required initially until the cessation of hostile acts had been achieved. Thereafter about 1000 professional and 200 field service and General Service staff would be required for tasks during the electoral campaign.²⁹ The initial estimate of the financial cost for UNTAG was \$300 million.³⁰

Resolution 435 itself simply approved the report of the Secretary General for the implementation of the Western Settlement Plan and established UNTAG.

The independence plan, then, appeared to envisage that the military component of UNTAG would supervise the demobilisation and cessation of armed hostilities phase, that the Administrator General would release all political prisoners and repeal all discriminatory legislation, and that law and order would be in the hands of the local police under the control of the Administrator General who had to ensure the good conduct of the police to the satisfaction of the Special Representative. The Special Representative, with the assistance of UNTAG, was to supervise the whole electoral process to ensure free and fair elections.

2. 1978–1988: South Africa's Intransigence

During the next ten years South Africa, taking full advantage of its continued presence in Namibia, its negotiating strength, and its support from the Contact Group, continued to stall on the implementation of the independence plan. In so doing, South Africa was able to influence the eventual implementation of the plan to its own advantage.³¹

South Africa's strategy during this period was to keep the negotiations on foot, but not to concede sufficient ground for there to be a settlement. For example, South Africa twice torpedoed the talks when a breakthrough appeared imminent, first by raiding the Kassinga refugee camp in Angola in May 1978, and then by invading Angola in 1981. It also raised new issues, or exaggerated existing ones, just as other issues were resolved. Most serious was the issue of 'linkage', which tied the implementation of Resolution 435 to the withdrawal of Cuban troops from Angola. Cuban troops had been called in self defence by Angola during the first South African invasion of that country on the eve of its independence in 1975, and Angola stressed that the Cubans would remain so long as South Africa threatened to invade it. The issue was not part of Resolution 435, and was only raised in 1981 with the support of the Reagan administration. Until late in 1988, it was the biggest stumbling block to the implementation of the independence plan.

The stalling of the independence plan allowed South Africa and the Western powers to engage in a subtle process of attempting to alter the independence plan to ensure an outcome favourable to their interests. For example, in October 1981 South Africa and the Contact Group effectively suggested a reversal of the stages

²⁹ *Ibid.* para. 32.

³⁰ *Ibid.* para. 41.

³¹ The following discussion is a summary of Johnstone *op. cit.* 344-56.

of Resolution 435 by proposing that the parties negotiate over constitutional principles prior to elections, rather than leaving the Namibian Constituent Assembly with an unfettered right to determine the independence constitution. One of the proposed constitutional principles was that a two thirds majority be required for the approval of the independence constitution.³² The whole purpose of the introduction of these new principles was to enable South Africa and the Contact Group to have greater control over the independence constitution than Resolution 435 envisaged.

A letter to the Secretary General dated 12 July 1982 from the members of the Contact Group set out 'Principles concerning the Constituent Assembly and the Constitution for an Independent Namibia' which, it was stated, had been accepted by 'all parties to the negotiations'.³³ The principles asserted that every adult Namibian was to be eligible, 'without discrimination or fear of intimidation from any source', to vote, campaign and stand for election to the Constituent Assembly. Voting was to be by secret ballot, with provision made for those who could not read or write. The date for the beginning of the electoral campaign, the date of elections, the electoral system, the preparation of voters' rolls and other aspects of electoral procedures were to be promptly decided upon so as to give all political parties and interested persons a full and fair opportunity to organise and participate in the electoral process. There was to be full freedom of speech, assembly, movement and the press. The electoral system was also to ensure 'fair representation in the Constituent Assembly to different political parties which gain substantial support in the election'.

The preamble to the constitutional principles stated that the Constituent Assembly was to formulate the Constitution for an independent Namibia in accordance with the constitutional principles and would adopt the principles as 'a whole by a two-thirds majority of its total membership.' The principles specified that the Constitution was to be the supreme law in a unitary and democratic state. The Constitution was to determine the organisation and powers of all levels of government, and was to have a separation of powers between the executive, legislature and judiciary. The executive and legislative branches were to be constituted by genuine and periodic elections to be held by secret vote. The Constitution was to include a declaration of fundamental rights which was to be consistent with the Universal Declaration of Human Rights, and aggrieved individuals were to be able to seek redress in the courts. The creation of retrospective criminal offences was prohibited. There was also to be provision for the establishment of elected councils for local and/or regional administration.

South Africa's most successful attempt at a unilateral amendment to the independence plan was its exploitation of a loophole in the settlement proposal. Resolution 435 did not deal with the composition of the defence force of an independent Namibia. From 1980 South Africa embarked upon a policy of 'Namibianizing' its armed forces in the territory, and created the South West

³² For further examples, see Johnstone *op. cit.* 345-6.

³³ United Nations Security Council Document S/15287, 1982.

Africa Territory Force (SWATF). From 1982 South Africa has attempted to conscript all Namibian citizens to SWATF,³⁴ and has tried to build up SWATF as an alternative to SWAPO as the appropriate defence force in the post independence period.

South Africa has also, since the mid 1970s, imposed relentless military pressure on all the independent Southern African states³⁵ and on SWAPO, in order to enable South Africa to demand important changes to the United Nations plan. In 1980, for example, at the initiative of President Neto of Angola, the independence plan was altered to establish, in its first phase, a fifty kilometre demilitarised zone on both sides of the Namibian border. South Africa was to have twenty military bases inside the zone, while SWAPO was totally excluded from the zone.

Despite the illegality of its presence in Namibia, South Africa's occupation also enabled it to search for an internal Namibian solution which by-passed the United Nations framework. Two major attempts at a unilateral settlement were made. The first, beginning in 1975, involved a Constitutional Conference at the Turnhalle in Namibia, and from 1977 involved the South African Administrator General attempting to set up an internal government.³⁶ When this first attempt at a unilateral settlement finally failed, a second attempt was launched in 1983 with the birth of the Multi Party Conference which was made up of a number of local Namibian political parties, but which excluded SWAPO.³⁷ South Africa attempted to set up the Multi Party Conference as a Transitional Government of National Unity in 1985,³⁸ but the Transitional Government did not at any stage achieve any credibility.

It was never really clear at the time whether the Transitional Government really meant to move towards a unilateral declaration of independence, or whether it was an attempt by South Africa to strengthen the position of the internal Namibian parties in the international negotiations over Resolution 435, and as an alternative to SWAPO. There were some suggestions that it was an attempt to pressure the United States and Angola into removing the Cubans from Angola, by threatening a unilateral settlement.³⁹

Since the mid 1970's South Africa had conducted a brutal strategy of 'destabilising' the Southern African states in order to consolidate South African political and economic hegemony in the region. Part of the strategy was South African support of the National Union for the Total Independence of Angola

³⁴ After Proclamation 198 in 1980, military service in SWATF was compulsory for all Namibian males from the year they turned eighteen. Administrative aspects of conscription has fell nominally under the 'transitional' territory administration, but the control and command of SWATF fell directly under the South African Defence Force in Pretoria. Residents in the Kavango and Ovambo bantustans have generally been excluded from the conscription process, on the official explanation that battalions are up to strength in those regions. The more likely explanation is that strong local support for SWAPO in those areas would give rise to resistance to the call up.

³⁵ Angola, Botswana, Zimbabwe, Zambia, Lesotho, Swaziland and Mozambique.

³⁶ See Johnstone *op. cit.* 350-1.

³⁷ *Ibid.* 351-5.

³⁸ See *Proclamation by the State President of the Republic of South Africa* No. R. 101, 1985, *Government Gazette of the Republic of South Africa* No. 9790, 17 June 1985.

³⁹ *Ibid.* 355.

(UNITA) in its civil war against the Angolan Movement for the Popular Liberation of Angola (MPLA) government.⁴⁰ If this support could enable UNITA to achieve a presence in the Angolan government, and pressure SWAPO to abandon its guerrilla campaign and switch to a political campaign through the Transitional Government structure, the result would have been an internal settlement favourable to South Africa, and far short of the terms of Resolution 435. The Multi Party Conference 'transitional government' failed to achieve any of its declared objectives or to present itself as a viable alternative to SWAPO. At the beginning of 1987 it unveiled a 'Programme of Action' aimed at establishing its independence from South Africa, but these plans were never implemented.

The Multi Party Conference was weakened by internal dissension, and by South African criticisms of its failure to extend its very limited base of support. South Africa in particular wanted to bring the Namibian bantustan leaders into the 'transitional government.' South Africa was determined not to see the demise of the 'second tier' government structures, based on the Namibian bantustans.⁴¹ The second tier governments gave each Apartheid-defined group control over its own taxation, education, cultural facilities and other affairs. After 17 months of deliberations, the Multi Party Conference produced a draft constitution in the middle of 1987, but this was rejected by South Africa because it made no reference to the second tier administrations.⁴² After meeting with the South African ministers of Defence and Foreign Affairs the Multi Party Conference agreed to revise the draft constitution to accommodate South African concerns. South Africa also reduced its funding to the Multi Party Conference in 1987 by 40 per cent, which sparked a budgetary crisis.

During this time South Africa continued to resist United Nations demands⁴³ for the implementation of Resolution 435. The weakness of the Multi Party Conference, however, made it unlikely that South Africa could further undermine Resolution 435 by installing the Multi Party Conference as a nominally independent government.

In 1987, the South African military presence in Namibia was increased, partly to back up South Africa's continuing invasions of Angola, and partly to carry out contradictory campaigns of trying to win the 'hearts and minds' of the populace by involving the army in educational and development projects and promoting sports and cultural events,⁴⁴ while beatings, shootings, rape, torture and destruc-

⁴⁰ Since 1985 UNITA has also been receiving 'covert aid' from the United States of America.

⁴¹ Legislation aimed at segregating race groups was introduced into Namibia by South Africa from the early days of the mandate, and gradually the system of Apartheid was established in Namibia. The Odendaal Report of 1964 advocated the creation of ten Apartheid style 'bantustans', each to be populated by one of the different 'tribal' groupings within Namibia. This was implemented in the late 1960s.

⁴² The Multi-Party Conference was itself divided over this issue. Two parties, including the white South West Africa National Party submitted an alternative plan which entrenched the second tier.

⁴³ In November 1987 the Security Council adopted Resolution 601 which reaffirmed the legal responsibility of the United Nations over Namibia and stated that 'all outstanding issues relevant to the implementation' of the United Nations independence plan had been resolved. The Secretary General was instructed to arrange a cease fire between SWAPO and South Africa, a move rejected by South Africa on the grounds that Cuban troops had not yet been withdrawn from Angola.

⁴⁴ *Namibian* (Windhoek) 21 March 1986, 30 January 1987, 13 February 1987, 20 March 1987, 27 March 1987, 17 April 1987, 4 July 1987, and 11 September 1987; *Windhoek Advertiser* (Windhoek) 29 November 1987 and 21 November 1987.

tion of property of the local population continued.⁴⁵ More than 2000 Namibians were conscripted into the South African army in January 1987, the largest ever mobilisation.

In early 1988 the issue of the second tier administration was further complicated when the second tier Administration for Whites declared that it would hold an election, against the wishes of the majority of parties in the transitional government, who then refused to dissolve the White body to allow the elections to take place.⁴⁶ In March 1988 the Windhoek Supreme Court held that the second tier structures violated the Multi Party Conference's Bill of Rights, because the system entrenched discrimination in that the Administration for Whites had funds which were almost double the funds for the other ten second tier authorities combined. The Court held, however, that further action, if any, lay with the transitional government.⁴⁷ In early April 1988 South African President P. W. Botha vested the Administrator General in Namibia with greater powers, a clear indication that South Africa would re-establish direct rule over the territory if the Multi Party Conference administration did not comply with South Africa's wishes. The Administrator General was given power to direct that elections take place for all the bantustan authorities, and to veto any attempts by the transitional government to abolish any of the existing authorities.⁴⁸ This further restricted the already limited powers of the transitional government and effectively prevented it from implementing one of the main objectives of the majority of parties in the central administration — the abolition of the second tier bantustan authorities, and their replacement with regional bodies. Mr Botha also declared that 'suitable steps' had to be taken against SWAPO and against the media which promoted 'subversion.' These developments immobilised the transitional government. These initiatives suggested that the South African government, far from being willing to implement Resolution 435, was attempting to consolidate its direct authority over Namibia, and to impose an administration in its own image.

3. *The 1987 Invasion of Angola: A Turning Point?*

During its biggest invasion for about six years, South Africa was heavily engaged in Angola's Cunene province in the latter half of 1987, ostensibly in activities against SWAPO, but in actual fact most of the fighting was against the Angolan armed forces (FAPLA). South Africa was reluctant to accede to the United Nations independence plan for Namibia until the conflict in Angola was resolved to its satisfaction.⁴⁹ From September about 3000 South African troops were deployed in the Cuando Cubango province, to stop FAPLA operations

⁴⁵ *Namibian* (Windhoek) 10 July 1987, 7 August 1987, 20 August 1987, 4 September 1987, 11 September 1987 and 18 September 1987; *Windhoek Observer* (Windhoek) 22 August 1987 and 19 September 1987.

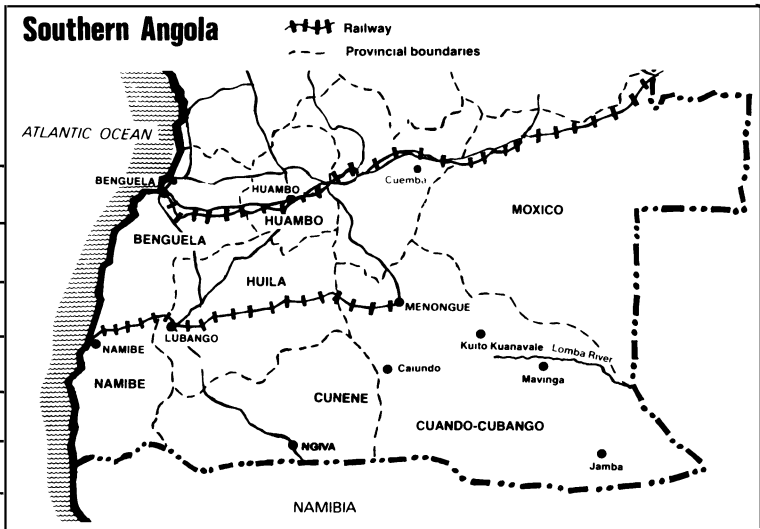
⁴⁶ *Windhoek Advertiser* (Windhoek) 24 February 1988.

⁴⁷ *Windhoek Advertiser* (Windhoek) 23 March 1988.

⁴⁸ *Windhoek Observer* (Windhoek) 9 April 1988; *Times* (London) 15 April 1988; *Windhoek Advertiser* (Windhoek) 6 April 1988.

⁴⁹ *Times* (London) 15 April 1988.

against UNITA in the area.⁵⁰ The substantial casualties suffered by the South African army provoked strong criticism within South Africa, and a mutiny by Namibian troops who had been ordered to disguise themselves as UNITA troops.⁵¹ South Africa then brought in more troops from Namibian and South African regular units, and, supported by heavy artillery and air cover, drove the Angolan forces back to the Lomba river in south eastern Angola.



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During the early months of 1988 South Africa attempted to extend its invasion into Angola, and to open up new fronts up to 600 kilometres into Angolan territory. By the end of March 1988 there were about 9000 South African troops occupying south eastern Angola, concentrated around the besieged town of Cuito Cuanavale in Cuando Cubango province.⁵² After three failed attempts to take the town, South African motorised columns fanned out to the south west Angola, through Cunene province, while a joint South African and UNITA force moved 400 kilometres north to attack towns along the Beguela railroad in early March. These initiatives were accompanied by bombing strikes by South African aircraft. It appeared that the long term objective was to connect the invading

⁵⁰ South Africa openly acknowledged that its aim was to save UNITA from total defeat by the Angolan armed forces: *FOCUS 75* (March-April 1988) 12. At the same time, South Africa was rearming the Mozambique National Resistance in Mozambique, and renewed threats were made against Botswana. A bomb was also planted in Zimbabwe, allegedly by South African agents: *Daily News* (Durban) 13 October 1987.

⁵¹ It was believed that up to 400 troops had resigned or deserted from 101 Battalion, a Namibian staffed professional unit in SWATF. South Africa conceded that 24 soldiers from the unit had been discharged for refusing to obey orders: *Independent* (London) 19 and 20 November 1987.

⁵² In order to reduce the high level of white troop casualties, South Africa increasingly resorted to long range artillery bombardment and bombing by the air force, and deployed more black troops in the front line: *FOCUS 75* (March-April 1988).

forces in the south with UNITA groups operating in the far north of Angola, which are supplied with arms by the United States from Zaire.⁵³ South African aircraft also bombed the outskirts of the city of Lubango at the end of February 1988, killing hundreds of civilians.⁵⁴

This intensified South African aggression in Angola was accompanied by renewed diplomatic and political pressure on the Angolan government to negotiate with UNITA and end its military assistance agreement with Cuba. Angola indicated its willingness to do so on the condition that South Africa ended its aggression in Angola, its support for UNITA, and its opposition to the United Nations independence plan for Namibia. In May 1988 the Angolan armed forces counter-attacked with Cuban backing. The South African troops laying siege to Cuito Cuanavale were pushed back at least 70 kilometres east of the town. Angolan forces in central Angola began driving the joint South African-UNITA force away from Cuemba on the Benguela railway line. Angolan forces also began to re-establish control of Cunene province to the west of Cuito Cuanavale, and Cuban forces, previously held in reserve, began to move forward.⁵⁵ The Angolans established a strong defensive line some 20 to 40 kilometres from the Namibian border, trapping up to 3000 South African troops near Cuito Cuanavale. Faced with the prospect of very heavy losses if the war continued, South Africa was forced to sue for a cease-fire.⁵⁶

It was not only these military set-backs that provided the balance of forces which forced Pretoria to the negotiating table.⁵⁷ During the mid-1980s South Africa expanded the size of its army and police force to cope with the growing unrest internally. The budget for the army, for example, was expanded by 30 per cent in April 1987, and the budget for the police by 43 per cent. In addition, the Angolan war has been very expensive for South Africa at an estimated R4 billion a year, an increasing drain on the South African economy at a time when it has been in deep trouble.⁵⁸ The relatively high casualty rate amongst white South African conscripts led to a crisis of confidence in the South African Defence Force among sections of the white community of South Africa, and raised doubts about the Angolan war.⁵⁹ In short, the war in Angola could not be sustained. Angola, devastated by thirteen years of war with South Africa and UNITA, was eager for peace.⁶⁰ The Reagan administration, fearing a Democrat victory in the Presidential elections in November 1988 and the prospect of the end of its policy of 'constructive engagement' in Southern Africa, stepped up its efforts to achieve a Southern African settlement before the end of 1988.⁶¹ At the same time, the

⁵³ *Star* (Johannesburg) 10 March 1988; *Independent* (London) 3 March 1988 and 10 March 1988.

⁵⁴ *Guardian* (London) 29 February 1988.

⁵⁵ *Guardian* (London) 6 May 1988.

⁵⁶ *Independent* (London) 10 August 1988.

⁵⁷ *Southscan* (London) 4 April 1988.

⁵⁸ *Financial Times* (London) 18 August 1988. It was estimated by the chief of the South African army, General Kat Liebenberg, in March 1989 that a settlement in Namibia would reduce South Africa's army requirements by 30 per cent: statement reported by South African Press Association, 29 March 1989.

⁵⁹ *Guardian* (London) 8 July 1988.

⁶⁰ *Guardian* (London) 18 May 1988.

⁶¹ *International Herald Tribune* 5 May 1988.

Soviet Union, under General Secretary Gorbachev, was considering cutting back its costly involvement in Southern Africa,⁶² and was keen to see a settlement in Southern Africa, involving both Angola and Namibian independence.⁶³ The Soviet Union had realised that there was not going to be a revolution in Southern Africa, and decided to abandon the region in the process of regularising its relationship with the United States. There were reports that President Reagan and General Secretary Gorbachev were likely to agree on a peace plan for Namibia and Angola when they met at their Moscow Summit in June 1988.⁶⁴

From early May 1988 there were talks in London involving the South Africa, Angola, the United States and Cuba. Shortly afterward, a further round of talks took place between South Africa and Angola, in Brazzaville, in the People's Republic of the Congo.⁶⁵ In June there were further talks, in Cairo, between South Africa, Angola and Cuba, with the United States acting as a mediator.⁶⁶ A major development occurred near the end of June when Angola indicated that it was willing to negotiate the withdrawal of Cuban troops from Angola without first seeking an assurance that the United States would stop its support for UNITA.⁶⁷ On 13 July 1988, after talks in New York, South Africa committed itself to withdraw from Angola, and to implement Resolution 435. The agreement also called for the 'redeployment toward the north and the staged and total withdrawal of Cuban troops from Angola.'

The talks continued in Geneva in early August 1989 and the parties agreed 'on a series of positive steps to prepare the way for independence of Namibia, in accordance with United Nations Security Council Resolution 435', and recommended 1 November 1988 for the beginning of the implementation of the Settlement Plan. The various steps agreed in preparation for meeting this target date were incorporated in the Geneva Protocol.

The cease-fire between Angolan and South African forces was smoothly implemented on 22 August, with the signing of the Ruacana Accord. The cease-fire was to be monitored by a joint Angolan-South African military monitoring committee.⁶⁸ All South African forces had vacated Angola by 1 September, the agreed deadline under the Geneva Protocol. The South African troops were, however, redeployed just across the border in northern Namibia, and further reinforcements were sent into Namibia from South Africa. The main South

⁶² *Ibid.*

⁶³ *Financial Times* (London) 20 May 1988. Cuba, the United States and Angola made it clear that there could be no peace settlement in Angola without a settlement in Namibia: *Windhoek Advertiser* (Windhoek) 19 May 1988.

⁶⁴ *Africa Confidential* (London) 27 May 1988. Throughout the subsequent negotiations over Angola and Namibia there were extensive discussions between the United States and the Soviet Union: *Independent* (London) 16 November 1988.

⁶⁵ *Times* (London) 16 May 1988.

⁶⁶ *Financial Times* (London) 27 June 1988.

⁶⁷ *Financial Times* (London) 24 June 1988. Prior to this Angola had insisted that the two issues be linked. During the previous year, the United States had sent UNITA US\$15 million worth of military equipment, so as to ensure that UNITA was in strong position when President Reagan left office. One of South Africa's demands during these negotiations was that a condition of a Southern African settlement was that UNITA be included in a coalition government in Angola: *Times* (London) 11 July 1988.

⁶⁸ *Namibian* (Windhoek) 27 September 1988; *Star* (Johannesburg) 28 August 1988.

African logistics base in Namibia, at Grootfontein, was considerably strengthened during July, and other bases were also expanded. There were also reports of the mass mobilisation of conscripts in South Africa, and in early September trains and military convoys were carrying armour, artillery and heavy equipment to the north of Namibia.⁶⁹

4. *The Settlement*

Further talks were held in Brazzaville in the People's Republic of the Congo during September, and the parties were close to agreement, although a few issues remained to be negotiated. There were further talks in New York in October but the stumbling block appeared still to be the timetable for Cuban troop withdrawal from Angola. At the end of the month the target date for the implementation of Resolution 435 was moved to 1 January 1989.

In mid-November, during a further round of talks in Geneva, South Africa agreed to a timetable for the independence process.⁷⁰ The principles of the agreement prohibited aggression and the use of force, but neither South Africa nor the United States committed itself to withdrawing support for UNITA.⁷¹ The South African Defence Force continued to build up along the Namibian border and by the end of November 1988 there was no sign of preparation for a military withdrawal from the territory.⁷²

On 13 December 1988 South Africa, Cuba and Angola formally signed the Protocol of Brazzaville which accepted the implementation of the United Nations independence plan for Namibia.⁷³ The provisions of the Protocol recommended to the United Nations Secretary General that 1 April 1989 be the date of the implementation of the independence plan, and specified that the parties would meet on 22 December in New York to sign a formal tripartite agreement and for Angola and Cuba to sign a bilateral agreement on Cuban troop withdrawal. The parties also agreed to exchange prisoners of war immediately following the signature of the tripartite agreement. The Annex to the Protocol established a Joint Commission, to consist of representatives from Angola, Cuba and South Africa to be constituted within 30 days from 22 December and to serve as a forum for discussion of issues relating to the interpretation and application of the tripartite agreement, the handling of any joint military monitoring committee business, and any other purposes that might be mutually agreed by the parties in future. The parties invited the Soviet Union and the United States to participate as observers of the work of the joint commission. At independence, the Namibian government was to become a member of the joint commission. The

⁶⁹ *Sunday Times* (London) 14 August 1988; *Observer* (London) 4 September 1988.

⁷⁰ *Independent* (London) 16 November 1988. The details of the agreement were not released until the agreement had been formally ratified by the governments concerned.

⁷¹ *Southscan* (London) 13 July 1988; *Sunday Times* (London) 14 August 1988; *Observer* (London) 4 September 1988.

⁷² *Namibian* (Windhoek) 21 October 1988; *Windhoek Advertiser* (Windhoek) 3 November 1988; *Independent* (London) 23 November 1988.

⁷³ United Nations Security Council Document S/20346 of 14 December 1988.

joint commission was not to usurp the role of UNTAG or the United Nations Verification Mission in Angola.

In Security Council Resolution 626 of 20 December 1988 the Security Council approved the Secretary General's proposals for the establishment of a small observer mission (the United Nations Angola Verification Mission) to oversee the phased withdrawal of the 50 000 or so Cuban troops from Angola.

Finally, on 22 December, at the United Nations Headquarters in New York, Angola, Cuba and South Africa signed the tripartite agreement providing for the implementation of Security Council Resolution 435 from 1 April 1989 and the staged and total withdrawal of Cuban troops from Angola over the next 27 months. At the same time the Angolan and Cuban governments signed an agreement which obliged Cuba to withdraw its troops from Angola in stages up to July 1991.⁷⁴

Under the timetable agreed to in the trilateral and bilateral agreements, South Africa was obliged to begin implementing Resolution 435 on 1 April 1989.⁷⁵ On that day, the United Nations Special Representative for Namibia was to enter the territory, and United Nations troops and officials of UNTAG were to be deployed in Namibia. The United Nations was to oversee the cease-fire in Namibia, and SWAPO and South African forces, including SWATF, were to be confined to base. At the same time, the release of political prisoners and detainees was to begin. By 1 April 3000 Cuban troops were to have left Angola.

By mid-April the demilitarized zone was to be established 50 kilometres either side of the borders between Namibia and Angola, and Namibia and Zambia, and 'selected locations' were to be exempt until the end of June.

All discriminatory legislation in Namibia was to be repealed by mid May, and South African forces were to be reduced to 12 000. The SWATF command structures were to be dismantled, South African troops in SWATF withdrawn and military equipment placed under United Nations supervision. Exiles and refugees were to begin to return to the territory.

By early June South African troop levels were to be reduced to 8000, and all political prisoners and detainees were to be released. There was to be a South African military withdrawal from Namibia to a maximum of 1500 soldiers by 1 July, and all South African military bases, apart from Grootfontein and Oshivello, were to be closed. 1 July was also to mark the start of the election campaign and voter registration. By August 1989 all Cuban troops were to withdraw to north of the 15th parallel in Angola.

Elections to the Constituent Assembly were to be held on 1 November, under United Nations supervision. Half the Cuban troops must have left Angola by that date, and the remaining troops in Angola were to withdraw to above the 13th parallel. By mid November all remaining South African troops were to be withdrawn, and all South African military facilities were to be closed. By January 1991 only 12 000 troops were to remain in Angola, and all were to leave by July 1991.

⁷⁴ United Nations Security Council Document S/20345 of 22 December 1989.

⁷⁵ United Nations Security Council Resolution 629 (16 January 1989).

5. The Implementation of the Settlement

The tripartite agreement and the bilateral agreement were welcomed and supported by the United Nations Security Council in Resolution 628 of 16 January 1989, which called on all parties to co-operate in their implementation. On the same day Security Council Resolution 629 set 1 April 1989 as the beginning of the Namibian independence process, instructed the Secretary-General to arrange a formal cease-fire between SWAPO and South Africa,⁷⁶ and called upon South Africa to reduce 'immediately and substantially' the existing police forces in Namibia in order to achieve a 'reasonable balance' between those forces and UNTAG.⁷⁷ The Resolution also asked the Secretary General to prepare a report for the Security Council on the implementation of Resolution 435, and to re-evaluate requirements for UNTAG and identify possible cost saving measures without prejudice to the achievement of the early independence of Namibia.

In his report to the Security Council⁷⁸ on the implementation of Resolution 435 the Secretary General recommended that, while the authorised upper limit for the military component of UNTAG would remain at 7500 in accordance with the original 1978 proposals, the budgetary provisions should be presented to the General Assembly on the basis of a military component of 4650 personnel. The balance of the 7500 military personnel in the original 1978 plan were held in reserve.⁷⁹ The estimated cost of the civil and military components of UNTAG was approximately US\$416 million, a cut from the estimate on the original plan of US\$700 million.

A bitter dispute erupted over the issue of the cost of the operation, and resulted in a delay in the approval of the independence plan by the Security Council. The five permanent members, who were to contribute 57 per cent of the cost of the peace keeping operations, supported the Secretary General's efforts to cut the size of the peace keeping force. They were opposed by the non-aligned nations on the Security Council who feared that even the full strength UNTAG force would be hard pressed to monitor the activities of the tens of thousands of South African troops and police in the territory. The matter was resolved in favour of the five permanent members, and United Nations Security Council Resolution 632 of 16 February 1989 implemented the independence plan as set out in Resolution 435 'in its original and definitive form' and approved the Secretary General's recommendations.

Eventually, on 1 March 1989, the United Nations General Assembly approved a budget of US\$416 million. UNTAG would consist of 4050 soldiers, 500 military police, and 100 civilians. One of the ludicrous consequences of this austerity drive was that the United Nations General Assembly approved a plan to

⁷⁶ SWAPO had implemented an informal cease-fire on 1 September 1988, but South African forces continued operations and the dawn to dusk curfew in the main war zone.

⁷⁷ On 17 January 1989 South Africa announced that it was reducing the South West African police by one sixth to comply with this provision.

⁷⁸ United Nations Security Council Document S/20412 24 January 1989.

⁷⁹ *Independent* (London) 4 April 1989; *Times* (London) 2 March 1989. See also *Natal Mercury* (Durban) 3 May 1989.

lease mine proof vehicles from the South African army and to buy other supplies from South Africa for its operations in Namibia despite the United Nations arms embargo against South Africa.⁸⁰

Despite its public commitment to implement Resolutions 435 and 632 on 1 April 1989, South Africa continued its military activities in Namibia during the first weeks of January 1989. On 10 January 2200 conscripts reported for compulsory military service with SWATF. Under the independence plan the conscripts were to be demobilised on 1 April 1989, although it was reported that military authorities intended sending SWATF officers to South Africa to continue their service.⁸¹

It soon became apparent that Resolutions 435 and 632, far from providing a coherent and complete independence plan, was only a rough framework lacking in important details. South Africa has been able to exploit gaps in the settlement to its own advantage.

The United Nations Special Representative was to consult with the South African Administrator General, who was responsible for the day to day administration of the territory and who was in command of the Namibian police force. The South African Defence Force and SWATF were to be confined to base and supervised by the United Nations, but the Namibian police were responsible for the maintenance of law and order. The Namibian police force included 3000 men who had formally been members of South Africa's notorious Koevoet ('Crowbar'), a police counter insurgency unit formed in 1979 which was responsible for most of the beatings, killings, rapes and abductions that had been carried out on the Namibian populace since that time. Koevoet had been officially disbanded in January 1989 as a 'good will gesture'. Most of the members of Koevoet, however, were integrated into the regular territorial police force on 1 April 1989, and were patrolling the territory at the time of the settlement.⁸² Koevoet personnel were to make up half of the police force maintaining order during the elections. This was in clear contravention of the spirit, if not the letter, of the Western Settlement Plan which envisaged the 'demobilisation of the citizen forces, commandoes, and ethnic forces, and the dismantling of their commando structures.'

It was not clear from the Brazzaville Accord what was to happen to SWAPO's troops. Part of the problem was that SWAPO, despite being one of the key parties involved in the conflict, was not involved in the negotiations leading up to the independence agreement.⁸³ It appears that the parties did not address this crucial question. There was no published agreement that all SWAPO guerrillas were to withdraw to north of the 16th parallel, 180 kilometres north of the

⁸⁰ United Nations Security Council Resolution 418 of 1977.

⁸¹ *Independent* (London) 11 January 1989; *Southscan* (London) 11 January 1989.

⁸² *New York Times* (New York) 15 January 1989; *Natal Mercury* (Durban) 5 April 1989; *Guardian* (London) 2 April 1989.

⁸³ In the Lancaster House talks over the independence of Zimbabwe in 1979, the Patriotic Front, represented by Robert Mugabe and Joshua Nkomo, were fully represented and were able to negotiate that their guerrillas enter designated assembly points in the outlying areas of the country. When tensions later arose contacts that were made during the negotiations served all sides well.

Angolan border. United Nations documents only referred to a regrouping in Angola, without specifying where. Clause 5 of the Geneva Accord of 5 August 1988 stated:

Angola and Cuba shall use their good offices so that, once the total withdrawal of South African troops from Angola is completed, and within the context also of the cessation of hostilities in Namibia, SWAPO's forces will be deployed North of the 16th Parallel.

SWAPO's President Nujoma then wrote a three page letter on 12 August 1988 to the Secretary General of the United Nations, which contained no reference to the 16th Parallel. The letter indicated a commitment to the peace process, and a commitment to comply with the proposed cease fire without an endorsement of the terms of the Geneva Accord.

These three factors, the paucity of the United Nations forces, South Africa's control of the Namibian police force, and the uncertainty about SWAPO's position after 1 April 1989, contributed to the incident that nearly destroyed the independence process when it had barely begun.

On 1 April, the day the cease-fire under Resolutions 435 and 632 came into effect, and the day that the United Nations Special Representative, Mr Martti Ahtisaari, entered Namibia, there were reports of about a thousand SWAPO guerillas infiltrating Namibia from Angola. After a threat by South Africa to expel the United Nations from Namibia, a hurried meeting between the South African Administrator General, Mr Louis Pienaar, and Mr Ahtisaari resulted in a decision to lift the restriction on six battalions of SWATF which were mobilised with South African army support to counter this 'incursion'.⁸⁴ Heavy fighting was reported, the worst in Namibia for about six years, with the brunt of the fighting against SWAPO being carried out by the regular territorial police force, comprising the former members of Koevoet. There were also reports of four South African Air Force Impala jets being used to support the police and army troops fighting SWAPO.⁸⁵ South Africa achieved a marvellous media coup when it was able to convince the world's media that SWAPO guerillas had broken the terms of the Geneva Accord and the independence plan by invading Namibia when they should have been 180 kilometres north of the Angolan border above the 16th parallel. After a week of fighting 300 men were reported dead.⁸⁶ SWAPO suffered huge casualties, but the manner in which many SWAPO guerillas died was sinister — many had been shot in the back of the head, and 'the pattern of injuries was too consistent to be the result of fighting'.⁸⁷ After the carnage evidence emerged that the South Africans had been expecting such an incursion,⁸⁸ and had used the opportunity to carry out political assassinations and kill many civilians as well as SWAPO guerillas captured in Namibia during an earlier phase of the war.⁸⁹ There appeared to be a reluctance on the part of the South African troops to take prisoners.

⁸⁴ *Independent* (London) 4 April 1989.

⁸⁵ *Herald* (Harare) 4 April 1989.

⁸⁶ *Times* (London) 15 April 1989; *Financial Times* (London) 10 April 1989. By mid May 316 SWAPO guerillas were reported dead, and 27 South African troops: *Age* (Melbourne) 16 May 1989.

⁸⁷ *Guardian* (London) 25 April 1989.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

The United Nations received widespread condemnation for its inability to act quickly and decisively.⁹⁰ The charges levelled at it included claims that it was understaffed — on 1 April only 971 United Nations troops were in Namibia, and they were all monitoring the withdrawal of the South African Defence Force and the demobilisation of SWATF;⁹¹ that it had no forces monitoring either the Angolan border, or the South West African police, as laid down in Resolutions 435 and 632 and reiterated in the Secretary General's January 1989 report to the Security Council; that it had no proper process for dealing with a breach of the agreement; that it had showed a clear anti-SWAPO bias by allowing the initiative to the South African forces, who were able to carry out brutal reprisals against SWAPO; that it had no contact with SWAPO, and no mechanism for contacting SWAPO in the event of a breach of the agreement;⁹² and that it did not monitor the exhumation of the bodies of SWAPO guerillas for a post mortem to determine the manner of their deaths at the hands of South African forces.⁹³

Why did SWAPO infiltrate the territory? It now seems fairly clear that SWAPO was not invading, nor were the guerillas already inside Namibia and merely trying to regroup so that they could hand themselves over to UNTAG who would confine them to base, as initially alleged by Sam Nujoma, SWAPO's President.⁹⁴ There were a number of more likely explanations. One is the SWAPO was trying to do what Robert Mugabe's ZANU guerillas did in 1980 after the Lancaster House talks settled the process towards Zimbabwe's independence — enter the country victorious prior to being confined to base within the country, so that the populace would see ZANU as being strong and victorious, and would be encouraged to vote for them.⁹⁵ A further benefit for SWAPO would be that its troops could be confined to base within Namibia under United Nations supervision with a greater chance of becoming part of an independence army and countering South Africa's great advantage of being present within the country. Another explanation is that, because of the uncertainty about where SWAPO guerillas were to be based, the guerillas had genuinely believed that they could enter the country and hand themselves over to UNTAG.⁹⁶

The first priority after the events of early April 1989 was to get the independence plan back on the rails. At first the South African Administrator General demanded that SWAPO guerillas either lay down their arms and surrender to the police, or turn northwards to Angola with their weapons with the assurance that police would not pursue north facing tracks. Not surprisingly, this suggestion was widely criticised. Then on 9 April an agreement, known as the Mount Etjo

⁹⁰ *Independent* (London) 4 April 1989; *Herald* (Harare) 6 April 1989.

⁹¹ These also did not include the key infantry battalions from Kenya, Finland and Malaysia: *Guardian* (London) 2 April 1989.

⁹² *Independent* (London) 4 April 1989.

⁹³ *Guardian* (London) 25 April 1989.

⁹⁴ *Guardian* (London) 4 April 1989.

⁹⁵ In 1980, after the Lancaster House Agreement, over 35 000 Zimbabwe guerillas assembled at designated assembly points in the outlying areas of the country, where they were watched by Commonwealth monitoring forces, and eventually disarmed in tandem with the Rhodesian army. There were very few casualties in the process.

⁹⁶ *Guardian* (London) 6 April 1989.

Declaration, was concluded between South Africa, Angola and Cuba. It specified that the SWAPO guerillas were to turn themselves in to United Nations Assembly points, or Namibian churches or missions, which had been designated as safe havens for guerillas wishing to contact UNTAG. They would then be transported to points about 140 kilometres inside Angola. South Africa had rejected the United Nations Secretary General's proposal that the SWAPO guerillas be disarmed and confined to base within Namibia.⁹⁷

There was initial confusion about the implementation of the plan. Nine assembly points were set up, seven on the Namibian border, and two in the nearby countryside. SWAPO refused to enter the points, not least because they were in or very near South African army bases, and because SWAPO had lost all confidence in the United Nations forces.⁹⁸ In addition, the surrendering SWAPO forces were to be photographed and fingerprinted by South African troops, wounded guerillas were to be treated by South African doctors, and the SWAPO guerillas were to surrender their weapons while the South Africans kept theirs.⁹⁹ South African troops conducted patrols around the assembly points.¹ South African troops also prevented SWAPO guerillas from going back to Angola — there were reports within a week of the agreement that South African troops had killed 13 SWAPO guerillas.²

The United Nations was reported as having difficulty in finding soldiers ready for the task of patrolling and shepherding to safe points any SWAPO guerillas seeking refuge under the terms of the truce.³ South Africa insisted that its troops would not be confined to base until there was verification that all SWAPO guerillas had left the territory.⁴ On 21 April South Africa agreed to confine its troops to base for sixty hours to allow SWAPO guerillas safe passage into Angola.⁵ In early May 4500 South African Defence Force personnel were released from base to hunt down any remaining SWAPO guerillas in Namibia.⁶ South Africa alleged that under the Mount Etjo Declaration South African troops were permitted to keep watch on the SWAPO withdrawal until May 13.⁷ There were also reports that South African security forces were carrying out massacres, assaults, beatings and other forms of intimidation in Namibia during April.⁸

These two factors, the release from base of the South African forces, and the allegations of intimidation by South African security forces, brought South Africa and the United Nations close to head on confrontation, and severely

⁹⁷ *Financial Times* (London) 10 April 1989.

⁹⁸ Within the first ten days only twelve SWAPO guerillas had reported to the assembly points: *Independent* (London) 20 April 1989.

⁹⁹ *Observer* (London) 16 April 1989.

¹ *Independent* (London) 17 April 1989.

² *Independent* (London) 17 April 1989 and 20 April 1989.

³ *Natal Mercury* (Durban) 17 April 1989. The only infantry unit fully equipped for the task was the 800 strong Finnish battalion. Initially the assembly points were manned by Australian and British units who were originally assigned as engineers and signallers.

⁴ *Financial Times* (London) 19 April 1989.

⁵ *Financial Times* (London) 22 April 1989.

⁶ *Windhoek Advertiser* (Windhoek) 3 May 1989; *Natal Mercury* (Durban) 5 May 1989.

⁷ *Natal Mercury* (Durban) 6 May 1989.

⁸ *Southscan* (London) 19 April 1989; *Independent* (London) 20 April 1989; *International Herald Tribune* 21 April 1989; *Namibian* (Windhoek) 21 April 1989; *Guardian* (London) 11 May 1989.

jeopardised the independence timetable.⁹ Matters came to a head near the end of May when it was revealed that the South African foreign minister had claimed that South Africa had the right to use whatever measures it deemed appropriate to keep the peace in Namibia during the transition to independence, and implied that it was the final authority over the territory.¹⁰ United Nations officials interpreted this as a crude bid by South Africa to by-pass the provisions of Resolutions 435 and 632 if there was any further violence in Namibia. The United Nations Secretary General took the South Africa's ambassador to task over the threat, and also demanded that Koevoet be disbanded and that its former members be removed from the Namibian police force.¹¹

In mid May the United Nations Special Representative, the South African Administrator General, and officials from South Africa, Cuba and Angola met under the banner of the joint monitoring commission to certify that all SWAPO guerillas had returned to Angola — most having gone on their own accord without having surrendered to the United Nations Forces — and all South African troops were confined to base.¹² The commission declared that Angola and Cuba would take 'all practical measures' to ascertain that the SWAPO guerillas remained in their bases, under United Nations monitoring, until a week after the results of the Namibian election were certified.¹³ A revised timetable was announced, but it appeared that the previously stipulated date for the beginning of the election campaign, 1 July, would hold.¹⁴

The independence plan was not very clear about the position of the Namibian refugees and exiles who were to return to Namibia before 1 November to vote. The Western Settlement Plan merely indicated that they were to be permitted to return peacefully and participate fully in the electoral process, and that suitable entry points would be designated for this purpose. The Special Representative with the assistance of the United Nations High Commissioner for Refugees (UNHCR) and 'other appropriate bodies' were to ensure that Namibians remaining outside of Namibia were given a free and voluntary choice whether to return.¹⁵ It was estimated that there were about 60 000 refugees in Angola, Zambia and Gabon,¹⁶ although SWAPO alleged there were as many as 80 000. As the Namibian population was only one and a half million at the most, the returning refugees and exiles made up a considerable segment of the potential voting population, and were likely to be strong supporters, if not members, of SWAPO.¹⁷ These refugees were to enter Namibia by land and air, to staging camps or reception centres inside Namibia, where they would stay for a short

⁹ *Natal Mercury* (Durban) 6 May 1989.

¹⁰ *International Herald Tribune* 20 May 1989.

¹¹ *Independent* (London) 25 May 1989; *Independent* (London) 22 June 1989.

¹² *Independent* (London) 16 May 1989; *Age* (Melbourne) 16 May 1989; *International Herald Tribune* 20 May 1989.

¹³ *International Herald Tribune* 20 May 1989.

¹⁴ *Age* (Melbourne) 16 May 1989.

¹⁵ Paras 7C and 7D.

¹⁶ *Namibian* (Windhoek) 28 April 1989.

¹⁷ *Times* (London) 20 May 1989.

time and be issued with the necessary documentation. The centres were run by the UNHCR and the Council of Churches of Namibia.¹⁸

Refugees were due to begin returning to Namibia in the middle of May, but were delayed because their return was contingent upon South Africa repealing all discriminatory legislation in the territory by that date. South Africa and UNTAG officials were unable to agree what this entailed. The major problem was Proclamation AG 8 which made provision for the racially segregated administrations under the territory's second tier government system. The South African Administrator General was of the view that the second tier administrations themselves could continue to operate within the framework of Resolutions 435 and 632, while the United Nations Special Representative said that the legislation was totally unacceptable within the framework of Resolutions 435 and 632 and had to be repealed in its entirety.¹⁹ At the beginning of June 1989 some 36 statutes, proclamations and ordinances in force in Namibia were repealed and a further ten amended by the Administrator General's Proclamation AG 14 of 1989. While this did not, by any means, remove all discriminatory and repressive legislation as provided for in Resolutions 435 and 632, it did remove some of the most notorious legal mechanisms from the South African administration in Namibia.²⁰ The Administrator General was of the view that all laws that 'may abridge or inhibit the objective of a free and fair election' had been covered. The United Nations Special Representative indicated that discussions were continuing on further laws to be amended.²¹ The repeal of laws was accompanied by the Amnesty Proclamation AG 13 of 1989. This covered people of Namibian birth, and their children and spouses, provided they were living outside Namibia immediately prior to 6 June 1989 and subsequently returned to the country through designated entry points. They were granted immunity from prosecution for any 'criminal offence' committed either in Namibia or elsewhere. The amnesty provided no immunity from civil action.²² The proclamation

¹⁸ *Southscan* (London) 22 March 1989. By early April 1989 the Council had already set up twenty five reception centres for returning exiled Namibians. Four of the centres were situated near the three main entry points in Windhoek, Grootfontein in central Namibia, and Ondangwa in the north. The remaining reception centres were scattered throughout the country: *New Nation* (Johannesburg) 13 April 1989. An agreement was signed between the Council and the UNHCR on 26 April, 1989 to work together in providing immediate international protection and material assistance to the refugees. The necessary medical equipment was to be made available by UNICEF, and the United Nations Food Programme was to finance the food for the returning refugees.

¹⁹ *Guardian* (London) 11 May 1989.

²⁰ The South African legislation included the Internal Security Act 1950, the Terrorism Act 1967, the General Law Amendment Act 1962, the Unlawful Organisations Act 1960, and the Public Safety Act 1953, the Prohibition and Notification of Meetings Act 1981. Still in force, however, was the Criminal Procedure Act 1977 which had been used to detain and charge political opponents of the South African administration, the Residence of Certain Persons in South West Africa Regulation Act 1985, the Intimidation Act 1982, the Demonstrations in or near Court Buildings Prohibition Act 1982, the Protection of Information Act 1982, the National Intelligence Act 1987, parts of the Riotous Assemblies Act 1956, parts of the Protection of Fundamental Rights Act 1988, parts of the Publications Act 1974. Also repealed in full was the Security of Districts Proclamation AG 9 of 1977 which had been used to impose a curfew in northern Namibia, and Detention of Persons in Order to Prevent Political Violence and Intimidation Proclamation AG 26 of 1978.

²¹ *Weekly Mail* (Johannesburg) 2 June 1989; *Times of Namibia* (Windhoek) 7 June 1989.

²² In May seven policemen issued summons against SWAPO claiming damages of nearly R5 million for injuries sustained during battles with guerrillas in April 1989: *Windhoek Advertiser* (Windhoek) 26 May 1989.

was criticised for failing to indemnify people who might return to Namibia after the closure of the designated entry points. The proclamation also gave the Administrator General the power to vary the stated qualifications for the immunity.

The repatriation of refugees was also delayed because of the grave concern of United Nations officials over the activities of some South African security forces, particularly Koevoet, who had created a 'climate of terror' in northern Namibia.²³ By early June agreement had been reached between the United Nations and South Africa's administration in Namibia on an amnesty and the repeal of discriminatory and security legislation in Namibia. The agreement was ratified in proclamations of the Administrator General. The first refugees and exiles returned to Namibia in the middle of June. By mid October 41 748 exiles had returned to Namibia through the UNHCR repatriation programme, and the repatriation of refugees and exiles was belatedly completed.²⁴ The number of returning refugees and exiles was considerably lower than the 80 000 reported by SWAPO. Many of these were youths and children who remained at schools outside the country, but many other Namibians chose not to register as refugees and to remain outside the territory, particularly in Angola, to await the outcome of the election.²⁵

Under the independence plan, once inside Namibia the refugees were free to move to where they wished. A problem which emerged was whether the refugees would be able to leave these camps. There are two major reasons why they may not have done so. First, while the UNHCR had responsibility for bringing the refugees to Namibia, he had not undertaken to give these refugees food once they left the camps. Thus it was not clear how they would be supported once they left the camps. Late in September 1989 the UNHCR announced an intention to help returning refugees and exiles with health services, education, shelter and employment opportunities.²⁶

The second point was that the Namibian police, backed up by the South African paramilitary, were responsible for the maintenance of law and order in the territory, and many of the refugees were not willing to place themselves at the mercy of these officials. Refugees who had returned to Namibia in June 1989 were reported to fear for their safety, refusing to leave the reception areas.²⁷ Of the first 6000 refugees to arrive in Namibia, only 1000 left the reception centres. The head of the UNHCR mission in Namibia was reported to have expressed concern that refugees remaining in the centres would stretch available resources.²⁸

The issues raised by the returning refugees were not, however, confined to their resettlement within Namibia. On 4 July 1989, 153 men, women and children held by SWAPO in Lubango, Angola, returned, telling stories of

²³ *Times* (London) 20 May 1989 and 23 May 1989.

²⁴ *Namibian* (Windhoek) 12 September 1989.

²⁵ Briefing from Namibia Communications Centre 11 September 1989.

²⁶ *Namibian* (Windhoek) 20 September 1989.

²⁷ *Guardian* (London) 22 June 1989; *Namibian* (Windhoek) 9 June 1989.

²⁸ *Guardian* (London) 22 June 1989.

torture, beatings and inhuman conditions at the hands of SWAPO security forces. Other returning refugees made similar accusations. There were allegations that SWAPO had been holding more Namibians in camps in Angola. SWAPO responded by releasing, it claimed, all detainees, many of whom returned to Namibia under UNHCR auspices. To try to dispel the allegations, on 23 August SWAPO leaders invited the United Nations, the Red Cross and Amnesty International to inspect the alleged detention camps. The United Nations Special Representative, charged under the independence plan with the responsibility of ensuring the release of all political prisoners and detainees, took up the offer, and sent a United Nations investigative team to visit Angola and Zambia. The investigative team reported that it found no detainees in what remained of the detention camps.²⁹

The Administrator General had previously refused to release the Namibian political prisoners held by the South African Administration, but on July 20, after an assurance by the Special Representative that he would investigate the release of all political prisoners held by SWAPO, he announced the release of 25 SWAPO political prisoners. In early September the United Nations investigated allegations that South Africa was holding up to 75 former SWAPO combatants.

6. *Finalising the Electoral Process*

At the time of writing, just two weeks before the re-scheduled elections for the Constituent Assembly beginning on 7 November, nearly 663 000 eligible Namibians had been registered to vote,³⁰ the actual laws governing the balloting and the rules for the Constituent Assembly had finally been settled, and there were still alarmingly frequent reports of political intimidation.

Under the United Nations independence plan the Special Representative was to have satisfied himself as to the fairness and appropriateness of the electoral procedures before the commencement of the official electoral campaign at the end of June. The Administrator General should have issued the general rules for the election by 12 May. In fact, the Administrator General only introduced the draft registration law on 24 April, and the draft rules for the balloting and the Constituent Assembly on 21 July. The result was an anomalous situation in which the political parties had been campaigning for over two months without knowing the exact election rules. The Administrator General's three pieces of draft legislation were heavily based on the 1978 South African election laws which, in defiance of Resolution 435, introduced the Democratic Turnhalle Alliance.³¹

On 27 June the Administrator General's Proclamation AG 19, dealing with registration to vote, was agreed upon, after some amendments, by the United Nations, and was promulgated on 29 June. It provided that anyone over the age of 18 years who had been born in Namibia, who had lived in the territory for four

²⁹ *Independent* (London) 24 August 1989, 12 October 1989.

³⁰ *Namibian* (Windhoek) 12 September 1989.

³¹ See Johnstone *op. cit.* 350-1.

years, or whose parents were born there, would be entitled to vote. This allowed the registration of South African officials and military or police personnel, as long as they declared that they intended to stay in Namibia. It also enabled the registration of 30 000 Angolans in Namibia, and at least 40 000 South Africans who at one stage may have lived there.³² It was not possible to ascertain how many Namibians were eligible to be registered as voters because the South African administration in Namibia has never conducted a proper population census. Registration had been hindered by the lack of official birth certificates, lack of adequate information about mobile registration teams, and the climate of fear generated by the former members of Koevoet.³³ At the end of August there were calls for an extension of the registration period which was due to finish on 15 September.³⁴ The Administrator General granted an extension of one week.

The other two draft proclamations of the Administrator General gave rise to much controversy and were only resolved in mid October 1989.³⁵

The United Nations independence plan stated that 'voting will be by secret ballot, with provisions made for those who cannot read or write'.³⁶ The Administrator General's Draft Election (Constituent Assembly) Proclamation compromised the secrecy of the ballot by requiring officials to mark each voter's registration number on the envelope in which the ballot paper was contained before it was placed in the ballot box. The draft proclamation also allowed South African officials to mark the ballot papers of anyone they considered to be illiterate. It was estimated that over half of the voters were illiterate. Contrary to the provisions of the Western Settlement Plan, there were no provisions specifying the supervisory and controlling role of the United Nations.³⁷ Yet the local police could be present at the four hundred polling booths, whereas party officials could not. The draft proclamation also envisaged that the verification and counting of ballot papers would be done centrally at the capital, Windhoek, rather than locally. This would increase the opportunity for fraud, because South African officials would be able to open and close the ballot boxes three times before the votes were counted. In addition, the provisions to check each voter's fingerprint against its duplicate card made the electoral machinery 'extraordinarily cumbersome' and there would probably be a delay of one month before counting could be completed.³⁸ It was apparent that the main problem arising out of the Draft Election (Constituent Assembly) Proclamation was that control of the electoral process would lie with South Africa, and not with the United Nations as envisaged by the independence plan.³⁹

³² Advertisements were placed in South African newspapers to encourage qualifying South Africans to register: *Namibian* (Windhoek) 29 June and 3 July 1989.

³³ Briefing from Namibia Communications Centre 11 September 1989.

³⁴ *Namibian* (Windhoek) 23 August 1989.

³⁵ *Guardian* (London) 23 August 1989, 27 September 1989; *Independent* (London) 10 October 1989; *Namibian* (Windhoek) 18 October 1989.

³⁶ Western Settlement Plan *op. cit.* para. 6.

³⁷ *Namibian* (Windhoek) 21 August 1989.

³⁸ *Star* (Johannesburg) 6 August 1989; *Guardian* (London) 23 August 1989; *Namibian* (Windhoek) 21 and 28 August 1989.

³⁹ *Guardian* (London) 23 August 1989.

The Administrator General's Draft Constituent Assembly Proclamation AG 91 was also widely condemned because of the broad powers it gave to the Administrator General to control and influence the decisions of the Assembly.⁴⁰ The Draft Proclamation specified that the Constituent Assembly was to make 'requests', 'recommendations' and 'proposals' to the Administrator General. The Administrator General had the power to decide when the Constituent Assembly should first meet, and could also refer the final version of the constitution to a review by South African appointed judges to see whether it conformed to certain principles that the Administrator General has adapted from the 1982 agreement in the United Nations Plan.⁴¹ In effect these powers would enable the Administrator General to put off Namibia's independence almost indefinitely, and even to frustrate the constitution from being implemented.

The independence plan gave the Administrator General no power with respect to the functioning or determinations of the Constituent Assembly, and nowhere envisaged that the Administrator General should have jurisdiction over the contents of the new constitution. It was also difficult to see the basis upon which the courts should be the arbiters of the initial contents of the Constitution. Under Resolutions 435 and 632 the Constituent Assembly alone was to determine its organisation and all matters pertaining to the constitution and its implementation. If any body was to have final authority over the Constitution it was the United Nations.

Another controversial aspect of the Draft Constituent Assembly Proclamation AG 91 was a provision which prohibited from standing for election to the Assembly persons convicted of political offences and offences carrying a sentence of more than six months without the option of a fine. This would preclude from candidature many of SWAPO's leaders and supporters who had been imprisoned for political 'crimes' by the South African administration.⁴²

The protracted delay in issuing and finalising the election rules led the Special Representative and the Administrator General to agree to allow political parties to register under a separate proclamation from that of the ballot. Proclamations AG 43 and 44, of 4 September 1989, required any political organisation wishing to register for the election to do so on 12 September in the new Registration Court. Eleven parties applied for registration and ten were registered.⁴³

These developments placed the credibility of the transition to independence in jeopardy. They were an attempt to usurp the United Nations' role as supervisor of the transition to independence by exploiting the advantages to be gained from South Africa's illegal administration in Namibia. Whether there could still be an acceptable outcome to the independence process depended on the United Nations' ability to overhaul the Administrator General's proposals for the election and for the Constituent Assembly. In United Nations Security Council Resolution 640 of 29 August 1989 the Security Council requested the Secretary

⁴⁰ *Namibian* (Windhoek) 16 August 1989.

⁴¹ *Supra*.

⁴² *Namibian* (Windhoek) 16 August 1989.

⁴³ *Times* (London) 13 September 1989.

General, in his supervision and control of the electoral process, to ensure that all legislation concerning the electoral process conformed with the provisions of the Settlement Plan; to ensure that all proclamations conformed with internationally accepted norms for the conduct of free and fair elections; and, in particular, to ensure that the Draft Constituent Assembly Proclamation AG 91 respected the sovereign will of the people of Namibia.

After much negotiating between the United Nations and South Africa, South Africa eventually agreed to compromise. By mid October all the election laws were settled to the satisfaction of UNTAG's Electoral Division. There were to be 357 fixed and mobile voting stations throughout the country, but only 40 per cent of them in the far North, where 60 per cent of the population was situated. Ballot papers were to be put directly into sealed ballot boxes and were to be counted at 23 district centres, thus ensuring that the vote was secret, and that the votes could be counted and the result finalised in three days. Illiterate voters could have the ballot paper and voting procedure explained to them by a South African election official in the presence of an UNTAG monitor.

Representatives of political parties would be able to observe all proceedings at polling stations. An international team of 1700 UNTAG election specialists would supervise the South African administration's election staff. The number of seats to be allocated to each party was to be calculated by dividing the number of votes cast by the number of seats (72). The Special Representative had the power to bring the election process to an end if he was not satisfied that it was fair and free, and was to certify the election results.⁴⁴

7. Future Prospects

The independence plan did not include details of the process involved in its second stage — the election of the Constituent Assembly. As we have already seen, the uncertainty over the Administrator General's proclamation relating to the Constituent Assembly threatened the entire transition process.

It is accepted that the new constitution has to receive the support of a two thirds majority of all the delegates to the Constituent Assembly. This would make it difficult for SWAPO, who all observers agreed would get the highest vote, to get the two-thirds majority. On this scenario SWAPO would have to enter into a coalition with some of the other parties.

A further problem is whether the elections will in fact be free and fair. Given South Africa's ability to intimidate the Namibian people in the period leading up to the elections,⁴⁵ and the United Nations' lack of resources in Namibia,⁴⁶ there was a real fear that the electorate would feel pressured to vote for the parties backed by South Africa, so that the strong support within the country for

⁴⁴ *Namibian* (Windhoek) 18 October 1989.

⁴⁵ *Namibian* (Windhoek) 19 May 1989.

⁴⁶ It was reported that in the middle of May most of the UNTAG forces had reached Namibia, but that only one third of UNTAG's allocated funding had been made available. This prevented the necessary hardware being purchased for UNTAG: *Jane's Defence Weekly* (London) 13 May 1989.

SWAPO⁴⁷ would not be reflected at the polls. Since their return to Namibia in June 1989, SWAPO officials continually expressed fears that Koevoet's presence in Namibia would prevent the elections being 'free and fair'. Under the independence plan, UNTAG was not empowered to enforce law and order, but rather to monitor the role of the South West African police. However, it appeared that UNTAG was unable properly to monitor many of the patrols of the South West African police because of inadequate staffing and equipment, and because the South West Africa police failed to provide UNTAG with accurate and timely information about its patrols and other activities.⁴⁸ The result has been a lack of public confidence in UNTAG's role in relation to the South West Africa police, and a belief that UNTAG was not doing enough to protect the local population from intimidation. Reports of Koevoet intimidation continued up until the time of writing,⁴⁹ although the Administrator General did announce in mid-August that he would withdraw the former members of Koevoet from the South West African police.⁵⁰ On 29 August 1989 the United Nations Security Council, in Resolution 640, reiterated that Resolution 435 had to be implemented in its 'original and definitive form' to ensure that the Namibian people could participate freely and without intimidation in the electoral process. It also demanded the disbanding of all paramilitary and ethnic forces and commando units, 'in particular Koevoet', as well as the dismantling of their command structures as required by Resolution 435. It called upon the Secretary General to review the ability of the military component of UNTAG to carry out its responsibilities under Resolutions 435 and 632. Early in October 1989 Koevoet was finally demobilised.

In June 1989 the *Namibian* newspaper published minutes of a South West Africa national security council meeting, held in September 1988, which revealed that Namibian politicians and officials of the South West Africa police and the Administrator General's office planned to subvert the 'free and fair' elections in the United Nations' plan for Namibian independence. Under Resolutions 435 and 632 the Administrator General was supposed to be neutral. He appointed Mr A. G. Visser, a member of the security Council, as the Chief Electoral Officer for the independence elections. The plans were aimed at preventing SWAPO from winning the independence elections, and included the development of a 'propaganda strategy' to prevent the state-run radio and television from reporting statements favourable to SWAPO.⁵¹

A further issue not covered by the independence plan relates to the position of Walvis Bay, Namibia's only deep water port. Walvis Bay was annexed by the British in 1879, before Namibia became a German colony. In 1884 it was proclaimed part of the Cape Colony. From 1922 it was administered by South

⁴⁷ See, for example, *Southscan* (London) 12 April 1989; *Financial Times* (London) 27 April 1989.

⁴⁸ Statement of the Second Observer Mission of the Commission of Independence for Namibia, 6-13 August 1989.

⁴⁹ *Namibian* (Windhoek) 21 and 30 August 1989.

⁵⁰ *Namibian* (Windhoek) 17 August 1989.

⁵¹ *Namibian* (Windhoek) 7 June 1989.

Africa as part of the mandated territory of South West Africa. In 1977, however, 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. This annexation was condemned by the United Nations.⁵² It was a clear attempt by South Africa to remove Walvis Bay altogether from the negotiations over the agreed transition to independence of Namibia. Walvis Bay was excluded from the negotiations during the formulation of the United Nations independence plan. The Contact Group clearly envisaged that Walvis Bay was to be excluded from the transition to independence and left in South African possession. It would then be up to the government of an independent Namibia to negotiate the future of the enclave as best it might. The South African position has appeared always to be that, while it was prepared to discuss the use of the port on a contractual basis with an independent Namibian government of which it approved, it would under no circumstances relinquish its sovereignty.⁵³

In the course of 1988 South Africa spent at least R22 million expanding the extensive military installations in the enclave, and its navy held its largest ever manoeuvres there.⁵⁴ It seems clear that, for the purposes of the elections to the Constituent Assembly, Walvis Bay is not part of Namibia, and Namibians resident in the area will have to cross the Swakopmund River to register for the election and to cast their votes.⁵⁵ South Africa also indicated that it would not permit any political campaigning in the area.⁵⁶ Walvis Bay is of crucial importance to an independent Namibia, and is also important for other landlocked Southern African countries such as Botswana, Zambia and Zimbabwe, who depend on the South African ports and rail system to move their exports and imports.

Unless its texture accords with South Africa's wishes, the first independent government of Namibia is likely to suffer from a program of destabilisation conducted by South Africa, along the lines of South Africa's program of destabilising the other independent southern African states.⁵⁷ Walvis Bay is an

⁵² In United Nations General Assembly Resolution 32/9 (4 November 1977) the United Nations General Assembly declared South Africa's decision to annex Walvis Bay to be illegal, null and void and an act of colonial expansion in violation of the purposes and principles of the United Nations Charter and of the Declaration on the Granting of Independence to Colonial Countries and Peoples and its associated United Nations General Assembly Resolutions 1514 and 1541 of 1960. It also declared that Walvis Bay was an 'integral part of Namibia with which it is inextricably linked by geographical, historical, economic, cultural and ethnic bonds.' In United Nations Security Council Resolution 432 (27 July 1978) the Security Council declared that the territorial integrity and unity of Namibia must be assured through the reintegration of Walvis Bay within the territory of Namibia and decided to lend its full support to the initiation of steps necessary to ensure the early integration of Walvis Bay into Namibia. Pending the attainment of that objective South Africa was not to use the port in any manner prejudicial to the independence of Namibia or the viability of its economy.

⁵³ *Windhoek Advertiser* (Windhoek) 26 June 1978 and 15 December 1978, *Telegraph* (London) 29 September 1978, *Rand Daily Mail* (Johannesburg) 22 April 1980.

⁵⁴ *Weekly Mail* (Johannesburg) 9 December 1988.

⁵⁵ There were reports that workers and visitors crossing the Walvis Bay 'border' were interrogated and intimidated by South African police manning the post: *Namibian* (Windhoek) 12 May 1989.

⁵⁶ *Namibian* (Windhoek) 24 March 1989.

⁵⁷ See *Commonwealth Eminent Persons Group on Southern Africa, Mission to South Africa: The Commonwealth Report* (1986) chapter 7; Vale, P., 'The Botha Doctrine: Pretoria's Response to the West and its Neighbours' (1984) 2 *South African Review* 188; Vale, P., 'Pretoria and Southern Africa: From Manipulation to Intervention' (1983) 1 *South African Review* 7.

obvious point from which South Africa would be able to influence, both economically and militarily, events in an independent Namibia. There were also reports that South Africa has been planning to set up an armed group, similar to UNITA, which might destabilise an independent Namibia.⁵⁸ Whatever military destabilisation may take place, it is clear that the Namibian economy, still in the early stages of development, will be heavily dependent on the South African economy, particularly in relation to technology, and South Africa's leverage in the economic arena is assured.⁵⁹ This dependence is likely to be exacerbated by the fact that Namibia's first independent government will inherit an accumulated debt of R780 million, 26 per cent of Namibia's current gross domestic product. Most of the debt is owed to South African financial institutions.⁶⁰

The final piece in the jig-saw is the future of Angola. UNITA was not included in the Angolan-South African cease-fire, but the agreement specified that neither Angola nor South Africa would allow their territories to be used for hostile acts against the other. Late in June 1989, it appeared as if UNITA and the Angolan government had reached a cease-fire agreement, the Gbadolite Declaration. The Declaration recognized President Dos Santos as the leader of Angola and established mechanisms for the absorption of UNITA members and other Angolans outside the mainstream of the MPLA into the government and armed forces of Angola.⁶¹ By the end of August UNITA had declared that the cease-fire was over.⁶² At the time of writing further negotiations between the Angolan government and UNITA were in train.

8. Conclusion

This article has attempted to chronicle and analyse Namibia's halting steps towards independence within the framework of the United Nations independence plan contained in Security Council Resolutions 435 of 1978 and 632 of 1989. It has revealed the independence plan as flawed and incomplete, and has shown how South Africa has been able to use its illegal presence in Namibia to exploit the gaps in the independence plan to its advantage, and to alter the content of the plan and delay its execution. By stalling on the repeal of discriminatory legislation and by police brutality, South Africa delayed the return of refugees and exiles to the territory. As a consequence, SWAPO, many of its members still exiled, was unable to begin an effective election campaign.⁶³ At the same time the local anti-SWAPO parties were able to campaign with strong South African support. South Africa has also been able to exploit the presence of its military

⁵⁸ *Namibian* (Windhoek) 16 December 1988, *Windhoek Advertiser* (Windhoek) 16 December 1988, *Southscan* (London) 11 January 1989.

⁵⁹ *New Nation* (Johannesburg) 13 April 1989.

⁶⁰ *Southscan* (London) 7 June 1989. SWAPO has indicated that if it becomes the first government of an independent Namibia it will not take on the debts incurred since 1979. Such an action would expose the government to economic retaliation from South Africa.

⁶¹ *Independent* (London) 17 May 1989; *Times* (London) 24 June 1989.

⁶² *Guardian* (London) 8 July, 29 August 1989; *Independent* (London) 25 August 1989.

⁶³ Exiled SWAPO members eventually entered Namibia late in June 1989; *Financial Times* (London) 19 June 1989.

forces in Namibia and its strength in the South West African police to intimidate the Namibian populace in the lead-up to the election.

The enormous power over the transition process given to the South African Administrator General by Resolutions 435 and 632, and by South Africa's *de facto* control of Namibia, was also a significant factor weighing in South Africa's favour. All disputed issues needed his agreement before they could be resolved.

The United Nations has been shown to be disorganised, under-resourced, and ineffective. Despite its legal responsibility for the territory in the transition to independence, and South Africa's illegal presence in the territory, the United Nations on many occasions was relegated to observer status while Cuba, Angola and South Africa made important decisions. This was particularly so in relation to the meetings of the joint monitoring commission, which, with the backing of the United States and Soviet Union, was able to brush aside attempts of the United Nations officials to participate in its decision making.⁶⁴

The enforcement of international law in the Namibian independence process, as elsewhere, has been heavily shaped by the political economy of the international legal order. Any resolution to the Namibia dispute is more likely to be the consequence of a shift in the balance of forces, both in Southern Africa and between East and West, than of a peace process set up and guided by the United Nations.

9. *Postscript*

Despite violent pre-election clashes between supporters of the two major Namibian political parties, the Democratic Turnhalle Alliance and SWAPO, and false allegations by South Africa that SWAPO troops were poised to cross the border into Namibia in the week before the elections, the elections to the Constituent Assembly were held from 7 to 11 November, and were regarded by all parties as being free and fair. On 14 November SWAPO was declared the winner of the election, with 57.3 per cent of the total vote, or 41 of the 72 seats. The Democratic Turnhalle Alliance received 28.55 per cent of the vote, or 21 seats. The result meant that SWAPO fell short of the two-third majority required for it to write Namibia's first constitution single handedly, and it would be forced to negotiate with the other parties to draft the new constitution.⁶⁵

⁶⁴ *Weekly Mail* (Johannesburg) 7 June 1989.

⁶⁵ *Independent* (London) 15 November 1989; *Times* (London) 15 November 1989.