

**Namibia from colonisation to statehood: The
Paradoxical Relationship between Law and
Power in International Society**

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Abstract

On March 21 1990, Namibia became an independent state after 70 years of being a mandated territory under South African control. This thesis examines the dialectical relationship between power politics and international law in securing this outcome. From the beginning when South West Africa became a pawn in the European balance of power in the late 19th century, its atypical nature amongst other colonial territories reflected the ambiguous relationship between power politics and law. The Namibia conflict was essentially driven by balance of power politics. As this thesis demonstrates, it was at once a creation, a victim and a beneficiary of power politics. Nonetheless, while power drove the conflict, law constrained it. Indeed, its history paradoxically demonstrated a degree of complementarity between the two. By itself, international law was impotent to secure change in opposition to the realities of power and the interests of the great powers. On the other hand, the Namibian question was posed within the legal framework of the international arrangements for the transfer of power, i. e. mandate system, trusteeship, and decolonization regimes. At each stage, the complex and changing relationship between power and law became manifest.

From the establishment of the mandate system in 1920, the ideas of self-determination and international accountability were ingrained in the consciousness of the metropolitan power. These ideas survived to influence much of the transfer of power debate. They did not stop power politics, but over the long term, they changed the legal framework within which it operated. Consequently, international law served as an institutional device for communicating the prevailing norms of the international community to the South African government and restrained South Africa from annexing Namibia. Yet international law alone could never create the optimal balance of incentives and costs necessary to resolve the Namibian issue. However, as the conflict became externalized within the Cold War, the United States, acting out of self-interest in containing Soviet expansionism in Southern Africa, discovered that a solution was an effective means of achieving this objective. Thus Namibia was a beneficiary of power politics, and the international community finally sanctioned the outcome.

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“Divine favours were never late”. These were Machiavelli’s words to Francesco Vettori, a Florentine Ambassador to the Papal Court, and a confidant of Pope Leo X de Medici, in 1513. As it was then, so it is today. This thesis could not have been completed without the support of others, whether living or dead. I am very happy to acknowledge them here.

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INTRODUCTION

Background to the study

The year 1990 was the *annus mirabilis* in the history of Namibia.¹ On March 21, 1990, Namibia gained independence. The UN Secretary-General, Javier Perez de Cuellar presided over the formal swearing in of the SWAPO (South West African Peoples Organisation) president, Sam Nujoma, as the first head of state. The independence celebration ended 70 years when South West Africa had been a Class C mandate of the League of Nations and a subject of the organised international community. At the independence ceremony, Mr. de Cuellar described Namibia's independence struggle as 'our struggle'.² Mr. Nujoma echoed de Cuellar's view. He said that, 'the primary gratitude of the Namibian people for reaching the most memorable moment in the annals of our history was to the international community for its steadfast support'.³

In a similar fashion, on 23 April 1990 when joining the United Nations as its 106th member state, Mr. Joseph Garba, the President of the UN General Assembly depicted Namibian independence as truly historic and unique. He said:

"It is a special occasion for the United Nations each time, a new state is admitted. However, the case of Namibia, is unique, since her independence is in part the brainchild of the United Nations. Namibia's accession to independent

¹ The name, Namibia, was officially adopted by the United Nations in 1967. It replaced the colonial name of 'South West Africa' (SWA). For ease of reference, in this study, Namibia and SWA are used interchangeably.

² **EIU Country Report No. 2, 1990-Namibia, Botswana, Lesotho and Swaziland** (London: The Economist Intelligence Unit, 1990), p. 16.

³ *ibid.*

nationhood and its entry to the UN, is therefore a victory for the international community as a whole: for the people of Namibia as well as for the United Nations".⁴

The uniqueness of Namibia amongst other newly independent states cannot be fully understood by relying on independence and post-independence orations. Starting with the way in which it was implicated in the European balance of power in the late 19th century, the atypical nature of Namibia amongst other colonial territories had always reflected the ambiguous relationship between power politics and international law. Thus, the history of the international status of Namibia, is nothing but a study of the centripetal and centrifugal forces of power politics.

To some, the Namibian question epitomised many of the critical problems of the post-war period. It encompassed colonialism and self-determination; racism and human rights; apartheid and equality; minority rule and democracy.⁵ South Africa's introduction of the Odendall Report in early 1960s effectively imported apartheid policies to Namibia and seemed to confirm this view if only because of the constant attempt to define Namibia as an integral part of the Union or at least, to shape the dispute internally. At another level, the Namibian question was akin to a general international crisis, which was sustained by, but then transcended idealistic imperatives. It was underpinned by multiple rationality stemming from both idealism and realism. It was an international conflict, in which the superpowers' aspirations to outwit each other were embedded. This standoff between them, in turn, made room for a regional hegemon. South Africa accordingly used the Namibian question and its willingness to engage with the Western powers over it to offset its own isolation from the wider

⁴ See, *Commonwealth Law Review*, Vol. 16, 1990, p. 950.

⁵ Slomin, Solomon. *South West Africa and the United Nations: An International Mandate in Dispute*. (London: The John Hopkins University Press, 1973), p. 1.

international community. For instance, the Namibian question illustrated how South Africa's portrayal of itself as a bastion against communism in Southern Africa prompted the United States peace initiatives, which were an attempt to pre-empt further Soviet gains after the Angolan civil war.

On yet another level, the Namibian question initially revealed the account of how international law guided by idealistic imperatives was impotent against the realities of power and great power's interests. South Africa was able to defy the consensus of international law for more than fifty years as it leaned on the reticence of the great powers that had the potential influence to make compliance possible. At the same time, the Namibian question equally helped in the transformation of international law, and the role of the International Court of Justice within it.⁶ The invitation of the General Assembly in 1960 to 'the legally qualified states' to institute a legal action against South Africa demonstrated the 'limited personality status' of the United Nations itself. Similarly, the ICJ ruling of 1966 against Ethiopia and Liberia for a lack of material and personal interest in South West Africa throw light on the political difficulty of applying international law to self determination issues. The ruling also accounted for the call by African states to make the ICJ more responsive to their sense of injustice.

Furthermore, in the late 1980s the Namibian question engendered the formation of the so called 'second generation' or 'governance-oriented' peacekeeping missions with a multidimensional mandate that combined traditional peacekeeping with peace-building operations. The UNTAG's functions included the creation of a climate of security

⁶ McWhinney, Edward. **Judicial Settlement of International Disputes: Jurisdiction, Justiciability and Judicial Law-Making on the Contemporary International Court.** (The Netherlands: Martinus Nijhoff Publishers, 1991), p. xvii.

between the SWAPO and South African troops, the organisation of elections and ushering in the birth of the new state.⁷ Besides, the Namibian question showed the tension inherent in the unanimity form of the Five Western Powers who formed themselves into a Contact Group to promote a political settlement, in tandem with the suspicion of the Communist bloc at the height of the Cold War. The Contact Group consisted of the United States, Britain, France, Canada and Germany. It came into being in 1977 to resolve the impasse between South Africa and the United Nations.

In the final analysis, as this study explains in the following chapters, the Namibian question exhibited the mutual exclusiveness of the balance of power and international law as mechanisms for understanding international relations, whilst at the same time, it paradoxically demonstrated a degree of complementarity between the two. The paradox was resolved in practice by confirming the primacy of balance of power over international law, so that the law had an influence but only when it suited the interests of the major powers. All these complexities will be examined in the course of this thesis. But in attempting to site the Namibian question within the centripetal and centrifugal forces that shaped the balance of power, one is challenged to seek a level of explanation that goes beyond contested meanings of the concept. It requires us to show how power and law combined to secure the outcome that ended the impasse on Namibia. At different time each played a part in resolving but also in prolonging the Namibian dispute. Indeed, one might query the extent to which the resolve for relative

⁷ Schrijver, Nico "Introducing Second-Generation PeaceKeeping: The Case of Namibia" *African Journal of International and Comparative Law*, March 1994, Vol. 6. No.1. p. 1-13; See, Thornberry, Cedric. *The Development of International Peacekeeping: LSE Centenary Lectures*. (London: LSE Books, 1995), p. 19-25.

balanced positioning amongst the great powers at different historical times impacted on, yet created and offered incentive towards the resolution of the Namibian question.

Statement of the Problem

The central proposition of this study is that Namibian conflict was essentially driven by balance of power politics. This study posits that Namibia was at once a creation, a victim and a beneficiary of power politics. The role of international law was a restraint on South Africans attempts to annex Namibia. The argument is that while power politics drove the Namibian conflict, law constrained it, and their 'cohabitation' secured an outcome towards its resolution

A sizeable literature has developed on Namibia's legal position, current politics and economic development. Yet existing studies suffer from two major drawbacks. The first is that concentration on South African apartheid eclipsed scholarship on Namibia. In most Southern African regional studies, Namibia is discussed in a chapter or two. Most of the available studies overemphasise the history, politics and economic development of Namibia.⁸

Secondly, there exist fragmented studies of the role of the international community in the process by which power was transferred from South Africa to Namibia. A coherent and detailed academic work is lacking in this area. Most of the available works confine their studies to examining the question of Namibia as a trusteeship territory and the role

⁸ Saunders, C. (ed.), **Perspectives on Namibia: Past and Presents**. (Cape Town: Centre for African Studies Occasional Paper No 4, University of Cape Town, 1983, p.16). First, R. **South West Africa** (Harmondsworth, 1963). Coker, Christopher. **The United States and South Africa, 1968-1985: Constructive Engagement and Its Critics**. (Durham: Duke University Press, 1986).

of the United Nations.⁹ Alternatively, they focus on a specific aspect of the conflict. For instance, Jabri used the third party mediation framework to explain how the involvement of the Contact Group, as an interested third party transformed the Namibian conflict from a binary form into a triad process.¹⁰ Dreyer believed that the complexities of Southern Africa regional interaction were important in the understanding of Namibia's decolonisation. According to him, the regional dynamics of Namibia's decolonisation from 1945 to 1990 interacted with, and at times determined, both the internal dynamics of colonisation, collaboration and resistance, and the international dimension of United Nations diplomacy and superpower politics.¹¹ Dreyer's study substantively explained the motives and factors underpinning the involvement of regional actors, and the constraints imposed upon them owing to their economic dependence on South Africa and their calculated national interests.

Amongst these studies, Dreyer's work alone considered the importance of power politics but only within the regional context. The argument of this thesis is that a concentration on the regional power balances is insufficient to account for what happened. The impact of the regional actors such as the Frontline States should not be overvalued. Most of them were either reacting to the dynamics of action and outcomes

⁹ The following works focused on the role of the United Nations in Namibia. Goisha, Rocha, *Namibia In Search of Namibian Independence: The limitations of the United Nations*. (Boulder, Colo: Western View Press, 1984); Dore, Isaac Ismail *International Mandate System*, (Boulder, Colo: Westview Press, 1985); and Slomin, Solomon. *South West Africa and the United Nations: An International Mandate in Dispute*. (London: The John Hopkins University Press, 1973).

¹⁰ Jabri, Vivienne. *Mediating Conflict: Decision-making and Western Intervention in Namibia*. (Manchester: Manchester University Press, 1990).

¹¹. Dreyer, R. *Namibia and Southern Africa: Regional Dynamics of Decolonisation, 1945-1990*. (London: Kegan Paul International, 1994).

defined by the superpowers, or sought their own legitimisation in international politics, with decolonisation as a useful political weapon.

In the wake of the final settlement of the Namibian dispute in 1988, some exciting studies have appeared. *The Transition to Independence in Namibia* edited by Lionel Cliffe (1994)¹² highlighted the political events that occurred during the 1989-1990 period. In its introduction, Cliffe noted that the authors were concerned with identifying the key analytical issues thrown up by these events (of 1989-1990), conscious that this would be only a preliminary effort but one that might at least set the agenda for future investigations of the transition to independence. Among the chronicle of events in the book were the cease-fire, the electoral processes (political campaigns and the actual voting), deliberations of the Constituent Assembly and the other trends leading to independence in March 1990.

Leys and Saul approaching the subject within the political economy tradition published *Namibia's Liberation Struggle: The Two-Edged Sword* in 1995.¹³ Like Cliffe, they insisted that they were not writing a definitive history of Namibia's independence struggle but a preliminary study of the way the war affected both the liberation movement itself and the political culture bequeathed to post-independence development. Their argument that the SWAPO emerged from its Thirty Years War, with resilient, strong, qualified and competent securocrats who are capable of governing the new state, is a substantive one. Yet, it is premature to conclude that the

¹² Cliffe, Lionel (ed.) *The Transition to Independence in Namibia*. (London: Lynne Rienner, 1994).

¹³ Leys, C. and Saul, J. (eds.) *Namibia's Liberation Struggle: Two-Edged Sword*. (London: J. Curry, 1994).

fungi of mal-administration, weak institutions and tribal politics characteristic of other African states will not infect Namibia.

Finally, memoirs, and biographies account for another set of literature on Namibia. Most of these memoirs give insider views on the negotiations over Namibia. Cyrus Vance's *Hard Choices* and Chester Crocker's *High Noon in Southern Africa* depicted the Carter administration and Reagan administration's understanding of, and approaches to, the Namibian question.¹⁴ The former focused on the Contact Group's multilateral initiatives, while the latter brought to light the reasoning and detailed negotiations that led to the New York Agreement of December 31, 1988. These memoirs are written in the language of personal involvement. Their authors understandably aim to gain reputation by combining intellectual objectivity and individual achievement. These delicate issues of objectivity and involvement often erode the very ground on which a detached analysis can be built. While drawing on their rich materials, what I hope to add to these accounts, is a demonstration of the mutual exclusiveness and interface between balance of power and international law, and the way in which the primacy of the former over the latter is established in international politics.

The reasons for such limited research on Namibia, in comparison to other African states, are not difficult to understand. Here it will suffice to point to three reasons. First, the South African government that occupied Namibia barred political exiles and most

¹⁴ Vance, Cyrus. *Hard Choices: Critical Years in America's Foreign Policy*. (New York: Simon and Schuster, 1983), and Crocker, Chester. *High Noon in Southern Africa: Making peace in a rough neighbourhood*. (New York: W.W. Norton, 1992).

western scholars, from Southern African archives¹⁵. This denial of access to information was not only an affront to freedom of expression; it undermined the richness of scholarship, which ought to have been developed on Namibia. Second, the pre-independence education system was racially segregated between the white community and the blacks, with more resources going to the former. The Academy of Tertiary Education was established in 1978 to provide higher education and matriculation courses for adults, but it was only in 1990 that the University of Namibia was formally instituted¹⁶. With the policy of segregation, each member of a particular racial group handicapped in their efforts to present a balanced view of the broad spectrum of ideological and racial divisions within the country. Inevitably, as a consequence, the interpretation and understanding of Namibia were often coloured by the limited experience of what the Mandatory Power wanted the citizenry and researchers to be aware of.

Third, there was problem concerning how materials on Namibia were catalogued. According to Hillebrecht, there are three frustrations confronting researchers on Namibia. These are the frustration of classification, the frustration of a dearth of literature and the frustration of incorrect title.¹⁷ The first frustration, he noted, was that there was no subject catalogue under the heading 'Namibia' but only on South West Africa or German South West Africa, as a result of a century old library classification

¹⁵ Saunder, *ibid*, p.17

¹⁶ EIU, *Namibia: Country Profile 1989-90*. (London: The Economics Intelligence Unit, London, 1989), p. 14.

¹⁷ Hillebrecht, Werner. "How to find what has been written about Namibia" in Wood, Brian. (ed.), *Namibia 1884-1984: Readings on Namibia's history and society*. (London, Namibia Support Committee, 1988), p. 81.

and cataloguing system. The second frustration, he observed, was that Namibia has never been a favourable topic in library accessions except during the colonial times. On the third frustration, there were many incorrect titles. For example, the Odendall Report was classified as an official South African Government document. The diversity of languages in Namibia was also one of the hindrances to research. Commenting on researching on Namibian history, Saunders observed 'that Namibia history is under-researched is not altogether surprising; ideally historians of Namibia would know English, Afrikaans, German, Ovambo, and Herero'.¹⁸ These frustrations, complexities and diversities of language coupled with the guerrilla war of independence discouraged research and scholarship. It is hoped that a sovereign, independent Namibia will redress most of these identified shortcomings.

In an effort to fill the existing intellectual lacunae, this thesis sets out three interrelated objectives: (i) to analyse the meaning or meanings associated with the balance of power. To highlight the nexus between balance of power and international law: their degree of compatibility or mutual exclusiveness for the creation of order in international politics. And the effectiveness of balance of power and international law in affecting states behaviour, in making states do what they would not otherwise have done. (ii) To locate and analyse the Namibian question within the context of complex answers generated from the problems identified above. To put it differently, the intermeshing of balance of power and international law is a useful template against which to analyse the involvement of great powers and other members of the international actors, including the regional actors within the southern Africa sub-region

¹⁸ Saunders, Christopher. "Towards the decolonisation of Namibian history: Notes on some recent works in English" in Brain Wood, *ibid*, p. 81

on the Namibian question. (iii) To justify the proposition that although the choice between balance of power and international law is not one of a simple either or nature, yet international law, never had significant independent effects on states behaviour or was able to create the optimal incentives and costs to resolve the Namibian question.

Within the context of these questions, two underlying themes will emerge. First, that although modern opinion and critiques of the balance of power have been so impressed by its imperfections that its underlying contribution to world order is often overlooked. In any event, it continues to be a determining feature of international relations. If there is a general moderation within the international system and the acceptance of norms of international law, these developments were made possible by the logic and practice of balance of power. Frankel correctly observed that although international law incorporated certain principles of natural law, the history of the concept showed that it was formed more through state practices than through logical deduction from any such idealist principles.¹⁹ In essence, where balance of power has existed, it has provided the foundation on which other institutions such as international law or diplomacy have been built. The second theme is the way in which the Namibian question developed in line with the different phases of the practice of balance power politics. In other words, Namibia, in different political periods, benefited from the resolve of the great powers when attempting to secure a relatively balanced position with each other.

Having set out the major themes and question to which this dissertation is addressed, a short outline of its structure may prove useful. The next section is devoted to the theory. It focuses primarily on balance of power theory and history. This section

explores why and how the Namibian question arose within the balance of power framework. Thereafter, the discussion considers the nexus between the balance of power and international law: their mutual exclusiveness and complementarity. Chapter two tracks the origin of the Namibian question to the Anglo-German rivalry of the late 19th century. Here, the discussion focuses on the assumption that Bismarckian colonial moves in South West Africa were *sui generis* as they were underscored by Germany's attempt to forestall Britain's expansionism.

Chapter three examines the politics and principle of the Mandate system. Emphasis is placed on how competing rationalities and interests between those in favour of the logic of balance of power and those in favour of idealism and international law led to the creation of the mandate system. A subsequent section focuses on the status of South Africa itself as a Mandatory Power in the context of its 'quasi-state status' within the classical positive international law. It also examines the legal disputes between South Africa and the United Nations after the demise of the League of Nations. Chapter four deals with the changes in both the global and regional balance(s) of power of the mid-1970s, and its effects on the involvement of the United States, as a mediator on Namibia. It is shown in this chapter that the United States, acting out of self-interest in containing Soviet expansionism in Southern Africa, discovered that a solution to both Rhodesia and Namibian conflicts was an effective means of achieving this objective; thus mediation came about within the context of power politics. In chapter five, the dynamics of the Contact Group diplomacy is examined. It seeks to explore how the Contact Group which intended to reflect an idealistic framework, unwittingly exemplified another attempt to limit the Soviets gains in Southern Africa, and raised

¹⁹ .Frankel, Joseph. **International Relations in a Changing World.** (Oxford: Oxford

some interesting questions on its own (Contact Group) relationship with the international law, as typified by the United Nations. Finally, chapter six assesses the 'end-game' of the Namibian conflict, and in this context considers those factors and forces that made Namibia a beneficiary of the balance of power. The chapter ends by summarising the general conclusions of the study.

Theoretical Analysis

1.1. Introduction

In this study, I shall argue that balance of power is an essentially a contested concept.²⁰

In particular, an attempt is made to examine the contending claims made on behalf of the balance of power and their applicability in the post-Cold War international relations.

The other purpose of this chapter is to ask how the balance of power relates to international law.

The chapter opens with an examination of the multiplicity of meanings associated with balance of power.²¹ This multiplicity has been repeatedly noted, for example, in the works of realist scholars such as Morgenthau, Wight, Hoffman, Kissinger, and Kenneth Waltz. These scholars' works have been selected as providing the most influential accounts of balance of power and/or international law within the realist tradition. They provided a benign definition of balance of power. Unlike Wight or

²⁰ For the purpose of this study, a contested concept is a concept over which there is a theoretical or political debate; concepts are 'essentially contested' when a settled definition can never be developed. See, Heywood, Andrew. **Politics**, (London: Macmillan Press Limited, 1997), p. 403. For instance, when the Allied Powers in 1813 submitted their conditions of peace to Napoleon, they invoked the principle of balance of power. When Napoleon rejected these conditions, he too, invoked the "equilibrium of rights and interests". See, Morgenthau, Hans. **J. Politics Among Nations**. (New York: Knopf, 1960), p. 214.

²¹ There is a huge literature on balance of power. For a detailed analysis of the concept, see, Gulick, E. V. **Europe's classical balance of power: a case history of the theory and practice of one of the greatest concepts of European statecraft**, (Westport, Conn.: Greenwood Press, 1982), Cameron, N. **The global balance of power**, (Leeds: Leeds University Press, 1981) Prior, J. **A balance of power**, (London: Hamilton, 1986), Luard, E. **The balance of power: the system of international relations, 1648-1815**, (London: Macmillan, 1991), Naidu, M. V. **Alliances and balance of power: a search for conceptual clarity**, (London: Macmillan, 1975), Niou, E. M. S. and Ordeshook, P. C. and Rose, G. F. **The balance of power: stability in international system**, (Cambridge: Cambridge University Press, 1989) and Sked, A. **Europe's balance of power, 1815-1848**, (London: Macmillan, 1979).

Morgenthau,²² Waltz remains silent on the importance of international law in his structural theory of balance of power. This sort of silence is not a new phenomenon. By the 16th century, attempts to prove or disprove the existence of a relationship between balance of power and international law were firmly established amongst international jurists and scholars such as Hugo Grotius, Immanuel Kant, Alberico Gentili and de Vattel. We will consider the opinions of these early scholars in the next section. In recent times though, Bull resolved the problem of the relationship between the two concepts by defining them as two of the ‘institutions’ of international society with concurrently conflicting and complementary objectives.²³ This is essentially the position adopted here. What is posited, in other words, is a symbiotic relationship between the balance of power and international law, with each having its own competence in affecting the behaviour of states. The relationship is both complementary and conflictual. The balance of power reduces the capacity of any one state or alliance of states to overthrow the international order. International law correspondingly reduces the desire to overthrow the order; hence both jointly create and sustain international stability.

Two caveats need be made. First, the choice between reliance on balance of power or international law has never been of a simple either or nature. Indeed, as we shall see, it is the confluence of the contending ways in which they affect the behaviour of states that will emerge as the leitmotif of this study. Second, if in

²² For these scholars work on international law, see, Morgenthau, Hans. J. **Politics Among Nations: The Struggle for Power and Peace**. (New York: Alfred A. Knopf, 1955), Chapter XVIII, p. 249-285; and Wight, Martin. **Power Politics**. Edited by Bull, Hedley and Holbraad, Carsteen. (London: Leicester University Press/ RIIA, 1995), Chapter 10, p. 105-112.

²³ Bull, Hedley. **The Anarchical Society: A Study of Order in World Politics** (London: Macmillan, 2nd edition, 1995), p. 129-130.

the chapters that follow, more emphasis is put on the balance of power than on international law, this is because I believe that international law does not have significant independent effects on state behaviour. The paradoxical essence of the balance of power is that it requires moderation and vigilance for the protection of a system of states. This system in turn needs to be reinforced by international law. Without rejecting the valuable contributions of both international law and the United Nations to the resolution of the Namibian conflict, the argument of the thesis is that they were secondary rather than determinant factors.

Lastly, I suggest that the externalities of the balance of power, which are beneficial to the entire system, have often been neglected by the realists, although they have been partially analysed by some English school scholars.²⁴ The proposition here is that although the great powers act out of self-interest to thwart the ambition of the most powerful, embedded in the contest for balance are contingent opportunities for solving conflicts which are themselves peripheral to the contest. Historically, these externalities have included the deepening of diplomatic intercourse amongst the European states in the 17th and 18th centuries; the imperative of rationality on the state's action and the

²⁴ The term 'English school' of International Relations is associated with scholars such as John Vincent, Hedley Bull, Martin Wight and Charles Manning. It is 'English' in the sense that most of its practitioners worked and work in England, but their background is diversely British. The idea of 'international society' remains the School's core contribution to international relations discourse. Simply put, international society is defined as the existence of a group of states, conscious of common interests, and common values, which form a society in the sense that they conceive themselves to be bound by a set of rules in their relations with one another. For a brief analysis of the English School, see, Neumann, Iver. B. "John Vincent and the English School of International Relations", in Neumann, Iver. B., and Weaver, Ole (eds.), **The Future of International Relations: Masters in the making?** (London: Routledge, 1 997), p. 39-64.

development of the balance of power as a conflict-resolution medium. The study explores these opportunities inherent in the balance of power, in order to show how Namibia benefited from them.

At base, the Namibian question was a decolonisation issue. However, this study is not primarily concerned with the “decolonisation debate”, or with the influence of domestic forces on decolonisation. The questions I am asking, although parallel, are different: what fundamental purposes did the balance of power and international law serve in the context of decolonisation; and how effective were they in resolving the decolonization problem.

Thus, the study seeks to locate the Namibian question within the realm of power politics. It explores how the forces of balance of power informed and determined Germany’s colonial claim to South West Africa. To this end, it focuses on Anglo-German rivalry of the late 19th century, exploring for example, the political and legal interests that underlay the cable sent on February 4, 1883 by Chancellor Bismarck to London questioning of the nature and character of Britain’s authority over the Angra Penquena. It is suggested that while the cable provided the cover for Germany to couch its claims on South West Africa within the prevailing norms of international law, its main motive was the containment of Britain’s European supremacy and global expansionism. This Anglo-German rivalry arguably prompted the Great War in 1914.

In the wake of the Great War, the League of Nations legitimated, appropriated and engrossed South West African affairs in the realm of international law under

the mandate system. The mandate principle defined South West Africa as a new kind of international responsibility; yet its creation came about from the mechanics of power politics. This dual aspect of the problem as subject simultaneously to the force international law and power politics continued through the period of Cold War bipolarity.

Neither the balance of power nor international law alone is sufficient to explain the resolution of the Namibian question. The role of the International Court of Justice and the United Nations in framing the problem cannot be ignored. The United Nations, acting on the basis of international law, made it impossible for South Africa to annex Namibia and kept the Namibian question on the international agenda for more than three decades. More importantly, international law served as a quasi-authoritative means by which the African states communicated the prevailing international norms to the South African government. In addition, the involvement of most African states, especially the Front-line States, had both political and legal implications. Through their involvement they influenced the liberation movements with their provision of political and diplomatic access for the major powers. They also enhanced their own reputation and served as a part of a regional countervailing alliance to South Africa. In this respect, their interests and functionality was nested within the global balance.

1.2. Definition(s) of the balance of power

The concept of the balance of power is one of the oldest in international relations. It was practised amongst the ancient empires before it was given its

modern name. According to Wight, in ancient times, what was practised was the pattern of power rather than the balance of power, although the two ideas come close to one another.²⁵ Thucydides used idea of the balance of power in his account of the Peloponnesian War, although he did not expressly used the term. Machiavelli likewise explained the politics of the Italian city-states of the 15th century without using the concept. Some diplomatic historians have traced the etymology of the concept to Bernardo Rucellai, (1449-1514), the brother-in-law of Lorenzo de Medici; others link to Philip de Comines, a 15th century French diplomat and writer.²⁶ Indeed, the term during its three hundred-year history has accumulated a number of meanings, some of them mutually contradictory. For instance, simply by consulting a good dictionary and analysing it word by word, Pollard concluded that there are several thousands meanings of the phrase.²⁷ Hass discovered eight distinct meanings; Martin Wight found nine, while Morgenthau made use of only four.²⁸

The problem with the concept is twofold. First, the focus on what constitutes a balance or equilibrium, and how to measure it? Second, the problem that arises out of the frequent past practice of using a single term to describe any one or all of three related but distinct things: (1) the action taken in making alliances, (2) the driver behind such actions, and (3) its outcome. The first problem arose early

²⁵ Wight, op cit., p. 157.

²⁶ Fredrich, Carl. J. **Foreign Policy in the Making: the Search for a new Balance of Power.** (New York: W. W. Norton, 1983), p. 23; Gulick, Edward. Vose. **The Balance of Power.** (The Pacifist Research Bureau, 1943), p. 15. Fredrich credited Rucellai, while Gullick believed that it was Philippe de Comines who first coined the concept. Who first used the concept is less important than the meanings associated with it.

²⁷ Pollard, A. F., "The Balance of Power", **Journal of British Institute of International Affairs**, (now International Affairs), II (March 1923), p. 51-64.

in the history of the concept. The imagery of balance in the natural order and cosmos informed those who popularised the balance of power concept. We can call these proponents the 'naturalists'. The second problem is associated with those who could be termed the 'experimentalists'. The two camps are not mutually exclusive; they are intertwined. The natural order formed the perspective of the former, while the latter leaned heavily on the accumulated evidence of state behaviour. For a while, David Hume, an 18th century Enlightenment thinker was a leading naturalist. He reasoned that balance of power is a fact of life, which is founded on 'common sense and obvious reasoning'.²⁹ Hume believed that the idea of balance arose naturally in considering any relationship between competing heavenly and human units, groups and institutions. To him, balance is the ordering principle of creation. It existed between God that ruled the ecclesiastical realm and Satan that ruled the secular realm. Similarly, it operated between the Roman Emperor and the Papacy in the medieval period.

Imagery of the cosmos and the forces of modernity and enlightenment shaped the naturalist understanding of the idea of 'balance'. Their mode of thought flourished during the Eighteenth century in the aftermath of the epistemological revolution initiated by the scientific discoveries of Copernicus, Bacon, Galileo, Newton and Descartes. It was a century when scientists and philosophers sought

²⁸ As quoted in Waltz, Kenneth. **Theory of International Politics**. (Reading, Mass.: Addison-Wesley, 1979), p. 117.

²⁹ Hume, David. **Essays and Treatises on Several Subjects**. 2 vols. (London, 1788), I, p. 305.

to capture the symmetry and regularity of nature.³⁰ This obsession with balance and symmetry unified the major contributions to science and philosophy of the age. In the words of Carl J. Fredrich it was the period when ‘men were seeing natural balances everywhere’ and they believed in the “pre-established harmony of the universe”.³¹ The ‘balance’ is denoted symbolically by a pair of scales. When the weight in the scales are of equal proportion, balance results.

This ‘naturalist’ view suffers two drawbacks. First, balance as a concept is often taken as given in any phenomenon. Balance of power is quite often spoken of as if it was a force of nature. But it is not. Such view is a crude-simplification of the complex realities. It does not tell us how the balance came into being, and how the competing agents reached a state of balance. Second, the naturalists failed to point out the fuzziness of the meaning of a balance. As Dickson put it, a ‘balance’ could mean equality, as of the two sides when an account is balanced. On the other hand, it could imply inequality, as when one has a ‘balance to one’s credit at the bank’.³² Since the concept of balance is immeasurable, the formulation of balance of power could not lay claim to precision.

The experimentalists reaffirmed the imagery of balance and looked at the political practices amongst the early city-states in Italy and other European kingdoms to explain balance of power. Drawing on Thucydides, Hume who combined the naturalist and experimentalist perspectives described the methods

³⁰ Knutsen, Torbjorn L. **A history of International Relations theory: An introduction.** (Manchester: Manchester University Press, 1992), p. 103.

³¹ Fredrich, op cit., p. 119.

³² Dickson, Lowes. G. **The International Anarchy, 1904-1914.** (London: Allen and Unwin, 1926), p. 5-6.

used by Hiero of Syracuse, who sent aid to Cathage in order to offset the growing might of Rome in terms of balance of power. Yet Rome's victory at the Battle of the Metaurus River denied the Carthaginians the capacity to form a counter-balancing force. From the founding of the Eternal City in 753 BC to the fall of Constantinople to the armies of the Turkish Sultan Mehmet II on Tuesday 29 1453 AD, Rome functioned as a hegemonic power.³³ Pax Romana lasted for 2,203 years. Like most other patterns of international relations, hegemonic order was not timelessly universal or insensitive to the context and limits of its own development. The erosion of Rome's hegemonic position began with the success of Otto I's campaign of 992 AD over the Byzantine Italian territories. From then on there were to be two empires. The dream of a Roman Empire was lost forever.³⁴ The Papal Schism between 1378 to 1417 sapped the energy of Rome as a cohesive political formation. Consequently, there was a dearth of effective technical and organisation competencies to contain the challenges of the new princes in Europe and the internecine religious wars.

As earlier indicated, the problem of the 'experimentalists' arose out of the practice of using a single term to describe simultaneously the action, intent and outcome of alliance formation. This confusion was nowhere better found than in Morgenthau's *Politics Among Nations*. Morgenthau offered four different meanings namely: (1) as a policy aimed at a certain state of affairs, (2) as an actual state of affairs, (3) as an approximately equal distribution of power, and

³³ Davies, Norman. **Europe: A History**. (Oxford: Oxford University Press, 1996), p. 149-408. Chapters IV to VI deal in great detail with the rise and fall of Rome.

³⁴ *ibid.*

(4) as any distribution of power.³⁵ He nonetheless, qualified his usage by preferring the second definition: that is, an actual state of affairs in which power is distributed among several nations with approximate equality. What often underpins this state of affairs is the composition of alliances formed in the international system. This line of reasoning assumes that the balance of power is a system in which either, or both of these propositions are true: (1) The participants have the common purpose of achieving a stable power relationship and restraining aggression. (2) There exists a normative form underpinning the balancing. That is the objective form balance rests on the belief amongst the statesmen that there must be one in any event.

Vattel's exposition on balance of power exemplified the experimentalist view. He described it as the "famous scheme of the political equilibrium of balance of power, by which is understood such a disposition of things as no power is able absolutely to predominate, or prescribe law to others".³⁶ Quincy Wright echoed Vattel's definition when he defined the balance of power as "a system designed to maintain a continuous conviction in every state that if it attempted aggression, it would encounter an invincible combination of the others".³⁷ To a great extent, it could be argued that the intent of the alliance makers is to deter an ambitious hegemonic power. It is however, more difficult to predict the consequences from making such alliances. It is the uncertainty of where to draw the line between imputing to the alliance makers an intent to attain power equilibrium, and the

³⁵ Morgenthau, *op cit.*, (1967), p. 280.

³⁶ Vattel, E. **The Laws of Nations or the Principles of Natural Law Applied to the Conduct and to the Affairs of Nations and Sovereigns.** Trans. of 1758 edition Charles Fenwick (Washington, D.C: Carnegie Institution, 1916)

outcome or consequences of such as an action on international order, that made balance of power an essentially contested concept. No unequivocal and precise answer to the question of the contestable nature of the concept was forthcoming when it was first raised centuries ago. Nor is there an answer now. For this reason, the position adopted in this study, is that every balance of power, whether local or general-implies a power competition and a struggle for relative advantage. Before we operationalise the concept of balance of power in relation to Namibia, it will be helpful to examine the historical development of balance of power.

1.3. The historical development of balance of power

Chris Brown described balance of power as an 'artefact'.³⁸ Brown is partly correct to say that it is a European invention, but we can add another dimension to his argument. In contemporary time, balance of power now had a strong global outlook in practice. In medieval Europe in which religion ruled, the concept of balancing did not assume a political construction. It was the competition amongst the five major Italian city-states Venice, Milan, Florence, Naples and the Papal States in the 15th century that "gave rise to the balance of power politics in the fullest sense."³⁹ From then onwards, the idea became a prevailing orthodoxy for explaining political manoeuvres amongst the princes and kings in Europe. Many kings appropriated, and defined their management of external relations in terms of balance of power.

³⁷ Wright, Quincy. "The Balance of Power", in Weighart, H. and Steffanson, V. (eds.), **The Compass of the World**. (New York: 1944).

³⁸ Brown, Chris. **International Relations Theory: New Normative Approaches**. (Hemel Hempstead: Temple Smith, 1992).

For instance, Henry VII saw his role as such, for he had as his motto, *cui adhaero praest* (whom ever I shall join will triumph). He is “reported to have had himself painted holding in his right hand a pair of scales in perfect balance, one of them occupied by France, the other by Austria, and holding in his left hand a weight ready to be dropped in either scale”.⁴⁰ In the preamble to the annual Mutiny Act (from 1727 down to 1867), the function of the British army was described as “the preservation of the balance of power in Europe”.⁴¹ Thus, was established the tradition of denoting Britain symbolically as the balancer of Europe. The balance of power became an architectural metaphor for British ‘splendid isolationism’ in the early modern period.

It was the Treaty of Westphalia in 1648, which formalised state sovereignty that opened up possibilities for theorising the balance of power. For instance, Sheehan observed that a detection of balance of power behaviour in the ancient Greek system did not mean that the principle was self-consciously followed or that it reflected a theory of international relations in which balance policies played a logical part.⁴² He also pointed out that during the period of the Italian state system, two elements of theory were missing from the balance of power idea despite its growing influence. These were: a holistic conception of international system and a non-ideological approach to foreign policy.⁴³ The

³⁹ Nelson, E. W. “The Origins of Modern Balance of Power Politics”, *Medievalla et Humanistica*. Vol. 1, (1943), p. 125.

⁴⁰ Morgenthau, op cit., p. 280.

⁴¹ Wight., op cit., p. 172.

⁴² Sheehan, Michael. *The Balance of Power: History and Theory*. (London: Routledge, 1996), p. 27. This is possibly the best historical study on balance of power in recent time.

⁴³ *ibid.*, p. 27.

Treaty set out the premise on which the theory of balance of power could work effectively. Sheehan identified two premises namely: “the existence of a functioning international system in which sovereign independence is the central goal of state policy; and a comparative moderation in foreign policy objectives as a result of an absence of any ideologically based interstate bitterness”.⁴⁴

Sheehan’s observations were much the same as of Kenneth Waltz, who argued that ‘the balance of power politics prevail wherever two and only two, requirements are met: that the order is anarchic, and those units wishing to survive populate it’.⁴⁵ Plausibly, their view of international politics holds at the structural level. But it suffers from at least two limitations. First, it limits the efficiency of the balance of power to the preservation of the international order. Balance of power on its own does not guarantee a trouble-free international order, nor can its influence be limited to preservation of order. On the first count, international law, albeit marginally, complements the balance of power to preserve the stability of the international system. On the second, in the quest for equilibrium of power amongst the great powers, issues of interest to lesser powers may be resolved to their advantage. In other words, balance of power politics opens a range of possibilities for weaker states to gain the attention of the major players, obtain some leverages and thus have their concerns addressed.

Second, both Sheehan and Waltz are unable to discern the ‘non-structural’ effects of the balance of power. Two ‘non-structural effects’ are discernible. First, the effect of balance of power in changing the behaviour of states and the

⁴⁴ *ibid.*, p. 8.

deepening of diplomatic intercourse amongst alliance member-states. For instance, the incessant power struggle amongst the European powers in the medieval period led to the emergence of diplomatic practices, whenever these powers needed to communicate with each other, and understand themselves better. Lurking in the shadow of the balance power are the forces of moderation, restraint and better rapport amongst the competing units.

Secondly, the impact of revolution on the balance of power should not be underestimated. Revolutions have both creative and destructive effects on the sustainability of the balance of power. At the height of the French Revolution in 1792, other European states united in a coalition against republican France.

These states proclaimed in unison that:

“No power interested in the maintenance of the balance of power in Europe could see with indifference to the Kingdom of France, which at one time formed so important a weight in this great balance, delivered any longer to domestic agitation and to horror of disorder and anarchy which, so to speak destroy her political existence”.⁴⁶

The coalition’s fears were two fold. Individually, each feared that the revolutionary movement could spill over into their respective states. Collectively, they feared its impacts on European stability. To that end, Britain’s naval capabilities in conjunction with other European powers checked Napoleon’s hegemonic tendencies. France was tamed, but not demolished. The allies’ success led to the Congress of Vienna of 1815, which established a replica of the old balance of power structure. For better or for worse, trends are

⁴⁵ Waltz, op cit., p 121.

⁴⁶ Morgenthau, op cit., (1948), p. 138.

historically established and replicated. Two hundred years after the fall of Bastille, the Berlin Wall fell down again. The French Revolution threatened the emergent European stability, the ‘second Russian Revolution of 1989’ ended the post Second World War bipolarity between the superpowers. It is not unreasonable therefore, to suggest that revolutionary events that involve a great power have wider implications on the reconfiguration of both regional and global balances of power. There is a scope for understanding the impacts of a revolution on the balance of power, although this study will not pursue this particular line of enquiry any further.

The period from the Treaty of Utrecht in 1713 to the final partitioning of Poland in 1795 has been acclaimed as the golden age of the practice of balance of power. And for the better part of the 18th century, the practice of balance of power was mainly a European affair. For instance, the framers of the American Constitution scorned it. They saw it as an outrage, endangered specie, a cloak that disguised imperialist policies, and not worth adoption in other parts of the world. Ironically, balance of power would be a defining characteristic of the American foreign policy for most part of the 20th century.⁴⁷ By the early 19th century, the practice of balance of power could not be contained to European frontiers. The statement made by George Canning, the British Foreign Secretary before the House of Commons on December 12 1826, is the first statement identifying colonies as a pawn in European power politics. Canning defending

⁴⁷ The transformation of the United States from isolationism to globalism reveals the tension between, and the complex interaction of the naturalists and the experimentalists. The Great War provided the United States with its first experience and the experiment on the balance of power; and accordingly set in motion the process of power competition,

his refusal to resort to war following the French invasion of Spain in 1823, contrary to the provision of the Congress of Verona of 1822. He said:

“If France occupied Spain, it was necessary, in order to avoid the consequence of that occupation that we blockade Cadiz? No. I look another way. I saw materials for compensation in another hemisphere. Contemplating Spain...I resolved that if France had Spain, it should not be Spain with the Indies. I called the New World into existence, to redress the balance of the Old”.⁴⁸

‘The materials for compensation in another hemisphere’ were not limited to the New World. Africa played the same role in the late 19th century. During this period, Africa emerged as of essential importance to the balance of power among the states of Europe. South West Africa was at once a creation and product of European balance of power politics during this period. How South Africa became a victim of the European balance of power, and an object of the Anglo-German rivalry, during the ‘reign’ of Chancellor Bismarck, is the main theme of the next chapter. The following questions are raised: How did Germany lay claim to South West Africa? What was the status of the territory of the SWA within the prevailing international law? What was the response of the British government to the German request? To what extent did the relationship between the Cape Government and the British Government become a factor in Britain’s reply to the German Government? What were the political and legal implications of the German claims?

The rise of Japan in the Far East and the United States in the New World at the beginning of the 20th century had a significant impact on the dominant European

exemplified in bipolarity in the wake of the Second World War. In other words, America was an experimentalist by default, and a naturalist by interest.

balance of power. For the first time in the history of the international system, the locus of power was not limited to Europe alone. The central balances in the European system also shifted from a multipolar to a bipolar balance. It was divided into two main camps namely: the Triple Alliance and the Triple Entente with the completion of the Anglo-Russian understanding of 1907.⁴⁹ If we focus on the relationship among states, the pre-First World War international system was multipolar; but if we focus on the relationship among coalitions of states, then a bipolar balance, with two major alliances confronting each other, was evident.⁵⁰ By extension, the Cold War consolidated the bipolarity that emerged in incipient form in the aftermath of the First World War. What was significant during this period was that European multipolarity was no longer the centre of world politics around which local balances would group themselves, either in intimate connection or in lesser or greater autonomy. The European balance of power became a mere function of the global balance of power between the United States and the Soviet Union. The superpower rivalry between the United States and the Soviet Union dominated and framed the international system for about 50 years, between 1949-1989.

1.4. Balance of power as a policy

At the most general level, there have been always been those for whom preserving the balance of power was a policy in its own right. The example of

⁴⁸ *Speeches of the Right Honourable George Canning*, 6 vols., (London, 1836), VI, p. 109-111, cited in Palmer and Perkins, op cit., p. 322.

⁴⁹ For a broader view of the structural transformation of the international system in the pre-First World War, see, White, John. Albert. **Transition to Global Rivalry: Alliance Diplomacy and the Quadruple Entente, 1895-1907.** (Cambridge: Cambridge University Press, 1995).

⁵⁰ Lee Ray, James Lee **Global Politics.** (Boston: Houghton Mifflin Co., 1995), p. 545.

Henry VII earlier cited has been a reference point for generations. In the late 20th century, no one was so connected with the scholarship and practice of balance of power as Henry Kissinger, the American Secretary of State during the Nixon/Ford administration. An academic before he entered politics, much of Kissinger's work was devoted to the analysis of European power politics between the 17th and 19th centuries. His understanding and interpretation of the late 20th century Cold War bipolarity, and the American role within it, exposes the limits of his historical and conceptual horizons. Suffice to cite two of Kissinger's arguments.

First, Kissinger believed that the functioning of balance of power system ended in the mid-19th century Europe. He said: "by the end of the 19th century, the European balance of power system returned to the principle of power politics, in a far more unforgiving environment. Facing down the adversary became the standard method of diplomacy, leading to one test of strength after another".⁵¹ Kissinger was thus making two strong claims: that there is a sharp distinction between the pattern of power politics and the balance of power; and that the balance of power system, as we know it, ended in the 19th century. Each of these claims is highly contestable.

Wight's observation that there is a thin line between the pattern of power and balance of power highlights the limits of Kissinger's argument.⁵² The pattern of power through alignments or neutrality has always provided a 'solution' to the

⁵¹ Kissinger, Henry. "The New World Order", in Chester, Crocker. Et al. (eds.), **Managing Global Chaos: Sources of and Responses to International Conflict**. (Washington, D.C.: United States Institute of Peace Press, 1996), p. 176.

power problem among states. The demise of Europe as the locus of the global balance of power in the aftermath of the Great War did not alter the fact that Europe continued to be the principle theatre of the post Second World War bipolar balance between the United States and Soviet Union.

Secondly, Kissinger claimed that, “during the Cold War, America was engaged in an ideological, political, and strategic struggle with the Soviet Union, in which a two-power world operated according to principles different from those of a balance of power system”. He is partly right to claim that the Cold War bipolarity was not a ‘clone’ of the dysfunctional European multipolar balance. Unlike the old European balance of power, which constituted a system, the Cold War bipolar balance was less than a system. This was so in the sense that the states involved did not necessarily have the common end in mind of preserving the independence of the rival participants. Paradoxically, the balance of terror, with the threat of the nuclear annihilation and the philosophy of the mutually assured destruction restored this system-like character to the balance, even if it was not intended. Many realists and neo-realists such as Morgenthau, Gulick, Mearsheimer and Waltz, all of whom believed that the traditional balances of power principles continued to operate, did not share Kissinger’s conclusion.

Whatever the difference of opinions on the nature of the Cold War, what was evident was that no other states than the United States firmly believed in the principle of balance of power: that is the avoidance of a hegemon. This belief led to the Cold War bipolarity between the West and the East. The Cold War, in the

⁵² Wight, op cit., p. 168.

context of the relationship of the local balances to the general balance, was in effect, a reverse of its European precursor. In this context, Africa was no longer dependent on the European multipolar structure, but on the dominant American-Soviet rivalry.

The Cold War was more than a quest to forestall the ambition of global supremacy by a single power; it entailed an ideological contest. In the immediate aftermath of the Second World War, communism offered many in the industrialised democracies an alternative to the failures of pre-war capitalism. Anticommunist social democrats responded through the creation of a welfare system that underwrote security from the cradle to the grave. More significantly, for the purpose of this thesis, the promise of communism looked seductive to the newly independent states in Africa as an alternative to pre-war colonialism, as it did to liberation movements such as SWAPO. How the Namibian question became a part of the Cold War equation is examined in chapter four. It addresses the following concerns: What forces led to the involvement of the United States in the Namibian question mid-1970s? The political and diplomatic investment of the United States in southern African issues from this time on has been called *Henry Africanus*, since it reflected the belated discovery of the strategic importance of Africa, by Henry Kissinger, the US Secretary of State. What were the constraints and the benefits of the United States involvement? What tensions did the US involvement engender given the prevailing legalistic means for resolving the Namibian question, which was then in favour?

1.5. Balance of power in the post-Cold War world?

More than half a century ago, Quincy Wright noted that, “the balance of power as the structure of world politics is incompatible with democracy, with free enterprise, with welfare economy and with peace”.⁵³ Wright’s observation in 1943 resonates with most of the issues concerning the validity and utility of the balance of power in the post-Cold war international relations. Contemporary political leaders pronouncements such as “the enlargement of democratic community”, the pursuit of ethical foreign policy”, imply a challenge to the balance of power. For example, during the 1992 American presidential election, the Democratic candidate, Bill Clinton declared that: “in a world where freedom, not tyranny, is on the march, the cynical calculus of power politics does not compute. It is ill-suited to a new era”. A few week before taking office, Anthony Lake, President Clinton’s national security adviser, criticised the Bush administration for viewing the world through a ‘classic balance of power prism’, whereas he and Mr. Clinton took a ‘more neo-Wilsonian view’.⁵⁴

Within the academic community, the end of the Cold War has opened the age-old question of the relevance of balance of power in international relations. The end of the Cold War was like a Greek gift to the critics of the balance of power. Most critics, especially the neo-liberals are eager to write its obituary. Before we turn to their reasons, it is important to examine the views of its proponents.

⁵³ Wright, Quincy “International Law and the Balance of Power”, **The American Journal of International Law**, XXXVII (Jan., 1943), p. 148.

⁵⁴ Clinton, Bill. “American Foreign Policy and the Democratic Ideal”, Campaign Speech, Pabst Theatre, Milwaukee, Wisconsin, October 1, 1992; Holmes, Steven. A. “Choice for

Amongst realist scholars there are three broad perspectives on the balance of power after the Cold War. Some hold that there is now a unipolar world; others claim that we are witnessing the emergence of a multipolar balance, while a few authors believe that there is an altered bipolar balance. Each side of these perspectives is examined below.

Charles Krauthamer sets out the debate on the emerging structure of post Cold War international relations. To him, the immediate post-Cold War world is not multipolar. It is unipolar.⁵⁵ The centre of world power is the unchallenged superpower, the United States, attended by its Western allies, with the former being the manager and the conductor of a unipolar world. He asserted that, “our best hope for safety is in American strength and will-the strength and the will to lead a unipolar world, unashamedly laying down the rules of world order and being prepared to enforce them”.⁵⁶

Krauthamer’s unipolar thesis was initially elevated from a pet theory to a gospel by the military industrial complexes in the United States, especially the Pentagon. In early 1992, a 46-page Pentagon’s draft Defense Planning document for the Fiscal Years 1994-1995 asserted that America’s political and military mission after the demise of the Soviet Union should be to prevent the emergence of a rival superpower in Western Europe, Asia or the Soviet Republic. To this end, the United States ‘must sufficiently account for the interests of the advanced

National Security Adviser Has a Long-Awaited Chance to Lead”, **New York Times**, January 3, 1993.

⁵⁵ Krauthammer, Charles. “The Unipolar Moment”, **Foreign Affairs**, Vol. 70, No. 1. (1991), p. 21-23.

⁵⁶ *ibid.*, p. 33.

industrial nations to discourage them from challenging our leadership or seeking to overturn the established political and economic order'.⁵⁷ This document scorned collective internationalism, and relied on benevolent hegemony. However, amidst strong criticisms and opposition both within and outside the United States, the Pentagon has since retreated from its unipolar agenda.⁵⁸ It set aside the view that the United States would tolerate no rivals,⁵⁹ or bears the burden of the world alone.

The Pentagon's retraction of its first draft underscores the end of the unipolar agenda, despite its seductive appeal to the military industrial complex. From a theoretical standpoint, it is impossible for America, or any other great power, to meet the three benchmarks required of a unipolar power. Schwarzenberger identified them as: the possession of overwhelming military superiority, an ideology that gives it the necessary impetus and self confidence to carry out its world mission; and the possession of technical means of organisation that are required not only to capture a world empire but also to hold it together.⁶⁰ The United States has no patent on any of these three.

The historical trend since the demise of Pax Romana suggests that a new robust global hegemon is more of a possibility than a probability. Recent anecdotal evidence suggests that most Europeans are not ready to bandwagon, but rather

⁵⁷ Tyler, Patrick. E. "U.S. Strategy Plan Call for Insuring No Rival Develop", **New York Times**, March 8, 1992, p. 1, 14.

⁵⁸ Patrick E. Tyler, "Pentagon Drops Goal of Blocking New Superpowers", **New York Times**, May 24, 1992, p. 1.

⁵⁹ Brilmayer, Lea. **American Hegemony: Political Morality in a One-Superpower World**. (New Haven: Yale University Press, 1994), p. 1-2.

balance against the United States, where necessary.⁶¹ For instance, in the wake of the June 1997 Denver Summit of the G.8, the European states were dismayed at the United States' new mood of arrogance' in its role as the world's only superpower. Prime Minister Lionel Jospin of France voiced his criticism about 'a certain tendency toward hegemony' on the part of the United States. The United States was accused of ignoring a majority of its allies by imposing its views of NATO expansion and enacting trade laws such as the Helms-Burton Act on trading activities in Cuba, which adversely affects European multinationals. The Europeans were also uneasy about the American Congress dictating to the United Nations, despite an arrears of about \$1.3 billion to the world body.

Focusing on post-Cold War debate, Christopher Layne, Kenneth Waltz and John Mearsheimer rejected the 'bandwagon' thesis. They argued that the question is not whether new power will rise and balance, but when. Layne argued that the unipolar moment was a mere geopolitical interlude that would give way to multipolarity between 2000-2010.⁶² To him therefore, "systemic constraints: balancing, uneven growth rates and the sameness-effect-impel eligible states to become great powers".⁶³ Waltz believed that bipolarity endures, but in an altered

⁶⁰ Schwarzenberger, Georg. **Power Politics: A Study of International Society**. (London: Stevens and Sons, 1964), p. 189.

⁶¹ See, **International Herald Tribune (IHT)**, "Clinton's Class in Economics Annoys Some", June 24, 1997, p. 6; **IHT**, "US Arrogance Is Unsettling Many Allies", June 28-29, 1997, p. 1; **The Times (London)**, "Clever pitch needed for American to play ball", June 13, 1997, p. 12; **IHT**, "European Protests Clinton's Limit on Widening NATO", June 13, 1997, p. 1.

See **IHT**, "A UN Deal made with the wrong Republican", June 23, 1997, p. 8.

⁶² Layne, Christopher. "The Unipolar Illusion: Why New Great Power Will Rise", **International Security**, Vol. 17, No. 4, Spring 1993, p. 5-51.

⁶³ *ibid.*, p. 7.

nature.⁶⁴ He stated that bipolarity continues because militarily Russia can take care of itself and because no other great power has yet emerged. Nonetheless, he foresaw a prospect of a multipolar world consisting of European Union, China, and a resurrected Russia.⁶⁵ In the same vein, John Mearsheimer, argued that the departure of the superpowers from Central Europe would transform Europe from a bipolar to a multipolar system consisting of Germany, France, Britain and perhaps, Italy assuming major power status and Russia as a major European power.⁶⁶ What is evident from these works is that the future leans towards multipolarity rather than to either unipolarity or bipolarity. Yet institutionalists such as Keohane and Ruggie predicted that the resulting system (i.e. multipolarity) would suffer the problems common to multipolar systems and would therefore be more prone to instability.⁶⁷

1.6. The critique of the theory of balance of power

No other theory has engendered so much criticism in international relations as balance of power. In the 19th century, the British Manchester school of political economy was the foremost critic. Leading the school were John Bright and Richard Cobden. Liberal ideas such as laissez-faire, anti-imperialism and pacifism underscored their criticisms. They repeatedly condemned the balance of power as an almost satanic doctrine. For instance, in his Political Writings,

⁶⁴ Waltz, Kenneth. "The Emerging Structure of International Politics", **International Security**, Vol. 18, No. 2. (Fall 1993), p. 52.

⁶⁵ *ibid.*, p. 55.

⁶⁶ Mearsheimer, John. J. "Back to the Future: Instability in Europe After the Cold War", **International Security**, Vol. 15, No. 1. (Summer 1990), p. 5-56.

⁶⁷ Keohane, Robert. "The Diplomacy of Structural Change: Multilateral Institutions and State Strategies", in Haftendorn, Helga and Tuschhoff, Christian. (eds.) **America and Europe in an Era of Change**, (Boulder, Colo.: Westview Press, 1993), p. 53; and

Cobden declared that, “balance of power is a chimera! It is a fallacy, a mistake, an imposture-it is an undescribed, indescribable, incomprehensible nothing; mere words, conveying minds not ideas, but sounds, a figment, which I could never understand”.⁶⁸ Since Cobden, the criticisms have grown. In broad terms, the criticisms focus on its rationalisation of international behaviour as primarily in pursuit of power; its emphasis on historical generalisations; and the alleged obscurity or meaninglessness of the concept. Latter day critics such as Organski have argued against it on the grounds that it not only fails to maintain peace but also actually brings war.⁶⁹

First, he argued not only that the balance of power grossly distorted the meaning of events, it was also an alien plant plucked from another discipline and forcibly planted in the field of international power politics. Secondly, he observed that: “the balance of power theory appears to owe at least part of its acceptance to a deep-felt desire on the part of some students of international politics to have a

Ruggie, John . “Multilateralism: The Anatomy of an Institution”, **International Organization**, Vol. 46, No. 3. (Summer 1992), p. 561.

⁶⁸ Cobden, Richard. **Political Writings**, 2 vols. (Appleton, 1867), I, p. 258. Cobden and Bright objected to balance of power, in part, because it was associated with the preservation of the Vienna settlement, arrived at the end of the Napoleonic wars. To them, balance of power burdened the nations with debts, killed hundreds of thousands of Englishmen and ‘desolated millions of families.

⁶⁹ Organski, A.F.K. **World Politics**, (New York: Knopf, 1968), p. 273. In the light of the depth of Organski’s critique of balance of power, James Lee Ray termed the ensuing discussion between Morgenthau and Organski as the “Morgenthau-Organski debate’. Ray, however argued that the problematic of the Morgenthau-Organski debate focuses on the level of analysis confusion. He pointed out that to Organski, balance of power refers to the distribution of power among individual states; and that Organski assumed that balance of power theory stipulates that a more or less equal distribution of power among states is a prerequisite for peace. Ray noted that Morgenthau believed that balance of power refers to equal distribution of power among coalition of states. See, Lee Ray, James. **Global Politics**. 6th Edition (Boston: Houghton Mifflin Company, 1995), p. 535-537.

law of their own as other social sciences”.⁷⁰ Thirdly, he attributed the popularity of the theory to the fact that it purports to describe processes that are automatic (or at least semi-automatic). Finally, he argued that the disappearance of the balancer, especially in the post Second World War period, poses a great challenge to the idea that balance of power ever worked. He queried that: “if it was to England’s advantage to act as balancer in the 19th century, why is it not to America’s advantage to act as a balancer today. If the balance of power is a permanent law, how can the balancer disappear?”⁷¹ The answers to each of these criticisms are not difficult to understand. Truly, some theorists leave the impression that it is the natural form of international relations. In the natural world, equilibrium is an inherent outcome of interaction of different parts that constitute the whole. This is a deceptively simple understanding of the idea. The political world is more complex and complicated. It requires a rational and delicate calculation of national interests and a matrix of manoeuvring amongst competing states to prevent the emergence of an hegemon. It involves hard choices for the policymakers and statesmen, as the survival and prestige of their states are at stake.

As noted earlier the theory was popularised in the 18th Century, when scientists and philosophers were seeing natural balances everywhere. It is a mistake however, to dismiss the notion as meaningless or irrelevant. The fact that an idea is borrowed from another discipline does not itself undermine its utility, or relevance. Nor is the balance of power the only concept to suffer from the problem of ambiguity. That the theory is contestable is a testament of the

⁷⁰ Organski, *ibid.*, p. 283.

importance of the idea it is intended to convey. The primary reason for maintaining a balance of power system was to prevent not war but hegemony, the domination of the entire system by one powerful state.

So also, it could be argued that the role of a balancer did not end with Britain's abandonment of this role in the late 19th century. A balancer might be an endangered species at the global level, but it is not an anachronism at the local /regional level. A balancer is a power, through accident of strategic position or its capability that can contribute decisive strength to one side or the other. There exists scope for a balancer in a regional context to preserve stability. A balancer is never a neutral power, yet it possesses some degree of freedom of action in choosing sides. It only identifies itself with the weaker state against the stronger. For example, Roosevelt made America played the role of balancer between Japan and Russia in the Far East.⁷² It is worth stating that a balancer works effectively within the multipolar environment, whereas a bipolar environment does not require the service of a balancer.

The last of Organski's criticisms of the balance of power is that it is based on two erroneous assumptions. One, that nations are fundamentally static, so that power is not changed from within. Two, that nations have no permanent ties to each other but move freely, motivated by considerations of power. Against this view, Organski maintains that domestic constraints imposed by the democratic

⁷¹ Organski, *ibid.*, p. 285.

⁷² Kissinger, Henry. **Diplomacy**, (London: Simon and Schuster, 1996), and John Milton Cooper Jr., **Pivotal Decades: The United States, 1900-1920**. (New York: W. W. Norton, 1990), p. 103; and Blum, John. Morton. **The Republican Roosevelt**. (Cambridge, Mass.: Harvard University Press, 1967), p. 134.

process and the economic development affect balancing behaviour and dilute the effectiveness of the balance of power. Power is composed of a complex combination of material and non-material factors, which make its measurement problematic. Even though the 'power' of a state can change from within, i.e. in terms of its economic, technological and military assets, such changes are seen in relation to other states. Whatever, the increase or decrease in the material and non-material factors of power, the change in state behaviour is an adaptation to external constraints conditioned by changes in relative power. Furthermore, it could be argued that the permanence of ties amongst allies depends on whether a threshold of security concerns is crossed. Relationship amongst allies is not underpinned by considerations of equity but by a perception of a convergence of interests.

The latest critique of balance of power comes from the critical theorist/post-structuralists such as Robert Cox, Richard Ashley, James Der Derian and Michael Shapiro.⁷³ Antagonism to power politics is one of the most distinct traits of these scholars. They question the privileged forms of representation through which the political world is constructed.⁷⁴ To them, therefore, balance of

⁷³ See the following as the key works applying critical theory to international relations: Ashley, Richard. K. "The Poverty of Realism", **International Organization**, Vol. 38, No. 2, (Spring 1984), p. 225-285.; Cox, Robert. "Gramsci, Hegemony and International Relations: An Essay in Method", **Millennium: Journal of International Studies**, Vol. 12, No. 2, (Summer 1983), p. 162-175; and Der Derian, James. and Shapiro, Michael. J. **International/Intertextual Relations: Postmodern Readings of World Politics**, (New York: Lexington Books, 1989). For a critique of the critical theory, see, Mearsheimer, John. J. "The False Promise of International Institutions", **International Security**, Vol. 19, No. 3, (Winter 1994/95), p. 5-49; and Davies, Norman. **Europe: A History**. (Oxford, Oxford University Press, 1996), p. 6.

⁷⁴ Shapiro, Michael. J. "Textualizing Global Politics", Der Derian, James and Shapiro, Michael. J. (eds.), **International/Intertextual Relations: Postmodern Readings of World Politics**. (New York: Lexington Books, 1989), p. 13.

power is nothing but a reified tradition, with a contested myth of origin derived from a reading of Thucydides and Machiavelli.⁷⁵ Yet, the panacea of the critical theorists is further historical study with much emphasis on other forms of literature. It is not that the criticism of the post-structuralists is entirely misleading, -the external world is indeed not so securely grounded as realists maintain-but the alternatives such as collective security or peoples' war suffer from the same weaknesses. It is for this reason that we offer an operational definition of balance of power for this study.

1.7. Operational definition of balance of power

It was David Baldwin who once noted that 'one of several criteria for selecting a taxonomy is the avoidance of unnecessary departures from common usage'.⁷⁶

The definition employed in this study is closer to Bull's than any amongst realists. In *The Anarchical Society*, Bull defined the balance of power as "a state of affairs such that no one power is in a position where it is preponderant and can lay down the law to others".⁷⁷ This study defines the balance of power as a pattern of interaction amongst major powers which produces a state of affairs that makes impracticable the domination of the international system by one state.

⁷⁵ Aker Jnr., Hayward. R., Thomas J. Biersteker and Tagashi Inoguchi, "From Imperial Power Balancing to People's Wars: Searching for Order in the Twentieth Century", in Derian and Shapiro, *ibid.*, p. 138.

⁷⁶ Baldwin, David A. *Economic Statecraft*, (Princeton, N.J.: Princeton University Press, 1985), p. 12.

⁷⁷ Bull, *op cit.*, p. 197. Bull provides a lucid account of historical and contemporary relevance of balance of power to the maintenance of international order. He identifies four dimensions of balance of power and makes an insightful comparison between general and local, complex and simple, objective and subjective, as well as the fortuitous and contrived balance(s) of power.

Our definition, unlike Morgenthau's or Waltz's implies the imperative of the processes and the forces, shaping the interaction. It also takes into consideration the outcomes of the interaction and the externalities it generate. When any state threatens to become dominant, its neighbours form a coalition not in pursuit of a theory of international relations, but out of enlightened self-interest to block the ambition of the dominant power. In the process, there exist opportunities for tradeoffs and externalities. In the resolve for power balancing, non-related issues may be factored in. These could be disarmament, or resolving other issues such as a decolonisation or civil war, when it is perceived that the potential hegemon is likely to benefit from the resolution of such conflicts. The outcome of this complex interaction amongst the states determines the nature of the international system at any time. In the present circumstances, it could be either multipolar or bipolar, but it does not look like a unipolar system.

Our definition differs from that of the neo-realists who assume that balance of power sufficiently guarantees international stability, or to the critical theorists who deny its usefulness. It is not either or it is not only these. In most cases, the balance of power produces a precarious stability, so we must look beyond its bounds for the sustenance of international order. A sub-text of our argument is that there is nexus between the balance of power and international law. This nexus is sometimes conflictual, and sometimes, mutually reinforcing.

Two caveats need be made. One is that power equilibrium works best if it is buttressed by an agreement on common values. The leaders of the pre-first world war Europe shared not only a commitment to the balance of power, but also a

degree of cultural homogeneity such as a common system of arts, laws and manners and a sense of restraint. Restraint in victory was not due to altruistic reasons but partly to a realistic concern to preserve the vanquished state as a potential future ally, and partly to the leaders' consciousness of their 'European corporate identity'. Europe was seen as a *societas gentium*.⁷⁸ The second caveat concerns paradoxical relationship of the balance of power and law. Balance of power constructs the issue areas for law, which in turn provides the framework within which power politics is played out. The mandate system is an example of this paradoxical relationship. We shall explain this proposition in detail in chapter three.

1.8. The balance of power and international law

At this juncture, it is important to answer two questions that emerge from the theoretical analysis. These are:

- (a) How far are balance of power and international law mutually reinforcing means of ensuring stability and moderation in international politics? Simply put, how far are they conflicting or even mutually exclusive?
- (b) To the extent that balance of power and international law are conflicting, which is more effective in affecting states behaviour?

The case, Namibia will, it is hoped, help us to answer these questions. Thus, the interface of balance of power and international law is a useful template against which to analyse the involvement of the great powers in Namibian affairs. It is also useful in understanding how, through a series of legal actions before the

⁷⁸ Gulick, Edward. V. *Europe's Classical Balance of Power*. (Ithaca, N.Y.: Cornell

International Court of Justice and multiple resolutions at the United Nations, the members of the international community communicated the acceptable norms of behaviour to South Africa, the mandatory power.

The relationship between balance of power and international law is a complex one, sometimes conflictual, sometimes complementary. We are concerned here not with a detailed study of international law as such, but to learn how a combination of balance of power and international law helps in making states do what they would otherwise not have done. Therefore we shall confine our attention to how the advocates of balance of power see the role of international law. Understanding the nature of the relationship thus requires some familiarity with the views of 16th century's publicists on balance of power.

To recap, we have noted that Waltz's silence on international law is not a new phenomenon, as many publicists who created the corpus of international law were equally silent on the balance of power.⁷⁹ There were those who denied the existence of a relationship, and others who recognised how they intersect. For analytical convenience, we may call the former the 'sceptics' and the latter, the enthusiasts'.

To the sceptics, the balance of power is an obstacle to the idea of an international legal order based on something more moral than force. They saw no relationship between power and law. Hugo Grotius (1583-1645), the father of the modern international law,

University Press, 1995), p. 19-20.

was the leading sceptic of his generation. He did not even discuss the balance of power under that term. He argued that 'quite untenable is the position, which has been maintained by some, that according to the law of nations it is right to take up arms in order to weaken a growing power which, if it becomes too great may be a source of danger'.⁸⁰ Another sceptic was Immanuel Kant (1724-1804). Kant observed that 'For a lasting universal peace on the basis of the so-called balance of power in Europe is a mere chimera'. The sceptics disregard for balance of power was informed by their absolute faith in the decision of the common will and obedience to laws. Kant in particular, believed that there existed in human nature a respect for law and duty that would tend to the ultimate success of law on the international level. Most sceptics were natural law thinkers, imbued with communitarian values, believed that religion could make a war just rather than the pursuit of power or national interest.

Alberico Gentili (1550-1608), an Italian legal scholar led the enthusiast camp. Gentili, a contemporary of Grotius, argued that the need to forestall the 'planning and plotting' of a universal domination by Spain justified opposition by a defense 'which anticipates dangers already meditated and prepared'. Another enthusiast was Emmerich de Vattel (1714-1767), a Swiss, and a contemporary of Kant. He observed that "the legitimate growth of a nation gives no right to attack it, but if the country gives evidence of injustice, greed, pride and ambition or a desire of domineering over its neighbours, they can take warlike measures to frustrate those intentions. Failing such menacing attitudes, other countries can develop countervailing force through alliances and 'gentle

⁷⁹ For a useful summary of the views of early publicists on balance of power, see Alfred Vagts and Detlev. F. Vagts, "The Balance of Power in International Law: A History of an Idea", *The American Journal of International Law*, Vol. 73, October 1979, p. 555-580.

means’”.⁸¹ Lassa P. Oppenheim, an English jurist pushed the enthusiasts’ view further. He considered the balance as ‘an indispensable condition of the very existence of International Law.’⁸² He said:

“a law of nations can only exist if there be an equilibrium, a balance of power between the members of the Family of Nations...As there is not, and never can be a central political authority above sovereign states that could enforce the rule of Law of Nations, a balance of power must prevent any member of the Family of Nations from becoming omnipotent”.⁸³

Like Oppenheim, Phillipson observed an organic relationship between the balance of power and international law. To him, “the balance of power is not the outcome of an explicit positive rule of international law; it is rather an implicit principle essential to and underlying the existence and applicability of international law; and so it may well be conceived to constitute a vital element of the modern juridical system”.⁸⁴

The enthusiasts saw Europe as political system in which equilibrium was crucial to order and stability. Unlike the sceptics, the enthusiasts were inclined towards positivism in international law. They set apart legal rules from moral precepts and from general principles of prudence and statesmanship. To them, the balance of power had two consequences for international law.

The first was that thinking about the balance of power has helped to shape the way jurists have constructed rules of international law. For centuries, it afforded them a

⁸⁰ Grotius, Hugo. **On the Law of War and Peace**, edition of 1646, translated by Francis W. Kelsey et al. (New York: Classic of International Law, Carnegie Endowment for International Peace, 1925), p. 184.

⁸¹ Vagts and Vagts, op cit. P. 571.

⁸² Oppenheim, Lassa. P. **International Law**, edited by R. F. Roxburgh, 2 vols. (London: Longmans, 1920-21), I, p. 93-94.

⁸³ *ibid.*, p. 94.

basis for considering the relationships of sovereign states as a system. The first tentative form of international institutional structure was constructed as the statesmen of the Concert of Europe tried to translate balance of power theory into action. The form of the famous Treaties, Westphalia (1648), Utrecht (1713), and Paris (1814) were shaped by the equilibrium principles. In essence, these treaties made it an obligation of states to maintain the balance of power and defined as international wrongs those actions that undermined the balance.

The consequence was that the practice of balance of power has an embedded normative value. It presupposes that while states may not be bind to preserve the equilibrium, they however, have the 'right' to conserve it. It presupposes that the great conquerors need to respect the limitations set by these treaties, as their violation could be a dangerous act. In substance, the balance of power could be a law on its own, as it limits a nation's freedom to initiate a war without a rational assessment of its cost to its own existence.

As the publicists in the sceptic camp mentioned above loath balance of power, so also many realists have raised the question whether international law is law at all as there is no authority to enforce compliance. Many others however, have acknowledged that international law unwittingly imposes a covenant of self-restraint on states. Kenneth Waltz, whom we had mentioned earlier leads in former group. In his *Theory of International Politics*, international law is never discussed. Waltz's construction of his theory of international politics is based on his exposition of balance of power. To him, the theory of the balance of power is the microtheory of international politics, by analogy to the microeconomic

⁸⁴ Phillipson, Coleman. **International Law and the Great Power.** (London: T. Fisher

theory of the market.⁸⁵ Waltz appears to believe that international law affects neither the structure of international politics, nor the behaviour of states. The latter point is in fact, could be fairly easily challenged.

Presumably, the absence of international law in Waltz's works stems from the Austinian view of international law. John Austin, who dominated jurisprudential thinking in Great Britain during the 19th century, contributed much in the way of theory suggesting the frailties of international law. Austin argued that for a legal system to exist in fact, three indispensable elements were essential. (1) There had to exist a clearly identifiable superior, or sovereign, who was capable of issuing (2) orders or commands for managing society, and (3) there had to be punitive sanctions capable of enforcing those commands.⁸⁶ For Austin, law was defined as the general command emanating from a sovereign, supported by the threat of real sanctions. Since international law had neither sovereign nor the requisite enforcement authority, Austin concluded that it was merely a "positive morality".⁸⁷ This view is open to challenge, however. International law may not have the same effect on the structure of international politics as the balance of power, but it is a mistake, to underestimate its influence on the behaviour of states; and its importance as a restraint on the excesses of belligerent states.⁸⁸

Unwin Limited, 1915), p. 4.

⁸⁵ Waltz, op cit., p. 118

⁸⁶ Austin, John. **The Province of Jurisprudence Determined and the Uses of Jurisprudence.** (London: Weindfeld and Nicholson, 1954), p. 121.

⁸⁷ Austin, *ibid.*, p. 144.

⁸⁸ For a critique of Austinian view of law, see, Falk, Richard. A. **The Status of Law in International Society.** (Princeton, N.J.: Princeton University Press, 1970), and Joyner, Christopher. C. "The Reality and Relevance of International Law in the post-Cold War Era", in Kegley Jr., Charles. W. and Wittkopt, Eugene. R. (eds.), **The Global Agenda: Issues and Perspectives.** Fourth Edition, (New York: McGraw-Hill Inc., 1995), p. 211-224.

International law consists of a set of norms that prescribe international behaviour, although those patterns may at times seem vaguely defined. It also furnishes a principled foundation for policy decisions, even though adherence to principle often becomes justifiable only if it can be shown to be practical.⁸⁹ Relatedly, reasons exist for states to obey international law; i.e. an obligatory basis does in fact exist to support international law's operation in world affairs.

Coplin's and Bull's analyses of international law help to fill the lacunae identified in Waltz's work. According to Coplin, "international law as an institution" expresses in a quasi-authoritative manner three assumptions about international politics:⁹⁰ It legalises the existence of states and helps to define actions necessary for the preservation of each state and of the system as a whole. It reduces the desire to overthrow the order, and reinforces the idea that vigilance, moderation and flexibility are necessary for the protection of a system of competing states. And finally, it establishes a legalised system of political payoffs by providing means to register gains and losses without creating a static system. This study shares Coplin's view that international law does not function like the balance of power as a coercive restraint on state action, or as a system of coercive norms controlling the action of states, but as an institutional device for communicating to policy makers a consensus on the nature of the international system, and the acceptable prerequisites of international order.

⁸⁹ Joyner, *ibid.*, p. 215.

⁹⁰ Coplin, William. D. "International Law and the Assumptions about the State System", *World Politics*, Vol. XVIII, No. 4, July 1965, p. 615-634.

It would be difficult to resist the conclusion that Coplin's view does not need some refining. It is not really convincing to suppose that international law is wholly. It needs to be dissected into different categories. Our discussion will then be confined to the relevance and applicability of a particular category of international law to the Namibian situation. Schwarzenberger's sociological classification of the norms of international law into three: power, co-ordination and reciprocity is useful here.⁹¹ On this view, the international law of power consists of those rules that help to maintain existing political hierarchies. The norms ensure the independence of states and non-interference in the domestic affairs, and make social existence possible, with the adjustment of diverging interests in accordance with the relative power between the haves and the have-nots. Peace treaties and boundary agreements exemplify the international law of power. The international law of reciprocity regulates areas less vital for power-purposes, where states are willing to accommodate the interests of others in order to secure reciprocal benefits. Fairness and co-operative actions underscore the international law of reciprocity when it covers areas such as diplomatic immunities and extradition, trade and communication or the limitation of warfare. The international law of co-ordination has developed to satisfy the functional needs of international society to address transnational problems as and when they arise. Examples include the regulation of the slave trade in the late 19th century, the law of the sea, which was designed to halt the continuing depletion of the seabed and aquatic resources.

⁹¹ Schwarzenberger, op cit.

Of the three sets, the international law of power occupies the high ground. According to Frankel, “against the background of security and moderation ensured by the law of power, reciprocal interests gave rise to rapid development of treaties, especially commerce, while numerous conferences and a few permanent institutions began to extend to the law of community”.⁹² It is possible to detect that states’ preference for a particular set of law is often essentially driven by political calculations. For instance, while the great powers favour the law of power to maintain the status quo, the weaker states often appeal to the law of reciprocity in their call for justice and fairness within the system. With respect to Namibia, this differential pattern can be illustrated by reference to the mandate system. The Mandate system exhibited the tension between the law of power and law of co-ordination. For instance, the Allied Powers invoked the law of power under the Treaty of Versailles to emasculate Germany after the First World War by distributing Germany’s colonies amongst themselves. From the point of view of the weaker states, the mandate system created an opportunity for transferring the authority over the colonies of the Axis powers to the international community, by making the mandatory states accountable to the League. This difference in international law is examined in detail in chapters three and four. In these chapters, I will show that the Ethiopian and Liberian proceedings against South Africa before the International Court of Justice in 1966, were underpinned by the norms of the international law of reciprocity.

Having considered the debate on the existence of a relationship between the concept of the balance of power and international law, we can now turn to the

⁹² Frankel, *op cit.*, p. 179.

question of their complementarity or mutual exclusiveness as institutions of international society. Bull provided an insightful explanation of the symbiosis between balance of power and international law. He noted that, “both general and local balances of power, where they have existed, have provided the condition in which other institutions on which international order depends (diplomacy, war, power management and international law) have been able to operate”.⁹³ These institutions assume a situation in which no one power is preponderant in strength; and their effectiveness as such is premised on a denial of a single preponderant state with the capacity to violate the rules and procedures of diplomatic intercourse with impunity. It could be further argued that given those conditions the balance of power facilitates the perfectibility of theories of state sovereignty, and of non-intervention. Accordingly, this leads us to another common feature of balance of power and international law, that is their dependence on a measure of self-help.

In the absence of central authority with preponderant power, some rules of international law are in fact upheld by measures of self-help, including the threat and use of force, by individual states. Similarly, the distinction that states have made between the justiciable and the nonjusticiable has been drawn on a basis of usefulness and convenience of international law to them alone, without any overarching authority. While necessity often dictates the adoption of the rules of international law, convenience shaped their form. States resort to international law on their own will, especially when certain of their secondary national interests are the subjects of dispute with another state. They also resort to balance

⁹³ Bull, *op cit.*, p. 102.

of power when others threaten their primary national interests. States are not coerced into taking either of these options.

Despite the view expressed above that the balance of power and international law combine to form a perpetual motion machine that creates and sustains international order, their respective preconditions are not mutually reinforcing. On this score, there are differences. Bull observed that, “it is paradox of the principle of balance of power that while the existence of a balance of power is an essential condition of the operation of international law, the steps necessary to maintain the balance often involve violation of the injunctions of international law”.⁹⁴ He reiterated that, “while international law depends for its very existence as an operating system of rules on the balance of power, preservation of the latter often requires the breaking of these rules”.⁹⁵ He identified at least three points: (1) preventive war; (2) the use of sanctions to deter aggressive war; and (3) intervention. Since our aim in this study is not to rehearse Bull’s argument, but to use his insights in our case study, the following questions will be addressed in chapters five and six respectively. (1) To what extent did the formation of Western powers, which constituted the Contact Group in the mid-1970s illustrate by its mediation the conflictual relationship between balance of power and international law? (2) How did the Contact Group resolve this dilemma? (3) How did ‘linkage politics’ illustrate this conflictual relationship; and which one of the two, i. e. the balance of power and international law was predominant?

⁹⁴ Bull, *op cit.*, p. 104.

1.9. Conclusion

In the preceding sections, I have shown that the balance of power is steeped in history. It is seen as a pattern of interactions amongst the great powers that produces a state of affairs that makes impracticable the domination of the international system by one power. It seeks to prevent a situation in which one state can dictate and lay down the rule of international intercourse to others. In its basic operation, it implies a power competition and a struggle for relative advantage. In its widest form, balance of power is full of peculiar ambivalence, but we need to endorse the ambiguity of the term. Raymon Aron warned that the ambiguity in 'international relations is not to be imputed to the inadequacy of our concepts: it is an integral part of reality itself.⁹⁶ Modern opinion on balance of power has been so impressed by its imperfections that it is often difficult to enquire into its externalities and spin-offs. With all its imperfections, it will continue to be a determining feature of international relations.

It is also too early to write the obituary of balance of power theory in the post-Cold War international relations. Historical referents have shown that where it has existed, the balance of power has provided the conditions for the other institutions on which international order depends. The divorce between balance of power and international law is particularly regrettable. There is no reason why their symbiotic relationship (whether complementary or conflictual) should not be a matter of interest to realist and neo-realist alike. Both are concerned, after all, to restrain the excesses of a potential hegemon, regulate disturbances within

⁹⁵ *ibid.*

⁹⁶ Aron, Raymon. **Peace and War: A Theory of International Relations**. Translated from the French by Annette, Richard. H. (Melabor, Fla.: Krieger, 1981), p. 8.

the international system, preserve international order, and limit, if not prevent war. Each however, has its own area of competence. While balance of power limits states on the coercive level, international law works at the level of public reputation.

In the final analysis, the argument is that although international law incorporates certain principles of natural law, yet it has developed more through state practices than through logical deduction from idealist principles. Thus, international law is inherently linked with the balance of power system, because the functioning of international law is premised on moderation and stability created by the workings of the balance of power. Neo-liberal and institutionalist scholars, with their emphasis on liberalism, co-operation, free trade and pacifism have attempted to highlight the weaknesses of the balance of power. Yet, they have been unsuccessful in undermining the belief that balance of power is the predominant organising principle of international relations. The liberal deference to high ideals, morality and public opinion are still of a limited value to states in relation to one another.

Balance of power theory has acknowledged anomalies-for example that balances have broken down and led to war. Nonetheless, this is not of itself a sufficient reason for rejecting the theory outright, for reasons identified by Kuhn and Lakatos.⁹⁷ Kuhn argued that a paradigm is replaced when it confronts a major

⁹⁷ Kuhn, Thomas., **The Structure of Scientific Revolutions**. (Chicago: University of Chicago Press, 1970) and Lakatos, Imre. **The methodology of scientific research programmers: Philosophical Papers Vol. 1**, Worrall, John and Currie, Gregory. (eds.). (Cambridge: Cambridge University Press, 1984).

anomaly that it cannot resolve.⁹⁸ Imre Lakatos further argued that a rejection of a paradigm is a decision that must be made for a field as a whole. He offered some rules for making the decision in a rational manner. He suggested that one paradigm may be rejected in favour of another if the latter produces a better theory. Thus, theory T is falsified if and only if another theory T' has been proposed with the following characteristics: (1) T' has excess empirical content over T: that is it predicts novel facts, that is facts improbable in the light of, or even forbidden, by T; (2) T' explains the previous success of T, that is, all the unrefuted content of T is included (within the limits of observational error) in the content of T'; and (3) some of the excess content of T' is corroborated.⁹⁹

These criteria are weighted in favour of the theory of balance of power for three reasons. First, the core premise of balance of power is that nation-states are the most important set of actors to examine in order to account for behaviour in international relations. Second, no alternative theory has been developed that can explain the pattern of interactions amongst states in international politics as the balance of power did in the

⁹⁸ Kuhn, *ibid.*, p. 153. Kuhn's main question here is: what is the process by which a new candidate for paradigm replaces its predecessor? His conclusion on 'paradigm shift' rests on the rejection of Popperian falsificationism. He noted that paradigm shift for two considerations: subjective and aesthetic. The subjective consideration involves the claim by the proponent of a new paradigm that they can solve the problems that have led the old one to a crisis. The aesthetic consideration presupposes the appeal to the individual's sense of the appropriate: that the new theory is said to be 'neater', more suitable or simpler than the old.

⁹⁹ Lakatos, *ibid.*, p. 32. Lakatos, like Kuhn doubted the efficacy of Popperian falsificationism as a condition for rejecting a theory. Karl Popper argued that a theory is scientific if one is prepared to specify in advance a crucial explanation or observation which can falsify it; or it is pseudoscientific in one refuse to specify such a 'potential falsifier'. Lakatos saw Popper as a dogmatic falsificationist, who believed that empirical counter-evidence is the one and only arbiter, which may judge a theory. In short, Lakatos believed that a theory could be protected from refutation by a vast protective belt of 'auxiliary hypotheses. This study's defence of the preeminence of the theory of balance of

past, given history and continuities. Third, balance of power is still a recurring pattern in an anarchical society, albeit it may be more evident at the regional than at the global level in the post-Cold War era. Thus far, we have established that the relationship between balance of power and international law is both conflictual and complementary. Understanding how this relationship works in the case under review thus requires some familiarity with the Anglo-German relationship of the late 19th century, in particular with an account of German colonial claims on South West Africa.

power borrows largely from Lakatos's conventional justificationism. See, Lakatos, *ibid.*, Chapter 1, especially, p. 8-46.

Chapter Two

South West Africa: A creation of balance of power.

2.1. Introduction

In the last chapter, we established the paradoxical essence of balance of power: that is, it shapes and defines the issue areas for law, which in turn provides the framework within which power politics is played out. It is necessary here to make two preliminary points about the presentation of the nexus between power and law. The first is the level of analysis used in the historical narrative. European balance of power politics of the late 19th century are examined to ascertain how South West Africa became at once, a creation and a victim of the rivalry between Germany and Britain. The second point concerns the analysis of the legal concept of *territorium nullius*. Without an examination of this idea, which defined the relationship between Europe and the other non-members of the family of nations in the late 19th century, no clear conclusion would emerge on the politico-legal complexities of Anglo-German rivalry. The chapter is divided into four main parts.

Part one focuses on the reasons and motives that underpinned German colonial moves in South West Africa. Was Bismarck, a reluctant colonialist responding to domestic pressures, or driven by the exigencies of the external environment? Part two highlights the nature and character of the Anglo-German relationship under Chancellor Bismarck. The following questions are addressed: Why was Chancellor Bismarck originally ready to do business with Britain, and what factors undermined the prospect of an Anglo-German alliance? Part three examines how Britain responded to German colonial moves in South West Africa. In the final part, we contextualise the prevailing

international law on *territorium nullius*. This leads us to seek answers to the question: within the prevailing international law, what can we make of the German colonial moves in South West Africa? And what was the legal status of the Cape Government in relation to the British Empire?

Several caveats must be made before proceeding. We will make no attempt to engage with the whole Anglo-German relationship. Several First World War scholars have written on its wider aspects.¹⁰⁰ The scope here is limited to how South West Africa featured in the relationship between 1870 and 1884. For this reason, there is also no discussion of the German colonial administration in South West Africa.

2.2. General explanations and the origin of German colonialism in Africa

A variety of explanations have been advanced to account for European colonial expansion in Africa, which peaked with the Berlin Conference of 1884-85. The four main explanations are: (1) European balance of power politics;¹⁰¹ (2) Imperialism: the quest for new and additional markets as a safety valve to a collapsing capitalist

¹⁰⁰ For a detailed account of the Anglo-German relationships between 1870 to 1914, see Turner, L. C. F. **Origin of the First World War**, (Edward Arnold, 1970), Ferro, M. **The Great Powers**. (London: Routledge and Kegan Paul, 1973), Koch, H. W. **Origin of the First World War**. (London: Macmillan, 1972), and Bartlett, C. J. **The Global Conflict: The International Rivalry of the Great Powers**. (London: Macmillan, 1994).

¹⁰¹ See Taylor, A. J. P. **Germany's First Bid for Colonies, 1884-5: A move in Bismarck's European Policy**. (London: Oxford University Press, 1938); Taylor, A. J. P. **The Struggle for Mastery in Europe, 1848-1914**. (Oxford: OUP, 1934); and Langer, W. L. **European Alliances and Alignments, 1870-1890**. (New York: Knopff, 2nd Edition, New York, 1950).

system;¹⁰² (3) The imposition of a (European) higher and mature Christian culture over the barbarians and the infidels,¹⁰³ and (4) The Monroe Doctrine of 1823 which proclaimed the exclusion of the Europeans from Latin America, and in turn kept the United States from participating in the partitioning of Africa, despite its presence at Berlin¹⁰⁴ The argument of this thesis is that in the case of South West Africa, the first of these explanations is most convincing. To illustrate this argument, we need to examine the background to German colonial policy.

It is tempting to view German colonialism as a modern phenomenon. Indeed, German colonial enterprise did not begin with Bismarck. There were German colonial efforts as early as the 17th century, when the Great Elector of Brandenburg established a trading post on the West Coast of Africa.¹⁰⁵ Towards the end of 1682, a fleet of four company ships under the captainship of von der Groeben, set out to ratify Block's Treaty, and establish a German colony at Cape Three Point, in present day Ghana. However, this enterprise was cut short when the Great Elector died in 1688, and the garrison and colonists, including von der Groeben were rapidly thinned by African fever. Secondly, the new Elector, Fredrick William of Prussia found his hands too full in Europe to be bothered with his predecessor's African plans. Thus, a few years later, he sold the fort

¹⁰² For an explicit explanation of the imperial activities of Europe in Africa, see Hopkins, A. G. **An Economic History of West Africa**. (London: Longman, 1973); Hobson, J. A. **Imperialism: A Study**. (London: A Constable, 1902).

¹⁰³ Fage, T. D. **A History of Africa**. (London: Hutchinson, 1988). p. 333.

¹⁰⁴ Mazrui, A. **The African Conditions- A Political Diagnosis: The Reith Lectures, 1979**. (London: Heinemann Education, 1980).

¹⁰⁵ Tilby, A. Wyatt. 'Germany as a Colonising Factor', **United Empire: The Royal Colonial Institute Journal**, Vol. III., No. 1., January 1912. p. 57.

to the Dutch for the knockdown sum of 7,200 ducats in cash.¹⁰⁶ This ended Germany's first attempt for colonies in Africa. 164 years later, Chancellor Bismarck revived the colonial enterprise in a very different European political and economic environment and consequently in pursuit of different interests and with a different rationale.

2.3. Bismarck's colonial moves in South West Africa

All four reasons for the general explanation for European colonialism in Africa have been attributed to Germany. Ritchie argued that the German acquisition of South West Africa in 1884 was not an end in itself, but a single step towards an end: the control of the whole southern section of the African continent.¹⁰⁷ Cana pointed out that the creation of a true colony in southern Africa and the acquisition of 'plantation colonies' in equatorial Africa were the main objects of German's policy in Africa.¹⁰⁸ Other explanations for German colonial expansion included the quest for new markets, and the imposition of a higher culture. de Vries maintained that the stream of emigrants who left Germany from time to time amounted to the 'exportation of the social question'.¹⁰⁹ Butler believed that as German missionary activities accelerated the process of German colonialism in South West Africa, the Rhenish Missionary Society

¹⁰⁶ Hamilton, L., 'German Colonial Policy', **United Empire: The Royal Colonial Institute Journal**, Vol. IV., (New Series) 1913., p. 157; Ritchie, Moore. **The Unfinished War: The Drama of Anglo-German Conflict in Africa**. (London: Eyre and Spottiswoode, 1940), p. 58.

¹⁰⁷ Ritchie, op cit. p. 90.

¹⁰⁸ Cana, F. R. 'German Aims in Africa', **Journal of the African Society**, Vol. LVI. Vol. XIV. July 1915, p. 355-265; Evans, Lewin. **The Germans and Africa**. (London: Cassell and Co., 1915).

¹⁰⁹ de Vries, J. Lucas. **Mission and Colonialism in Namibia**. (Johannesburg: Ravan Press, 1978) p. 7.

needed the protection of the German State to accomplish its civilising mission due to the local conflict between the Herero and Nama tribes.¹¹⁰

Arguably, each of these arguments misconceives the real source of Germany's imperialism. Neither economic interest nor high culture is sufficient to explain German colonialism in South West Africa. It is also necessary to take account of the process by which, the German claim was advanced against other powers with similar motives. We also need to ask why and how Bismarck, by his own admission, a reluctant colonist, became embroiled in the enterprise. Was his conversion due to the demands of missionaries and traders alone, or were there other broader and deeper motives? In other words, what were the grounds for Bismarck's colonial claims for South West Africa? At first sight, his opposition to colonialism would seem to contradict the balance of power hypothesis. We need, therefore, to examine further the causes of his conversion to the cause of German expansionism.

That Bismarck was opposed to colonial expansion is supported by three reasons. His own speeches always emphatically denied any sympathy with overseas expansion. He once reported that colonial possession was a two-fold liability: externally, because the country lacked a fleet adequate to defend them; internally, because the costs of administering them would widen the parliamentary parade ground by increasing the government's financial dependence on the Reichstag. Secondly, some of the most publicized of the Chancellor's acts provided tangible evidence for this attitude. For instance, in 1871, during the preliminaries of the Treaty of Frankfurt, he rejected the

¹¹⁰ Butler, Jeffrey. "The German Factor in Anglo-Transvaal Relations", in Gifford, Prosser and Roger, Wm. (eds.) **Britain and Germany in Africa: Imperial Rivalry and Colonial Rule.** (Louis, New Haven: Yale University Press, 1967). p. 181.

French offer of colonies in Cochin China. In 1882, he announced that the political situation prevented the government from taking any part in the work of the *Kolonial verein*. Thirdly, given his pivotal goal of nation building, colonial acquisition seemed to be incongruous.

Each of these views, however, can be interpreted differently. The view of Bismarck as anti-expansionist is at odds with the other image of Bismarck as the Iron Chancellor. If Bismarck's utterances were anti-expansionist, yet he never ruled out colonialism for all time. Most of his statements were in line with the practice of circumspection employed by European statesmen of his generation. Most European statesmen worked on the assumption that if they spoke the truth, they would not be believed. Consequently, they always said what other statesmen wanted to hear. During the formative years of German unification, Bismarck was also engrossed with the task of the nation building. He postponed, rather than rejected imperial expansion. For instance, the idea of future colonies for Germany was not absent from Bismarck's mind even before the unification of 1871. Article IV of the Constitution for the North German Confederation, which he prepared, reads that the Law of the Kingdom shall be extended over Colonies and the settlements in the land overseas. This clause was enshrined in the Constitution of the Empire of 1871. Finally, Bismarck read the external environment with caution in order to play the power game. A politically expedient course of action for a young united empire, with a weak naval force, in relation to its immediate neighbours, France and Britain, was to take a back seat on colonial issues.

Bismarck essentially encouraged France and Britain to go "colonial", plausibly to create conflict between them, and to divert the attention of France and England from

Germany's diplomatic and military capabilities. This reasoning goes a long way toward explaining the caution of the formative years: it was underpinned by domestic considerations. At this time, Bismarck counted on the support of the Liberal Party to complete the project of centralising the empire. When he was free to break out the alliance with the Liberal Party, he did. Perhaps, the time was ripe to take on Britain in the murky waters of colonialism.

Rival historical explanations have been offered for Bismarck's colonial moves within the context of the famous Fischer-Kehr debate: the contest between external and the domestic considerations. Fisher¹¹¹ argued that the external environment was the major determinant, while Kehr¹¹² was a leading proponent of the domestic political explanation. It is not necessary to speculate at length on the reasons why the Iron Chancellor changed his mind in the mid-1880s. It cannot be denied, however, that ulterior motives of a domestic variety effected the quest for colonies. It is important though, not to explain every colonial move with reference to a single cause. Each colonial claim was *sui generis*. As far as South West Africa was concerned, the balance of possibility weighed in favour of the external considerations of which Taylor's balance of power argument is the most plausible.¹¹³ Taylor observed that:

¹¹¹ Fischer, F. **Germany's Aims in the First World War**. (London: Chatto, 1969).

¹¹² Kehr, E. **Battleship Building and Party Politics in Germany**. (Chicago, University of Chicago Press, 1975); idem, **Economic Interest, Militarism and Foreign Policy**. (Berkeley: University of California Press, 1977)

¹¹³ Taylor, A. J. P. **Germany's First Bid for Colonies, 1884-1885: A move in Bismarck's European Policy**, (London: Macmillan, 1938), p. 6. This book is, perhaps, still the most provocative work on anti-British sentiments as the *causa belli* of German colonialism. It is important to note that Henry Ashby Turner has challenged Taylor's thesis. Yet Turner conceded that Britain was a vital factor in shaping the new German colonial empire, and that the friction that later developed between the two powers resulted from Germany's attempt to widen its role in the colonial world. See, Henry

“It is important to discover an explanation of Bismarck’s colonial policy by fitting it into the structure of contemporary European politics. His colonial policy alone seems meaningless and irrational; but when the relations of England and Germany are added to those of Germany and France, and to those of France and England, Bismarck’s policy of 1884 and 1885 becomes clearer as at any other time in his career”.

Taylor then noted that such an examination shows that Bismarck quarrelled with England in order to draw closer to France; and that the method of quarrel was the deliberately provocative claim to ownerless lands, in which the German government had hitherto shown no interest. Furthermore, he demonstrated that “the German colonies were the accidental by-product of an abortive Franco-German entente. Overseas imperialism, in other words, was for Bismarck only a means, the end being a rapprochement with France”.¹¹⁴

Taylor placed great weight on the psychology of the balance of power. To the German mind friendship with one power necessarily implies hostility against another, and Germany to make herself presentable to France, had to provoke a quarrel with England so that Franco-German friendship should have the solid foundation of Anglophobia. A grievance had to be created, and Bismarck turned to the colonial topic, which he had hitherto despised. Justifying the choice of South West Africa as the ground, Taylor maintained that:

“It would have been simple for Bismarck to stage a quarrel with the English, merely by joining the French opposition in regard to Egypt; but this would not have served his purpose, which was to convince the French

Ashby Turner, “Bismarck’s Imperialist Venture: Anti-British in Origin?”, in Gifford, and Roger, op cit., p. 81.

¹¹⁴ *ibid.*, p. 16.

that he had grievances of his own and therefore actually needed French help".¹¹⁵

The first grievance that Bismarck had against Britain concerned the Fiji settlement. In Fiji, Britain had never responded to Bismarck's request for the protection of the Germans doing business in the area in 1875. This refusal was a reminder to Bismarck that Germany needed its own colonies. In fact, he was more troubled by Britain's territorial expansionism in the early 1880s. In 1882, Britain concluded a Colonial Convention with France which, called for a demarcation line between English and French territory north of Sierra Leone and for establishing high custom duties against goods from third countries. German firms in West Africa resented these duties. Moreover, in early 1884, England concluded the Anglo-Portuguese Treaty, which established monopolistic control of the Congo River, in effect adding to its existing possessions by proxy. This treaty discriminated against Germany's commercial interests. It was therefore no surprise, when on April 18, 1884, Bismarck protested to Portugal and refused to accept the Treaty's terms. At the same time, he instructed his ambassador in Paris to approach France with the proposal to unite the commercial interests of France and Germany in the Congo against England. Six days later, he received a response wherein France promised full support. France's co-operation in maintaining the principle of equality of trade in the Congo finally led to the calling of the famous Berlin Conference of November 15, 1884.

This anti-British position was first identified by George Peris in 1914,¹¹⁶ and later developed by Taylor in 1938. To a great extent, the anti-British feeling on Germany's

¹¹⁵ *ibid.*, 23.

¹¹⁶ Peris, George. Herbert. **Germany and the German Emperor** (London: Andrew Melrose Ltd., 1914), p. 398.

imperial venture had its intellectual roots in the writings and speeches of the historian von Treitschke. On the German colonial question, he writes:

"History teaches us that nations rise and decline: they cannot remain stationary. Britain above all other nations stands across the path of expanding Germany. If German greatness is to come to full stature, Britain must sooner or later be humbled. The power of Britain and her institutions, her liberty, is not attuned to this age ".¹¹⁷

Cana also observed that von Treitschke was the first and most influential man to focus German eyes on southern region of Africa as suitable for colonisation.

"Treitschke held that Germany should possess colonies, and he believed that in South Africa circumstances were distinctly favourable to Teutonic ambitions. Quick to perceive where Britain had not succeeded in the colonial field he called attention to the fact the policy of England at the Cape, "vacillating between weakness and violence", had alienated the Boers. He fully recognised that if Germany followed an independent colonial policy in that quarter a collision with the interests of Britain was inevitable-but a collision with Britain was one of the things Treitschke most ardently desired."¹¹⁸

Despite Treitschke's prophecy, Bismarck, still preferred an alliance with Britain at the birth of German Unification in 1871, having just been at war with France. To understand what led Bismarck to confront Britain over South West Africa, we need to look in more detail at the diplomatic exchanges between the two countries. These are not fully covered in Taylor's sweeping account, although, they do not rebut his general conclusion.

¹¹⁷ Quoted from Ritchie, *ibid.*, p. 68.

¹¹⁸ Cana, *op. cit.*, p. 255.

2.4. South West Africa and the Anglo-German Relations, 1870-1884¹¹⁹

Bismarck intended to maintain a friendly attitude with Lord Salisbury's Government during the formative years of a unified Germany. By sending one or the other of his two sons, Count Herbert and Count William, on visits to England repeatedly, he sought to demonstrate his commitment to Anglo-German relations.¹²⁰ To Bismarck, a *rapprochement* between England and Germany was a marriage made in heaven. He thought of England as the most natural ally, with few areas of divergent interests. His calculation was that an Anglo-German alliance would guarantee stability in Europe. However, such moves met with both domestic and external scepticism. In Germany, at the social level, alliance with Russia was of paramount importance, while relation with Britain was of a secondary importance. Despite the growing public opposition to an alliance with Britain, Bismarck was serious in pursuing this objective.

For her part, Britain did not receive Bismarck's overtures with enthusiasm. Arguably, it was naive of Bismarck to believe that Britain could be Germany's natural ally. No other state than a unified Germany posed such a threat to the power of the British Empire. At the end of the 19th century, it was still the largest empire in the history of the world, comprising of nearly a quarter of the landmass of the earth covering about 11 million

¹¹⁹ On this part, I rely heavily on diplomatic evidences, especially Dugdale, E. T. S., **German Diplomatic Documents, 1871-1914 Volumes I –IV**. (London: Menthuen and Co., Ltd., 1928).

¹²⁰ Dugdale, E. T. S. **German Diplomatic Documents, Vol. 1: Bismarck's Relations with England, 1871-1890**. (London: Menthuen and Co. Ltd., 1928), p. vii.

square miles with a population totalling 372 million.¹²¹ It dominated world politics during this period, stretching from the Mediterranean to South East Asia with the largest naval fleet that controlled most of the world's shipping lanes. However, during the last two decades of the 19th century, Britain's imperial spirit started to crack, with the loss of her manufacturing, naval and colonial monopolies, her domestic politics became highly factionalised in the rivalry of the two parties led Disraeli and Gladstone. Gradually, her energies for global domination were sapped. As her hegemonic power diminished; "there was one dominating question in British foreign policy: Russia and Germany."¹²² Britain understandably feared Germany, more than Russia. More than any power in Europe, Germany was the most aggressive and most militaristic. Unification in 1871 was followed by the first 'economic miracle' in history. With prosperity, came ambition and a strong desire to be militarily powerful, through the acquisition of a formidable army and navy. London's concerns about Germany boiled down to a simple fear: that German ambitions did not appear to be confined to Eastern Europe; that they extended to western Europe and the world beyond.

With this perception of German ambitions, Britain found it difficult to engage with Bismarck on continental matters in the way he wanted. For example, Lord Beaconsfield admitted in 1879 that England alone had destroyed Bismarck's efforts towards a closer understanding with England at that time. He wrote: 'that proposal (of an alliance with Great Britain) was not only rejected by the English Secretary of State,

¹²¹ Morris, James. **Pax Britannica: The Climax of an Empire.** (London: Faber and Faber, 1968). Even the Roman Empire was with 120 million people, and occupied 11 square million mile.

¹²² Stone, Norman. **Europe Transformed, 1878-1919.** (London: Fontana Press, 1985), p. 159.

but was only notified by him to his colleagues, accompanied by his opinion, that it could not for a moment be entertained¹²³

By 1880, Bismarck was himself pessimistic about his Anglo-German overtures. His first offer of Alliance in conversation with Lord John Russell (then Foreign Secretary) in 1876 over the Eastern Question failed to materialise. At this time, however, Bismarck contemplated an alliance with Russia, the implication of which would have reduced the importance of a British connection.¹²⁴ Ironically, the Egyptian question brought Germany and Britain together against France. However, it was a double-edge sword for Britain, France, and Germany, and its final outcome constituted a classic balance of power politics.

The Egyptian question tested the resolve of the Anglo-Franco understanding and finally broke it. In April 1877 both England and France were in co-operation and established co-dominion of Egyptian finances to advance their respective colonial interests. The European Commission of Control that was set up to manage the precarious state of Egyptian finances was quickly converted into a Condominium of the two Powers. But in 1882, France refused to join England in coercing Alexandria; this left England in control of the country, and joint policies on Egypt began to fall apart.¹²⁵ Their policies were not only incompatible; England was confronted by the determined hostility of France. As France could count on the support of Russia, it was important for Britain to

¹²³ Dugdale, *ibid.*, p. 145.

¹²⁴ Dugdale, *ibid.*, p. 144.

¹²⁵ Dugdale, *ibid.*, p. 155. 'The Egyptian Question'.

secure the support and goodwill of Germany, to if needed could be added Italian and Austrian support.

By granting or refusing his support, Bismarck could facilitate or frustrate the successful prosecution of British policy in Egypt. German interests in the Suez Canal were small and purely commercial, yet it could have derailed British policy in Egypt, if it had supported the French. Germany maintained a political silence on the issue, and by so doing outmanoeuvred France. Britain appreciated Germany's neutrality. Count Herbert Bismarck reported that Sir William Harcourt, the British Home Secretary, had said to him that:

"We are uncommonly grateful to Prince Bismarck, for the friendly attitude of German policy this summer was of great service to us. Our being left with a free hand in Egypt we owe, when all is said, to Germany's goodwill. We are all aware that at a particular moment Prince Bismarck could have upset the coach if he had chosen to, and we realise with much thankfulness that he refrained from doing so".¹²⁶

Altruism, however, is always a scarce commodity in international diplomacy. The outcome of the Egyptian question altered the contour of the Anglo-German and Anglo-French relationship. Bismarck sensed that Britain's defeat of France over the Egyptian question was a step toward the realisation of the 'Cape to Cairo' project propounded by the British industrialist, Cecil Rhodes. He also sensed that the Cape to Cairo project would consolidate Britain's global expansion, and give it a sense of supremacy in Europe. On the other hand, Bismarck believed that he could exploit the French sense of wounded pride against the British. To France, the prospect of an alliance with Germany

¹²⁶ Dugdale, *ibid.*, p. 168.

was a rearguard action to reclaim its place at the forefront of European politics. Bismarck's move was least expected in London. Thus, on February 4, 1883, Bismarck sent a cable to London through his son, Herbert asking about the nature and character of Britain's authority over the Angra Pequena-the original cartographical name for South West Africa- so as to make provision for the protection of German traders in the area. Again, on September 10, 1883, Plessen, the German charge d'affaires, enquired at the British Foreign Office if Britain had suzerainty at Angra Penquena and, in case the suzerainty exits on what ground it rests.¹²⁷

To the British Government, German colonial aspirations were 'unpractical' and 'untimely'. In a series of despatches to Count Munster in London, Bismarck criticised British attitudes towards the German requests. "In his despatch of May 25th 1884, he said:

"In view of the unexpected peremptory attitude of the English regarding Angra Pequena. I beg you to cease to mention the subject of Heligoland in your discussions. It would provide an excuse for making the justice of our African claims subservient to our rights regarding Heligoland. A desire of this kind can only be presented to a nation when it is in a friendly mood towards us. This description does not apply to England of today, as is proved by their unrestrained claims against us in colonial matters. A Monroe Doctrine for Africa".¹²⁸

In the letter, Prince Bismarck warned of the need for Germany to form an alliance with France, if Britain failed to budge. "If we fail to obtain justice from England across the ocean, we must try at any rate to gain closer touch with other sea-faring Powers, France

¹²⁷.The documents concerning Angra Penquena are in F.O. 64/1101. See W. O. Aydelotte, "The First German Colony and its Diplomatic Consequences", in **Cambridge Historical Journal**, Vol. V. No. 3, p. 293 for Bismarck's instruction to Herbert Bismarck of 4 February, 1883.

¹²⁸ Dugdale, *ibid.*, p. 174.

included. Public opinion in Germany would not endure the arrogance and selfishness of the English for ever".¹²⁹

Similarly, in his letter of June 1st 1884, Prince Bismarck remarked that:

"If Lord Granville (the British Foreign Secretary, 1870-74, 1880-85) finds that the English Parliament's friendly feeling towards us is incompatible with our pursuit of a Colonial policy, we should be curious to learn why the right to colonise, which England uses to its fullest extent, should be denied to us".¹³⁰

It was at this time that the British Government gave her approval to the Cape Colony to annex the territory. The Germans got a hint of this 'covert approval', as the letter further illustrated. Bismarck showed his indignation, he wrote:

'Supposing it to be really our intention to establish colonies, how can Lord Granville contest our right to do so at the very moment when the British Government is granting an unlimited exercise of the same right to the Government at the Cape? This naïve egoism is in itself an insult to our national feeling. The '*quod licet Jovi*, etc.', cannot be applied to Germany".¹³¹

Lord Granville's reply implied that Britain had no intention of obstructing the German colonial aspirations. He wrote: "To my sincere regret we have not yet been able to reply because we cannot act except in agreement with the Government of the Colony, which has an independent Ministry and Parliament".¹³² Yet it was clear that there were some understandings between London and Cape Government to thwart the German ambition.

¹²⁹ *ibid.*, p. 174.

¹³⁰ *ibid.*, p. 174.

¹³¹ *ibid.*, p. 177.

¹³² *ibid.*, p. 177.

2.5. Britain's reactions to German colonialism in South West Africa

Three interpretations have been advanced in relation to the British response to Bismarck's colonial claim. One, that London was caught off guard. Two, that Britain wanted to adopt its own Monroe Doctrine in Africa; (3) that Britain was faced with a dilemma of supporting competing demands from Germany and South Africa.

The first interpretation, that the British Government was caught off guard requires one to be economical with the truth. Sir Bartle Frere of the Colonial Office in Cape Town had earlier informed London that German aims in South West Africa extended beyond the British protectorate there, for the annexation of the whole of South West Africa up to the Portuguese hold, Angola. He warned the British Government further that if any loophole were left, Germany would take the whole country for herself.¹³³ In the event, however, the British Government only annexed Walvis Bay, in recognition of its economic viability, as a seaport; while the remaining area was described as a barren land-locked territory, of little or no significance. This interpretation could not stand up to close scrutiny for the reason that a reply note prepared by Foreign Office Permanent Under-Secretary, Pauncefote, was never sent to Bismarck. Pauncefote note read that: 'Her Majesty's Government have no claims or jurisdiction over the mainland'. The note was, however, not sent because the Cape Government was not yet consulted.¹³⁴

The second interpretation looks more plausible. On May 16th 1884, Lord Derby, the Colonial Secretary, announced to a deputation of South African merchants that even if

¹³³ Ritchie, op cit., p.81.

¹³⁴ Taylor, op cit., p. 25. Taylor's conclusion that the British government never for one moment contemplated forestalling the German colonial plans is surprisingly a naïve

England was not prepared to take formal possession of Angra Pequena, she considered that she had the right to prevent other nations from doing so.¹³⁵ As it will be shown later in the next section, Britain's dilemma had legal and political implications. Its failure not to take the formal possession of Angra Pequena implied that the territory was a *territorium nullius*, yet Britain could not effectively pursue her policy of establishing a British Monroe Doctrine and anti-German sentiment at the same time. As Stern observed, Britain was caught between Germany and South Africa, rather than being primarily concerned with Germany alone.¹³⁶ He argued that the British occupation of Egypt had mortgaged the government's freedom of action, and that Britain was caught between the need to buy German support in Egypt and the last minute demands from South Africa to protect them from German inroads.

This leaves us with the third interpretation. This is, that having recognised the problems associated with the imposition of a unilateral British Monroe Doctrine in southern Africa, Britain decided to playoff Germany against South Africa. Thus, on May 1884, Sir Hercules Robinson, successor at the Cape to Sir Bartle Frere cabled to London that 'the Ministry was to recommend to the Cape Parliament to take control of the coast line from the Orange River to Walvis'.¹³⁷ Hence, at the instigation of the British Colonial Administration, the Cape Parliament decided to annex the strip of the coast to the North and South of Angra Pequena in May 1884. This was however, too late. With the

understanding of how bureaucratic ineptness could be used to mask the making of an unfavorable decision against a competing Power.

¹³⁵ Dugdale, op cit., p. 175.

¹³⁶ Stern, Fritz. **Gold and Iron: Bismarck, Bleichroder, and the Building of the German Empire.** (London: George Allen and Unwin Ltd., 1980) p. 411.

knowledge that London was ready to acquiescence to the demands of the Cape Government, Bismarck dispatched an official proclamation to a German trader, Luderitz, to declare his settlement to be under the imperial protection as from April 24, 1884. This was fourteen months after Bismarck sent the first cable to London. On August 7, 1884, the German flag was hoisted at Angra Pequena and the whole coastline between 26°S and the Portuguese boundary was declared to be a German territory. "This put an end to the British claim of the right of suzerainty and jurisdiction between latitude 18° and the Cape frontier",¹³⁸ and simultaneously to the realisation of Rhodes's Cape to Cairo route project.¹³⁹ It nonetheless, marked the birth of a German South West Africa. It was, as we have seen a creation of the European balance of power politics, although South Africa continued to make a claim for South West Africa.

2.6. South Africa and its claim for South West Africa

Three main reasons explained South Africa's desire to annex South West Africa. These were the Greater South Africa philosophy, the mistrust of the Germans as good neighbours, and the externalisation of the anti-German sentiments. In what he termed as a 'Greater South Africa', Hyam argued that the main intention of the Cape Government was to complete its provincial union, throughout southern Africa and a programme of expansion outside the British controlled area.¹⁴⁰ For instance, in 1908,

¹³⁷ Ritchie, op cit., p. 88.

¹³⁸ Hamilton, L. "German Colonial Policy", **United Empire: The Royal Colonial Institute Journal** Vol. IV., (New Series), 1913, p. 161.

¹³⁹ For a detailed analysis of 'Cape to Cairo scheme' see, Evans, Lewin. "The Cape to Cairo Route", **United Empire: The Royal Colonial Institute Journal**. Vol. XIV., (New Series), No. 12. December 1923, p. 696-699.

¹⁴⁰ Hyam, Ronald. **The Failure of South African Expansion, 1908-1948**. (London: Macmillan, 1972), p. 2.

General Smuts noted that concerning the future of South Africa, the German Empire was no desirable neighbour, and as of 1914, he still regarded South West Africa as 'part of the Afrikaner heritage'.¹⁴¹

The presence of Germany in South West Africa was seen as a threat to the realisation of the Greater South African dream. The ruling class within South Africa perceived Germany as a military state. For instance, Park argued that the presence of German power on the borders of the Union was viewed with suspicion from the start. 'If Germany's policy either in Europe or overseas had been a policy of peace, South Africa might perhaps have watched the development of this territory on her boundaries with friendly and sympathetic interest. But German's scheme of colonisation was directed on military lines and with military intent'.¹⁴² Many South Africans, of British and Afrikaner heritage opposed Germans as the immediate colonial neighbour. They were already uneasy with the presence of a single colonial power, the British. Now they were to be confronted with two European powers. Cape public opinion in 1884 continued to feel that there was no room for two European flags in South Africa.¹⁴³

The third reason for South Africa's attitude was the externalisation of South Africa's anti-German sentiment, especially with her participation in the First World War. According to Vanderbosch, 'it was generally assumed that when Great Britain declared

¹⁴¹ Extracted from Hancock, W. K. and van der Poel, J. **Selections from the Smuts Papers, Vol. III.** (Cambridge, England: Cambridge University Press, 1966), p. 198.

¹⁴² Park, Maitlan. "German South West African Campaign" **Journal of the African Society.** Vol. XV., No. LVIII., January 1916. p. 11.

¹⁴³ Louis, W. R. **Great Britain and Germany's Lost Colonies, 1914-19.** (1967), p. 18.

war on Germany on August 4, 1914, South Africa automatically became a belligerent. The Union was part of the British Empire and when the United Kingdom became involved in war, so did the whole Empire'.¹⁴⁴ Ritchie argued that with the victory of the South African forces over the German force in South West Africa, 'the British Empire thus acquired, through the agency of Union of South Africa and by right of conquest, a territory which thirty years before it had allowed to slip through its hands'.¹⁴⁵ In a similar vein, Bernard observed that 'everyone who approves a colonial setback for Germany is helping England to secure for herself that universal domination'.¹⁴⁶

Rayner has shown that the South African government and forces acted upon the instruction of the Imperial Government to capture German South West Africa. He observed that, 'on the 7th August, 1914, the Imperial Government, through the then Acting Governor General (Lord de Villiers) invited the Union Government to "seize Swakopmund, Luderitzbutch and other parts of the South West Africa that had wireless stations. Three days later, General Botha announced that he and his colleagues "cordially agreed" to do so'.¹⁴⁷ Botha strongly believed that the Union was a part of the whole of the British Empire. When the Empire was in war, South Africa was *ipso facto* involved. The British Government moulded, and prepared the colonies and dominions for war against the Germans. In 1907, the Imperial Conference in London agreed on the collaboration between the Home and Dominion General Staffs, and the Imperial

¹⁴⁴ Vanderbosch, Amry. **South Africa and the World: The Foreign Policy of Apartheid.** (Kentucky: The University Press of Kentucky, 1970), p. 31.

¹⁴⁵ Ritchie, op cit., p. 170.

¹⁴⁶ Benard, Augustin. "Germany's Colonial Aims", **Journal of African Society**, No. LVIX., Vol. XVI., July 1917, p. 308.

¹⁴⁷ Rayner, W. S. **How Botha and Smuts Conquered German South West Africa.** (Cape Town: The African World/ Red Cross, 1915), p. 7.

Conference of 1911 drew their attention to the dangerous state of affairs in Europe. The Conference established the British Committee for the Defense of the Empire that drew up military and civil contingency plans for war. In addition, the Union Defence Act of 1912 made the South African troops available for service anywhere, including German South West Africa and German central Africa.¹⁴⁸

Britain and South Africa had a separate, but similar interest in keeping Germany out of southern Africa. However, within South Africa those with sympathy for with Germany challenged their government. General James B. M. Hertzog, the National Party leader, believed that just because South Africa was in a state of war as a consequence of the war between Britain and Germany, this did not make it South Africa's war. Many Afrikaners sympathised with the Germans, who had supported them during the first Anglo-Boer War.¹⁴⁹ Hertzog's criticism, like the Bismarck cable, to which we next turn, raises an important question, which has been neglected for over a century: can a non-sovereign state have full status and enjoy equal spoils as a sovereign state as defined by classical positive international law. This question in particular is related to the 1910 *South Africa Act*, under which South Africa still lacked the legal and constitutional capacity to conduct foreign policy or wage war on her own. Yet in 1919 South Africa became a Mandatory Power.

¹⁴⁸ . Schnee, Henirich. **German Colonisation-Past and Future: The Truth About the German Colonies.** (London: George Allen and Unwin Limited, 1926), p. 89.

¹⁴⁹ There were two Boer wars: the first war was between 1880-81, and the second was in 1899. Until, 1902, when the Boer finally surrendered, Germany in particular, saw Britain as the aggressor, an evil Goliath against the David who was pluckily standing up to his bullying. See, John Cannon (ed.), **The Oxford Companion to British History**, (Oxford: Oxford University Press, 1997), p. 111.

2.7. The Bismarck cable and international law

It is tempting to focus exclusively on the political components of Bismarck's colonial policy. To do so, however, ignores the importance of how norms in international law are embedded in the practice of power politics within the context of the legitimisation of European power in non-European territories. The cable of February 1883 sought to determine whether South West Africa was a *territorium nullius*. The concept of *territorium nullius* is controversial. Indeed, at its session at Lausanne in 1888, the Institute of International Law set up a committee to agree a definition. It failed, neither of the drafts proposed by two of its members, Martitz and Engelhardt was accepted by the Institute. Notwithstanding, Martitz's definition of *territorium nullius* as "comprising any region not effectively under the sovereignty or protectorate of one of the States forming the community of international law, whether inhabited or not" was operationally accepted by European rulers.¹⁵⁰ It is not within the remit of this thesis to question the ideology underpinning the acceptance and usage of Martitz's definition by the European powers, as at this time, the European powers were both judge and jury of which states were considered to be members of the family of nations. Rather, the purpose of this section is to put into historical perspective the principle of *territorium nullius* as it was understood in the late 19th century.

The doctrine of *territorium nullius* has passed through different phases. It began with the Papal Bull, in which the Pope granted to its favoured Kings and Princes the exclusive rights of acquiring dominions in the New World. The Bull was limited to lands which were not actually possessed by any Christian kings, and required the

¹⁵⁰ The following paragraphs were based on the account given by Lindley, M. F. in **The Acquisition and Government of Backward Territory in International Law: Being a**

grantee to lead the inhabitants to the Christian faith. The *Bull of Nicholas V of 1452* was the first known Bull, and followed with the *Bull of Alexander VI of 1453*. The grant of Nicholas V to King Alphonse of Portugal in 1452 was to invade, conquer, storm, attack and subjugate the Saracens and other enemies of Christ. The Bull of Inter Caetera of Alexander VI granted Ferdinand and Isabella the exclusive rights of acquiring dominion in the New World. The Papal Bull was supplanted with the *rule of discovery*. This was because other European Kings found themselves competing for wealth and dominions in the New World and the Far East. The rule of discovery was a direct challenge to the Papal Bull and the Papacy's favoured princes. This rule presupposed that discovery by the representative of one nation was sufficient to exclude others from the region discovered. It was devised to minimise conflict amongst European princes and to regulate competing territorial claims. However, it brought more problems than it anticipated. Extravagant claims were made. The Spaniards in particular, heretofore granted the Papal Bull, used the rule of discovery to reinforce their claims.

Gradually, a new principle emerged to complement the rule of discovery—the *principle of occupation*. It gave the discoverer the right to a period of grace for making a settlement through the building of forts, cultivation of soils, and erection of factories. It also focused on the establishment of an efficient governmental institution capable of providing security to life and property on the territory. Subsequent to the principle of occupation was the *principle of geographical contiguity*. This principle suggested that a Power that was in actual possession of certain territory had thereby acquired rights over contiguous country, which has not been appropriated by another Power.

So much for the historical development of the concept of *territorium nullius*. We will now turn to the legal issues raised by the cable of February 4, 1883 and London's response. In the first place, we must note that the cable asked whether Britain had sovereignty over the Angra Pequena, and if she had, whether the British government would protect German citizens in the territory. It could be argued that Bismarck was following the emergent practice amongst the European powers of notifying each other when making colonial claims. Yet it also seems more likely that Bismarck made his inquiry partly to keep German policy within the law, and partly to signal Germany's intentions.

The cable provided the legal ground on which Germany could advance its colonial claims, yet its main motive was to contain Britain's continental and global expansion. In short, Bismarck's political interest was both indissolubly linked and interlocked with legal constraints. In turn, there were legal imperatives behind the action of the British government. As we have seen, three years earlier in 1880, Britain had annexed Walfish Bay but proclaimed that it had no sovereign rights on the rest of Angra Pequena, i. e. it was a *territorium nullius*. Britain claimed that the territory had no economic value worthy of occupation. Yet it was ready to deny any competing Power the right of occupation. Lord Granville, remarked that: "although English sovereignty had been proclaimed at Walfish Bay and the islands off Angra Pequena, any claim to sovereignty or jurisdiction by a foreign power between Angola and Cape Colony (i.e. South West Africa) would infringe England's legitimate rights".¹⁵¹ Thus, when Germany made its own claim, Britain invoked the principle of geographical contiguity on behalf of the

Longmans, 1926), p. 16.

¹⁵¹ Dugdale, op cit., p. 177.

Cape government against Germany without admitting that it was doing so. Even if Britain had no material interests of its own, her conduct was decidedly Machiavellian.

From a political point of view, Taylor is right when he argues that Bismarck achieved his goal of preventing a British colonial monopoly in vast parts of Africa. Yet his account of German colonial claims failed to appreciate Bismarck's desire not to overthrow the existing European order by flouting the norms of international law. Bismarck had to follow the tradition that existed amongst the European powers. Since the rule governing colonial acquisition had moved from the preserve of the Papacy to the principle of occupation, he had to obey the norm of notification. Now we can turn to the question regarding the status of South Africa within the context of classical positive international law.

In retrospect, South Africa, as the other British dominions, Australia, Canada and New Zealand, illustrates the problem of 'quasi-states' in international relations. Robert Jackson coined the phrase 'quasi-states' to describe those states, which despite their recognition by other states and international institutions nonetheless lacked substantial and credible statehood judged by the empirical criteria of classical positive international law.¹⁵² Established states enjoyed what Jackson described as 'positive sovereignty', while quasi-states have only 'negative sovereignty', that is their legitimacy rests to a considerable degree on international recognition. Such states were usually incapable of defending themselves against any industrialised states that possessed a modern arsenal. It has to be pointed out that in the 1920s South Africa could not be considered as weak or soft in Jacksonian terms. Yet it actually existed on the sufferance of the major

powers, and to a great extent depended at the critical moment of its formation on international support. Under the 1910 *South African Act*, it lacked the constitutional capacity to conduct an independent foreign policy or declare war, two prerequisites of positive sovereignty. It was not until the Balfour Declaration in 1926 that South Africa ceased to be constitutionally dependent on Britain. Paradoxically, this was after it had benefited from the First World War by being granted the mandate South West Africa.

2.8. Conclusion

In this chapter, we have considered the link between balance of power and international law. More importantly, we have established the centrality of balance of power in general, and Anglo-German rivalry in particular, as the proximate cause of the creation of German South West Africa. Yet its existence was simultaneously defined within the prevailing international law of *territorium nullius*. There is thus a link between the issues discussed above, and those to be discussed in the next chapter on the Mandate system. The League of Nations created the mandate system for two competing reasons: to create a sense of international responsibility for the colonised peoples; and simultaneously to satisfy the interests of the Allied and Associated Powers. Thus the mandate system reflected a delicate balance between power politics and the responsibility of international community to the peoples of the former German colonies.

¹⁵² Jackson, R. H. **Quasi-states: Sovereignty, International Relations and the Third World**. (Cambridge: Cambridge University Press, 1990).

Chapter Three

The Politics and the Principle of the Mandate System

3.1. Introduction

Who was to inherit Germany's colonial possessions was a major concern of the Allied and Associated Powers, even before the last gun of the First World War was silenced. At the end of the war, however, the concept of taking over German colonies as the 'spoils of war',¹⁵³ clashed with the emerging internationalist idealism championed by President Wilson of the United States. The Allied and Associated Powers believed that the fighting had stemmed from Germany's bid for mastery in Europe, and that the war was about power. Germany was too powerful relative to her neighbours, and she had to be radically, if not permanently weakened. Wilson concluded that the war had been caused by the imperfections of the balance of power. His recipe for a New World order was democracy. The Allied Powers wanted to negotiate a punitive peace with annexations and indemnities, while Wilson wanted a peace with no gains for any of the belligerents: a lenient peace underpinned by the linked concepts of collective security, self-determination and democracy.

The League of Nations was formed amidst these conflicting interests, objectives and personalities in the Great Hall of Mirrors at the Palace of Versailles. The mandate system was an integral part of the new order. From the discussion in the preceding chapters, we have established the relationship between law and power, and concluded that South West Africa was a pawn in power politics between Germany and Britain.

¹⁵³ Blakeslee, H. George "The Mandates of the Pacific", *Foreign Affairs- An American Quarterly Review*, Vol. 1, No. 1, September 1922, p. 98.

This argument is in itself contingent, suggesting another element, concerning how the relationship works. This is that law may have a role but only when it is within the bridles of power, and that law can only succeed if backed by power, and in particular, when it serves the interests of the great powers. The formulation of the mandate system, to which we now turn, explains by example our second argument. In particular, we shall examine the differing interests that made South West Africa a Class C mandate. We therefore suggest that as a Class C mandate, South West Africa became a ward of the international community, whose existence was dictated by the overarching political interests of the Allied Powers but legitimated with a legal instrument.

To recap, in chapter two, we started an examination of the legal status South Africa's participation in the First World War. We took into consideration its dependence on a Great Power. In this chapter we shall continue with this line of inquiry: that is, South Africa's status as a mandatory power and how its participation in the League of Nations helped in completing its international personality. Furthermore, we shall examine the political contents of the Advisory Opinions of 1950 and 1955 and the South West Africa cases before the International Court of Justice. Much has been written on the legal side of the case.¹⁵⁴ However, international law does not operate in a political vacuum but reflects the prevailing exercise of power. Its relevance in international politics derives from its impact on prevailing contentious issues, such as decolonization

¹⁵⁴ See the followings for the legal proceedings of the South West African case, International Court of Justice, **SW Africa Cases (Second Phase), ICJ Report 1966**. (Netherlands: ICJ, 1967) Green, L. C., "SW Africa and the World Court", 22 **International Journal**, (1966-67), p. 39; Gross, E. A., "The SW Africa Case: What Happened"? 45 **Foreign Affairs**, (1966), p. 36; Higgins, R., "The International Court and SW Africa: The Implications of the Judgement", 42 **International Affairs**, (1966), p. 573; Manning, C. A. W., "The SW Africa Cases: A Personal Analysis", 3 (2) **International Relations** (1966), p. 98; Roberts, M. "SW Africa and the UN", **The**

and self-determination. As we shall see, the United Nations adopted a legalistic approach to secure the transfer of the mandatory authority from South Africa.

The chapter is divided into four parts. Part I explains South Africa's transition from a *de facto* to a *de jure* Mandatory Power in South West Africa; and explores the principle of the mandate system and the nature of a C-class mandate. Part II discusses the principle of the United Nations' Trusteeship System. Part III examines South West African issue within the United Nations General Assembly. It focuses on the differing interests and conflicting principles among the member states. Part IV explores the beginning of transformation of the United Nations tone and actions on South West Africa.

3.2. South West Africa and the Military Occupation Interregnum, 1915-1919

There was a five-year interregnum between South Africa's military occupation and its full legal control over South West Africa. The German Force in South West Africa conceded military defeat to South Africa's armed forces in early 1915, within less than a year of the outbreak of war. It was not until the end of 1919 that South Africa accepted the Mandatory status and passed the Act of the Union Parliament (Act 49 of 1919).¹⁵⁵ The agreement between the Council of the League of Nations and South Africa was signed on December 17, 1920. In the period between 1915-1920, South Africa was the *de facto* authority in South West Africa and ruled with martial law. With the mandatory agreement, it became the *de jure* government. Its five-year old martial law was abrogated, and full civil administration under the mandate system was

World Today, (October 1966), p. 407; and Verzijl, J. H. W., "The SW Africa Cases (Second Phase)", 3 (2) **International Relations**, (1966), p. 87.

established. Notwithstanding, the road to mandatory power was paved with competing needs, values and interests.

3.3. The principle and politics of Mandate System

The etymology of the mandate system can be traced to the ancient idea of a *mandatum*, under the Roman law, which is "a type of contract whereby one party agrees to execute gratuitously a commission received from another, and in the execution of which he must show *omnes diligentia*."¹⁵⁶ In simple terms, it is the transfer of property (A) from X to Y, but with a proviso of no direct benefit for Y being in possession of A.

According to Reginald,

“ a mandate is a power or influence given by the League of Nations to one State, called the Mandatory, over a community or region, varying in character and degree in ratio to the stage of political and economic development, the civilisation and geographical locality of that community or region for the trust of the civilisation”.¹⁵⁷

In wars, the confiscation of the possessions of the defeated powers could either be used as the ultimate sign of victory or as a bargaining chip in the settlement of other claims. The groundwork for the distribution of German colonial possessions had been agreed two years before the war ended by Britain, Italy, France and Japan, formally known as the Council of Four, (C-4). In early 1917, these powers agreed that the occupied German territories would be divided amongst themselves upon victory. However, at the Paris Peace Conference, the disposition of the German colonies amongst the Allied and

¹⁵⁵ Union of South Africa, **Official Year Book of the Union and Basutoland, Bechuanaland Protectorate and Swaziland, 1910-1920**, No. 4., 1921 (Pretoria: The Government Printing and Stationery Office, 1921), p. 904.

¹⁵⁶ Smith I. C., "Smut's Role in the Establishment of the League of Nations and the Mandate for South West Africa", **South African Historical Journal**, No. 5, Nov. 1973, p. 96.

Associated Powers clashed with Wilsonian idealism. The battle was between the annexationists and the non-annexationists. Amongst the annexationists were France, Italy and the British Dominions; while the United States led the non-annexationist camp. The annexationist group was not homogenous: Britain itself was reluctant, but constrained by the agitation of the Dominions. On the other hand, France, wanted as much German territories as it could get.

In London Lloyd George's government wanted the captured colonies to be used as a bargaining chip in the pursuit of other settlement claims. For instance, at the beginning of the war, a British telegram had urged the Southern Dominions to begin military operations "that any territory must be at the disposal of the Imperial Government for purposes of an ultimate settlement at conclusion of the war".¹⁵⁸

Amongst the Dominions, South Africa did not believe that these German colonies should be used as a trade-off. It called for total annexation, invoking two reasons: national security concerns and German misrule of dependent peoples. The Cape Government used the accusation of German barbarism in the colonies as an effective argument for annexation, thus putting the idea of British retention of colonies in a humanitarian light.¹⁵⁹ The South African delegation spoke of the Herero's uprisings against the Germans in 1904. It claimed that the German colonial administrators were insensitive to the local needs using the British Foreign Office's Blue Book as

¹⁵⁷ Reginald, Berkeley. "Mandates", **The Covenant-A Quarterly Journal of the League of Nations**, Vol. 1, No. 1, October 1919, p. 33.

¹⁵⁸ Mackenzie, S. S. **Australians at Rabaul** (Sydney, 1934), p. 5.

¹⁵⁹ Gaddis, Smith. "The British Government and the Disposition of the German Colonies in Africa, 1914-1918" in Gifford, Prosser and Louis, Roger. WM. (eds.), **Britain and Germany in Africa: Imperial Rivalry and Colonial Rule**. (New Haven: Yale University Press, 1967), p. 284 and 287.

corroborative evidence.¹⁶⁰ In addition, South Africa's Prime Minister Louis Botha referred to South West Africa as 'a piece of land cut out of the Union', and "the very few white people lived there and the natives were 'quite happy' under South African rule'.¹⁶¹ South Africa also played the security card, claiming that the country would be insecure with a post-war German South West Africa.

Under pressure from General Smuts, the Imperial War Cabinet inaugurated Lord Curzon's Committee on territorial war aims in early 1917. The Committee met between April 17-19, 1917 and later recommended that German South West Africa and German East Africa must be annexed.¹⁶² Although, the Imperial War Cabinet adopted the Curzon report, it faced a strong opposition both within and outside Britain by the time the war settlement claims were made in 1919. Domestic opposition came from a surprising quarter, Lord Kitchener, the Secretary of State for War; and externally, from President Wilson of the United States.

Ironically, Lord Kitchener placed the issue of colonial settlement in the context of the European balance of power. He argued that it would be a mistake for Great Britain to take more than an irreducible minimum of Germany's colonies "as it would more than anything else interfere with the future establishment of goodwill between Germany and

¹⁶⁰ See **British Parliamentary Papers** Cd. 8371, Vol. XX, 1916; Cd. 8306, Vol. XX, 1916; Cd. 9146, Vol. XVII, 1918; and Cd. 9210, Vol. XLII, 1921.

¹⁶¹ Maurice Hankey's notes of a meeting of the Council of Ten, BC-12, January 27, 1919 (3 P.M.), **The Papers of Woodrow Wilson** (Library of Congress, Washington D.C.), p.296-297.

¹⁶² The final report of the Curzon Committee of April 28, 1917 can be found in the **Austen Chamberlain Papers**, University of Birmingham Library, Birmingham.

ourselves after the war".¹⁶³ He believed that the annexation of colonies was an unnecessary humiliation of Germany that would add little if anything to British security. To him, the annexation of Germany's colonies could cause a stress on Anglo-German relations in post-war period. He felt that a co-operative, friendly Germany was necessary for post-war stability in Europe and thus for Britain's safety.¹⁶⁴

President Wilson shared Lord Kitchener's view, but with a different logic and conclusion. His contempt for annexation stemmed from his belief that the continuous struggle for balance of power precipitated intense territorial conquests and consequently the imperfection of the balance of power caused the war. He argued that power politics should not be the guiding principle of state relations. With the American experience in the Philippines, he believed that colonial powers should act as trustees until colonial populations were ready for self-government and even independence.¹⁶⁵ His famous "Peace Without Victory" address to the United States Senate, on January 22, 1917 became a manifesto in which he first launched his critique of European imperialism, militarism and balance of power.¹⁶⁶ He further remarked that:

"No peace can last, or ought to last, which does not recognise and accept the principle that governments derived all their powers from the consent of the governed, and that no right anywhere exists to hand peoples about from sovereignty to sovereignty as if they were property".¹⁶⁷

¹⁶³ See Secretary's notes of a War Council Meeting, 10 Downing Street, March 10, 1915, and memorandum by Lewis Harcourt, "The Spoils", March 25, 1915, Asquith papers, the Bodleian Library, Oxford University.

¹⁶⁴ Gifford and Louis, op cit. p.280.

¹⁶⁵ *New York Times*, October 7, 1913.

¹⁶⁶ Knock, Thomas. J. **To End All Wars: Woodrow Wilson and the Quest for a New World Order.** (Princeton, NJ.: Princeton University Press, 1995), p. ix.

¹⁶⁷ The December peace note and the address to the Senate can be found in *The Public Papers of Woodrow Wilson*, 4, 402-14.

Wilson declared that "the world [was] against any further annexations". The Dominions' rationale for annexation, he went on, if it was sincerely based on concerns for their own security, indicated "a fundamental lack of faith in the League of Nations".¹⁶⁸

However, the opposing camps, France and the Dominions, especially South Africa and Australia subdued Kitchener and Wilson's voices. For instance, Lloyd George expressed that Britain was not interested in annexation in any form. Yet he spoke about the concerns of the Dominions as they feared being neighbours to the ex-German colonies. Lloyd George told Walter Hines Page, the American Ambassador in London that: "Even Great Britain, who wants nothing for herself, will be prevented from returning the German colonies. South Africa and Australia will not permit the giving back of lands that would make them neighbours to German subjects and give Germany secret submarine bases throughout the world".¹⁶⁹

Plausibly, Lloyd George's statement suggested that the quest for colonial possessions was no longer a major issue in Anglo-German rivalry. Yet the German question had not declined on its importance in the overall European politics, especially on Franco-German relationship. By contrast to England, France wanted Germany to be smaller on all fronts. To the French mind, the war had been about France, and so the peace, consequently had to be, too. France alone suffered about six million casualties, which was more than the losses of the other Allied and Associated Powers combined.¹⁷⁰ More

¹⁶⁸ *op cit.*, Knock., p. 211.

¹⁶⁹ Walter Hines Page to the Secretary of State, February 11, 1917, **Foreign Relations of the United States**, 1917. Supplement I (Washington, 1931), p. 43-44.

¹⁷⁰ Fromkin, David. **In Time of the Americans: The Generation That Changed America's Role in the World**. (London: Macmillan, 1995), p. 224.

important, Georges Clemenceau was a survivor of the National Assembly that in 1871 had been forced to accept the punishing peace that Bismarck's victorious Germany had imposed upon a weakened France. The ghosts of 1871 haunted him: time and venue. Coincidentally, the declaration of German Reich in 1871 and the opening of the Peace Conference fell on the same fateful date of January 18.¹⁷¹ More significantly, it was in this same Palace that Germany's Empire had been proclaimed 48 years previously. Now he wanted revenge. Indeed, his aim pursued through the redrawing of the frontiers, indemnities and annexations was how to keep Germany from being able to harm France again. Clearly, Clemenceau's peace with revenge contrasted with Wilson's idea of a peace with justice, and without victory. Wilson's self image of a latter day Moses or Joshua: that is as a saviour from dangers past, who would deliver Europe from dangers future, was a mile apart from those European leaders, who had experienced the war at first hand. For instance, in his attempt to further distance himself from the European leaders, Wilson named the charter of the League, a Covenant, revealing his Presbyterian background.

As the gulf widened between the non-annexationists and the annexationists, Britain, with South Africa's Smuts in the shadow suggested that the United States should acquire the African territories. The United States rejected this proposal. It therefore, put Smut's proposal on the table: a middle approach that would retain the substance but remove the opprobrium of "selfish imperialism".¹⁷² The idea was that the German colonies be placed under some sort of international control. This was a delicate balancing act, as it was conceived to satisfy the appetite of the Dominions and yet fulfil

¹⁷¹ See **The Independent -London- (The Monday Review) Gazette**, January 18, 1999, p. 7.

¹⁷² Gifford and Louis, op cit., p.291.

the ideal envisioned by President Wilson. For instance, Knock observed that in order to avoid fatal rupture in the Council of Ten on the application of the mandate principle:

"Lloyd George and General Smuts hastened to construct a detour over which both Wilson and the Dominions might pass. This could be done, Smuts reasoned, by yielding to Wilson on general principle, while differentiating between the character of mandated territories according to their stage of development"¹⁷³.

3.4. The classification of the Mandates

Article 22 of the Covenant of the League of Nations divided the mandates into three categories namely: "A", "B" and "C" respectively. Class 'A' Mandates applied to a few former Turkish communities including Armenia, Syria Mesopotamia and Kurdistan, Palestine and Arabia, whose stage of development warranted their provisional recognition as independent states, subject to administrative advice and assistance. Class 'B' Mandates governed the cases of the bulk of the former German colonies, including Central Africa and New Guinea. Here, however, there were some restrictions on the Mandatory powers, despite its competence to govern the territory. Amongst the restrictions was open trade.

Class 'C' Mandates were South West Africa and certain South Pacific islands. There was no restriction on the right of governance given to the Mandatory Power in this category. It was held that these territories could best be administered under the laws of the Mandatory State as an integral portion of the territory of the Mandatory, as a sacred trust of civilisation. This categorisation was based on crude factors such: population density, smallness in size, remoteness from the centres of civilisation, and geographical contiguity to the Mandatory State. The Article concluded that in every case of mandate, the Mandatory shall render to the League of Nations an annual report in reference to the

territory committed to its charge. This brought the idea of international responsibility into the history of international relations. Dr. William E. Rappard, a professor of Harvard University served as the Director of the Mandates Section, under the aegis of the Permanent Mandates Commission (PMC). The duty of the Commission was to "examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the Mandates".¹⁷⁴

The political question to be addressed here is who really controlled the Class C mandate, despite the establishment of the PMC. It was noted that the Council of the League of Nations approved the terms of the mandates and the Mandatory Powers did agree to exercise their mandates on behalf of the League. Yet there was no provision for a replacement of a mandatory within the Treaty in case of any failure on the part of the Mandatory State to carry out the trust it has undertaken.¹⁷⁵ In addition, the power of the Permanent Court of International Justice (PCIJ), on the reference to it of a dispute 'relating to the interpretation or the application of the provisions of the mandate' did not cover revocation. The PMC was given the responsibility of being an accounting institution, but it lacked the most effective weapon: the power of revocation. South Africa would later seize on this deficiency to strengthen its control over South West Africa.

In form, the C-mandates provided for international accountability. Behind this pretence, however, lay the hidden interests of the dominant Powers. It could be argued that the

¹⁷³ Knock, *op cit.*, p. 212.

¹⁷⁴ Blakeslee, *op cit.*, p. 114.

¹⁷⁵ Lindley, *op cit.*, p. 269.

League of Nations was used to legitimise what has been concluded among the C-4. For instance, Miller pointed out the overarching influence of the C-4 with a conclusion that:

"It is least arguable that even without any treaties those four powers would have agreed that South West Africa should go to South Africa, Mesopotamia to the British and so on, a distribution politically logical and also in accord with the military situation".¹⁷⁶

He argued further that "what the secret treaties did was to prevent the mandates, particularly in respect of the 'C' mandates, from going any farther toward League of Nations control of those areas".¹⁷⁷ In the main, the Treaty of Versailles was nothing but an international law of power in which the victor's interests for punitive sanctions against the defeated powers was acknowledged, with no chance for the Germans to participate in its drafting and negotiation. Arguably, and contrary to the original spirit of the Roman *mandatum*, it was the Associated Powers such as South Africa that benefited from the Treaty more than the Allied Powers.

Thus far, the creation of the mandate system was an outcome of political considerations. Yet the mandate system, as it subsequently metamorphosed into the trusteeship and decolonisation regimes, became a living instrument, which offered the prospect of statehood for the colonised peoples. The mandate system may have been radical by the standard of the status quo, for it ingrained the ideas of self-determination and international accountability into the consciousness of the metropolitan powers. What is interesting is how the idea underpinning the mandate system survived to influence much of the transfer of power debate. While the mandate system may be the lamest of models; it was the best of precedents. It did not stop power politics, but over

¹⁷⁶ Miller, David. Hunter. "The Origin of the Mandate System" *Foreign Affairs: An American Quarterly Review*, Vol. VI, No. 2, January 1928, p. 281.

¹⁷⁷ *ibid.*

the long term it changed the legal framework in which it operated. There was a belief on the duty of care to the colonised peoples by the international community. In any event, South Africa's status as a mandatory power remained controversial.

3.5. South Africa and the C-mandate

In chapter two, I examined the beginning of the South Africa's attempt to incorporate South West Africa as a step towards the realisation of Greater South Africa. The war galvanised this idea. Indeed, by the time of the Peace Conference in 1919, the annexation issue had become an inter-party affair within South African domestic politics. To both Botha and Smuts, the leaders of the ruling United Party, the quest of annexation was a means for securing political advantage over their main rival, General Hertzog. The National Party which, Hertzog led, expressed its anti-British sentiment by accusing them of subservience to the Empire.¹⁷⁸

The possession of the South West African mandate was of enormous value to Smuts in his argument against the nationalist attack. Hertzog, held that dominion status was actually subservience. Smuts replied that the dominion's right to govern the mandate, and the power of its legislature to enact laws that would also apply in the mandated territory carried with them essential connotations of sovereignty. Alongside satisfying territorial and security interests, the control of South West Africa was a demonstration of Smut's claims that South Africa was effectively independent, and thus took much of the wind out of the Nationalist sails.¹⁷⁹ It was therefore not surprising that Botha and Smuts were committed in every respect to winning and keeping South West Africa as a

¹⁷⁸ Simpson, Maynard. W. "South West Africa in Trust, 1915-1939", in Gifford and Louis, op cit., p. 642.

¹⁷⁹ **The Times**, September 13, 1919, p. 9.

bona fide prize of war. For the next seventy years, the South West African issue would be a driving force within South African domestic politics. Yet, it was at the international level that South Africa benefited most from its mandatory power status. In the subsequent chapter, it will be shown how, by engaging with the Western powers, the government used the South West African question to offset its pariah status at the height of its isolation over its apartheid policies. Our immediate concern here, however, is the issue raised by Hertzog: that is the status of South Africa within the family of nations.

The question of South Africa's status in the 1920s is usually discussed in terms of its dominion position. Yet it raises wider question, namely which states constitute international society. As conventionally represented, international society,¹⁸⁰ consists of formally recognised independent sovereign states that interact together. On this view the legal status of the British Dominions was problematic. The Article 1 of the League recognised very explicitly that a Dominion or Colony is not identical with a State. It is possible to maintain that the rights of a Dominion within the League are not rights under international law in general, but rights given by a distinct instrument by contract for certain purposes.¹⁸¹ Oppenheim observed that "after the Great War, the position of the British Dominions underwent a fundamental change". "Without doubt, he said, "their admission to the League of Nations gave them a position in International Law".

¹⁸⁰ Bull, op cit., p. 22-50 for the idea of international society.

¹⁸¹ Article 1 of the Covenant states that: "any fully self-governing State, Dominions or Colony may become a member of the League if its admission is agreed to by two-thirds of the Assembly, provided it shall give effective guarantees of its sincere intention to observe its international obligations". For a detail analysis on the status of the Dominions in the League, see, Arthur Berriedale Keith, **The Dominions as Sovereign States: Their Constitutions and Governments**, (London: Macmillan, 1938), p. 40-48.

Nevertheless, he also noted that their position in the Family of Nations "defies exact definition".¹⁸²

The controversy surrounding the status of South Africa stemmed from the fact that at this time, the imperial government was responsible for the management of its external relations. It was not until the passing of the Balfour Declaration of 1926 that the British Dominions were given the right to formulate and executive their own foreign policies.¹⁸³ On June 1, 1927, General Hertzog's government established the South African Department of External Relations. Four years later, in 1931, the Statute of Westminster conferred full autonomy on Dominions. For South Africa, the Status of the Union Act, 1934 was passed.

To consider this line of argument more fully, we need to contest South Africa's position as an autonomous independent action within the context of classical positive international law. As noted earlier, the Dominions, including South Africa, were implicitly recognised as independent signatories to the Treaty of Versailles by being dependent on a major power, Britain. Their membership of League, however, did not give them an automatic and immediate recognition by other states as autonomous actors in international affairs. Hertzog expressed this fear of non-recognition when he told the House of Assembly in 1926 that: "unless our status is acknowledged by foreign nations we simply do not exist as a nation".¹⁸⁴

¹⁸² Oppenheim. L. F. L, **International Law: A Treatise** Volume 1-Peace, 3rd Edition, 1920.

¹⁸³ See South Africa, "Foreign Relations" in **Official Yearbook of Republic of South Africa**, 14th Edition, 1988/89 (Pretoria: Bureau for Information, 1989), p. 201 for a detailed analysis

¹⁸⁴ Dawson, R. M. **The Development of Dominion Status, 1900-1936**. (London: Oxford University Press, 1937), p. 104.

Opinion continued to be divided on this point. Zimmern argued that the League was an answer to the constitutional dilemma over the Dominions' right to autonomous foreign policy making, because international relations would only take place within the structures of the League Covenant.¹⁸⁵ Baker noted that the Dominions' admission to the League was "the decisive step in the consolidation and development of their international position".¹⁸⁶ However, Manning reiterated Oppenheim's view that the membership of the League did not in itself prove that the Dominions were independent and sovereign. He argued in 1932 that League membership did not guarantee international recognition of the Dominions' sovereign independence.¹⁸⁷ From this perspective, it could be argued that the United Nations system marked a radical departure from League doctrine. Most of the post-Second World independent states defined and gained their recognition from other states by being members of the United Nations, whereas being a member of the League of Nations had not conferred automatic recognition from other states. As the League of Nations and the United Nations were governed by different political and legal principles, so also, South Africa sought to redefine its mandatory role within the emerging international order of the post-Second world war, United Nations.

¹⁸⁵ Zimmern, A. **The Third British Empire**. (London: Oxford University Press, 1926), p. 65.

¹⁸⁶ Baker, Noel. P. J. **The Present Juridical Status of the British Dominions in International Law**. (New York: Longmans Green, 1929), p. 65.

3.6. South Africa and the Trusteeship regime.

The League of Nations lived for a quarter of a century, 1919-1945.¹⁸⁸ The Permanent Mandates Commission of the League of Nations, to which the Union reported on the administration of its Class -C Mandate, was dissolved in the spring of 1946 at the last meeting of the League of Nations Assembly. The United Nations was to replace the League of Nations as the organised international community.¹⁸⁹ In retrospect, the question is why South Africa did not annex South West Africa during the Second World War? The answer is conjectural, but some reasons have been proposed. According to Vanderbosch, if the South Africa had wanted to annex South West Africa the war seemed to offer a good opportunity.¹⁹⁰ Hancock also held that had South Africa simply annexed the territory during the war "Not a dog would have barked", but Smuts's "old fashioned respect for the legal fabric of the Society of Nations restrained him".¹⁹¹ Hancock noted that Smuts thought that South Africa needed a seal of international recognition.¹⁹² To that extent therefore, South Africa thought that the

¹⁸⁷ Manning, C. A. W. **The Policies of the British Dominions in the League of Nations.** (London: Oxford University Press, 1932), p. 9.

¹⁸⁸ For a comparison between the League of Nations and the United Nations, see Fliegiers, Serge. "The League Is Dead-Long Live the Charter" *Free World Magazine*, July 1954 as reprinted in the **Congressional Record Appendix**, 79th Congress, First Session, July 11, 1945-October 11, 1945, p. A3446-A3448; as well as **Congressional Record Vol. 91, Part 6**, entitled "The Charter of the United Nations", July 2, 1945-Sept., 10, 1945, p. 7941-7994.

¹⁸⁹ For a complete official record of the United Nations Conference on International Organisation, see **Documents of the United Nations Conference on International Organisation, Vols. I to XV** (London and New York: UN Information Organisation, 1945).

¹⁹⁰ Vanderbosch, op cit., p. 207.

¹⁹¹ Hancock, W. K. **Smuts, 2 Vols.** (Cambridge University Press: Cambridge, 1962), Vol. 2: **Fields of Force, 1919-1950**, p. 467.

¹⁹² *ibid.* It must be pointed out that Smuts's request for the seal of international recognition and his desire to annex South West Africa were irreconcilable. The international community would not provide the necessary instrument. Although Smuts devised the differentiation of the mandates system, his belief that the international community would acquiesce in annexation suggests a partial blindness to the changing

United Nations would be a necessary vehicle for this seal of international recognition. General Smuts, (now a Field Marshall), sought a seal of approval at the United Nations. On May 11, 1945, at the Yalta conference, during the discussion concerning the provisions of the Charter of the UN relating to the dependent territories, he expressed South Africa's desire to incorporate the mandated territory of South West Africa into the Union. However, the Chairman ruled the statement of South Africa out of order on the ground that specific territorial questions were not under discussion. In any event, at the San Francisco Conference, the Fourth Committee as well as the Trusteeship Council were established to manage the trusteeship territories.¹⁹³

A proposal moved by the Egyptian delegation during the first meeting of the Fourth Committee seems worth a brief comment at this point. The delegation proposed:

(1) that the General Assembly should have the power to terminate the status of trusteeship of a territory and declare the territory to be fit for full independence; and (2) that whenever an Administering Authority violated the term of trusteeship, or ceased to be a Member of the United Nations, the organisation should transfer the territory under trusteeship to another Administering Authority. These proposals, however, were not adopted.¹⁹⁴ In retrospect, the power to terminate the status of trusteeship would have redressed the shortcoming bequeathed by the League of Nations. The rejection of these Egyptian proposals consequently limited the authority of the United Nations on the trusteeship question. And, as we shall see, South Africa would later question the competence of General Assembly on method of trusteeship.

nature of the international order. And for Smuts to achieve such a feat would have ignored the sensitivities of the international community.

¹⁹³ United Nations, **Yearbook of the United Nations, 1946-47**. (New York, UN Department of Public Information, 1947), p. 31.

¹⁹⁴ *ibid.*, p. 31.

The United Nations had two parts of its first session in London and New York respectively.¹⁹⁵ On January 17, 1946 during the London session, Neaton Nicholls (the Union High Commissioner in London) and a member of the South Africa delegation opened the campaign for the annexation of South West Africa.¹⁹⁶ Following him, Prime Minister Smuts said that: "due to the political contiguity of South West Africa and its peoples' ethnologic kinship with the rest of the Union, South Africa was legitimately concerned in seeing the annexation of the Territory. On the basis of a consultation exercise conducted in the Territory by referendum, the Legislative Assembly had requested the incorporation".¹⁹⁷ The results were mis-leading as the 18-member Legislative Assembly consisted only of Europeans, while the blacks who constituted 85% of the Territory's population were disenfranchised.¹⁹⁸

On December 14, 1946, the General Assembly rejected South Africa's request to annex South West Africa. It recommended that the Territory should be placed under the international trusteeship system. South Africa was invited to propose a trusteeship agreement for the Territory in conformity with Articles 77 and 79 of the Charter. On July 23, 1947, South Africa replied that it had abandoned the incorporation project, but could not place it under international trusteeship. It maintained that it did not consider itself to be under any legal obligation to propose a trusteeship agreement, but continued administering the Territory in the spirit of the existing mandate. Nevertheless, it would

¹⁹⁵ United Nations, **Yearbook of the United Nations, 1947-48**. (New York: UN Dept. of Public Information, 1948), p. 10.

¹⁹⁶ *Ibid.*, p. 188-93. United Nations, General Assembly, 1st Session, 17 January, 1946.

¹⁹⁷ *Ibid.*, p. 199-235, 235-55. UNGAOR, 1st Session. Part II, Fourth Committee, Pt. Annex 13.

transmit an annual report on its administration as required under Article 73e of the Charter. South Africa further argued that since the League was no longer in existence, the United Nations, could not have any jurisdiction over South West Africa. The argument that the UN was not the legal heir of the League is not valid. The UN was, in form, a revised version of the League. With the exception of the veto power of the permanent members of the Security Council, which departed from the unanimity rule of the League, where every member had a veto, the principal organs of the two bodies were very similar. As Calvocoressi succinctly put it: “the framers of the UN aimed, not to devise a new kind of organisation, but to retain a familiar framework and insert into it more effective machinery for the prevention of war”.¹⁹⁹ More significantly, in 1942 South Africa was amongst the first 21 signatories of the Atlantic Charter that agreed to create a general international organisation to replace the League at the end of the war.

In response to South Africa’s decision, on September 23, 1947, the General Assembly referred the question of the future status of South West Africa to the Fourth Committee. In the Committee discussion, France, Mexico, United Kingdom, United States and Venezuela expressed satisfaction that South Africa had not incorporated South West Africa. France, United Kingdom and United States declared that they saw no reason to condemn South Africa, but the Soviet Union interpreted South Africa's action differently. Her representative argued that measures such as the invitation to the territory to participate in South Africa’s Parliament, signified *de facto* annexation. The ensuing debate in the General Assembly revealed the difference of opinion between

¹⁹⁸ The results of the elections were as follow: 208,580 in favour of annexation, 33,520 opposed the annexation, and 59,790 could not be consulted. See, **Yearbook of the United Nations, 1947-48**. *ibid*, p. 10.

¹⁹⁹ Calvocoressi, Peter. **World Politics Since 1945**. ((London: Longman, 7th Edition, 1997), p. 146.

East and West, a difference that hardened with the onset of the Cold War. The impact of the Cold War on the South West Africa is the main theme of the next chapter.

There was another conundrum. The ensuing debate on South West Africa revealed the attitudes of many states on the divorce between moral force and legal considerations. Liberia, the Latin American and most of the Eastern bloc states argued that South Africa had both a moral and a legal obligation to submit a Trusteeship Agreement. They stated that the provisions of Chapter XII of the Charter were obligatory with respect to former Mandated territories. On the other side, the United Kingdom, United States, Austria, Belgium, Denmark Canada and Netherlands believed that there was no legal obligation to submit a Trusteeship Agreement for a Mandated Territory. They held that Article 77 (2), was permissive and not mandatory.²⁰⁰ Britain specifically argued that the South African Government was fully entitled to adopt the attitude it had taken. France and United States, however, maintained that while there was no legal obligation, there was a strong moral obligation for the South African Government to submit a Trusteeship Agreement. They stressed that a recommendation of the General Assembly had a moral power, and expressed the hope that the moral force reflected in the General Assembly's resolution 65 (1) of December 14, 1946, would prevail.

The attitudes of these states to self-determination reflected the nature of their relations with South Africa, also determined where they drew the line between moral force and legal consideration. Given her historic, maternal relationship and economic interests, it was difficult for Britain to pull the plug on South Africa. The United States' emphasis

²⁰⁰ Article 77 (2) states that: "it will be a matter for subsequent as to which territories in the foregoing categories will be brought under the trusteeship system and upon what terms".

on moral force underscored its Wilsonian sensibilities. Liberia and Ethiopia, the Latin American states and India all took the high moral and legal ground in demonstration of their fear of injustice in international relations, having once being colonised territories. Yet they were also interested raising their own profile as active players on international arena, and the issue at stake provided an opportunity.

True to the letter of the old order, but in aversion to the new, South Africa submitted an annual report of her administration of South West Africa to the Trusteeship Council in July 1948. However, the government argued that South Africa had submitted the report on a purely voluntary basis, for the purposes of information only. And on the understanding that the United Nations had no supervisory jurisdiction over the Territory of South West Africa and that the forwarding of information should not be construed as a commitment for the future. Subsequently, in November 1948, South Africa proposed to the Fourth Committee a “closer association and integration’ of South West Africa in the Union. It would be effected by representation of South West Africa in the Union Parliament: six members in the House of Assembly and two representatives in the Senate”.²⁰¹

The submission in itself raised another problem for South Africa and the Trusteeship Council. It suggested that South Africa had recognised the competence of the Trusteeship Council by default, and by implication, the authority of the United Nations, despite its denial that this was the case. On the other hand, the Trusteeship Council had no standard operating procedure for dealing with the submission. Its final discussion

²⁰¹ See **Yearbook of the United Nations, 1948-49**, (New York: UN Department of Public Information, 1949), p. 864- 865, for a discussion on the 76th to 84th meetings of the Fourth Committee.

not only portrayed the absence of clarity, but also indicated the limit of the institution's ability to influence the behaviour of states. For instance, in his opening speech to the Council, the Chinese representative proposed that "in accordance with the resolution of the General Assembly, this Council should undertake to examine the report in the same manner as it would examine a report from a Trust Territory". This proposal met with reservations from the representatives of Australia and France, while representatives of Iraq, Belgium, Mexico and New Zealand supported it. After an intense debate, the Council agreed to the Belgian proposal. It is important to quote at length the proposal made by Mr. Ryckmans of Belgium:

[I] do not think it advisable to tell the representative of the Union of South Africa that the Trusteeship Council will examine the report submitted by the Union Government as if it were a report from a Power administering a Trust Territory. This is a controversial question. We shall in fact examine this report as we examine any other, but in principle we should consider it in the same way as it would have been considered by the Permanent Mandates Commission. There is, however, no need to mention this. It is sufficient to say that the Trusteeship Council will, as authorised by the General Assembly, examine the Union of South Africa's report on the Territory of South West Africa on a given date. It is also unnecessary to state that the report will be dealt with in the same way as a report on a Trust Territory. Should we do so, we might receive the reply: "This report must not be examined as a report on a Trust Territory but as one on a mandated territory". I therefore think it is unnecessary to specify this (*to South Africa*).²⁰²

There was deadlock between South Africa and the United Nations in 1949. In a letter dated 11 July 1949, South Africa noted that the United Nations was using South West Africa to criticise its domestic policies. It accused the Trusteeship Council of behaving as a 'government in exile' for the peoples of South West Africa by deliberating on its

²⁰². United Nations, "General Assembly Resolution 141 (II) of 1 November 1947 regarding the question of South West Africa", **Trusteeship Council Official Records-**

internal matters. Consequently, South Africa informed the United Nations that it would furnish no further report on the territory. From a preliminary analysis, South Africa's charge of the Trusteeship Council as 'government in exile' was premature. In the light of subsequent structures and institutions created by the United Nations to wean South West Africa from South Africa, it may not, have been technically correct to criticise the Trusteeship Council on this score. In the next section, we shall examine some of these United Nations organs and structures with state-like competencies, or at least aspirations?

The immediate question is why South Africa adopted this new position? Some observers have claimed that South Africa's change of heart was due to the strong position taken by the new hard-line National Party government under the leadership of Dr. Malan.²⁰³ But, there were no signs that the previous United Party administration had been ready to take a soft approach-leading political elites in South Africa believed in the policy of integration, irrespective of their political affiliation.

3.7. The 1950 and the 1955 Advisory Opinions.

The UN General Assembly feared the ramifications of South Africa's refusal to recognise the authority of the UN Trusteeship Council. It effectively challenged the legitimacy of the world body. It also called into questioning its competence to secure self-determination for the colonised peoples. In December 1949, the United Nations therefore, requested an advisory (i.e. non-binding) opinion from the International Court of Justice on the international status of the Territory of South West Africa, and the

Second Session: First Part-From the first meeting, 20 November 1947, (New York: Lake Success, 1947), p. 120-133.

international obligations of South Africa arising therefrom.²⁰⁴ Seven months later, on July 11, 1950 the Court gave its opinion,²⁰⁵ rejecting South Africa's argument that the Mandate had lapsed with the demise of the League, but declaring that the Mandates were to continue until 'other arrangements' were established. The Court then, transferred the supervisory role of the Mandate to the General Assembly, and observed that South Africa alone could not modify the status of the Territory without the consent of the United Nations. Finally, with regard to the applicability of Chapter XII of the Charter, the Court held by a vote of 8 to 6 that the Charter did not impose upon the Union of South Africa the legal obligation to place South West Africa under the International Trusteeship System.²⁰⁶ This was a convoluted opinion.

Its ambiguity led to multiple interpretations by both South Africa and the United Nations.²⁰⁷ The opinion denied South Africa the opportunity to annex the Territory, but it made it impossible for the United Nations to assert a complete authority over it, having ruled that the Trusteeship System was not applicable to South Africa.

²⁰³ See, for example, Ballinger, Ronald. B. **South West Africa: The Case against the Union.** (Johannesburg: South African Institute of Race Relations, 1961), p. 18-22.

²⁰⁴ United Nations. **Yearbook of the United Nations, 1950** (New York: Department of Public Information, 1950), p. 807.

²⁰⁵ International Court of Justice, **Reports of Judgements, Advisory Opinions and Orders. International Status of South West Africa. Advisory Opinion of July 11th, 1950.** (Netherlands: ICJ, 1950).

²⁰⁶ United Nations, **Yearbook of the United Nations, 1950**, *ibid*, p. 810.

²⁰⁷ The Court's decision that the Union of South Africa was under no legal obligation to place South West Africa under International Trusteeship System and that the General Assembly was legally qualified to exercise supervisory function exercised by the League with regard to the administration of the Territory suggests a contradictory posture. The Trusteeship Council had been established to supervise and control the Mandated territories, and to transfer such authority to the General Assembly as the Court's decision portends to do looks irreconcilable.

Predictably, South Africa rejected the Court's opinion. For the United Nations, there was the dilemma of how to implement this convoluted opinion. The Fourth Committee passed three drafts for a standard procedure of implementation. The first draft (A/C.4/L.116/Rev.1) implicitly rejected the ruling and called for the establishment of a ten-man expert Commission for South West Africa. The second draft (A/C.4L.121) called for the establishment of a ten-man expert *ad hoc* committee. The third draft resolution (A/C.4/L.124/Rev.1) called upon the General Assembly to accept and endorse the advisory opinion of the Court. It also called for the establishment of a committee, composed of the President of the Trusteeship Council, the Chairman of the Fourth Committee and the Chairman of the interim Committee to confer with the Union of South Africa on the implementation of the advisory opinion.²⁰⁸ Finally, with Resolution 449 (V) of 1950, the Assembly established a five-member Committee to confer with South Africa concerning the procedural measures necessary for implementing the Court's opinion, and to report to the Assembly's sixth session. This five-member Committee consisted of the representative of Denmark, Syria, Thailand, the United States and Uruguay.

The creation of the Ad hoc Committee on South West Africa marked an important juncture in the functions of the United Nations. It marked the process of creating a series of multiple institutions and structures by the United Nations to replace South African rule. These institutions and structures were often given executive capacity to wrestle control from South Africa. More importantly, they were stateless structures created to act as a midwife for a state waiting to be born. This process was a converse of Jackson's quasi-state thesis. In this case the state was not dependent on its

²⁰⁸ United Nations. **Yearbook of the United Nations, 1950**, op cit., p.816.

membership of international organisations to justify its existence, it was the international organisation, which was helping the state to come into existence. The UN was now defining the menu, and creating the agent of statehood.

3.8. The *Ad Hoc* Committee on South West Africa

The *Ad Hoc* Committee on South West Africa held 15 meetings with the South African government between 6 March 1951 and 17 October 1951. The most significant outcome of these meetings was South Africa's proposal to negotiate a new international instrument with France, the United Kingdom and the United States- the three remaining members of the Principal Allied and Associated Powers of the First World War. South Africa maintained that the proposal was made not because the Union Government had any legal obligations towards these Powers but because they had been connected with the original Mandate for South West Africa. If these three Powers were willing to become "the other party" to a new contractual agreement, the United Nations would then call upon them to negotiate the instrument and the Union of South Africa would be directly responsible to them and not the United Nations.²⁰⁹ To South Africa, the three Powers would act as principal and not as agents. It seems clear that South Africa believed that she could achieve her aim on South West Africa by relying on the support of these Powers. In this way, South Africa would use the most powerful and respected group within the Security Council to undermine the authority of the United Nations. It is of some interest therefore that twenty-six years later, the same trio of France, the United Kingdom and the United States would form the core of the Contact Group that

²⁰⁹ United Nations. **Yearbook of the United Nations, 1951.** (New York: UN Department of Public Information, 1951), p. 631.

in 1978 negotiated Resolution 435, which set up a mechanism for South African withdrawal from Namibia.²¹⁰

The *Ad Hoc* Committee rejected South Africa's proposal of negotiating a new international instrument. It said that it could not accept any proposal which did not give adequate effect to the principle of international accountability and which did not allow for a full implementation of the Court's advisory opinion, or undermined the United Nations' authority and competence. Instead, the *Ad Hoc* Committee resurrected the League's formula. It proposed that the General Assembly should establish a fifteen-member Committee on South West Africa, to include the Union of South Africa to undertake the functions and responsibilities akin to those of the former Permanent Mandates Commission. South Africa and the Eastern bloc states rejected this proposal for different reasons. South Africa did not want any power sharing formula. The Eastern bloc states felt that the new Committee would serve no useful purpose, but become a mere 'reconstruction of the *Ad Hoc* Committee.'²¹¹ They called for an immediate termination of South Africa's Mandate and its re-placement with the International Trusteeship System demonstrated another difference of opinion between East and West.

From the *Ad hoc* Committee, the South West African question was now transferred back to the Fourth Committee. Yet South Africa's relationship with the Fourth Committee was equally cold. For instance, at its 361st and 362nd plenary meeting between 18-19 January, 1952 South Africa argued that the Committee had acted

²¹⁰ See Chapter Five for a detail analysis of the dynamics of the Contact Group diplomacy on Namibia.

²¹¹ United Nations, *Yearbook of the United Nations, 1951*, *ibid.*, p. 631.

unconstitutionally, unwisely and improperly by adopting a draft resolution which permitted oral hearings from certain Herero chiefs and from the Rev Michael Scot, a nationalist cleric. South Africa intimated that its delegation would not take part in any vote on the draft resolution submitted by the Committee on this item.

At this point, Uruguay described the South West Africa question as a struggle between a Member State that refused to fulfil its international obligations and the great majority of the General Assembly which, wished to enforce respect for international undertakings and defend weak peoples and human rights.²¹² Yet, there was no coherence on how the international community condemned South Africa. For instance, United Kingdom and Belgium reiterated that South Africa was not legally obliged to place South West Africa with the Trusteeship Council as the Court had declared. On the other hand, Philippines, Cuba, Ecuador, Egypt and India, maintained that South Africa should conclude a Trusteeship Agreement with the United Nations as soon as possible.²¹³ With so much diversity of opinion, South Africa had plenty of scope for non-compliance.

3.9. Committee on South West Africa

Following three years of unproductive negotiation, the Committee on South West Africa (hereafter CSWA) was set up at the eighth session of the General Assembly in November 1953 with new terms of reference. The Committee was composed of Brazil, Mexico, Norway, Pakistan, Syria, Thailand and Uruguay.²¹⁴ It was given formal and extended functions. These included: (1) to examine reports and petitions concerning

²¹² *ibid.*, p. 643

²¹³ *ibid.*, p. 641. (Five-power resolution: A/C.4/L.157).

South West Africa; (2) to report to the Assembly on conditions in the Territory; and (3) to enter into negotiation with the Union of South Africa in order to implement fully the Court's advisory opinion. As with its predecessor, South Africa maintained an arms length relationship with the CSWA. It reiterated that it had never recognised any obligation to submit the South West Africa report to any international body since the demise of the League of the Nations. In its first report, the CSWA rebuked South Africa concerning the political status of the native inhabitants, who were excluded on the political and economic spheres. It concluded that:

"After 35 years of administration under the Mandate System the native inhabitants are still not participating in the political development of the Territory, that their participation in the economic development is restricted to that of labourers, and that the social and educational services for their benefit are far from satisfactory".²¹⁵

The CSWA also tried to raise the stake with South Africa by calling for the adoption of the 'Special Rule F'. This stipulated that: "decisions of the General Assembly on questions relating to reports and petitions concerning the Territory of South West Africa shall be regarded as important questions within the meaning of Article 18, paragraph 2, of the Charter of the United Nations".²¹⁶ In effect, Article 18 (2) of the Charter would raise the South West African question to an important question before the General Assembly, and then upgraded it to one that threatened international peace and security.²¹⁷ Meanwhile, this clause requires a two-third before it could be passed.

²¹⁴ United Nations. **Yearbook of the United Nations, 1954**. (New York: UN Department of Public Information, 1954), p. 24.

²¹⁵ Ibid, p. 325.

²¹⁶ Ibid., p. 325.

²¹⁷ Article 18 paragraph of the United Nations Charter provides that: "Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include: recommendations with respect to the maintenance of international peace and security, ...the questions relating to the operation of the trusteeship system, and budgetary questions.

The CSWA felt disappointed when the clause failed to achieve the required two-third-majority vote. The vote was 13 in favour, 8 against and 29 abstentions. Consequently a request for a second advisory opinion from the Court on the voting procedure was sought. The contentious issue was what constituted a two-thirds majority? Was it a two-thirds majority of the General Assembly membership, or of those in attendance during the South West Africa debate. The Court ruled on June 7, 1955, that issues on South West Africa should be regarded as important questions within the meaning of Article 18, paragraph 2, of the Charter, and should therefore be made by a two-thirds majority of the Members present and voting.²¹⁸ Yet those states which had voted against the preambular clause were unconvinced. It was not until six years later with the adoption of Resolution 1596 (XV) of 7 April 1961, that the General Assembly confirmed that South West Africa constituted a potential threat to international peace and security.

The UN's main liability was its long-term asset. It had the opportunity to accuse South Africa of breaking different norms of international arrangements. For instance, in early 1956, the CSWA claimed that South Africa's treatment of the native inhabitants of South West Africa constituted a breach of the Universal Declaration of Human Rights. The CSWA's invocation of this international instrument on behalf of the peoples of South West Africa coincided with India's calling attention of the world body to the treatment of the Indian descents living in South Africa. As a result, on November 1956, South Africa withdrew from the Fourth Committee on the basis that the Assembly's was considering questions outside its remit on South West Africa.²¹⁹

²¹⁸ United Nations. **Yearbook of the United Nations, 1955.** (New York: UN Department of Public Information, 1955), p. 265.

²¹⁹ The treatment of people of Indian origin in the Union of South Africa and the question of race conflict in the Union of South Africa were the questions that made South Africa to pull out of the Fourth Committee. These two issues were championed

In order to restrict South Africa's stratagem, the General Assembly again sought the Court's advice on hearing of the petitioners from the Territory.²²⁰ When South Africa refused to co-operate further with the United Nations, the petitioners were personally invited to New York. This was a departure from the League practice and the 1950 Court opinion, which indicated that the UN supervision should not exceed that exercised by the League and that the same procedures should be followed as far as possible. By a vote of 8 to 5 the Court held that the CSWA might properly grant oral hearing to the petitioners. The significance of the Court's ruling as reported in its own report was that the judges were influenced by the "practical considerations arising out of the lack of co-operation by the Mandatory".²²¹ This arguably broke the barrier between political and juridical reasoning. Based on this opinion, on December 7, 1956, the Fourth Committee granted the request of the Rev Michael Scott and Mr. Mburumba Kerina Getzen for permission to make a statement before the Committee. Their statements were forwarded to the CSWA for study and consideration.

3.10. Good Offices Committee on South West Africa

The UN did not rest on its resolve to take South Africa head on. It was ready to explore all options contained within the Charter to take control of South West Africa. Yet like most bureaucratic institutions, it favoured an incrementalist option. Accordingly, on October 25, 1957, it expanded the membership of the CSWA from seven to nine and established a three-nation Good Offices Committee (hereafter GOC). The first African

by the Indian delegation to the UN General Assembly. For details, see Chapter X of the **Yearbook of the United Nations, 1956**, (New York: UN Department of Public Information, 1956).

²²⁰ Landis, Elizabeth. S. "South West Africa in the International Court: Act II, Scene 1", **Cornell Law Quarterly**, Vol. 49, No. 2, winter 1964., p. 191.

²²¹ International Court of Justice, **ICJ Report** 23, 25 (Advisory Opinion), SWA Petitioner 31. (Netherlands: ICJ, 1956).

representative, Ethiopia was included in the CSWA as was Finland, the United States replaced Norway, while the other six old memberships were retained.²²² The GOC consisted of the United Kingdom, the United States and Brazil. Its remit included holding talks with the South African Government on a satisfactory definition of the status of the Territory, and the establishment of a working international arrangement between the United Nations and South Africa in accordance with the Charter of the United Nations.

In political terms, the GOC marked a fundamental departure. It was hoped that the United States and Britain would play a leading and positive role in negotiation with South Africa. It is important to point out that contrary to Kerina's suggestion that the inclusion of the United States in both the CSWA and the GOC has some Cold War undertones,²²³ that Europe was then the main theatre of the contest between the United States and the Soviet Union, and that African issues were not yet prominent within Cold War politics. Neither West nor East interpreted their difference of opinion on the issue in zero-sum terms. Far from the Cold War imperatives, the inclusion of the United States as well as the United Kingdom was intended to secure the co-operation of South Africa. To recap, on October 17, 1951, South Africa had proposed to negotiate a new instrument with France, United States and the United Kingdom in the course on negotiation with the first *Ad hoc* Committee on South West Africa.²²⁴

²²² United Nations. **Yearbook of the United Nations, 1956** (New York: UN Department of Public Information, 1956), p. 309.

²²³ Kerina, Mburumba. "South West Africa and the United Nations", **Africa South**. Vol. 3., No. 1., Oct.-Dec., 1958. p. 15.

²²⁴ See footnote 209.

Be that as it may, South Africa went into discussions with the GOC and neglected the CSWA. They had two meetings between May and June 1958 in London and Pretoria. South Africa made two proposals. It reiterated its intention to negotiate a new instrument with the remaining three Allied and Associated Powers. It also proposed to partition the Territory, administering the northern portion containing the Bantu population, as an integral part of South Africa under a trusteeship agreement with the United Nations, with the rest being annexed to South Africa.

The GOC was quiet on the first proposal, but expressed the opinion that some form of partitioning could provide a basis for agreement. It implored South Africa to consider the practicability of such a partitioning. It must be said, however, that when South Africa had earlier put forward this idea in 1953, it was vehemently opposed by the General Assembly. Neither of the two proposals was agreed: the General Assembly regarded partition as an endorsement of *apartheid*. South Africa only wanted to annex the richer southern part of the Territory, and exclude the black majority, who would now live in the administered territory and be denied access to the Territory's rich resources. Partitioning would also have been a breach on the principle of territorial integrity.²²⁵ It would also damage the United Nations's credibility and amount to a repudiation of responsibility. As Dugard put it, "the Principal and Allied Powers in 1920 placed South West Africa under international tutelage in order to erase the legacy of racial dominance and brutality perpetuated by the Germans during the colonial

²²⁵ For a concise analysis of the Good Offices Committee Report to the General Assembly's Fourth Committee, see United Nations. **Yearbook of the United Nations, 1958**. (New York: UN Department of Public Information, 1958), p. 312. Criticisms and critiques of the Good Offices Committee visit to South West Africa are well treated of in the Editorial Analysis and Comment of **Africa South**, Vol. 3., No. 1., Oct.-Dec 1958 under the caption "The Pattern of Betrayal", (p. 1-5).

period; hence acquiescence to South Africa's proposal would ultimately defeat this 'humanitarian' objective.²²⁶

South Africa's attempt to ride on the back of some its 'trusted' members of the GOC was shattered by the General Assembly. For a while, it put on hold a discussion with the GOC. Perhaps, working with the belief that it could garner the support of the United States and United Kingdom, it renewed discussions on all possibilities with the GOC in September 1959.²²⁷ This marked a moderate departure from South Africa's thirteen-year-old non-recognition of the United Nations authority and competence on the South West Africa question.

All mandatory territories other than South West Africa had been under the International Trusteeship System, including those under the control of the Great Powers such as France, the United Kingdom and the United States.²²⁸ If the Great Powers could place their Trust territories under the International Trusteeship System, why had South Africa refused to act in the same manner? We might attribute South Africa's apparent change of position partly to the demand for economic sanctions against South Africa, partly to linking of the South West African question to the apartheid issues, and partly to the evidence of a new flexibility at UN. For the first time, the United Nations gave South Africa a choice on which of its agencies to negotiate with. Thus, in Resolution 1360

²²⁶ Dugard, John. (ed.), **The South West Africa/ Namibia Dispute: Documents and Scholarly Writings on the Controversy between South Africa and the United Nations.** (Berkeley: University of California Press, 1973), p. 26.

²²⁷ United Nations. **Yearbook of the United Nations, 1959.** (New York: UN Department of Public Information, 1959), p. 323.

²²⁸ By 1959, there were 10 Trust Territories that continued to be administered under the International Trusteeship System. Those held by the Great Powers are listed below together with the Administering Authority of each Territory. United Kingdom--

(XIV) of November 17, 1959, the General Assembly invited the South African Government to enter into negotiation with either the CSWA or the GOC or any other committee appointed by the Assembly, with a view to placing the Mandated Territory under the International Trusteeship System. Yet South Africa selected to discuss with the uncompromising CSWA rather than the GOC. The discussions immediately broke down.²²⁹ In a serpentine manner, the newly independent African countries such as Ghana and Egypt seized upon the situation to call for robust action against South Africa. As the number of independent African countries multiplied in the early 1960s, the contour of the South West African question was altered.

3.11. The United Nations' coercive resolutions against South Africa

Prior to the entry of the newly independent African states, the United Nations aimed to secure a solution through soft resolutions, persuasions and compromises. The strategies were primarily legalistic. Overnight, the African states became a bloc working as a giant pressure group pursuing the eradication of colonialism. At the 15th General Assembly in 1960, seventeen states joined, fifteen of them were from Africa. Their inclusion as members of the organised international community affected the composition and orientation of the UN. To them, UN was a forum in which to vent their anger against South Africa, which was seen as a pseudo-colonial overlord. However, their constant stalking of South Africa on the self-determination and apartheid issues put a wedge between them and the Western powers. The Soviet Union became their natural ally in accusing the West of being duplicitous in their views on

Tanganyika and the Cameroons; France-the Cameroons and the Togoland, the United States--Trust Territory of the Pacific Islands as a strategic area.

²²⁹ United Nations. **Yearbook of the United Nations, 1960**. (New York: UN Department of Public Information, 1960), p. 491; and **The United Nations Review**, Vol. 6, No. 6, December 1959, p. 64-69.

apartheid and the self-determination. Yet there was an element of dis-ingenuity in their criticisms of the West. They were potential free riders of the stability guaranteed by the Western powers, despite their formal non-alignment. The South West Africa was a convenient platform on which to advance their own political agenda within the international arena. Their entry would also influence the management of the international system, and heighten the organisational problems of the United Nations. Old issues became defined in a new way and exerted an influence on real political struggles. The increase in size made the UN less homogenous, more fictionalised. It reduced the capacity for concerted action as global issues were shaped by bloc interests and priorities. Since our concern here is on the South West African question, we need to examine their role on the issue.

To a great extent, South Africa's strong-arm tactics against its opponents were a Greek gift to the African states. The infamous Sharpeville incident of March 1960 provided tangible evidence of the oppression suffered by South African blacks. One African proverb says: *"If a snake can eat its own offspring, what then can it not do to other animals' offspring"*. Sharpeville was interpreted as a warning of what South Africa, a guardian, could be expected to do in South West Africa. Although the UN remained committed to a resolution within the confines of a legal order; it was ready to 'outsource' the solution by 'delegating responsibility to qualified member-states'. Thus, under Resolution 1361 of November 17, 1959, the General Assembly 'invited' qualified states to take legal action against South Africa in the Court.²³⁰ In a strict sense, only the signatories of the League of Nations met this requirement. Thus, Liberia and Ethiopia were the only African states that qualified. However, before taking on

this burden, they sought the endorsement of other African states at the Second Conference of Independent African States at Addis Ababa, held in June 1960. Before we examine their case against South Africa, it is important to see how most of the new states of Africa reacted to the South West African question.

Ghana and Nigeria were the most vocal. The representative of Ghana informed the General Assembly that the Ghanaian President had proposed on September 23, 1960 that South African government should be asked to surrender the Mandate to the United Nations. He also recommended that a committee of the independent African states should administer the Territory, on behalf of the United Nations, under the International Trusteeship System. He further suggested that should South Africa fail to accept the proposal, the General Assembly should terminate the Mandate at its next session (16th Session), and designate the African states as the Administering Authority.²³¹ Perhaps, Ghana did not know that Egypt had made a similar proposal back at the San Francisco in 1945. This idea that a committee of the independent African states should take over the Territory reflected the overbearing self-importance of these new comers. Nigeria was even more egotistical. Nigeria served notice on South Africa that the issue had passed beyond the stage of legal dispute. It warned that it would use all necessary means to bring about a restoration of basic rights and human dignity to the people of South West Africa. Paradoxically, seventeen years later, in 1977, Nigeria joined five other southern African front line States, and the five Western powers, to secure a solution.

²³⁰ UN General Assembly Resolution 1361 (17 Nov. 1959), United Nations. **Yearbook of the United Nations, 1960.**

²³¹ United Nations. **Yearbook of the United Nations, 1960**, *ibid.*, p. 492.

The tension between South Africa and the UN reached a near crisis point in mid-1961. Resolution 1568 (XV) of 18 December 1960 gave the CSWA the power to conduct on-the-spot assessment of the prevailing socio-economic and political conditions of the people. South Africa refused to grant the CSWA a visa to visit the Territory. The CSWA however, was determined to carry out its mission with or without South African consent. It also planned to visit the neighbouring states of Southern Rhodesia, and Bechuanaland, under the British control, and Portuguese Angola. London's eleventh hour withdrawal of visa facilities previously granted to the CSWA frustrated its plan to visit the neighbouring countries. The Committee's chairman, Mr. Fabregat of Uruguay later called this 'the most excruciating experience of the mission'. This action taken by the British government suggested that South Africa was under a protective shield of a great power, despite the rhetoric of anti-colonialism. Yet the CSWA was determined to enter the Territory by any means. And in a letter dated 7 July 1961, the South African Minister of Foreign Affairs declared that: "if members of the Committee and or other members of its party should attempt illegally to cross the South West African border", his Government would "however reluctantly, be obliged to prevent such attempt".²³² He maintained further that an attempt by a Committee of the United Nations to enter the Territory after visas had been refused "would involve the United Nations in an act of aggression".²³³

The CSWA, therefore concluded that the lives of the indigenous peoples and the security of South West Africa could not be guaranteed without any strong measure within the purview of the UN Charter. Accordingly, it called for an immediate removal

²³² United Nations. **Yearbook of the United Nations, 1961**. (New York: UN Department of Public Information, 1961), p. 457.

²³³ *ibid.*, p. 457.

of South Africa from South West Africa, with effective and simultaneous transfer of power to the United Nations or to the indigenous inhabitants, either through the CSWA or through a UN Special Committee of Assistance to South West Africa.²³⁴ It called for the establishment of a Special Committee of Seven (hereafter the Special Committee) to undertake this Herculean task.

3.12. The Special Committee of Seven

The significance of the Special Committee was that it was instructed to work towards the goal of implementing Resolution 1415 (XV) of 1960, which focused exclusively on granting independence to colonial countries and peoples irrespective of their political, economic and social developments. For the first time, the UN was no more interested on the process of trusteeship regime, but on formal decolonisation.

However, South Africa granted only two of 17-member Special Committee the opportunity of a working visit to the Territory. The Special Committee's recommendation was more robust than its predecessor's. The Chairman and Vice-Chairman stated that:

"Short of the use of force or other compulsive measures within the purview of the Charter, there seemed to be no way of implementing Resolution 1702 (XVI) of 19 December, 1960, or of solving the question in a way which would be acceptable to South Africa, other than the virtual or outright annexation of the Mandated Territory by South Africa".²³⁵

²³⁴ For the CSWA detailed recommendation, see, *op cit.*, p. 458.

²³⁵ United Nations. **Yearbook of the United Nations, 1962.** (New York: UN Department of Public Information, 1962), p. 440.

It also recommended the imposition of sanctions or employing other means to enforce compliance with its decisions or resolutions.²³⁶ It is tempting to be sympathetic to Ruth First's argument that that the Special Committee- the fourth of such committees to have been set up in ten years- should not have been established at all, for it was a means of circumventing the whole trusteeship system.²³⁷ The UN however, is a bureaucratic organisation that thrives on multiplication of institutions.

Meanwhile, South Africa was irked at the Special Committee's recommendations. Not surprisingly, it resorted to blackmail. It alleged that the Committee's Chairman and Vice-Chairman had signed a *communiqué*, after visiting South West Africa, where they admitted that they had found no basis for the most serious charges levelled against South Africa, i. e. threat to international peace and security, territorial militarization and a gradual extermination of the population.²³⁸ Mr. Carpio and Dr. de Alva later questioned the authenticity of this *communiqué*. The significance of the Carpio-de Alva mission was that it indicated a toughening of the UN's position against South Africa. It provided the background in which the Liberian and Ethiopian case against South Africa took place.

²³⁶ *ibid.*, p. 440.

²³⁷ First, Ruth. **South West Africa**. (Middlesex, Baltimore: Penguin Books Inc., 1963), p. 193.

²³⁸ United Nations, **Yearbook of the United Nations, 1962**, op cit., p. 440. Mr. Carpio of the Philippines and Dr. de Alva of Mexico were the Committee's Chairman and Vice-Chairman respectively. Their mission to South West Africa was known as the Caprio-de Alva mission.

3.13. Ethiopia and Liberia V. South Africa

In October 1960, Liberia and Ethiopia (hereafter the applicants) instituted a legal action against South Africa based on the GA Resolution 1361.²³⁹ Legal scholarship has paid much attention to the jurisprudence of the case.²⁴⁰ Indeed, according to one author, Marinus Wiechers, the South West Africa case suffered from verbal indigestion due to the proliferation of articles and reviews,²⁴¹ which made it doubtful whether another article on the legal aspects of the case could elucidate anything'.²⁴²

Wiecher's criticism reminds us of the necessity of broadening our understanding of the South West Africa case beyond the legalistic frame. It is important to examine the political and international contexts in which the case arose. On the one hand, the post-war international political environment impacted on the effectiveness (or otherwise) of international law on decolonization issues, on the other hand, international law, exerted real influence on political struggles, especially over self-determination. The General Assembly's decision to invite 'legally qualified states' to bring an action against South Africa raises further questions: (1) why should the General Assembly have invited legally qualified states, and how did they respond? (2) what did the outcome tell us about the efficacy of international law as a means of influencing state behaviour; and (3) to what degree did the outcome of the case change the position of the main parties on the South West African question?

²³⁹ U. N. General Assembly Resolution 1361, 14th Session (17 November 1959).

²⁴⁰ See ref. 154, for writings on case proceedings. For South African view of the case, see, **South West Africa Case, 1971**, (Cape Town: Cape and Transvaal Printers Limited, 1971).

²⁴¹ Wiechers, Marinus. "South West Africa: The background, content and the significance of the opinion of the World Court of 21 June 1971", **The Comparative and International Law Journal of Southern Africa**, Vol. V. No. 2., July 1972, p. 123.

²⁴² *ibid.*, p. 123.

3.14. The limited personality of the United Nations

The Article 7 of the Mandate read in conjunction with Article 37 of the Statute of PCIJ (Permanent Court of International Justice) put a burden of responsibility on the signatories of the League to help in making the mandatory power fulfil its obligations. In a sense, this decision was borne out of South Africa's insolence. However, it exposed the limitation of the 'personality' of the United Nations. The founding fathers of the United Nations gave limited personality status to the organisation devoid of the supreme right with which sovereign states, whether big or small, are endowed. More importantly, the UN is denied the right to judicial recourse, designed to lead to an enforceable judgement. It can only request an advisory opinion.²⁴³ The General Assembly's needed to devise a way of seeking binding adjudication on the case in line with Article 59 of the statute of the Court.²⁴⁴ Indeed, Ethiopia and Liberia justified their involvement in the case on the limited legal personality of the United Nations. They said: 'we are in fact appearing in representational capacity to bring proceedings which the Assembly cannot bring for itself, because under Article 34 of the Statute of the Court, only States can appear in contentious proceedings before the Court.'²⁴⁵ They asked the Court: whether the Mandate was still in force, whether the United Nations had supervisory authority, and whether South Africa was violating its obligations under the Mandate by among other things, imposing *apartheid* upon the 'non-white' inhabitants of the Territory, and by establishing military bases in the Territory.²⁴⁶

²⁴³ Gross, A. Ernest., "The South West Africa Case: What Happened", **Foreign Affairs**, Vol. 25. No. 1., October 1966., p. 47. As a result of the 1966 judgement, Gross argued that the Statute of the Court should be amended so as to enable the United Nations to appear as a party in appropriate cases before the Court, but this is yet to materialised.

²⁴⁴ Nordau, op cit., p. 125.

²⁴⁵ Gross, op cit., p. 47.

Alongside their justification on the limited personality of the United Nations, both Ethiopia and Liberia also claimed the representational interest of the international community. They argued that they act in their capacity:

"...As members of a United Nations collegiate organ.... guided not by their individual interest but by the interest of the Organisation. They had in mind...an alleged right of the Organisation and not...a right belonging to them individually".²⁴⁷

Without rehearsing the legal arguments, it could be argued that what constitutes 'representational interest' is a political question. At onset, South Africa raised a preliminary objection that such an interest was insufficient to give the Court jurisdiction under Article 7. It claimed that such interest must be 'personal and direct', arising out of obligations owed individually to the applicant states or to their nationals.²⁴⁸

The applicant's claim that they were representing the interests of the whole international community is a controversial one. They viewed decolonisation as a communitarian project. Yet different bloc interests and priorities presupposed drawing a scale of preference for international issues on regional and ideological biases. Thus far, the General Assembly had been the focus of the South West African debate. The Security Council had remained silent. Why is so? A plausible reason is that that the Security Council was primarily concerned about the maintenance of international security and peace. As earlier shown, the CSWA attempt to rein in Article 18 (2) of the UN charter on South West Africa in 1954 failed to meet the required two-third majority

²⁴⁶ Landis, *op cit.*, p. 194. Landis quoted the applicants verbatim as recorded in the court's opinion.

²⁴⁷ *ibid.*

votes. That the only two African countries present at the League of Nations took a legal action against South Africa underscored the priorities of other signatories to the Covenant. Never the less, it was to their credit that these two African states took the legal action. They, and the whole international community, had to wait for six years for a judgement.

3.15. The 1966 Judgement

On July 16, 1966, the Court passed a judgement, having dismissed South Africa's preliminary objections four years earlier. It ruled that the applicants had no specific legal right or interest in the performance of the mandate for South West Africa.²⁴⁹

Commenting on the ruling, Kiewiet stated that:

"July 16 1966 is a memorable day in contemporary South African history. For South Africa the decision was a windfall. It acquired a precious gift of the time. The internal danger of surrender to an adverse decision was reduced. The government's position of legal correctness was unimpaired. Before local public opinion the government grew again in reputation for steadfastness and competence. A debatable legal pronouncement was popularly translated into vindication, an exoneration from fault and incompetence".²⁵⁰

Two elements are conspicuously absent in Kiewiet's interpretation of the ruling. One, is the reaction of the international community, especially the General Assembly, which initiated the legal action. The other is the effect of the ruling on the Court itself and international law in general.²⁵¹ In the main, by focusing on these issue, we intend to

²⁴⁸ Memorials of Ethiopia and Liberia, *SWA Cases, Second Phase, ICJ Report* (1966) p. 62-63. (Netherlands: ICJ, 1966).

²⁴⁹ The verdict of the Court was full of suspense, the vote being evenly divided (7-7). It was the President, Sir Percy Spender (Australia) that threw the 'casting vote' to break the tie in favour of South Africa.

²⁵⁰ de Kiewiet, C. W. *Africa Report*, Vol. 14. No. 2. February 1969, p. 50.

²⁵¹ Some international law experts had observed that the vote cast by the Court's president, Sir Percy Spender of Australia to unlocked the seven-seven tie shifted the decision making

shed more light on the limitations of international law. The paradox however is that had the Court ruled against South Africa, the ruling would have been binding, but South Africa might not have complied with an adverse ruling. More contentious is how to effect compliance. It is also highly debatable whether South Africa would be persuaded by the 'shadow of the future' reason for compliance as argued by idealists such as Robert Axelrod. The shadow of the future implies that states must be aware that short term gains from breaking rules that they helped create may be offset by future costs imposed by other states".²⁵² It is not only that the Court lacks an enforcement mechanism of its own, but both Ethiopia and Liberia were also incapable of imposing considerable costs on South Africa, either politically or economically. And the Western powers commitment to the South West African question was non-committal, but circumspect.

The international community received the Court's judgement with shock and dismay. The United Nations as a whole was visibly shaken. The Africans felt betrayed. To them, the Court had diminish its prestige as a means of settling international disputes and had raised serious doubts about its integrity and usefulness. Perhaps, as an expression of its annoyance, the General Assembly on 10 October 1966 rejected a proposed supplementary appropriation of \$72,500 for the Court's 1966 budget.²⁵³ Clearly, the credit of the Court in settling decolonization issues was damaged and its

process of the Court from its Eurocentric jurisprudence, with its postulated a priori dichotomy between law and politics, to the adoption of an American style judicial policy role. See, McWhinney, Edward. **Judicial Settlement of International Disputes: Jurisdiction, Justiciability and Judicial Law-Making on the Contemporary International Court**, (The Netherlands: Martinus Nijhoff Publishers, 1991), p. xvii.

²⁵² Axelrod, Robert. **The Evolution of Co-operation**. (New York: Basic Books, 1984).

²⁵³ United Nations. **United Nations Monthly Chronicle, (UNMC)**, 3 (10), 1966, p. 62-63.

adjudicative function impaired. Yet the judgement has significant effect in the political arena in the light of the reactions of the international community as well as SWAPO.

3.16. The response of the international community to the judgement

Contrary to Kietwiet's suggestion, alluded to earlier, the judgement was not in totality a windfall for South Africa. It was more of a Greek gift, as it changed the character of the South West African dispute. The judgement raised the probability of political actions against South Africa, and the spectrum of action moved from the legal framework to the political sphere. In particular, it also transformed the perception of the liberation movements to armed struggle and guerrilla warfare.²⁵⁴ SWAPO, in particular, came to the conclusion that no court could really deliver justice in a political conflict. Independence was not in the gift of any court. According to Levinson, prior to the 1966 judgement, the liberation movements still believed that the United Nations would free them. "It was only in 1966 when the Court judgement favoured South Africa that they finally resolved that there was no other course but to fight for freedom".²⁵⁵ From now on SWAPO believed itself to be engaging in an armed struggle, a war of national liberation. The first armed encounter between SWAPO and South African security forces took place at Omgulumbashe in Ovambo land on 26 August 1966.²⁵⁶

²⁵⁴ It must be noted that this study does not focus on the history, development and operations of these liberation movements. An excellent discussion on the liberation movements can be found in Dreyer, Ronald. **Namibia and Southern Africa: Regional Dynamics of Decolonization, 1945-1990**. (New York: Kegan Paul International, 1994).

²⁵⁵ Levinson Olga, **Story of Namibia**, (Cape Town: Tafelberg Publishers Limited, 1978), p. 74; and Dube, Emmanuel. M. "Relations between Liberation Movements and the OAU", in Shamuyarira, N.M. (ed.), **Essays on the Liberation of Southern Africa**, (Dar es Salaam: Tanzania Publishing House, 1972), p. 39.

It was not only SWAPO that was concerned with the outcome of the 1966 judgement, some Western powers were also concerned. For example, Coker revealed that in a memorandum to President Johnson, in July 1964, the State Department had warned that if the ICJ ruled against Pretoria, 'we (America) may be in a serious crisis with South Africa next year'.²⁵⁷ While this study found no evidence to suggest that Washington wanted to pervert the course of justice in any way, the State Department concern indicated that a ruling in favour of South Africa was a relief to the Johnson administration.

After the Court's ruling, the United Nations' faith in legal means sank to zero, hence a political decision had to be taken. It must be noted that South West Africa had been debated by every General Assembly session since 1946. It had been referred to the ICJ four times, with a total of 73 resolutions by the General Assembly.²⁵⁸ On October 27, 1966, with Resolution 2145 (XXI), the General Assembly finally delivered its own verdict.²⁵⁹ It declared the mandate 'terminated' and placed the territory under its 'direct responsibility'.²⁶⁰ The revocation revived a neglected 1946 Egyptian proposal. As we have already seen, in its Working Paper to the Fourth Committee in 1946, Egypt had proposed that the General Assembly should be given powers to terminate the Mandate and declare the territory independent. At that time, the proposal was rejected.

²⁵⁶ Alao, C.A. "A Comparative Evolution of the Armed Struggle in Namibia, South Africa and Zimbabwe", in William Gutteridge and J.E. Spence, **Violence in South Africa**, (London: Frank Cass: 1997), p. 63.

²⁵⁷ Coker, op cit. p. 243--Memo to President Johnson from William Brubeck, 29 July 1964.

²⁵⁸ . United Nations, **Yearbook of the United Nations, 1967**. (New York: Office of Public Information, 1966), p. 595.

²⁵⁹ Cheng, Bin. "The 1966 South West Africa Judgement of the World Court", **Current Legal Problems**, Vol. 20. 1967, p. 181.

Now, the revocation of the Mandate led to the establishment of the 11-member United Nations Council for South West Africa (hereafter The Council). With the assistance of a United Nations Commissioner, the Council was to become the legal administering authority for the territory. In essence, the Council was conceived as a parallel authority to South Africa, a government in exile for South West Africa. It was instructed to use all its powers to enable the territory to become independent by June 1968. Not surprisingly, the question of how the Council should pursue its duties became a matter of controversy within the United Nations, across the East and West ideological divide.²⁶¹

The Soviet Union doubted the necessity of a transitional period between the ending of the Mandate and the date of independence. Supported by Czechoslovakia, it opposed the direct administration of the Territory by the Council and advocated that the General Assembly should declare the territory independent immediately to allow the OAU to assist the national liberation movements with the formation of a new government.²⁶²

The Soviet Union feared that any new UN agency would be used by the opponents of independence for purposes other than those envisaged in the Charter".²⁶³

The United States, Canada and Italy led the opposition to the Soviet position. These states preferred a gradualist and negotiated settlement with the appointment of a Special Representative. Among other things, the Special Representative would make a

²⁶⁰ United Nations, **Yearbook of the United Nations, 1967**, op cit., 596-605.

²⁶¹ The debate on the role of the Council revealed the division within the UN along bloc and ideological divide. See, **UNMC, Vol. IV, No. 3**, March 1967, p. 5; **UNMC, Vol. IV, No. 6**, June 1967, p. 33; and **UNMC, Vol. IV, No. 4**, April 1967, p. 11-15.

²⁶² United Nations. **Yearbook of the United Nations, 1967**. (New York: Office of Public Information, 1967), p. 691.

²⁶³ *ibid.* p. 692.

comprehensive survey of the situation in the territory, and determine the conditions necessary to enable it to achieve independence. The Soviet Representative saw the appointment of a Special Representative as an implicit acquiescence in the continuation of the illegal administration in the territory for an undetermined period of time. In his reply, the USA representative said that the Soviet Union's representative had been the first to lose sight of the importance of the criterion of practicability.²⁶⁴

The liberation movements were also not satisfied with the revocation of the Mandate and the establishment of the Council. They argued that their faith in the effectiveness of the United Nations and its strategies had reached its limit. In their testimony before the Committee of 24 on its mission to Africa on June 7-9 1967, Solomon Mifimo, Moses Garoeb and Jacob Kuhangua (SWAPO) expressed their disappointment on the functions entrusted to the Council. They said that they had hoped that the General Assembly would decide upon the use of force to terminate South Africa's control of the territory. In addition, they said that the people of South West Africa consequently felt that they could not rely entirely on the United Nations to liberate the territory and were determined to fight on their own behalf.²⁶⁵

South Africa, predictably, challenged the revocation. It refused landing rights to the 11-member Council for its on-spot visitation to the territory. More importantly, it expedited the implementation of the Odendall Plan that intended to incorporate South West Africa as a fifth province of South Africa. The Plan effectively exported the principle and practice of apartheid policies to South West Africa. With the Odendall Plan, South Africa played to the gallery of its critics and angered its friends in the

²⁶⁴ UNMC, Vol. IV, No. 3, March 1967, p. 10.

international community. The Plan united South Africa's foes and allies. It was like giving one's sword to the enemy in a battle. It was at this juncture that the Security Council finally intervened. Presumably, the Council had refused to deal with the South West Africa on the grounds that it did not constitute a potential threat to international peace and security. In a twist of events, it now challenged South Africa's implementation of the Odendall Plan. On January 30, 1970 the Security Council abandoned its cavalier position with the establishment of the first Security Council Sub-Committee on Namibia.²⁶⁵ Six months later, on 29 July 1970, the Namibian question was placed before the Security Council as a *situation* constituting a threat to international peace and security. It could be argued that the West changed its stance under constant pressure from the Afro-Asian bloc. It could also be argued that Western powers interpreted the Odendall Plan as a gross violation of liberal values, which they themselves held. Thus, to do nothing would be a dereliction of duty in safeguarding human rights. Namibia was now within the legitimate remit of the Security Council.

Under Article 12 (1) of the Charter, the General Assembly cannot make recommendations regarding a situation when the Security Council is exercising functions assigned to it with respect to that situation. The interpretative function of this article has legal and political implications. From a legal standpoint, it confirms the primacy of the Security Council over the General Assembly on matter of international concern. On the political side, it draws a boundary on the competencies between the populous General Assembly and the authoritative Security Council. In effect, the ability

²⁶⁵ United Nations. **Yearbook of the United Nations, 1967**, op cit., p. 698.

²⁶⁶ Before the establishment of this Sub-Committee, all the initiatives on South West Africa were from the General Assembly, but now, the Sub-Committee consisted of all the council members. See, **UNMC, Vol. VII, No. 2**, February 1970, p. 3; and **UNMC, Vol. VII, No. 8**, August-September 1970, p. 37.

of the African group to shape the outcome of the Namibian question was inherently limited. Through Resolution 282 (1970), the Security Council asked the Court for an advisory opinion on the following questions: What are the legal consequences for States on the continued presence of South Africa in Namibia, notwithstanding Resolution 276 of 1970?

3.17. The 1971 Opinion: a reversal of the Court's position

The Court delivered its opinion on 21 June 1971. The 15-man Court held:

Firstly, by 13-2 that South Africa was in illegal occupation of South West Africa and under an obligation to withdraw its administration from the Territory immediately.

Secondly, by 11-4 that the Members of the United Nations were obliged

(i) to recognise the illegality of South Africa's presence in the Territory and the invalidity of its acts on behalf of or concerning the Territory; and

(ii) to refrain from any acts or dealings which would imply recognition of the legality of, or lend support or assistance to, the South African presence and administration.

Thirdly, also by 11-4 that it was incumbent on State Members of the United Nations to give assistance in the action taken by the United Nations with regard to the Territory.²⁶⁷

It has been argued by critics that the 1971 Court decision was to serve two inter-related purposes: the rehabilitation of the Court's image, and the harmonisation of hitherto disjointed positions between the Court and the United Nations on one hand, and within the United Nations itself. For instance, Crawford argued that 'there is clear link, legally and politically, between the decisions in the *South West Africa* cases (*Second Phase*) of

²⁶⁷ ICJ. *Yearbook 1970-71*, (Hague: ICJ, 1970), p. 105.

1966 and *Namibia (1971)*.²⁶⁸ In the latter decision the Court did what it could to undo the damaging effects of the former. It marked the most important reversal of position in the history of the Court. Though the Court was 'mindful of its 1966 decision, the events between 1966-71 transformed it from 'a first-world' to a 'third-world' court- in terms not only of composition but also of orientation. Crawford noted further that:

"in the whole context of the decolonization process' the Court's role has been to an extent secondary, with 'the *corpus iuris gentium*' taking the form, more or less, of an administrative law, a body of rules relating to and supportive of the application of Chapters XI and XII of the Charter by the political organs, and in particular the General Assembly. The Court has not-as it has so markedly in the field of maritime delimitation-played the role of 'lead agency'. But its role has not been merely adjectival, but has consistently supported the principle of self-determination, as implemented by the General Assembly".²⁶⁹

More significantly, the Court's decision took the Namibian question back to its roots: a political question. The architecture of the mandate system had been reshaped to reflect the realities of the new order: decolonisation. Its principal architects now had a duty of care to make Namibia a self-governing entity, within the framework of the UN. It conferred upon them levels of responsibility hitherto unknown since the trusteeship regime was formed in 1946. The question now was whether they would put a premium on securing South African compliance, which international law by itself, had been unable to do, at the expense of their economic, political and strategic interests in South Africa.

²⁶⁸ Crawford, James. "The General Assembly, the International Court and self-determination", in Lowe, Vaughan and Fitzmaurice, Malgosia (eds.), **Fifty Years of the International Court of Justice: Essay in honour of Sir Robert Jennings**. (Cambridge: Cambridge University Press, 1995), p. 39.

²⁶⁹ *ibid.*

Chapter Four

Namibia and *Henry Africanus*.

4.1. Introduction

In the preceding chapter, we have established that the Court's ruling in 1971 shifted the Namibian question into the political arena. Yet, in the two *South West Africa cases (1960) and (1966)* international law, though it provided machinery for the settlement of the dispute, failed because of the lack of a compliance mechanism, and agents competent to enforce its rulings. These limitations however, do not imply that international law has no utility in international politics. Indeed, international law is useful as a system of restraint on the actions of states. In the case under review, international law restrained South Africa from annexing South West Africa. It also served as an institutional device for communicating to the South African government the prevailing standard of acceptable behaviour within the community of states, especially on self-determination. By contrast, in this chapter, the focus will be on how the Namibian question became inextricably linked with the balance of power. And paradoxically, how Namibia emerged as a beneficiary of the changes in the global and regional balance of power of the 1970s.

It will examine the American initiative to resolve the conflict taken by Secretary of State, Henry Kissinger. His diplomatic and political investment in resolving the wider southern African conflict in 1976 has been termed as *Henry Africanus*.²⁷⁰ This chapter will show that the power struggle between the United States and the Soviet Union

²⁷⁰ This term is associated with Elaine Adam, a US State Department official. She coined the term to describe Kissinger's shuttle diplomacy in Africa from April 1976 to January 1977. We shall use this concept as it is for the rest of the study. See, Adam, Elaine. "Henry Africanus", *The United States Foreign Relations, 1976*. (Washington, DC: State Department, 1976), p. 59-60.

created an opportunity to break the Namibian stalemate. It seeks to demonstrate that the United States, acting out of self-interest in containing the Soviet Union globally and its influence in southern Africa in particular, discovered that securing a solution on Namibia was an effective means of achieving this objective. In other words, mediation came about within the context of power politics. Indeed, resolving the Namibian conflict can be viewed as one of the externalities of the balance of power.

It is tempting, to neglect the impact of international law on the Soviet intervention in Angola. However, besides power considerations, this chapter will show that the Soviet understanding of the utility of international law of wars of liberation also influenced its action in southern Africa. But as this particular set of international laws was shaped and defined by the political realities of the decolonization era, for the Soviets, it served less as a vehicle for justice for the third world, than as a means of furthering its own political interests.

The chapter is divided into three parts. The first part begins by evaluating the failure of the 'UN regime'. Part two examine the changes in the global and regional balances of powers of the mid-1970s. It shows that the Soviets intervened in Angola partly for power considerations and partly as a result of its own interpretation of the utility of international law. Part three discusses *Henry Africanus*. It examines the process of negotiation between South Africa and the United States of America, and the leverage that Washington was able to exercise on Pretoria in solving southern African problem.

4.2. The end of the United Nations' regime

The election of Kurt Waldheim as the UN Secretary General in January 1972 created a new opening for the UN-South Africa dialogue on Namibia. This was at the urging of the French Ambassador to the UN, Jacques Kosciusko-Morizet, and Ambassador Ortiz de Rozas of Argentina.²⁷¹ At the UN Security Council meeting in Addis Ababa in February 1972, the Secretary General was requested to initiate contacts with all parties concerned with Namibia on the process of self-determination. It is important to explain the event that surrounds this request. Since it was the American Ambassador to the UN, George Bush who made this proposal,²⁷² it was greeted with predictable scepticism by the Soviet Union, China, and many African states. It took some considerable persuasions from the western and Latin American delegates, and a grudging acquiescence from the Soviet Union and China before the resolution was adopted. At first South Africa was reluctant to invite the Secretary General, but it later issued an official invitation.²⁷³ On March 6, 1972, Waldheim embarked on a five-day visit to Namibia and South Africa. He had a long discussion with Prime Minister John Vorster and Foreign Minister, Hilgard Muller. But on his return to New York, Waldheim

²⁷¹ **Africa Report**, Vol. 17, No. 4, April 1972, p. 8-9.

²⁷² **United Nations Monthly Chronicle**, Vol. IX, No. 2, 1972, p. 40. It was evident that George Bush made the proposal to avert the resolution called for the imposition of sanctions against South Africa that was being moved by some African states with the support of the Soviet Union.

²⁷³ In a statement to the Press, Waldheim remarked that his visit was at the invitation of the Government of South Africa in connection with Resolution 309 (1972). See **UN Monthly Chronicle**, Vol. IX, No. 4, April 1975. Prime Minister B. J. Vorster said: "South Africa has always been prepared to talk to the Secretary-General of the UN. In fact we invited Mr. Dag Hammarskjold when he was Secretary General to come to us, we later invited Mr. U Thant when he was Secretary General to talk to us, he wouldn't come. We invited Dr Waldheim to come and talk to us. He came. "Indeed South Africa was prepared to talk to representative of the Secretary-General of the UN, but it refused to accept the Chairman of the UN Council for Namibia".

admitted that there was a 'deep gulf' between the position of the United Nations and South Africa.²⁷⁴

Nonetheless, the UN continued to find a way to break the imaginary Chinese wall that South Africa was erecting. On Namibia, the credibility, competence and legitimacy of the UN was at stake. The UN appointed Alfred Martin Escher, a Swiss diplomat as a Special Representative to Namibia. Mr. Escher met with John Vorster between 8 October to 3 November 1972, and again in the early part of 1973. In his report to the Secretary-General, he remarked that Vorster indicated to him that the time was not yet ripe for a detailed discussion on Namibian independence. Meanwhile, prior to Escher-Vorster talks, China and Soviet Union had expressed scepticism about the dialogue.²⁷⁵ To these states, the talks were "‘delaying tactics', a confusion strategy, and an attempt by the South African authorities to extricate themselves from their political isolation and to mollify their condemnation by the peoples of various countries".²⁷⁶ Contrawise, the United States and Britain believed that the talks were the appropriate ones. For instance, Christopher Phillips, America's Representative at the United Nations remarked that:

²⁷⁴ See **Africa Report**, op cit., p. 9.

²⁷⁵ United Nations, **UN Monthly Chronicle**, Vol. IX. No. 11. December 1972, p. 22. It is worth pointing out that the appointment of the Secretary-General Representative became a divisive issue between the Soviet Union and the Western powers. When the Secretary-General proposed that Lord Caradon (United Kingdom) be appointed for an initial period of one year; the Representative of the USSR said that his delegation was categorically opposed to the approval of Lord Caradon because he (Lord Caradon) was a representative of a Colonial Power which not only maintained under colonial rule a number of territories but also extended various sorts of assistance to racist colonial regimes of South Africa. For that reason, the USSR delegation considered that such a Representative could not further the liberation of the peoples of Namibia from the tyrannical rule of South Africa. As a result of the Soviet objection, the President of the General Assembly called attention to a note by the Secretary-General withdrawing the nomination of Lord Caradon as UN Commissioner for Namibia on 23 December 1971. See **UN Monthly Chronicle**, Vol. IX. No.1. January 1972, p. 161-62.

"the progress was a relative term and should be considered within the context of the particular problem. The progress achieved with regard to Namibia since the adoption of Resolution 309 (1972) seemed greater when compared to the progress achieved between the birth of the UN and the adoption of Resolution 309 (1972)".²⁷⁷

However, like its predecessor, the Escher-Vorster talks broke down. In his report to the Security Council on 30 April 1973, Waldheim concluded that the position of the South African Government was still far from coinciding with that established by the resolutions of the UN concerning Namibia, in particular, Resolution 323 (1972).²⁷⁸ In its Lusaka Declaration of 14 June 1973, the UN Council for Namibia also termed the results of the Escher-Vorster talks not only unsatisfactory and counterproductive, but called for their immediate termination. The OAU and the UN General Assembly equally expressed the same view. In the light of the above, the Security Council decided in December 1973 to discontinue contacts with South Africa.²⁷⁹

With the breakdown of talks, both South Africa and the UN started blaming each other. South Africa pointed out the partiality of the UN; while some UN member-states accused South Africa of bad faith. South Africa charged the UN of creating a "spirit of mutual distrust [that] was ...hardly conducive to the settlement of the South West Africa question within a United Nations framework."²⁸⁰ The UN's creation of the Council for South West Africa in 1967, the General Assembly's recognition of SWAPO as the

²⁷⁶ United Nations, *UN Monthly Chronicle*, Vol. IX. No. 1. January 1973, p. 6.

²⁷⁷ United Nations, *UN Monthly Chronicle*, Vol. IX. No. 1. January 1973, p. 1-12.

²⁷⁸ **Official Records of the Security Council, 28th Year, Supplement for April, May and June 1973**, United Nations, Document S/10921.

²⁷⁹ Resolution 342 (1973) of 11 December 1973.

²⁸⁰ Jordan-Walker, "Settlement of the Namibian Dispute: The United States Role in Lieu of UN Sanctions", *Case Western Reserve Journal of International Law*, 14 (1982), p. 543, 551.

authentic representative of the Namibian people in 1973, and the subsequent action of granting SWAPO a full observer status in 1976, arguably lent credence to South Africa's claim of UN impartiality and partisanship. In fact the move to granting SWAPO an observer status was led by Cuba at the Havana Seminar held by the Special Committee of Twenty-Four on 12 June 1976.²⁸¹ As the Non-Aligned bloc secured the vote in the General Assembly, some Western countries felt that the 'tyranny of the majority' was at work. Even, some neutral states such as Netherlands and Australia criticised the UN for granting a sole-representative status to SWAPO. For example, Netherlands argued that:

"It was not for the United Nations to express support for armed struggle to achieve independence. The Netherlands recognised SWAPO as a major political force in Namibia that should be directly involved in the negotiations in progress, but it could not regard SWAPO as the sole and authentic representative of the Namibian people. There were other political groups in Namibia which, with SWAPO, should establish their credentials in free and democratic elections as provided for in Security Council Resolution 385 (1976).²⁸²

Yet South Africa claim of being fair on Namibia has become something of an oxymoron.

Some institutionalist scholars have puzzled over the question of the breakdown of the talks between South Africa and the United Nations. Sushma Soni's 'regime' analysis

²⁸¹ For the General Assembly's debate on recognizing SWAPO as the sole representative of the Namibian people, See, General Assembly Resolution 3111, UN GAOR, 28th Session, Supp. No. 30, at 94, UN Doc. A/9030 (1973). For the debate on SWAPO's full observer status, see, "The Havana Seminar", *UN Monthly Chronicle*, Vol. XII. No. 6. June 1976, p. 19. and G.A. Res. 31/152, UN GAOR, 31st Session, Supp. No. 39 at 136, U.N. Doc. A/31/39 (1977).

²⁸² *UN Monthly Chronicle*, Vol. XIV. No. 11. December 1977, p. 40. In the same session, New Zealand held that for the United Nations to endorse any one organisation as the sole representative of the Namibian people might prejudice the wishes of the Namibian people as a whole.

of the Namibian question comes into the frame.²⁸³ Soni argued that, "the formal, democratic processes that contributed to the UN regime's legitimacy eventually led the negotiations over Namibia into acrimony and failure".²⁸⁴ In other words, the militant posture of the African group as well as the non-committal attitudes of the western powers undermined the UN regime. The significance of Soni's analysis is that it points us to the political elements within the Namibian conflict.²⁸⁵ In 1976, the Western powers and the African group in the Security Council passed Resolutions 385 and 386 to demand an immediate withdrawal of South Africa from Namibia and the necessity for a free and fair election under the UN supervision.²⁸⁶ However, the original African sponsored draft, which was intended to empower the Security Council to act under Chapter VII on the grounds that the illegal occupation by South Africa constituted a threat to international peace and security, was vetoed by France, the United States and the United Kingdom. The two resolutions, although weaker than the African draft were intended to show the international community's condemnation of the South African sponsored Turnhalle Conference.²⁸⁷ However, the triple Western veto sent out two

²⁸³ Soni, Sushma. "Regimes for Namibia's Governance: A Comparative Study", *Columbia Journal of Transnational Law*, Vol. 29. No. 3., 1991, p. 563-607.

²⁸⁴ *ibid.*, p. 583.

²⁸⁵ For a critique of regime theory as a framework of analysis of the super-power relationship, see, Hoffmann, Stanley. "Ethics and Rules of the Game Between the Superpowers" in Henkin, Louis and Hoffmann, Stanley (eds.), **Right V. Might: International Law and the Use of Force**. (New York: Council on Foreign Relations Press, 1989), p. 79. In brief, Hoffman argued that the superpower game does not constitute an overall regime, if regime is taken as a co-operative, diffuse reciprocity between the actors; as the superpowers demonstrate no preference of joint action over unilateral action. He noted that although partial regimes existed on the nuclear and arms control issues, they were often fragile, and beset with skepticism and less co-operative instincts. To him, therefore, the superpowers' overall relationship constitutes even less of a regime than the security practices of past balance of power systems.

²⁸⁶ United Nations, "Security Council Makes Unanimous Demand for Free Elections in Namibia under UN Supervision", *UN Monthly Chronicle*, Vol. XII. No. 2. February 1976, p. 18.

²⁸⁷ Below is a brief note on the Turnhalle Conference. The conference was convened in Windhoek between 1-12 September 1975, and concluded its work on 19 March 1977. The

contradictory messages: one was plain, the other latent. It was clear that the Western powers did not want to exalt the Namibian question into the mainstream of Security Council business, where the Soviet Union could have a considerable influence. Yet, they needed to be seen to be censuring South Africa for breaching a norm of international community. In the same vein, the Western leaders were more concerned with political developments in southern Africa, in particular with the presence of the Soviet and Cuban forces in Angola than with South Africa's illegal occupation of Namibia. Washington, in particular, was greatly concerned that the Soviet expansionism in southern Africa was a test of America's credibility in world politics in the wake of the Vietnam war; an affront to the precarious global equilibrium, and a breach of the prevailing rule of détente of the mid-1970s.

4.3. The United States and the Soviets and Africa, 1960-1971.

As shown in chapter two, both the United States and the Soviet Union were present at the Berlin Conference of 1885. Neither was interested in the partitioning of Africa. Each was concerned with different issues. America was concerned with commerce and navigation issues and its Latin America neighbourhood, while Russia was interested in

meetings were held in Turnhalle, a former German gymnasium. The conference was composed of tribal representatives of Namibia's eight black groups, plus representatives of the white, Colored and Baster populations, a total of 136 participants. Non-white political parties were excluded from the talks. As a result, the Ovambos, Kavangos, East Caprivians and Rehoboth Basters were represented by their homeland governments, and the Bushmen and other groups were appointed by the South African government. The Turnhalle Conference idea was designed partly to deflate international criticisms and partly to exclude SWAPO on the political process. It was an attempt to entrench the 'bantustanization' of the Territory, or what critics termed a 'creeping UDI'. See: **UN Monthly Chronicle**, Vol. XII, No. 8., August-September 1976; United Nations, **Decolonization: A publication of the UN Department of Political Affairs, Trusteeship and Decolonization**, No. 9, Revised Edition, December 1977), For Sam Nujoma's condemnation of the Turnhalle Conference; see, **UN Monthly Chronicle**, Vol. XII, No. 9, October 1976, p. 12.

preserving its interests in Asia.²⁸⁸ For most of the colonial era, Africa was regarded as an extension of Europe, and treated as such by both Washington and Moscow. The wave of decolonization after the Second World War brought Africa into the mainstream of international system. Individually and collectively, Africa became an actor in global affairs; and accordingly, it was politically expedient for each of the two superpowers to see how Africa could be used to advance its respective political and geostrategic interests.

Mindful of its relationship with the colonial powers, Washington was confronted by two dilemmas: how to choose between the Europhiles and the Afrophiles, or between national interest concerns and moral responsibility (defined in the Wilsonian tradition).²⁸⁹ Most Afrophiles believed in the pursuit of a moral concern on foreign policy and had sympathy for African nationalism. The Europhiles saw most nationalist leaders such as Nkrumah, Lumumba and Diop as recruits of Soviet socialism, and believed that the American support for the remaining colonial powers, especially Portugal, was important in securing its support for America's European policy.

Unlike the United States, the Soviet Union had unreservedly supported anti-colonial groups. African nationalist leaders were anti-colonialists to a man, but crudely, they were also anti-western and anti-free market economies. Many were seduced by socialism with its promised cradle-to-grave philosophy of care, and by Moscow, which

²⁸⁸ Kennedy, Paul. **The Rise and Fall of the Great Powers.** (New York: Vintage Books, 1989), p. 194.

²⁸⁹ The Kennedy Administration was the most confronted with a choice of European solidarity against communism or a support for the African nationalist groups, in their quest for self-determination as enunciated by Wilson. This was termed as "Europeanist versus Africanist" See, Noer, Thomas. J. "New Frontier and Old Priorities in Africa", in

they regarded as a New Jerusalem. Many forms of hyphenated-socialism (i. e. African-socialism, scientific-socialism and pragmatic- socialism) were professed, and provided African leaders with a roadmap for centrally planned economic policies. Through its support for African trade unions and political parties with communist affiliations in Algeria, Morocco, Tunisia, Sudan and South Africa using the World Federation of the Trade Union (W.F.T.U.) the Soviet Union intended to gain a foothold in the new states.²⁹⁰ Soviet ideological support did not bring with it the hard currencies needed for nation building. It used its economic aid sparingly. The economic and historical cords that tied Africa to the West remained unbroken. Some conservative states such as Nigeria and Kenya obstructed the Soviets' full penetration of Africa and many remained within those western institutional arrangements such as the Commonwealth and French Franc monetary system and LaFracophonie, albeit their double-faced policy termed Non-Alignment.

As the post-independent African states internal politics were characterised by personal rule, tribal politics, coups and counter-coups and rampant kleptocracy, African affairs, rather than Africa itself began to lose its appeal to both Washington and Kremlin. According to Rivkin, "American disillusionment with African affairs had already been apparent by the mid-1960s".²⁹¹ Guelke similarly observed that 'the same was true of Moscow'.²⁹² Even Kissinger's 1969 *National Security Study Memorandum 39* concluded that "The Soviets appear to afford Africa a low priority at present and can be

Patterson, Thomas. G. (ed.), **Kennedy's Quest for Victory: American Foreign Policy, 1961-1963**, (New York: Oxford University Press, 1989), p. 253-283.

²⁹⁰ M. H. "Soviet Interest in Africa", **The World Today**, Vol. 12. No. 9. September 1956, p. 356.

²⁹¹ Rivkin, A. "Lost goals in Africa", **Foreign Affairs**, Vol. 44. No. 1., October 1965, p. 112-3.

expected to limit the extent of their commitment and involvement".²⁹³ In the wider international arena, Africa's influence, which had been greatly exaggerated particularly in Africa, slumped. Mayall, in a book with a paradoxical title, *Africa: The Cold War and After* observed that the momentum of Africa's revolution and Africa relevance in global affairs began to wane as early as 1963. He pointed out that the weighted vote of the African group, in concert with other Non-Aligned states failed to secure the necessary Security Council Resolution on South Africa. Mayall's conclusion that "the very incoherence of African state structures and the volatility of African politics were likely to undermine any sustained attempt at political influence",²⁹⁴ was an apt description of the constraints that weakened Africa's influence on international arena.

Furthermore, the emerging superpower relationships of the late-1960s and early 1970s were less fortunate to many Africa states, contrary to the popular expectation. It was a period briefly known as the 'era of détente', during which Washington and Moscow sought to modulate their global competition by pursuing areas of mutual interests and indulging in occasional displays of friendship in the wake of the Cuban missile crisis.²⁹⁵ 'Détente' is a French word that refers to the loosening of tension; in Russian it translates as *razryadka*, a relaxation of tension. As a policy, it was popularised by Kissinger during the Nixon administration. The 1972 'Basic Principles of Soviet-American relations marked the hallmark of détente. In it, both sides agreed to forswear "efforts to obtain unilateral advantage at the expense of the other," and they pledged not

²⁹² Guelke, Andrian. "Southern Africa and the Superpowers", *International Affairs*, Vol. 56. No. 4. Autumn 1980, p. 650.

²⁹³ *ibid.*, p. 650.

²⁹⁴ Mayall, James. L. B., *Africa: The Cold War and After*. (London: Elek Books, 1971), p. 13.

²⁹⁵ Issacson, Walter. *Kissinger: A Biography*. (New York: Simon and Schuster, 1996), p. 437.

to exploit regional tensions or to claim spheres of influence in various areas of the world.²⁹⁶

The impact of détente on the Namibian conflict cannot be ignored. As earlier indicated, the 1966 Court ruling shifted the main issue from legal plain into the arena of politics. Each superpower, nonetheless, considered the Namibia question as a residual issue within the global concerns. It was an issue not to be exploited, albeit some posturing at the United Nations. Detente, as it later emerged, was not glorious; yet it became a difficult reality for the superpowers in the context of the embedded paradox of mutual assured destruction.²⁹⁷ Irreverently, each superpower was ready to cheat on the other whenever the opportunities arose. Washington went into the Middle East while Moscow headed for Africa. Artfully, the United States supported Israel during the October 1973 War, but it made impossible an absolute Israeli victory. Consequently, both the Arabs and Israel now looked to Washington to resolve their differences. It paved the way for America to gain a foothold in Egypt and successfully squeezed out the Soviet Union of a role in the Middle East peace process. It also made possible for Washington to contain Arab nationalism. Meanwhile, the Soviet Union's support for the Federal Government during the Nigerian civil war (1967-70) won her a symbolic and political achievement in Africa.²⁹⁸ The Nigerian experience showed that other African states could count on the Soviet Union, especially when betrayed by their Western allies or ex-colonial power. Soviet military hardware became popular in Africa. Such 'cheating' (that is, in the Western view of détente) were not construed as

²⁹⁶ *ibid.*

²⁹⁷ For a chronicle of Détente and the Mutual Assured Destruction (MAD), see Isaacs, Jeremy and Downing, Taylor. **Cold War: For 45 Years The World Held Its Breath.** (New York: Bantam Press, 1998), p. 231-245.

an absolute breach of the rule of détente until the Angolan conflict. Prior to 1975, any gains were not seen as large enough to dislocate global equilibrium, but accommodated within the margin of safety. Washington became uneasy with what it perceived as Soviet gains in Angola, and indeed in southern Africa in general.

4.4. The Angolan crisis: a shift in the southern African balance of power.

The fall out of the ‘carnation revolution’²⁹⁹ in Portugal in April 1974 led to an abrupt termination of colonial order in Angola and other Portuguese territories. In Angola, each of the three nationalist movements was primarily based on tribal loyalties. Yet the United States, Soviet Union and China were the ‘patrons’ of these nationalist movements. Thus, Angola became a ‘little fish in a pond full of sharks’, as a colonial war was exalted into a new superpower contest. Significantly, it served as the first test of the new rules of détente, a way to feel out the limits of how far each superpower could go in seeking an advantage in the third world. More relevantly, it introduced a significant shift in the balance of power in southern Africa, and the Namibian conflict was externalised within it. For now, we are primarily concerned with different motives of the external powers in the Angolan conflict.

According to Rothchild and Hartzell, there were two types of external intervention in the Angolan conflict, namely, the direct and indirect interventions. Each intervening state had a different mix of motives, and sought to shape the outcome that would

²⁹⁸ Kaplan, Stephen. **S. Diplomacy of Power: Soviet Armed Forces as a Political Instrument.** (Washington, D.C.: The Brookings Institution, 1981), p. 172.

²⁹⁹ The revolution is called a ‘carnation revolution’ as revolutionaries and the masses went into the street in Lisbon with a pink colored flower to show their support for the coup plotters. I got this term from the Open University programme on Democratization aired by the BBC 2 on April 09, 1999. It was presented by David Goldbatt under the titled ‘Democracy from the classical times to the present’.

advance its perceived interests.³⁰⁰ The United States and the Soviet Union intervened indirectly; South Africa and Cuba directly. Yet any distinction of intervention according to troop involvement tells only half the story. Although, troop commitment is a useful way of determining the extent of the intervening states' political interests in the Angolan conflict, there exists a difference in the level of intervention by the United States and Soviet Union. For its part, the Soviet Union used the international law of wars of liberation as a cover for its pursuit of power political interests rather than justice in a colonial war. On the other side, the United States was forced to limit its involvement to covert operations, and even, the US Congress, despite Soviet advisers and materiel being fully committed subsequently curtailed these. It was also clear, that while South Africa felt betrayed by the United States, which had initially encouraged it to get involved in Angola, there was no similar breach in the Soviet-Cuba axis. Each of the lesser powers, South Africa and Cuba however, had their self-interest independent of the superpowers.

4.5. Cuba and the Angolan conflict

Several studies on the Angolan conflict have examined the motives of the intervening powers. For Cuba, three interrelated motives are discernible. These are: personal, ideological, and political. The Cuban President, Fidel Castro saw himself as the heir apparent to the leadership of the Third World after Ghandi and Nasser. He also believed that Cuba should be a vanguard of revolution in the third world.³⁰¹ Angola was a good place for both Castro and Cuba to advance their objectives. The third motive was

³⁰⁰ Rothchild, Donald and Hartzell, Caroline. "The Case of Angola: Four Power Intervention and Disengagement", in Levite, Ariel. E., Jentleson, Bruce. W. and Berman, Larry. (eds.), **Foreign Military Intervention: The Dynamics of Protracted Conflict**, (New York: Columbia University Press, 1992), p. 165.

³⁰¹ *Ibid.*, p. 168.

contingent on the first two. The MPLA's Marxist-Leninist orientation established a unity of interest between Cuba and the Soviet Union. Castro saw in Angola the opportunity to improve Cuba's relationship with the Soviets.³⁰² A relationship that had been strained since Krushchev withdrew the missiles in Cuba in 1962 without formal consultation. In effect, Angola became a critical ground to reverse the moral defeat suffered by Cuba, and to a lesser extent, the Soviets themselves. Meanwhile, Cuba pursued a relatively autonomous policy in Angola, independent of Moscow.³⁰³

4.6. The Soviet Union in Angola

The question of whether the Soviets or the United States intervened in Angola first is like asking which comes first, chicken or egg: did America respond to a Soviet intervention or the Soviets to an American one? What was clear was that both sides were responding to the cycle of escalation in the Angolan conflict. Soviet intervention has been variously explained as the result of opportunism and pragmatism. Leading the opportunist view, Porter noted that Moscow simply took advantage of extremely easy pickings.³⁰⁴ Legum, on the other hand, argued that the Soviet actions in Angola were not being opportunistic, but pragmatic and tactical".³⁰⁵

³⁰² Grande, William. Leo. "Cuban-Soviet Relations and Cuban Policy in Africa", **Cuban Studies/Estudios Cubanos**, Vol. 10, No. 1. January 1980, p. 20

³⁰³ **New York Times**, January 30, 1976. The number of Cuban military personnel in Angola in 1976 reached between 15,000 and 18,000 men. See, Petersen, Charles. C. and Durch, William. J. "Angolan Crisis Deployments (November 1975 to February 1976)", in Bradford, Dismukes and McConnell, James (eds.), **Soviet Naval Diplomacy**. (New York: Pergamon, 1979), p. 146-67.

³⁰⁴ Porter, Bruce. **The USSR in Third World Conflicts**. (Cambridge: Cambridge University Press, 1984).

³⁰⁵ Legum, Colin. "Foreign Intervention in Angola", **Africa Contemporary Record**, Vol. 8, 1975-76, (London: Rex Colings, 1976), A 3-38.

Another factor was ideology. The MPLA was regarded as a regime of shared values.³⁰⁶ Other factors included Sino-Soviet rivalry and the fear of a US-Chinese condominium in Southern Africa. Sino-Soviet rivalry was an important but not a sufficient interpretation of Soviet motives.³⁰⁷ It should not be overestimated: Chinese support of the FNLA in 1974 may have spurred the Soviets and Cubans to back the MPLA, but Peking folded its hands and withdrew well before the escalation of the war in November 1975. The massive Soviet-Cuba commitment took place well after China was out of the scene. Garthoff's observation is more plausible. He argues that "the 'parallel view' held by Washington and Peking on Angola may have heightened Soviet fear of a possible US-Chinese condominium, but that Soviet action was directed more against Washington than Peking".³⁰⁸ Porter also shared Garthoff's view. To quote him again: "from November 1975 to the end of the war, the Kremlin was clearly more concerned about Washington's action than about Peking's propaganda".³⁰⁹ Thus, it could be argued that the Soviet intervention in Angola fitted its grand design for Africa, in line with its 'symbolic victory' in the Nigerian war. The 'rules' of détente were insufficient to prevent these states from intervention.

³⁰⁶ For instance, the MPLA was rated as one of the "vanguard revolutionary democratic parties". These vanguard revolutionary democratic parties were in the Class A category of the Soviets classification of the national liberation movements. In fact only seven were members of this exclusive club out of about 80. The activities of the group and the way they are treated by the Communist Party of Soviet Union (CPSU) highlight their special place in the national liberation movement. Their leaders were accorded the privilege of addressing the main session of the 26th CPSU Congress in February-March 1981, an honour extended to leaders of only 26 of the 83 regular foreign Communist parties in attendance. See, Spaulding, Wallace. "Checklist of the National Liberation Movement", **Problem of Communism**, Vol. XXXI, March-April 1982, p. 75, and p. 80.

³⁰⁷ Legum, Colin. "National Liberation in Southern Africa", **Problems of Communism**, Vol. XXIV, Jan-Feb 1975, p.7.

³⁰⁸ Garthoff, Raymond. **Détente and Confrontation: American-Soviet Relationships from Nixon to Reagan**. (Washington, D.C.: The Brookings Institution, 1985), p. 529. According to Garthoff, while Kissinger stated twice in news conferences in December 1975 that the U.S. and China had "parallel views", and even policies in Angola, he made clear that U.S. decisions and actions were not "coordinated" with Beijing.

Another explanation could be found in game theory analysis. The Soviet Union was more of a jealous power, than an opportunist. First, it is doubtful whether the Soviets believed, as they insisted, that they were not breaking the rule of détente.³¹⁰ Both superpowers were cheating each other. Cheating becomes unacceptable within the game if it imposes a considerable cost on the party that is being cheated. It was business as usual for Moscow. But assuming Moscow did recognise that it was breaking the rules, there were no comparable domestic constraints as they were in Washington to make the Soviets desist. Secondly, it would be an illusion to believe that with nuclear parity status achieved, the Soviet Union would remain a satisfied power. Bismarckian Germany was an example of an un-satiated power. Power is like alcohol, intoxicating. The rule of détente had to be broken for the Soviet Union to project its power globally. Angola's geopolitical position was undoubtedly an important Soviet consideration. Zaire, Angola's northeastern neighbour had been a primary target of the Soviet Union's Africa policy since the Congo crisis of early 1960s. A breakthrough in Angola could also extend Soviet's influence to Namibia, and so to the threshold of South Africa. Each of the motives identified above is plausible. Yet there is a missing element. Why did the Soviets use international law as part of their grand strategy? To answer this question it is necessary to examine the Soviet understanding of the international law of wars of national liberation.

4.7. Soviet Union and the international law of wars of national liberation

To the Soviets, wars of national liberation constituted the third most important component of the 'world revolutionary process', after the 'world socialist system and

³⁰⁹ Porter, op cit.

the revolutionary movement of the working class in capitalist countries.³¹¹ Broadly conceived, wars of national liberation were waged to defend people from foreign attack and from attempts to enslave them, to liberate the people from capitalist slavery, or lastly, to liberate colonies and dependent territories from the yoke of the imperialism.³¹² For our purposes, it is this last justification—that is to liberate colonies and dependent territories from the yoke of colonialism—that is relevant.

In the wake of the Second World War, there emerged a consensus in the international community on the necessity of putting an end to all forms of domination, exploitation, including racist and minority regimes. Yet the Soviet Union and the Western countries had opposing views on the means of achieving self-determination and the nature of assistance to the liberation movements. Thus, Kremlin's view of these wars borrowed largely from Lenin's interpretation of the First World War, as later developed by Soviets jurists:

“The national-liberation war of dependent people against the colonial power will always be a just, defensive war from the political as well as the legal standpoint, independently of who initiated the military action. This means that the national liberation war begun by a dependent, disenfranchised people will represent but a lawful act on its part in response to an act of aggression committed earlier by the imperialist state which led to the forcible enslavement of said people and the territory which it occupies”.³¹³

Since Lenin, the Kremlin had maintained that any struggle between a colonial power and a native independence movement amounted to a formal international war since it

³¹⁰ **Washington Post**, January 12, 1977.

³¹¹ Spaulding, *op cit.*, p. 77.

³¹² See, **History of the Communist Party of the Soviet Union (Bolsheviks), Short Course 167-168**, (Edited by a Commission of the Central Committee of the CPSU, 1939).

represented an armed collision between two distinct entities, each fully acknowledged as a subject of international law in its own right. It had even tried to bring the colonial conflicts within the scope of the notion of aggression.³¹⁴ Thus, in the Soviet view, any resistance to the free realisation by the peoples of the right to self-determination represented a violation of the norms of international law, and the letter and spirit of the UN. Consequently, the Soviets professed to believe that the UN must act as an institutional guarantor of the rights of the national liberation movements and the legitimacy of their use of force in situations where they were denied the right to self-determination. Unsurprisingly, this interpretation of the law was contested, if only because it appeared to contradict Article 2 (4) of the UN Charter.³¹⁵ The Charter acknowledges the right of people to self-determination, but does not prescribe any specific procedure for its implementation. For example, Resolution 1514 (1960) known as the 1960 decolonization declaration explored the various strategies and tactics for opposing colonialism.³¹⁶ Yet it did not contain any provision permitting a colonial people to use force for the realisation of their rights. The implementing provisions simply stated that the immediate steps should be taken to transfer all powers to the colonial people.

³¹³ Ginsburgs, George. "Wars of National Liberation" and the Modern Law of Nations-The Soviet Thesis", *Law and Contemporary Problems*, Vol. XXIX, No. 4, Autumn 1964, Duke University-School of Law, p. 920.

³¹⁴ *Ibid.*, p. 918.

³¹⁵ Islam, Rafiqul. M. "Use of force in self-determination claims", *The India Journal of International Law*, Vol. 25, No. 3 and 4, July-December 1985, p.434.

³¹⁶ The 1960 Declaration on Granting Independence to Colonial Countries and Peoples, *UNGA Resolution 1514 (XV)*, See, *Yearbook of the United Nations*, 1960, p. 46.

The right to use violence to achieve self-determination was claimed explicitly for the first time in Resolution 2625 (1970) known as the 1970 declaration.³¹⁷ It was intended in the 1960 declaration that the colonial powers would promote the realisation of self-determination of dependent people in good faith. The shift was partly a consequence of Portugal's refusal to decolonise, and partly the robust posture adopted by the newly independent African states in the UN.³¹⁸ In 1964, for example, all anti-colonial struggles, including armed struggles, were declared entirely legal by the conference of Afro-Asian jurists.³¹⁹ In the same year the conference of non-aligned states agreed that 'colonial peoples may legitimately resort to arms to secure the full exercise of their right to self-determination and independence if colonial powers persist in opposing their natural aspirations.'³²⁰ It is important to put the 1970 declaration into proper historical context. The 1969 Lusaka manifesto of the OAU became the text of the 1970 General Assembly declaration. It was partly informed by Portugal's and Spain's reluctance to allow their colonies the right to self-determination. It was also partly an attempt by the African group to establish their claim to contribute to the making of international law in the international arena. It was partly to reinforce the view that armed resistance should become the alternative means to secure self-determination. Despite this trend toward the approval of the violent exercise of self-determination, the western countries refused to accept its legality. They maintained that the right to use force as an act of self-defense had specifically been accorded to the UN members under

³¹⁷ Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance With the Charter of the UN, *UNGA Resolution 2625 (XXV) of 24 October 1970*, for brevity hereafter cited as 'the 1970 declaration', for the text, see **International Legal Materials**, Vol. 9, (1970), p. 1292.

³¹⁸ Islam, *op cit.*, p. 434.

³¹⁹ Umozurike, U. **Self-Determination in International Law**, (New York: Archon Books, 1972), p. 80-81.

³²⁰ For the text of the NAM Cairo Summit of 1964, see, **Indian Journal of International Law**, Vol. 4, (1964), p. 603.

Article 51. Since membership was open only to sovereign states (Article 4 of the Charter), national liberation movements could not justify their resort to force by referring to Article 51.³²¹

The other area of disagreement was the nature of external support and assistance. The 1970 declaration signified that third states are permitted to render assistance to the people struggling for the fulfilment of their rights. However, the nature of the support that could be given was not specified. Controversy over the nature of aid was manifest in the Special Committee debate where two opposite views emerged. The Afro-Asian and the Socialist states argued that foreign armed assistance could be sought and received within the scope of the right to seek and receive external aid. The western states maintained that such aid could only include moral and political support. On the insistence of the Western countries group a right to seek and receive foreign aid was granted instead of direct foreign assistance.³²² This authorisation was thus designed to avoid legitimising any attempt to seek outside armed intervention, although it was subsequently disingenuously construed as embracing a wide variety of military aids, including armed intervention. According to Higgins, “such external support and military aids are so frequent in recent years that there is, as has been asserted, an ‘incipient’ rule of customary international law which permits such assistance.”³²³ As will be shown in the next section, it could be argued that the United States covert and financial supports for the FNLA, and later UNITA were within the bounds of the 1970 declaration. On the other hand, the presence of the Cuban forces and the Soviets

³²¹ Dugard, C. “The OAU and Colonialism: An Inquiry into the Plea of Self-Defence as a Justification for the Use of Force in the Eradication of Colonialism”, **International and Comparative Law Quarterly**, Vol. 46, (1967), p. 171-77.

³²² Islam, op cit., p. 443.

advisers in Angola appeared to stretch the 1970 declaration to its limits, if not to establish a total breach of it. To show to their opposition to armed struggle, the United States, Britain, France, West Germany, Belgium and Luxembourg cast the six negative votes when the General Assembly voted in December 1976.³²⁴ The vote was 197-6. It was the first time the UN had ever endorsed armed struggle by a national liberation movement. In spite of its opposition to armed struggle, and as its behaviour in Angola indicated, the United States did not rule out giving assistance to armed liberation movements

4.8. The United States in Angola

The United States did not pretend that its involvement in Angola was based on legal considerations, yet it was unwittingly constrained by liberal and domestic pressures. The rationale for the American intervention rested on Kissinger's view of global stability in terms of equilibrium between major international actors. Despite stiff opposition from the Congress,³²⁵ Kissinger believed that Soviet expansionism had to be stopped. This rationale can be broken down into three parts: to contain the Soviet Union; to maintain the strategic status-quo in Africa; and to serve as a strategic shield for South Africa in the midst of neighbouring and internal communist storms.³²⁶

³²³ Higgins, Rosalyn. "International Law and Civil Conflict", in E. Eduard, (ed.), **International Regulation of Civil Wars**, (London: Thames and Hudson, 1972), p. 183.

³²⁴ **Africa Report**, "Namibia", Vol. 22, No. 2, March-April 1977, p. 32.

³²⁵ The Senate voted 54-22 on December 19, 1975 to approve the Turney Amendment to the Financial Year 1976 defense appropriation bill cutting off all funds for CIA's military assistance to the FNLA and UNITA.

³²⁶ Providing 'shield' for allies and friends if threatened by a nuclear power is one of the core objectives of Nixon Doctrine. It was therefore not surprising that America wanted to do so for South Africa, when the latter felt threatened with communist storms both externally and domestically. For a comprehensive analysis of the Nixon Doctrine, see Kissinger, Henry **Diplomacy**, (London: Simon and Schuster, 1995), p. 708.

In explaining the Ford administration's decision to intervene in Angola, Kissinger left no doubt about his priorities: "America's modest direct strategic and economic interests in Angola are not the central issue. The question is whether America still maintains the resolve to act as responsibly as a great power".³²⁷ "A failure to counter Moscow's moves in southern Africa could", Kissinger declared, "encourage expansion elsewhere and cause our allies to question our will to defend them." "Should foreign countries begin to doubt American resolve, we are likely to find a massive shift in the foreign policies of many countries and a fundamental threat over a period of time to the security of the United States. If Moscow get away with this one, it will try again soon in some other area".³²⁸ The United States made clear that if the Soviet Union had not been in Angola, it would not have cared which party came to power in Luanda,³²⁹ although whether this is true is doubtful. Within the Soviet's club of national liberation movements, the MPLA was *primus inter pares*. Its socialist doctrines made it an unlikely candidate for an American client. The United States support for the FLNA and UNITA was probably not unconnected with their preference for capitalism. The CIA's Angolan Operation dubbed IAFEATURE was a \$32 million covert support to Holden Roberto's FNLA.³³⁰ With the demise of FNLA, the pendulum of America's support swung to Jonas Savimbi's UNITA.

³²⁷ Henry Kissinger press conference, Pittsburgh, November 11, 1975.

³²⁸ Henry Kissinger testimony, sub-committee on African Affairs, Senate Foreign Relations Committee, January 29, 1976.

³²⁹ The most useful analyses of the U.S. decision to intervene in Angola are Morris, Roger. "The Proxy War in Angola", *The New Republic*, January 31, 1976, p. 19-23; Davis, Nathaniel. "The Angola Decision of 1975: A Personal Memoir", *Foreign Affairs*, Vol. 57. No. 1 (Fall 1978), p. 109-24; and Hyland, William. *Mortal Rivals*. (New York: Random House, 1987), p. 130-47.

³³⁰ Stockwell, John. *In Search of Enemies: A CIA Story*. (New York: W. W. Norton, 1978), p. 55, 67, 162, 206-7. John Stockwell was chief of the CIA Angolan Task Force during the civil war. The CIA provided Holden Roberto limited financial and material assistance during 1962-69, through President Mobutu of Zaire; and later trained him (Roberto) as an intelligence agent. See *New York Times*, September 25, 1975.

It was Kissinger's belief that any marginal increase in Soviet power would disrupt both the global and regional balances of power. In the era of parity, he argued that:

When one great power tips the balance of forces decisively in a local conflict through its military intervention-and meets no resistance-an ominous precedent is set, of grave consequence even if the intervention occurs in a seemingly remote area.³³¹

A study by the Congressional Research Service reinforced this view. It saw the role of the third world in international relations as multi-purpose subsidiaries that could be used to enhance or lessen the power ingredients of a superpower. It reasoned further that there was a necessity of maintaining regional balances so that the larger global balance might be preserved.³³² This CRS study resonates with the Kissinger's brand of realism.

Kissinger began with a simple premise: any event should be judged foremost by whether it represented a gain for the Soviets or for the West in the overall global balance. In Angola however, it was American 'credibility' that was at stake. In the wake of post-Vietnam depression, Kissinger concluded that America could not abandon its commitments without undermining its influence elsewhere in the world.³³³ Notwithstanding, the 'credibility case' is fraught with problems, such as the lack of clarity between vital and peripheral interests. Yet within the realist tradition, maintaining a state's position in the hierarchical order of power is a non-negotiable

³³¹ Kissinger, address in San Francisco on February 3, 1976, **Department of State Bulletin**, (February 23, 1976), p. 209.

³³² This excerpt from the study by the Congressional Research Service is quoted in Klinghoffer, A. J., **The Angolan Civil War: A Study in Soviet Policy in the Third World**, (Boulder, Colo., Westview Press, 1980), p. 77.

³³³ Isaacson, op cit. p. 656.

matter. In Angola, Kissinger did not want America's credibility to be called into question as it had been in Vietnam, therefore, he was determined to resist any challenge to the US position.

Sceptics have maintained that Kissinger's strong commitment in Angola was to save his own intellectual ego. Their argument was that the Angolan independence refuted the main premise of the NSM-39 of 1969, which stated that "the whites [of southern Africa] are here to stay and the only way that constructive change can come about is through them".³³⁴

There was also an economic dimension to Kissinger's policy. Shielding South Africa from communist encroachment meant the preservation of the region's linkages to the international economic system. For instance, by 1971, the United States had about \$1 billion investment in South Africa, representing about 300 firms. Trade with South Africa amounted in 1972 to \$597.1 million in exports and \$324.7 million in imports. To put the investment into perspective, it represented 15% of the total foreign investment in South Africa. For the U.S., this represented 25% of its total investment on the African continent.³³⁵ Compared to US's global investment, this was insignificant, but

³³⁴ For a brief but insightful analysis of the NSM-39 and the contradictions inherent the American foreign policy during Nixon. see, Robert Sutherland Litwark, **Détente and the Nixon Doctrine: American Foreign Policy and the Pursuit of Stability**, (An Unpublished thesis submitted to the Department of International Relations, London School of Economics, University of London, May 1981, chapter six focuses exclusively on the Angolan Civil War, p. 305; and Legum, Colin. "The Role of the Big Powers" in Legum, C. Hodges, T. **After Angola: The War over Southern Africa**. (London: Rex Collins, 1976), p. 41.

³³⁵ This economic data was extracted from the statement of David D. Newsome, the US Assistant Secretary for African Affairs to the Sub-committee on Africa of the House Committee on Foreign Affairs, March 27, 1973, **U.S. House of Representatives, Committee on Foreign Affairs**, (Washington, D.C.: Government Printing Office, 1973), p. 578-79.

the fear of a communist government in Angola influencing events in South Africa (through the ANC and the South Africa Communist Party) was sufficient to threaten the margin of advantage enjoyed by the American investors. It was therefore considered important for the United States, to maintain, if not to expand its market share in South Africa and its neighbourhood.

The Angolan conflict also highlighted the impact of domestic structures on foreign policy. Kissinger's favoured confrontational stance in Angola did not win domestic support.³³⁶ The lack of support from both the Congress and some of the State Department bureaucracy did not put an end to *realpolitik*. The paradox of the Congressional action was an outcome, which imposed an idealist map on a realist landscape. Angola converted Kissinger, the prince of realism to 'idealism' peremptorily. Paradoxically, an analysis done for *realpolitik* led to the re-adoption of an idealist motif within American foreign policy. Yet Kissinger's overarching concerns were still global equilibrium, and the relative position of the United States to the Soviet Union, but he was forced to abandon the threat of the use of force, and to reinvent the values based on the Wilsonian tradition. In other words, it became necessary to accommodate South Africa, the black Africa states, and the liberation movements (those that had previously seen as the handmaidens of Moscow) to offset the gains of the Soviets. This is the pillar that supported the strategy of *Henry Africanus*.

³³⁶ For instance, on December 19, 1975, the Senate voted 54-22 to approve the Turney Amendment to the Financial Year 1976 Defense Appropriation Bill cutting off all funds for CIA's military assistance to the FNLA and UNITA. In January 1976 this amendment to the Defense Department appropriations bill received an equally one-sided vote in the House. **Congressional Quarterly Almanac**, 1975, Vol. 31, (Washington, D.C.: Congressional Quarterly, 1976), p. 885-886. See, Stockwell, John. **In Search of Enemies: A CIA Story**. (New York: W.W. Norton, 1978).

In effect, negotiating the end of white minority rule in Rhodesia and Namibia and encouraging reform in South Africa was America's strategy to pre-empt Soviet gains in southern Africa.³³⁷ Politics remained usual in US-Soviet relations, but in relation to Africa with a different American methodology- 'containment through mediation'. The change was clearly due to the failure of covert action. More importantly, the new strategy incorporated the Rhodesian and Namibian conflicts. It was then assumed that using the political and economic leverage of the United States to act as peacemaker, rather than searching for enemies, was a more effective way to exclude the Soviets from Namibia and Rhodesia. The Namibia conflict became an externality from the balance of power by default. It is however, difficult to tell, whether America's relationship with South Africa was a benefit or a liability. Kissinger had to maintain a delicate balance between the American relationship with South Africa, and his sceptical African friends.

4.9. South Africa and the Angolan conflict

South Africa's intervention in Angola was initially limited to the supply of arms and advice to UNITA. But as the MPLA was seen to be gaining military advantage, the prospect of a left-wing government in Angola that would provide a cover for the ANC unsettled the apartheid government. In October 1975, Pretoria encouraged by Washington, decided to dispatch several thousand of South African regular troops into Angola.³³⁸ In order to disguise its direct involvement, these troops moved north towards

³³⁷ Clough, Michael. **Free at Last: U.S. Policy Toward Africa and the End of the Cold War.** (New York: Council on Foreign Relations Press, 1992), p. 10.

³³⁸ In his autobiography, former South African Prime Minister, F. W. de Klerk revealed that: "when Angola had become independent in 1975, South Africa had been asked by the United States and several moderate African countries to come to the aid of UNITA and the FNLA. We had done so, but had to withdraw when the US Congress demanded the end to any US involvement in the war. As a result, the Cuban-backed Marxist MPLA had been

Luanda, and later joined the UNITA forces, whose power base was in the south of Angola. It was in summer 1977 that the South African government declared that it joined forces with the UNITA to fight the Soviet and Cuban backed MPLA between September 1975 and March 1976. It listed three principal reasons for its intervention: to defend the Cuene River hydroelectric and irrigation project; to facilitate "hot pursuit" tactics against the SWAPO based in southern Angola, and to aid the FNLA and UNITA against Communist infiltration.³³⁹ A major incentive leading to South Africa's direct intervention was its perceived geopolitical-security concerns. Pretoria worried about challenges to itself as well as its continued control of Namibia.³⁴⁰

South Africa feared that with a left-wing MPLA government in Angola and FRELIMO government in Mozambique, the spectre of communism was growing in its perimeter. The Portuguese coup removed the 'buffer' provided by other white regimes in the region. A South African defense document noted that, "the threat to the Republic within the ambit of the communist international battle for world domination is also related to the increase and establishment of communist influence and presence in Southern Africa, the India Ocean and its littoral countries".³⁴¹ More generally, South Africa was concerned about what it perceived to be a total Communist onslaught on the African continent. Prime Minister Vorster charged the Soviets and the Cubans that: "their aim is not simply the establishment of a Marxist state in Angola, but to endeavour to secure a

able to consolidate its hold over the country. See, de Klerk, F. W. **The Last Trek: An Autobiography** (London: Macmillan, 1998), p. 68.

³³⁹ **Facts on File**, Vol. 37. No. 1892, Feb 12 1977, p. 85-86

³⁴⁰ Rothchild and Hartzell, in Levite et al, op cit., p. 169.

³⁴¹ Republic of South Africa, Department of Defense, **White Paper on Defense and Armament Production**, 1975, p. 7.

whole row of Marxist states from Angola to Dar-es-Salam".³⁴² Besides its fear of communism South Africa was concerned about the OAU's position on Angola and Namibia.

The OAU did not condemn the large scale Soviet-Cuban involvement in Angola after the breakdown of the Alvor Accord. South Africa had hoped that the OAU would abide with its policy of opposition to any superpower intervention. Despite Nigerian criticisms on the continued presence of the Soviets and Cuban troops in Angola,³⁴³ the OAU continued to provide the institutional framework for activity against South Africa both within and outside African continent.

The OAU had established the African Liberation Committee (ALC) in 1963. In 1970, the Committee recognised the ANC and the PAC as legitimate liberation movements in South Africa. At the OAU Summit in Rabat, Morocco, the Freedom Fund was increased by 50% while the ALC membership was enlarged from 11 to 17. Its inclusion of the liberation movements in the deliberations of the Council of Ministers (before they had been limited to observer status) was aimed against South Africa, which was not even accepted as a member of the OAU.³⁴⁴ The dilemma for South Africa was that at the time that the OAU and NAM were mounting a concerted campaign to isolate the South African government from the social and international

³⁴² Hallet, Robin. "The South African Intervention in Angola, 1975-76", **African Affairs**, No. 308. July 1978, p. 363

³⁴³ The Nigerian head of state, General Olusegun Obasanjo (1976-79), in one of his speeches before the OAU in 1977 warned Soviet Union and Cuba that "Africa is not about to throw off one colonial yoke for another", he added that what Africans need are economic and technological assistance and "not military hardware for self-destruction and sterile ideological slogans which have no relevance to our African society". **Africa Contemporary Record**, 1978-1979, (London: Rex Collins, 1980), p. 34.

³⁴⁴ **Africa Record**, July-August 1972, p. 10.

sporting events,³⁴⁵ Pretoria was confronted with a fracture on the US-South African axis. South Africa believed that it had been first encouraged to support UNITA and then left in the lurch when the Senate blocking further American involvement.³⁴⁶ South Africa was constrained in its ability to control Namibia when it was embroiled in the Angolan conflict. In retrospect, South Africa's intervention in Angola was too ambitious. Prime Minister Vorster belatedly acknowledged that: "the Soviet Union was sending sophisticated weapons to Angola, only big powers can affect this arsenal. It is certainly beyond our limits"³⁴⁷ When the Angolan conflict was really beyond the limits of the South African government, its main preoccupation shifted back to Namibia. But its effort to affect the emerging shift in the regional balance of power established the connection between the Angolan conflict and the Namibian question.

4.10. Angola and Namibia: A marriage of convenience

Prior to the installation of the MPLA government in Luanda, SWAPO was operating from military bases in Zambia. These bases were distant from Namibia and consequently made it difficult to pursue effective successful military operations.

³⁴⁵ The OAU's charter strongly condemned the apartheid policies. Through the OAU's effort, South Africa withdrew from the Commonwealth, excluded from the Economic Commission of Africa and the United Nations Educational Scientific and Cultural Organisation. Yet the effectiveness of the OAU strategy was always undermined by some African countries such as Zambia, Malawi, which economically dependent on South Africa and Ivory Coast and the Western powers at the Security Council level. See, **South Africa: Time Running Out**, -A Report of the Study Commission on US Policy Toward Southern Africa, (Berkeley, CA.: University of California Press, 1981), p. 295-297.

³⁴⁶ Arguably, South Africa may have forgiven the United States on the Angolan issue, but it never forgot. Paradoxically, Washington's action could be seen as a blessing in disguise for South Africa. It prompted South Africa's withdrawal from Angola, and perhaps saved it from a worse fate: the Vietnamization of southern Africa. See, Campbell, Kurt. M. "The Soldiers of Apartheid", **SAIS Review**, Winter-Spring 1988, p. 43-56; and Spence, Jack. E. "Current Trends in South African Foreign Policy", **The South African Institute of International Affairs**, Vol. 8, No. 3, December 1976, p. 1-16.

However, the MPLA victory changed their prospects. SWAPO acquired a militant ally in MPLA's Neto and got permission to attack the South African forces from close range on the Angolan border. Moses Garoeb, SWAPO's secretary general noted in March 1976:

"The independence on Angola, under the government of the MPLA, has changed the whole situation of our liberation. Many of our supplies are going to come through Luanda and other ports along the coast of Angola. The armed struggle can only intensify and increase. We have that long border with Angola now, there is no way South Africa can barricade itself fully against our efforts."³⁴⁸

SWAPO and the MPLA formalised co-operation in February 1976, when Nujoma transferred his headquarters and training camps to Luanda.³⁴⁹ Pledging Angolan support for Namibia's liberation, Neto indicated that he would not remain passive as long as the South Africans were in Namibia: Angola would always be in danger of being invaded again. In return for this support, Nujoma renounced his past association with UNITA's Jonas Savimbi.³⁵⁰ In addition to providing a dependable rear base for PLAN, Neto facilitated their training by Cuban and Soviet military instructors. After the formalisation of MPLA-SWAPO links, Garoeb said: "the Cubans are already helping with aid and training. SWAPO now has the initiative. The balance of arms is in SWAPO's favour as South Africa no longer has the monopoly that it had previously in

³⁴⁷ Jaster, Robert. **The Defense of White Power: South African Foreign Policy Under Pressure**, (Basingstoke: Macmillan with International Institute for Strategic Studies, London, 1988), p. 74.

³⁴⁸ **Southern Africa**, April 1976, p. 5-6.

³⁴⁹ Khadiagula, Gilbert. M. **Allies in Adversity: The Frontline States in Southern African Security**. (Athens: Ohio University Press, 1994), p. 99.

³⁵⁰ **Africa Confidential**, 10 February 1976, p. 5; Burchett, Wilfred. **Southern Africa Stands Up: The Revolutions in Angola, Mozambique, Zimbabwe, Namibia, South Africa**, (New York: Urizen Books, 1978), p. 128.

that field, seeing that SWAPO has the same weapons as the MPLA in Angola such as Soviet-made AK47 automatic rifles”.³⁵¹

According to Dreyer Angolan independence reinforced co-operation between SWAPO and ANC.³⁵² The relationship between SWAPO and ANC was not organic, but a function of necessity. For many years, the ANC suspected SWAPO’s commitment to socialism. Until 1976, SWAPO was on the soft side of the socialist spectrum; and it found it difficult to fit into the hard socialist philosophy of the ANC-SACP alliance. In 1976, SWAPO adopted its first political programme that positioned it as a “vanguard party capable of safeguarding national independence and of building a classless, non-exploitative society based on the principles and ideals of scientific-socialism”.³⁵³ The MPLA, ANC and SWAPO became allies on the political and ideological levels as well as in the field from 1976. In a self-confession, *Namibia Review*, a government publication argued in 1993, that: “in theory, SWAPO as a liberation movement was considered a socialist, but in practice, it was not. The *Namibia Review* revealed that: ‘ a number of factors created this belief, such as the flirtation of SWAPO’s political programme with the concept of scientific socialism, and the fact that SWAPO was

³⁵¹ *Daily News*, 18 February 1976.

³⁵² Dreyer, op cit., p. 103.

³⁵³ According to Checklist of the National Liberation Movements, SWAPO belonged to what could be called the ‘Class C category’. These were national liberation movements that through their membership of the World Peace Council were regarded by the Soviets as the most important of the international Communist front organizations ranking, viewed with skepticism that they would gather support from any quarter. Most of their relationship with Moscow was often based on opportunism. None of the leadership of this category was given the privilege of addressing the 26th Congress of the CPSU in Feb-March 1981. See, Spaulding, op cit. p. 78 and p. 81.

receiving arms and military training in 'socialist countries'. It is important to note that SWAPO turned to the East for military support after the West refused to assist".³⁵⁴

The relationship between SWAPO and MPLA was also a marriage of convenience. It would later impose more costs than benefits on the two parties, as each was confronted with multiple political, diplomatic and strategic realities. It was a relationship of unequal. The MPLA was always mindful of its status as a governing party, whose aim included the preservation of the territorial integrity of the Angolan state. SWAPO's bases in Angola often made this task difficult. Strategic co-operation between SWAPO and MPLA was not sufficient to allow SWAPO to defeat the South African forces. In numerical and strategic terms, SWAPO's guerrilla efforts could not match South Africa military capability. However, its 'hit and run' tactics inflicted a considerable human and economic cost on South Africa. It made winning the war difficult for South Africa, despite its military superiority.

The presence of UNITA forces in most of SWAPO's operational areas also impeded its ability to conduct an effective guerrilla war. When SWAPO established close political relations with Luanda and Zambia expelled UNITA forces, Savimbi found sanctuary in northern Namibia as a guest of the South African government. With a base at Grootfontein and continued logistical support from South Africa, UNITA began harassing the MPLA and SWAPO. For example, in August 1976 Jorge Sangumba,

³⁵⁴ **Namibia Review: A Review of Policy and Development** Vol. 2. No. 1. January 1993, p.14. It could be argued that SWAPO had always advocated the establishment of a mixed economy. It also relied on the Nordic countries to support the construction and management of its educational centres in Angola, Zambia and the Congo. Some of its leaders, in fact, admired social democracy, or hidden capitalism as practiced in Sweden.

UNITA's spokesman, indicated that his movement was committed to defeating SWAPO because:

"a SWAPO victory would make it impossible for us to continue to operate from Namibia. Our objective is to create a Vietnam-type situation in which the Soviet-Cuban troops are cast in the role of the American government. The UNITA forces will take on SWAPO and its allies until the Luanda government concedes to our demands".³⁵⁵

Suffice to conclude that there exists a confluence of interest between South Africa and United States in southern Africa, that is the maintenance of regional and global balance of power respectively. In particular, the United States was motivated by the expansion of the Soviet Union into the southern Africa, an action that it interpreted as a complete breach of the rules of détente. South Africa, however, seized the opportunity of the Soviet-Cuban presence in Angola to present itself to the West as a bastion against communism in southern Africa. It was a strategy devised to end its isolation from the international community, and simultaneously to curtail the influence of those forces that threatened its regional dominance. It has also been established that the Soviets were in Angola as a demonstration of their global reach. Yet the Soviet presence in Angola brings us back to the central theme of this study-namely, the complex relationship between the balance of power and international law.

The Soviets presence in Angola cannot be explained solely in terms of power politics; it also resulted from the Soviets understanding of international law, especially as it regards wars of liberation. It is this understanding that accounts for the difference in the intensity of the United States and Soviet Union involvement in Angola. While the United States confined its involvement to the provision of financial resources to its

³⁵⁵ *New African*, August 1976, p. 35.

favoured nationalist movement; the Soviet Union and Cuba favoured direct foreign involvement with men, advisers and resources. There emerged two paradoxes. One, the United States driven by power calculus, was involuntarily constrained by forces of idealism. Two, while the Soviet Union and Cuba legitimised their presence in Angola with the 'just war' doctrine,³⁵⁶ and stretched the 1970 declaration to its limits; the United States reverted to idealism to reposition itself in southern Africa. This was intended to pre-empt further Soviet gain in either Rhodesia or Namibia. This strategy created the opportunity that broke the stalemate between South Africa and the United Nations. Namibia was now directly involved in the great game.

4.11. Henry Africanus

The strategy of Henry Africanus modelled on Kissinger's 'shuttle diplomacy' in the Middle East.³⁵⁷ It described Kissinger's efforts in resolving the southern African conflict through his series of meeting with both the South African Prime Minister John Vorster and the leaders of the Frontline States. It began in April 1976 and continued until the American presidential election of 1977. It started with a two-week trip to Africa between April 24- May 7, 1976. This trip marked Kissinger's début as one of the determining influences in African affairs; and his willingness to use moralism as a foreign policy tool. In his pre-trip message before the Congress, Kissinger described his mission as intended to establish with African leaders a 'community of concerns'

³⁵⁶ A close reading of the speeches of the Soviets Representatives to the United Nations indicated that they constantly repeated certain words like 'just cause' in relation to the colonial wars. For example, the Soviets Representative to the UN in 1976, Mr. Kharlamov, said during the Security Council Debate on Namibia on 19 October 1976 that: "the USSR fully supported the demands made by the representatives of African and other countries. It would continue to support the just cause of the African peoples struggling for freedom and independence. It would not slacken its efforts in the struggle to achieve a just solution to the question of Namibia", See, **United Nations Monthly Chronicle**, Vol. XIII, No. 10, November 1976, p.121.

specifically to the problem of the political evolution of southern Africa, and generally to the problem of African development'.³⁵⁸ The trip started in England with a consultation with the British Foreign Secretary, Anthony Crossland. It ended in France, when Kissinger gave a feedback on his visit to French President, Giscard d'Estaing.

There were probably two reasons for Kissinger's consultation with London and Paris: Africa was never America's sphere of interest, hence it was desirable to keep the two former colonial powers informed before America ventured into the continent's affairs. Secondly, these two powers could be used to gain access to African leaders. Britain's access to Commonwealth Africa and the France's influence within LaFrancophonie and Franco-African Summit could both be useful. In addition, Britain was directly involved in the Rhodesian issue, and an Anglo-American group had been formed to co-ordinate the two countries' policies. From England, Kissinger's itinerary took him to Kenya and Tanzania in East Africa, to Zambia and Zaire in Central Africa, Liberia and Senegal in West Africa. The trip, encountered covert Soviet resistances-the Ghanaian government called off Kissinger's proposed visit, reportedly under pressures from the local intelligentsia and the Soviets.³⁵⁹

³⁵⁷ Adam, op cit., p. 59-60.

³⁵⁸ **Department of State Bulletin (DSB)**, Vol. LXIV. No. 1925. May 17, 1976, p. 623.

³⁵⁹ For various editorials in the local press critical of Kissinger's role in southern African affairs, see **Ghanaian Times (Accra)**, 29 April 1976, p. 4; 11 May 1976, p. 4; 16 September 1976, p. 4. It is significant that a petition circulated at the University of Ghana, Legon, prior to the visit's cancellation characterized Kissinger as the "enemy" for his policies on the Angolan issue.

In Lusaka, Kissinger enunciated a 10-Point Initiative that primarily sought to address the issues of Rhodesia and Namibia.³⁶⁰ He depicted these two issues as containing seeds of greater conflict, which now required urgent attention. At one point, Kissinger pointedly referred to Rhodesia as Zimbabwe, the name given to it by the black nationalists. This won the hearts, but not the heads of many nationalist leaders. Progress on Namibia could result from direct negotiation between Kissinger and Vorster, whereas Kissinger had to use Vorster to get to Rhodesia's Ian Smith.

Passing from generalities to specifics on Namibia, America's position was unequivocal. It contained the following elements: a free and fair election and electoral system in Namibia under the United Nations' supervision, but which had the confidence of the United States; a consultative mechanism between the United States and the African leader on the transition programme; the easing of American trade and investment sanctions on Namibia; and a top-up of economic and technical assistance to Namibia once concrete movement toward self-determination was under way.

The realisation of these objectives was dependent on South Africa's co-operation and willingness to forgo its uncompromising posture. Kissinger tailored his speech to soften South Africa's hard-line posture, and to gain the confidence of the African leaders. His strategy of divorcing South Africa's internal apartheid policies from the Rhodesia and Namibia issue won over Vorster.³⁶¹ Apartheid was seen as a different phenomenon that required a different sort of influence on the part of the United States. Kissinger craftily

³⁶⁰ Kissinger's Statement in Lusaka, 27 April, 1976, **Africa Contemporary Record, 1976-77**, C161. (London: Rex Collings, 1977). See Kissinger, Henry. **Years of Renewal**, (New York: Simon and Schuster, 1999), p. 943.

³⁶¹ It was later noted that Kissinger made no reference to majority rule in South Africa during his Lusaka address.

disembodied political separateness from self-governance. Kissinger, an architect of 'linkage', now de-coupled related issues. It worked: previously he had made clear that he was not concerned with apartheid, and Vorster agreed to negotiate the Namibian issue, and to persuade Ian Smith to abandon his internal self-determination. Although black African states wanted more robust American pressure against the Pretoria regime, by seeking an end to South African occupation in Namibia, an issue that had nearly defeated them, Kissinger had softened their criticisms. The United States was now viewed as having a measure of understanding of African concerns.³⁶² It was Kissinger, the student of Bismarck and Metternich at work. In psychological terms, he was concerned with satisficing the main parties rather than satisfying them.

His Machiavellian strategy even started before he personally visited Africa. He had dispatched William E. Schaufele JR, the Assistant Secretary for African Affairs to the OAU Summit held in Ethiopia in January 1976 with the infamous 'Ford letter' on Angola. The letter suggested that United State's pressure would be brought against South Africa to withdraw its troops from Angola, if African leaders were to reject the intervention of communist forces in Angola.³⁶³ Kissinger's tactic was to 'handcuff' the Africans, with the knowledge that some OAU members, especially Nigeria, were expressing disquiet at the presence of the Soviets and Cuban forces in Africa. President Nyerere of Tanzania reacted indignantly. He defended the Soviet and Cuban role and said 'the Ford letter had contributed to the failure of the OAU's special session on Angola.'³⁶⁴

³⁶² **Department of State Bulletin**, Vol. LXIV. No. 1925. May 17, 1976, p. 623.

³⁶³ See **Facts on File**, Vol. 36. No. 1837. January 1976, p. 36.

³⁶⁴ See **Facts on File**, Vol. 36. No. 1835. January 10, 1976, p. 16. At the January 13 OAU Extraordinary Session of the Head of States and Governments, there was a deadlock. The 46-member organisation had a 22-22 split in the voting with 2 nations abstaining. They

The April-May trip was followed with two American and two British missions at ministerial level. The Kissinger-Vorster Bonn's meeting was the outcome of this shuttle diplomacy.³⁶⁵ The venue of the meeting was the first procedural issue that had to be sorted out between United States and South Africa. Kissinger wanted Switzerland, while Vorster insisted on West Germany. On this issue, Vorster had his way, and the meeting was held in Bonn. Perhaps, as a compromise, the follow-up meeting was held in Zurich, Switzerland. In fact, the Bonn meeting was split into two sessions, and convened at their respective quarters. The first was held on 23 June at Bodenmais, where the South African delegation was housed. The second day's talks took place at the United State headquarters at Grafenau, near the Czechoslovakia border.³⁶⁶

This meeting was explorative, but symbolic to both states. It was the first high-level meeting since the World War II between South Africa and the United States. Each party wanted to maximise its benefit. For the United States, the meeting represented a pre-emptive strike to shape the course of events in southern Africa. It was also an opportunity to begin efforts towards achieving a negotiated solution in Rhodesia and Namibia.

For South Africa, the meetings represented a major diplomatic achievement and a step toward breaking out of Pretoria's diplomatic *cul de sac*. No other statesman, except Kissinger could have been as useful to Pretoria. He was a Nobel Peace Prize Winner. In

were Ethiopia, the host state, and Uganda, whose president was the OAU Chairman for the year. The vote was polarised between the pro-MPLA nations led by Nigeria and those that favoured the formation of a government of national unity in Angola, led by Senegal.

³⁶⁵ *New York Times*, June 15, 1976.

³⁶⁶ See *Facts on File*, Vol. 36. No. 1859. June 26, 1976, p. 446.

a Gallop poll, a few years earlier, he had been voted as the most admired person in America. A photo opportunity with Kissinger was worth more than a mere symbol to Vorster. It was an opportunity that many developing countries leaders often dreamt of.³⁶⁷ Besides its symbolic role, the meeting had some political significance for South Africa. Just as its mandatory power status helped to confirm South Africa as a member of the family of nations,³⁶⁸ South Africa's engagement with the United States on Namibia helped Pretoria to recover from its exclusion from 'respectable' international society due to its apartheid policies. In other words, South Africa was using the Namibian question to break loose out of the shackles of being a pariah.

To a limited extent, a preliminary assessment of *Henry Africanus* suggests a positive outcome. For instance, it led to a shift in the position of Cuba, albeit in a premature manner. For example, at the First Congress of the Cuba Communist Party held in Havana between December 17-22, 1975, Fidel Castro asserted that 'Cuba would continue to aid the MPLA and the Puerto Rican independence, even at the cost of continued hostility from the US'.³⁶⁹ In one of his responses to the OAU on January 11, 1976, the Cuban Deputy Premier, Carlos Rafael Rodriguez, said that 'Cuba would continue to provide troops to the MPLA regardless of any resolution that the OAU may adopt regard foreign intervention in Angola'.³⁷⁰ During his April 1976 visit to Africa,

³⁶⁷ One anecdotal evidence revealed that when Kissinger visited Bolivia, protocol prevented the president of that country from being part of the welcome party, but he went to the airport that night anyway, incognito, and stood in the crowd anonymously so that he could witness Kissinger's arrival. See, **Washington Post**, December 30, 1973. It was reported that President Nyerere once claimed that: "Africa only needs two men: God and Kissinger. If the two are with us, nothing can be against us".

³⁶⁸ See Chapter Two of this study for more detail.

³⁶⁹ For a detailed account of the First Congress of the Cuban Communist Party of December 17-22, 1975, see **Facts on File**, Vol. 35. No. 1833, December 27, 1975, p. 984. The MPLA was represented at the Congress by Lucio Lara.

³⁷⁰ See **Facts on File**, Vol. 36. No. 1835, January 10, 1976.

Kissinger hedged the US position by stating that it would only consider the normalisation of relations with Angola if Cuban troops were withdrawn.³⁷¹ After Kissinger's visit, Castro, offered a partial withdrawal of the Cuban forces at a rate of 200 per week, in a letter to the premier of Sweden, Olof Palme. Castro authorised Palme, who received the letter on May 21, to divulge its contents to Kissinger, who was in Stockholm on an official visit. Kissinger was notified of Castro's letter on May 24, 1976;³⁷² and he termed it as a 'positive development'.³⁷³ He later asked Palme to tell Cuba that the US still insisted upon a total withdrawal of Cuban troops; and that the US would not consider recognising the Luanda regime until such actions were taken.³⁷⁴

It is important not to exaggerate the influence of *Henry Africanus* on Cuban behaviour. The United States had limited leverage in this regard. Kissinger himself conceded that America had no equal diplomatic leverage with Cuba, as it had with the USSR because of the US-Soviet relations.³⁷⁵ To Cuba, the United States taunted the threat of MPLA's non-recognition and non-restoration of relations with Havana. In international diplomacy, non-recognition of one state by another is not a matter of concern to the third state. A state recognises another on the basis of its own rational explanation of cost and benefits. Arguably, Havana was not urgently pressed to restore diplomatic relations with Washington, given the knock-on effects of Cuba's policies as immigration and border control problems to the United States. As it later emerged, it was Washington under the Carter administration in 1977 that made the first move towards a restoration of diplomatic relations with Havana.

³⁷¹ Kissinger made the proposal in Monrovia, Liberia at a state dinner given in his honour by President William Tolbert. See. **Facts on File**, Vol. 36. No. 1852, May 8, 1976, p. 318.

³⁷² **Facts on File**, Vol. 36. No. 1855. May 29, 1976, p. 370.

³⁷³ *ibid.*

³⁷⁴ *ibid.*

Perhaps, to demonstrate its leverage over the Soviet Union, the US Department of State announced on March 16, 1976 that because of actions such as the Soviet Union's (and Cuba) in Angola have their penalties, the government have decided to defer further cabinet-level meetings of joint US-Soviet Commission. Robert L. Funseth, State Department spokesman said the decision was to postpone US participation in the joint Commission on housing, trade and energy, three of nine of such commissions. Washington was cautious though by not breaking off the SALT talks or the exportation of American grains to the USSR.³⁷⁶ It is clear that United States recognised the pecking order of issues in superpower relations. By implication, both Angola and Namibia became footnotes in the global balance of power. Yet each measured differently on the Richter scale of the great game, with Angola on a higher range than Namibia.

America had to make concessions as well. At the 31st session of the UN General Assembly, the United States formally showed its support for SWAPO.³⁷⁷ This support did not mean a formal recognition of SWAPO as the sole representative of the Namibian people, as the UN majority would have wanted. Washington also abandoned its vetoing of Angola's admission into the UN. In what he described as 'a new spirit of give and take', the US Ambassador to the UN, Mr Scraton, remarked that 'out of respect for the sentiments of our African friends, the US would discontinue its resistance to Angolan admission to the UN by refraining from casting another veto'.³⁷⁸ The US abstention on this occasion paved the way for Angola's admission on December 1, 1976 as the UN's 146th member-state. Yet Washington continued to 'road

³⁷⁵ **New York Times**, February 6, 1976.

³⁷⁶ **Facts on File**, Vol. 36. No. 1845. March 20, 1976, p. 196.

³⁷⁷ **Department of State Press Release 485**, text from Bulletin 75, p. 497-510, 31st Regular Session of the UNGA, New York, Sept. 21-Dec. 22, 1976.

³⁷⁸ *ibid.*, p. 59.

block' Angola's membership of the International Monetary Fund, and did not formally recognise the MPLA government. Indeed, the absence of a diplomatic relationship between Washington and Luanda would later constrain the former's effectiveness in negotiating with the latter on the Namibian issue.

Washington's acceptance of SWAPO amongst the southern African nationalist movements such as the ANC in South Africa, and the MPLA in Angola was incongruous given its view that they were terrorists under the remote control of Soviet Union. It showed however, that the United States recognised that SWAPO was *sui generis* amongst these organisations. As earlier indicated, SWAPO was not a socialist ideologue like the ANC or SACP.³⁷⁹ Political calculations rather than the essentials of international law, as espoused by the United Nations informed the United States action. Elaine Adam's view that it was the respect for the United Nations that prompted the US action on SWAPO is misleading. Adam noted that:

The United States itself had not been much enamoured of SWAPO whose leader, Sam Nujoma, was on close and friendly terms with the new Angolan government and boasted of substantial aid in the guerrilla struggle in Northern Namibia. At the same time, however, Washington could see no virtue in attempting to bypass the United Nations and the territory's principal nationalist movement.³⁸⁰

As earlier argued, the US never saw SWAPO as the sole-representative of the peoples of Namibia, but as one of the political groupings, contrary to the wishes of the United Nations. Washington's acceptance of SWAPO was intended to reinforce its bargaining

³⁷⁹ In fact, SWAPO's internal wing was not banned in Namibia under the provisions of the Suppression of Communism Act, as were the ANC or the SACP in South Africa. SWAPO itself eschewed any 'communist' label, described itself as a "socialist, non-aligned political party". See, Murray, Roger. "Namibia: No Easy Path to Independence", *Africa Report*, Vol. 22, No. 3. May-June 1977, p.18.

strategy leverage over South Africa. If the US had not done so, it would not have had a strong voice in condemning the Turnhalle constitutional conference. Recognition was intended to gain the confidence of the African leaders. Washington knew that it had to 'paddle the boat' with many African leaders inside it. Their confidence in America's initiative to act as a broker depended on its relationship with SWAPO, which since 1965 had been recognised as the sole Namibian liberation movement by the OAU. Acceptance of SWAPO was thus politically expedient. Many OAU member states saw SWAPO as Namibia's government-in-waiting'. It was this fact that had often hardened South Africa's resolve to exclude it from the political process. According to Arnheim, "if SWAPO is going to take power, then it is best to be on good terms with it from the beginning. In other words, the West was competing with Russia in wooing what it had identified as the future government of Namibia-a country very rich in mineral wealth and also of some strategic importance."³⁸¹ The Angolan experience was a warning to the United States of the consequences of backing the wrong horse.

What Washington did not know (or if it knew had never openly declared) was that neither the Soviet Union nor Cuba had a stranglehold on SWAPO. On Angola, the Soviet Union and Cuba publicly acknowledged their military and political support to MPLA, while their assistance to SWAPO was never publicly confessed. For instance, in his meeting with British Prime Minister, Harold Wilson, on 25 March 1976, Soviet Foreign Minister, Andrei A. Gromyko reiterated that Moscow was not involved with nationalist movements in either Namibia or Rhodesia.³⁸² Similarly, during his nine-day visit to southern Africa between 23

³⁸⁰ Adam, op cit., p. 59.

³⁸¹ Arnheim, M.T.W. **South Africa After Vorster**, (Cape Town: Howard Tmmins Publishers, 1979), p. 100.

³⁸² Andrei A. Gromyko made the assertion at the conclusion of an official visit to London. Prior to his visit to London, James Callaghan, British Foreign and Commonwealth

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March to 1 April 1977, Soviet President, Nikolai Pogorny, and buttressed Gromyko's view of the Soviet's minimal interest in Rhodesia and Namibia. In his meeting with Joshua Nkomo of the Patriotic Front (Rhodesia), Oliver Tambo of the ANC (South Africa) and Sam Nujoma of SWAPO, he merely expressed Soviet support to the nationalist struggle in Rhodesia and Namibia.³⁸³

The position of Cuba on Namibia was largely rhetorical. It was resource-driven and resource constrained. In Dar-es-Salaam, during his historic one-month eight Arab and African countries tour between March 1-April 2, 1977, Castro unequivocally stated that Cuba's aid to Africa would not be stretched beyond Angola.³⁸⁴ At a press conference he declared that Cuban troops would not be sent to aid Black Nationalist guerrillas in

Minister had called on Soviet Ambassador to London, Nikolai Lunkov, three times on March 15-19-1976 to express British concern over Soviet intervention in southern Africa. Hence, after his meeting with Harold Wilson, Gromyko said the talks had covered the situation in Angola and the 'areas around Angola'. The meetings were also said to have related to South Africa's withdrawal of its forces from Angola. See **Facts on File**, Vol. 36, No. 1846, March 27, 1976, p. 228.

³⁸³ President Pogorny visited Tanzania, Zambia and Mozambique. He also had an unexpected one-day visit to Somalia where Soviet Union maintained naval facilities. Pogorny's visit marked the first state visit of a top ranking Soviet official to southern Africa. Pogorny's tour could be interpreted as a move to consolidate Soviet influence in southern Africa, and to counter Kissinger's initiatives. However, at this time, Kissinger had taken the high moral ground. The high point of Pogorny visit was the signing of the Treaty of Friendship and Co-operation with Mozambique. The terms of the treaty indicated the possibility of direct Soviet involvement in any conflict threatening Mozambique's security and pledged continuing military co-operation. See **Facts on File**, Vol. 37, No. 1900. April 9, 1977, p. 248..

³⁸⁴ Cuban President, Fidel Castro visited eight Arab and black African countries between 1 March-2 April, 1977. These included: Algeria, Libya, South Yemen, Somalia, Ethiopia, Tanzania, Mozambique, and Angola. In Tanzania, he addressed African issues. The highlight of his tour was a nine-day visit to Angola. Castro declared March 24 that Cuba would "not place any limit on its co-operation" with Angola and would give the Luanda government "all the aid it needs". See **Facts on File**, Vol. 37, No.1900. April 9, 1977, p. 249. It was not clear whether Castro and Pogorny visit to Africa at the same time was coincidental or a deliberate act to muster a joint collaborative action to undermine America's efforts in southern Africa. For instance, at the end of his tour, Castro went to Moscow, where he met with the leading Soviet officials.

Rhodesia and Namibia. "We believe the struggle for independence is primarily a task which belongs to the people concerned themselves, and independence is not bought from outside" he said.³⁸⁵ This statement contradicted Cuba's policy in Angola.

4.12. Kissinger-and Vorster in Zurich

As earlier mentioned, the Bonn meeting was an exploratory one. It was followed with another in Zurich, Switzerland on Sept. 4-6, 1976, that focused on how to achieve majority rule in Rhodesia and South African acceptance of Resolution 385 (1976) on Namibia. Kissinger touched a painful nerve in South Africa politics, in the aftermath of the Soweto unrest of June 1976. According to Johnson, a deal was done in Zurich over the gold price, over foreign loans and the US veto in the Security Council.³⁸⁶ On Rhodesia, Vorster agreed to an Anglo-American plan to provide financial guarantees of about \$2.0 billion for white Rhodesians to assure them of their rights in an independent Rhodesia as well as choice of emigration with financial compensation.³⁸⁷ The significance of the Zurich talks was that it broke the stalemate that existed between South Africa and the UN since the collapse of the Escher-Vorster discussions in early 1973. For the first time, Vorster agreed to the Kissinger's proposal for a conference on Namibian independence, which was scheduled for Geneva in October 1977. Also for the first time, Vorster acknowledged SWAPO as an important political faction, which had a role to play with other political groupings (especially those being sponsored by South Africa) in the political developments of Namibia. Furthermore, *Henry Africanus*

³⁸⁵ *ibid.* p. 249.

³⁸⁶ Johnson, R. W. **How Long Will South Africa Survive.** (London: Macmillan Press Limited, 1977), p. 247.

³⁸⁷ **Facts on File**, Vol. 36. No. 1870. September 11, 1976, p. 660. For a detailed discussion on the Rhodesian issue, see Windrich, Elaine, "Rhodesia: the Road from Luanda to Geneva", **The World Today**, Vol. 33. No. 3. March 1977, p. 101-111.

triggered a concerted action outside the mainstream UN and OAU platform from those states that are in the same neighbourhood with South Africa, commonly called the Frontline States.

4.13. The Frontline States: a facilitator

In tandem with the Zurich talks, the leaders of Frontline States met in Dar-es-Salaam to work out a concerted opinion of developments in the region.³⁸⁸ In response to the Zurich meeting in which Kissinger and Vorster had agreed to a UN-sponsored international conference, the FLS exerted its leverage over the SWAPO leadership. Accordingly, Nujoma agreed to discuss with South Africa arrangement for the transfer of power. More importantly, SWAPO was persuaded by the FLS, that attending the conference was the most beneficial option available. Failure to accept could have marred its relationship with the Frontline leaders, and increased the suspicions of the United States and other Western powers about SWAPO's inclination towards socialism and romance with the Eastern bloc. Furthermore, it was recognised that SWAPO's armed struggle could not bring about an outright military victory against South African forces, which now concentrated its men on a single front.

With the substantive issues under discussion, Kissinger needed to broaden his country's support base. He did. When he left Zurich, he met three European leaders, namely, the British Prime Minister, James Callaghan; the French President, Valery Giscard d'Estaing and the German Chancellor, Helmut Schmidt. This broadening was very important in

³⁸⁸ For a detailed understanding of the FLS, see, Thompson, Carol. B. **Challenge to Imperialism: The Frontline States in the Liberation of Zimbabwe**, (Harare: Zimbabwe Publishing House, 1985) chapter 2; and Ajala, Adekunle. "The OAU and Southern Africa", in Aluko, Olajide and Shaw, Timothy M. (eds.), **Southern Africa in the 1980s**, (London: George Allen and Unwin, 1985), p. 10-11.

facilitating a composite Western influence on the main parties. However, there were different priorities, as between Rhodesia and Namibia. Britain, as the nominal sovereign in Rhodesia was particularly interested in solving the Rhodesian issue. Germany, being Namibia's former colonial power, was more interested in the resolution of Namibian question, as Chancellor Schmidt made clear in his meeting with Kissinger on September 7, 1976. He pointed out that "We Germans are a little bit more interested in Namibia than Rhodesia because in Namibia, there are about 25,000 of German descent with whom we naturally have special links".³⁸⁹ France had no direct stake in either Namibia or Rhodesia. However, her influence within the Francophone states was considered important to reduce any unwarranted obstructions. The hope was that with French support, their doubts about the American action would be greatly reduced.

Kissinger had earlier suggested that: "The United States is the only country which can speak to all sides on southern African conflicts".³⁹⁰ Although this was true, in practice, he needed the cooperation of the European powers and the goodwill of the Frontline leaders. In fact, he later understood the influence of the FLS as an important factor within his whole mediation package. For instance, after leaving Europe, he held a series of talks with African leaders in Dar-es-Salaam, on September 14, 1976. This meeting ascribed legitimacy and credibility to his efforts. From there, he went to Pretoria to meet with Vorster and Ian Smith on Rhodesia. On September 18, 1976, Kissinger and Vorster discussed Namibia. It was reported that 'considerable progress' had been made toward the hastening of Namibian independence and Rhodesian majority rule. At this stage, America was more optimistic about the prospect for success on Namibia than over Rhodesia.

³⁸⁹ **Facts on File**, Vol. 36. No. 1870, op cit., p. 660.

The Frontline leaders shared this optimism. During Kissinger's visit in April 1976, Nyerere and Kaunda impressed upon him the importance of concentrating on Namibia. There was a consensus among the FLS that of the two immediate items on Kissinger's agenda, Namibia was less intractable. Paul Bomani, Tanzania's ambassador to the US echoed this view, when he said: "it is here that we had expected Kissinger's shuttle diplomacy to produce the quickest favourable results. Instead we have been told that substantially the Namibian question is easy but that procedurally it is very difficult".³⁹¹ This optimism rested on two factors: Firstly, Resolution 385 (1976) was universally acknowledged as the framework document. It only required the persuasion of South Africa to respond positively to the spirit and letter of this document. Hence American resolve was seen as crucial factor that would make South Africa comply. Kissinger was believed to have possessed the wherewithal.

Presumably, the Africans faith in Kissinger was not misplaced. He had a history of securing diplomatic breakthroughs from the Middle East to Vietnam. While it is important not to exaggerate his successes, what was evident that within five months, he was able to convince South African the importance of giving serious consideration to Resolution 385 (1976). He persuaded South Africa to 'talking' and broke the deadlock that formerly existed between the UN and South Africa. He made Nujoma adopt a flexible approach towards United States initiatives. For instance, in August 1976, Nujoma stated that, "Kissinger's approach on Namibia is bound to fail because it is a serious subversion of the commitments made by the United Nations. The United Nations is the only authority to organise any negotiations on the future of our country. Kissinger is simply playing into

³⁹⁰ Department of State Bulletin, Vol. LXXV. No. 1943. September 20 1976.

³⁹¹ Bomani, Paul. "Southern Africa and the World", *Journal of Southern African Affairs*, 1 (October 1976), p.4.

South Africa's hands, which wants to create an illusion that something is being done".³⁹² However, after meeting Kissinger in New York in late September 1976, Nujoma declared that 'there is a general ground for negotiation with South Africa'. He continued that if America was 'serious' about pressing for a South African troop withdrawal from Namibia, a peaceful solution was possible.³⁹³ Yet, it took another fourteen years before a final resolution was reached on Namibia, ironically, by another Kissinger disciple, Chester Crocker.

4.14. Limitations of *Henry Africanus*

To some, *Henry Africanus* was an opportunistic move: an opportunity for Kissinger to regain prestige for himself and the United States. According to Stedman, "the Kissinger approach was based on the crude intervention of a ripe moment".³⁹⁴ Yet there existed a disjunction between the theory of ripeness and the reality of the Namibian conflict at the time Kissinger intervened.³⁹⁵ To others, Kissinger's diplomatic style, which was characterised with secrecy and deal making was a subject of criticism. According to Johnson, "Kissinger had relied on 'lying to both sides' to save the day", and stepped out of

³⁹² **Times of Zambia**, 10 August 1976.

³⁹³ **United Nations Monthly Chronicle**, October 1976.

³⁹⁴ Stedman, Stephen. John. **Peacemaking in Civil War: International Mediation in Zimbabwe, 1974-1990**, (London: Lynne Rienner Pubs., 1991), p. 118.

³⁹⁵ According to William Zartman, A crisis is ripe when the following factors are present: (1) here occurred a situation of deadlock and deadline. (2) The blocking of 'unilateral solutions, and consequently, joint solutions become conceivable. (3) The party that previously had the upper hand in the conflict has slipped and the underdog has gained in strength. And (4) a hurting stalemate situation: a moment when things will significantly worsen if they have not gotten better in ways that negotiation seeks to define. It is doubtful whether we can transpose the 'ripeness' argument into the Namibian conflict. South Africa hands were yet to slip in Namibia, while SWAPO was yet to inflict a considerable damage to South Africa that would have made it thought otherwise. For a detailed analysis, see, Zartman, I. William. **Ripe for Resolution**, (Oxford: Oxford University Press, 1983), p. 353.

his initial role of an interlocutor to be a mediator.³⁹⁶ Each of these criticisms looks plausible, but they have to be seen in context.

An informal rule of negotiation is the necessity of doing deals in one area, for payoffs in another. Hence secrecy, changes of role and tactics, and massaging of facts are all inevitable. Indeed, *Henry Africanus* was full of halfway measures, inconsistencies and suspected by many within the United Nations, especially the Soviet Union and Nigeria. Kissinger did not push Vorster beyond his 'comfort zone', or what Alexander George called the *resistance point*.³⁹⁷ Vorster was still within his own maximum demands. The issue of Walvis Bay was sidestepped; and Vorster maintained his opposition to any direct negotiation with SWAPO. Nigeria and Soviet Union were the leading critics of America's 'honest broker' role in southern Africa. The Soviet press denounced Kissinger's efforts and called his negotiations 'a fraud' that was giving breathing space to white minority regimes in Africa.³⁹⁸ *Tass*, accused him of shielding the white minority regimes, and warned Africans that similar 'shuttle diplomacy' tactics in the Middle East had caused the Lebanese civil war.³⁹⁹ The United Nations platform served as the venue where America and Soviet Union exhibited their glaring mistrust of each other's moves and motives in southern Africa.

On 28 and 30 September 1976, in his address before the world body, Soviet Foreign Minister, Andrei Gromyko, delivered a sharp attack on Kissinger's diplomatic efforts in Africa. Gromyko maintained that such efforts were aimed at containing 'the just struggle of

³⁹⁶ Stedman, op cit., chapter three, "Henry Kissinger, Geneva, and 'Lying to Both Sides'", p. 85, and p. 119.

³⁹⁷ The resistance point is defined as the least each party in a negotiation is willing to settle for. It is each side's irreducible goals in the negotiations. See, George, Alexander. L. and Craig, Gordon. A. (eds.), **Force and Statecraft: Diplomatic Problems of Our Time**, (Oxford: Oxford University Press, 1983), p. 167.

³⁹⁸ *Tass*, September 17, 1976.

the people of Zimbabwe and Namibia and of the indigenous population of the Republic of South Africa for their legitimate rights. "Every possible method is being brought into play", Groyenko declared, "from direct suppression and violence to attempts to divert the national liberation movement away from genuine independence and freedom through political gimmickry and financial handouts".⁴⁰⁰ He was referring to the proposed Anglo-American \$2.0 billion compensation to the white Rhodesians.

In his own address before the General Assembly the same day (September 30, 1976) Kissinger strongly denounced what he called Moscow's "crude attempt to distort the purposes of diplomacy and to impede hopeful progress toward peaceful solutions to complex issues".⁴⁰¹ These efforts "only foster tension", Kissinger maintained. "They cannot be reconciled with the policy of improving relations. We have been concerned by the continuing accumulation of Soviet armaments and by recent instances of military intervention to tip the scales in local conflicts."⁴⁰² Kissinger continued, referring to the Soviet-Cuban intervention in Angola. "There may be some countries who see a chance for advantage in fuelling the flames of war and racial hatred. But they are not motivated by concern for the peoples of Africa, or for peace. And if they succeed, they would doom opportunities that might never return".⁴⁰³

Nigeria on the other hand, pointed out that Kissinger's exclusion of the United Nations in the negotiation undermined the credibility of his mediation. Leslie O. Harriman, the

³⁹⁹ *Tass*, September 25, 1976.

⁴⁰⁰ **Facts on File**, Vol. 36. No. 1873, October 2, 1976, p. 718-9. The financial handout was a joint United States and Britain \$2.0 billion trust fund designed to keep the white Rhodesians. Other western countries such as Germany, Canada, Australia and Japan as well as private investors were to contribute to the fund.

⁴⁰¹ *ibid.*, p. 719.

⁴⁰² *ibid.*, p. 719.

Nigerian, Chairman of the Special Committee on Apartheid warned that resort to individual shuttle diplomacy outside the United Nations framework could only lead to chaos. He emphasised that the only meaningful dialogue would be between the South Africa regime and the liberation movements on the basis of the Charter and resolutions of the United Nations. He maintained the view that America's mediatory role was not predicated on its firm commitment to freedom in southern Africa; but that its bottom line was the danger of Soviet and Cuban involvement in the region, as stressed by various reports.⁴⁰⁴

Irrked by these criticisms, the United States vetoed a resolution aimed at forcing South Africa to surrender control of Namibia and impose an arms embargo against the Pretoria regime. Britain and France also vetoed the resolution. In explaining the American position, the US ambassador to the UN, William R. Scranton, maintained that its approval would have undermined the 'substantial progress' that had been made in negotiation on Namibia between Kissinger and Vorster.⁴⁰⁵

The final outcome of *Henry Africanus* included the following: a proposed Geneva conference to negotiate a constitution; the United Nations as an observer; an all Namibian negotiated constitution acceptable by South Africa; a post-independence South Africa-Namibia relationship; and an election and independence plan by 31 December 1978.⁴⁰⁶

The content of the Geneva plan confirmed the sceptic's view that South Africa was evading the necessity of negotiation with SWAPO under UN auspices. Nyerere later revealed that the Geneva conference option was presented to him and Kaunda in general terms. He said

⁴⁰³ *ibid.*, p. 719.

⁴⁰⁴ Harriman, Leslie. O. "Shuttle Diplomacy Outside UN Framework is Dangerous", *UN Monthly Chronicle*, Vol. XIII. No. 9. October 1976, p. 14.

⁴⁰⁵ *Facts on File*, Vol. 36. No. 1876. October 23, 1976, p. 781.

⁴⁰⁶ Vance, *op cit.* p. 273.

that they accepted the plan without noticing that both the United States and South Africa would attend as observers.⁴⁰⁷

Presumably, the exclusion of the UN was the most practical ploy that could be used to get South Africa to the negotiating table. South Africa's fear of UN partiality that had existed for the past thirty years needs to be taken into consideration by any mediator. The UN was not completely excluded. Resolution 385 (1976) was still the framework document of Kissinger-Vorster talks. Kissinger later met with the UN Secretary-General in late 1976 to brief him on his journey so far on southern Africa conflicts.

Broadly speaking, it could be argued that *Henry Africanus* typified the realist tradition of diplomacy, namely: persuasion, compromise and threat of force. As Morgenthau observed, "the great negotiator was someone who put the right emphasis at any particular moment on each of these three means, and the diplomat must at the same time use persuasion, hold out the advantages of a compromise and impress the other side with the military strength of his country".⁴⁰⁸ The failure of military means in Angola prompted the device of diplomacy. In specific terms, *Henry Africanus* showed in vivid detail Kissinger's style of diplomacy. As a lone ranger diplomat, his operational code revolved around personal diplomacy, secrecy and surprise, contempt for bureaucracy, established methods and regular procedure. The Geneva plan was Bismarckian in design. As Bismarck was able to preserve the peace of Europe by manipulating the commitments and interests of other powers, so Kissinger used the southern African situation to craft a position that would sustain the status quo in favour of the United States and its allies.

⁴⁰⁷ Nyerere, Julius. K. "America and Southern Africa", *Foreign Affairs*, Vol. 55. No. 4., (1977), p. 680.

⁴⁰⁸ Morgenthau, (1967), op cit., 521.

In the final analysis, *Henry Africanus* was a reflection of Kissinger's understanding of international relations, primarily as a continuum of interactions of the Great Powers.⁴⁰⁹ It looked in regional stability with global balance of power; and saw the role of the third world countries as pawns that could be used to enhance or lessen the power ingredients of a superpower. It was designed to deter an adversary, reassure an ally, and win new friends. The overarching concern of *Henry Africanus* was a resolution of a seemingly thorny decolonization issue as a means of maintaining both the regional and global stability. The paradox of *Henry Africanus* is that while it was conceived as an exercise in power politics, it set in motion an outcome preferred by international law. The departure of Kissinger in January 1976, once again, raised the question of whether the Namibian issue would be shaped by the logic of power politics or by idealist imperatives championed by the new Carter administration

⁴⁰⁹ For a classic study on Kissinger's historicism, see, Cleva, Gregory. D. **Henry Kissinger and the American Approach to Foreign Policy**. (London: Associated University Press, 1989), p. 23-47.; Graubard, Stephen. R. **Kissinger: Portrait of a Mind**, (New York: W. W. Norton, 1973); Dickson, Peter. W. **Kissinger and the Meaning of History**, (Cambridge: Cambridge University Press, 1978).

Chapter Five

The Dynamics of the Contact Group Diplomacy⁴¹⁰

5.1. Introduction:

It was concluded in the last chapter that *Henry Africanus* was essentially driven by power politics. This chapter focuses on how, by contrast, the Carter administration, which organised the Contact Group, sought to free its policy from the realist tradition by giving it an idealist orientation. Most studies on Namibia have placed the emphasis on the role of the Contact Group as a third party mediator.⁴¹¹ Yet, this appraisal fails to understand the extent to which Contact Group diplomacy represented a continuation of power politics by other means. In other words what started as an exercise in traditional liberal diplomacy was unwittingly transformed into another attempt to limit Soviet gains in southern Africa. The literature on the Group also mostly overlooks its efforts to resolve the dilemma of its relationship to international law. This chapter is divided into two main parts. Part one deals with the Contact Group's four year negotiations with the South African Government. Part two focuses on two of questions that the Contact Group raised. To what extent did they reinforce or deviate from the assumptions

⁴¹⁰ The Contact Group or the Five Western powers consisted of the three western permanent members of the Security Council namely: the United States, Britain and France and two western non-permanent members namely: Germany (West) and Canada. Germany and Canada were nominated in 1977 as members of the ten non-permanent members. It is important to point out that the details of this negotiation are yet to be officially released by those governments concerned. Most of the materials used in this section are from the public record. These include: documents from the Foreign and Commonwealth Office, London; the State Department in Washington; official documents from the South African High Commission in London, the Canadian Ministry of Foreign Affairs and International Trade, Ottawa, Canada as well as newspapers and journals such as the United Nations Monthly Chronicle, the New York Times, Facts of File (USA) and Financial Mail (South Africa).

⁴¹¹ Jabri, Vivienne. **Mediating conflict: Decision-making and Western intervention in Namibia.** (Manchester: Manchester University Press, 1996). Jabri showed that the

concerning the balance of power of *Henry Africanus*? And what were the constraints and successes of Contact Group diplomacy?

5.2. The Road to the first New York Proximity Talks: April 1977 -September 1978⁴¹²

On April 17, 1977, the Contact Group ambassadors in Pretoria presented an *aide memoir* to the South African Government about their disapproval of the Turnhalle proposals. They informed the South African Prime Minister, John Vorster that the Turnhalle proposals would not gain their support or international approval, as they deviated from the major provisions of SCR 385 (1976). The Contact Group stated that the Turnhalle proposals were in contravention to the principle of international law concerning self-determination as well as the Universal Declaration on Human Rights. Mr. Vorster replied that he welcomed discussions with any government, but stressed that the people of Namibia must approve any independence plan.⁴¹³ In other words, the Turnhalle proposals would not be abandoned.

The second round of talks was held in Cape Town on April 27-29, 1977. At the meeting, Vorster turned down the request that South African troops should withdraw from Namibia. However, further talks were agreed. On May 1, Vorster expressed South Africa's willingness to accept the UN involvement, but not its supervision and control of the electoral process.⁴¹⁴ Significantly though, he indicated that SWAPO would be encouraged to participate in a universal suffrage election, without literacy qualification.

Contact Group, acted as an *interested third party*, and by so doing, its intervention transformed the Namibian conflict from dyadic into a three-cornered relationship or triad.

⁴¹² **A History of the Namibian Negotiations (until April 1981)**, (London, 1981), hereafter A History. I got this document from the British Foreign and Commonwealth Office in January 1997. The document is not paged, but covers these talks (section, 12).

⁴¹³ **Facts on File**, Vol. 37, No. 1901, April 16, 1977, p. 285.

⁴¹⁴ **A History**, op cit, section 13.

The third meeting was held on May 8-10.⁴¹⁵ The main issue discussed was the nature of the interim administration. Vorster noted that South Africa would refrain from seeking a parliamentary approval for the Turnhalle constitutional proposals. He maintained that the interim administrative authority would be based on the Turnhalle proposals. On behalf of the Contact Group, Don McHenry insisted that the authority should be broadly based. He described South Africa's offer as "predominantly ethnic, lacking neutrality and appearing to prejudice the outcome of free elections."⁴¹⁶

South Africa's abandoning parliamentary approval for Turnhalle indicated some softening of its position. Presumably, it was connected to the following: (1) the Contact Group's threat of sanction, and its unequivocal rejection of the Turnhalle conference. (2) The United States strategy of "strangulation by finesse" as exemplified at the Mondale-Vorster Vienna meeting. (3) The forthrightness of the Frontline States at the Maputo conference.

5.3. The threat of economic sanctions

In their first meeting with Vorster, the Contact Group unequivocally pointed out that should South Africa fail to agree to free and fair elections open to all parties in Namibia, they would support the sanctions vote being called for by the African states. Vorster was reminded that the triple veto of October 1976 had prevented the sanctions resolution. Although he described the threat of sanctions as "obnoxious",⁴¹⁷ he must have feared the consequences on the South African economy. When the Contact Group once more visited Namibia between May 8-10 1977, they persisted in their

⁴¹⁵ *ibid.*, section 12.

⁴¹⁶ **Facts on File**, May 7, 1977, p. 349.

⁴¹⁷ *ibid.*, p. 349.

condemnation of the Turnhalle arrangements as undemocratic and a breach of the international norms on human rights. They warned Turnhalle members in person that the West would not recognise the territory's independence until the Turnhalle delegates rewrote the constitution to eliminate ethnic divisions.⁴¹⁸ Whilst South Africa claimed that the presence of these diplomats conferred a measure of external legitimacy on the Windhoek administration, it was the requirements of negotiation that lay behind the visit. Even so, some Contact Group members were uneasy about being seen to legitimise the white-minority government in Pretoria or its protégé in Windhoek.

5.4. “Strangulation by finesse”

Unlike its predecessor, the Carter Administration conceived the Namibia, Rhodesia and South Africa issues as inextricably linked. In Carter's words: “in southern Africa, we have three major simultaneous and interrelated goals (Namibia, Rhodesia and South Africa), and they can be categorised respectively as: independence, majority rule and human rights”.⁴¹⁹ In essence, Carter regarded South Africa's illegal occupation of Namibia as a violation of the international law on self-determination and human rights. To drive the point home, when on May 18-20, the American Vice President, Walter Mondale met with Vorster, he (Mondale) told him that South Africa has no alternative, but a “one-man, one vote” principle.⁴²⁰ The administration strategy was to use its strong

⁴¹⁸ **Facts on File**, May 28, 1977, p. 400.

⁴¹⁹ Weekly Compilation of Presidential Documents dated September 5, 1977, p. 1263; **Department of State Bulletin** (hereafter the DSB), Vol. LXXVII, No. 1996, September 26, 1977, p. 397.

⁴²⁰ In his post-Vienna conference with Walter Mondale, Vorster's statement was nothing but a direct attack on the Carter's administration attitudes towards the apartheid regime. And in his statement before the South African House of Assembly on June 13, 1977, Roelof Botha, the Minister of Foreign Affairs unequivocally warned that “South Africa was heading inevitably for worsening relations with the United States unless US demands for one man, one vote in South Africa were modified. See, South Africa, **South Africa and the World: A Political Backgrounder**, (London, South African Embassy, no date

objection to apartheid to 'push' South Africa on both Namibia and Rhodesia. Vorster would later describe this strategy as "strangulation by finesse". It was this liberal agenda and not power politics that underpinned the Contact Group diplomacy on Namibia.

Yet there was a tension within the Carter administration between those who wanted to anchor the foreign policy in the liberal agenda, and those who saw issues within the prism of power politics. The former were known as regionalists, and the latter as globalists. Cyrus Vance, the Secretary of State, and Andrew Young (the Ambassador to the UN) were the leading regionalists, while, Zbigniew Brzezinski, the National Security Adviser, a quintessential realist, led the globalist camp.

Andrew Young was the administration's 'unique selling point' to the African leaders, being an African-American. His role in the UN was to secure the cooperation of the African states on Namibia. However, during his first visit to Africa between May 10-24, 1977, he was confronted with the division of opinion among the US ambassadors along the regionalist-globalist divide over the influence of the Soviet Union in Africa. The globalists expressed their grave concern at the presence of Soviet and Cuban troops in Africa. They wanted firm action from the United States to contain the Soviets. The regionalists thought that Soviet influence in Africa had been exaggerated, and that most African conflicts emerged out of tribal politics, dysfunctional and weak governmental institutions, and personal rule. They argued that most African states were not governed by ideology, but like 'consumers' were ready to switch brands when they grew dissatisfied. The tension between globalists and regionalist remained unresolved

given, p. 3-13; and 16. I got this material from the South African High Commission in

throughout the Carter administration. Although initially the administration pursued the regionalist line, events in the Horn of Africa in late 1977, and the Soviet invasion of Afghanistan in 1979, prompted some of the regionalists to take a crash course in geopolitics.

Young started his African trip with a visit to Ivory Coast. From there, he went to Ghana and from Ghana to Liberia. From Liberia, he went to Lisbon, where he met with Mondale, who was about to meet with Vorster in Vienna.⁴²¹ His visit to Ghana was both significant and symbolic. It was significant, as it was intended to bring West African states into the mainstream of the mediatory initiatives. As we saw in the last chapter, both Ghana and Nigeria had rejected Kissinger's offer of a visit in mid-1976. Nigeria, would later become a significant player in the Namibian question, as it served as part of the Frontline States, despite its geographical remoteness from southern Africa. Young met Mondale for policy co-ordination. After Mondale concluded meeting with Vorster, he conferred with the British Prime Minister, James Callaghan and the Foreign Secretary, David Owen. Vorster, on the other hand, went to Ivory Coast, to meet President Houphouet-Boigny. Boigny was a moderate African leader, who was France's most courted and trusted leader in Africa.⁴²² Given that France was amongst the Contact Group, Vorster wanted to tell the South African side of the story to France via Boigny. While the United States had defined for itself an undiluted responsibility for setting the Contact Group agenda and guiding it through, the Frontline States raised its profile on Namibia with the Maputo Conference.

London.

⁴²¹ **Facts on File**, May 28, 1977, p. 398.

⁴²² **Financial Mail** (South Africa), November 11, 1977, p. 476-77.

5.5. The support of the Frontline States at the Maputo conference

By 1977, the FLS had become an effective, albeit informal regional actor. At this time, the Namibian question was a more important FLS diplomatic project than Rhodesia/Zimbabwe. The FLS provided SWAPO with some materials, diplomatic and organisational support. More importantly, it served as the political fixer between SWAPO and the Contact Group, as shown during the six-day UN conference (May 16-21) held in Maputo.⁴²³ The conference intended to mobilise international support for and assistance to, the peoples of Rhodesia and Namibia in their struggle for self-determination and independence. Despite the Contact Group's reservations about the Maputo Declaration and Programme of Action,⁴²⁴ the FLS expressed their support for the Contact Group's *aide memoir* to South Africa. There were two turning points in Maputo. First, President Machel of Mozambique, the conference's chairman gave his support to both the Contact Group's action and the Anglo-American plan on Rhodesia.

Secondly, Nujoma gave a cautious welcome to the Group's initiatives. On May 16, he accused the Big Five of trying to perpetuate South African control over Namibia, but after meeting with Young the next day, he declared the "Western nations contact with South African Government were useful", though he remained opposed to Western activity in Namibia.⁴²⁵ Although SWAPO continued to be suspicious of the Contact

⁴²³ **United Nations Monthly Chronicle** (hereafter UNMC), Vol. XIV, No. 6, June 1977, (New York: UN Office of Public Information, 1977), p. 41; **Yearbook of the UN, 1977**, (New York: UN Department of Public Information, 1977), p. 828-833.

⁴²⁴ Maynes, William- The United States' Assistant Secretary of State for International Organization, spoke on behalf of the Five. He said: "The position of the Western members of the Security Council is clear. In the light on the initiatives we have taken, we find ourselves unable to associate ourselves with the number of the provisions of the Declaration. To associate ourselves would prejudice the results of the negotiations which have brought about the most promising start to resolve the Namibian problem", See UNMC, *ibid.*, p. 48.

⁴²⁵ **Facts on File**, May 28, 1977, p. 399.

Group, the FLS exerted considerable pressure to make SWAPO's outright rejection impossible. After Maputo, with the persuasion of the FLS, Nujoma met with the Contact Group to discuss SWAPO's response to Ambassador Murray's correspondence between August 8-11, 1977 in New York.⁴²⁶ Nujoma agreed to a parity of status of both the UN Special Representative and the South African appointed Administrator-General. But he insisted on the total withdrawal of South African troops from Namibia before elections were held.

Having got SWAPO conditional agreement, the Contact Group had a discussion with the South African government on September 22-25.⁴²⁷ Roelof (Pik) Botha, the South African Foreign Minister, rejected Nujoma's demand for a phased withdrawal of the South African troops. Surprisingly, South Africa made a sharp turnabout from the April and June concessions. Botha called the plan for a phased reduction of the South African troops to a 1,500-man level a device to turn Namibia over to SWAPO terrorists. He also insisted that South African forces would not withdraw until there was a watertight guarantee that the Cuban forces would not enter Namibia. The Contact Group found it difficult to provide the guarantee.⁴²⁸ Vorster had to persuade his foreign minister to set aside the Cuban issue,⁴²⁹ but he warned that South African forces would re-enter Namibia if there were any Cuban tricks. According to Vance, Pik Botha's new demand was dictated by his fear of an Afrikaner conservative backlash, following Proclamation

⁴²⁶ **A History**, op cit., section 14.

⁴²⁷ **A History**, op. cit., section 14.

⁴²⁸ Vance, op cit., p. 276.

⁴²⁹ It is important to note that South Africa never raised the issue of the Cuban troops, until it was raised by United States in 1981 as a condition for the withdrawal of the South African troops in Namibia.

264 of September 30, 1977, which de-linked the National Party of South West Africa (NPSWA) from National Party of South Africa (NP).⁴³⁰

Between October 15-19, the Contact Group briefed SWAPO on the outcome of its meeting with South Africa.⁴³¹ SWAPO insisted on a total withdrawal of South African troops. Afterwards the Contact Group had a discussion with the FLS on November 21 - December 7. A fourth round of talks with South Africa was held in Pretoria on December 2-3, 1977.⁴³² The position of South Africa and SWAPO on the withdrawal of South African troops remained incompatible. So also was the issue of the Walvis Bay. The Contact Group proposed a compromise. It included; a token of South African forces of 1,500 men to remain in Namibia, confined to a single base and to operate under UN monitoring until independence; the release of all political prisoners; a UN military presence of some "2,000 men"; and the deferral of the Walvis Bay issue for negotiation until after independence. South Africa and SWAPO did not accept these proposals.

The Contact Group feared a stalling of the momentum of the negotiation. At this stage, the consensus that bound them together was threatened. Britain and France were tempted to go along with the internal settlement plan. Even President Carter considered an internal settlement solution owing to SWAPO's rigidity.⁴³³ Vance recalled that he had to persuade Britain and France on the danger of agreeing to the internal settlement,⁴³⁴ which would have amounted to *de facto* international recognition of the

⁴³⁰ See Jabri, *op cit.*, p. 111.

⁴³¹ A History, *op cit.*, section 14.

⁴³² *ibid.*, section 14.

⁴³³ Vance, *op. cit.*, p. 302.

⁴³⁴ *ibid.*, p. 302.

South African plan. It would also have undermined the neutrality and the credibility of the Contact Group, and fuelled the scepticism of some radical African states. More importantly, it would have undermined the liberal premise of the Contact Group effort. In the light of these wider implications, it was consequently shelved. The Contact Group, however, concentrated on how to hold off South Africa from raising new and additional issues. By freezing new demands from South Africa, it would not be difficult to convince SWAPO through the FLS. The 'proximity talks' were the option to forestall a stalling.

At the 'proximity' talks the two principal parties, South Africa and SWAPO, met separately with the mediator without any direct dialogue between themselves. It involved a laborious process of notepassing by the mediator on issues being discussed between the main parties. The meeting was convened to bridge the gap between South Africa and SWAPO; to increase the momentum of the negotiation; and to minimize procedural difficulties.

SWAPO was willing to negotiate directly with South Africa; but Pretoria continued to refuse to deal directly with SWAPO.⁴³⁵ For the United States, Vance commented that, "contact with SWAPO was difficult, partly because its leaders were so out of reach, but also because of its suspicion about our motives".⁴³⁶ The proximity talk was designed to bring them as close as practicable. The choice of New York was important to all the parties, including the Contact Group. Being the centre of the United Nations, it denoted

⁴³⁵ **South Africa and the World**, op cit., p. 10. For instance, in his Vienna meeting with Mondale, Vorster described Nujoma as an "adventurer". He said, "We have nothing to say to an adventurer like Sam Nujoma, we have nothing to discuss with him...But as the South African Government, we have nothing to say to them (SWAPO) whatsoever".

⁴³⁶ Vance, op cit., p. 303.

neutrality. South Africa and SWAPO had established posts in New York, and both were taken out of their natural bases: Pretoria and Luanda or Dar-es-Salaam. To the Contact Group, the choice of New York was a matter of convenience. The 'working group' of the Contact Group was based at UN Headquarters. The FLS also had a considerable presence in New York through their UN representation.

The talks began on February 11, 1978, and focused on three issues: the South African troop withdrawal, the status of Walvis Bay and the role of the UN.⁴³⁷ As the talks progressed, there were signs that South Africa was stonewalling, whilst SWAPO was giving more grounds that anticipated as it agreed to allow 1,500 South African troops to remain inside Namibia throughout the elections. At one stage, German Foreign Minister, Hans Dietrich Gencher warned Pik Botha that sanctions would be unavoidable if Pretoria remained intransigent.⁴³⁸ Pik Botha suddenly withdrew from the talks, and they broke down. According to Peter Katjavivi, SWAPO's information secretary, Botha withdrew because he was startled by SWAPO's new flexibility. He remarked, that "Botha went to New York expecting to be confronted by SWAPO's rigid adherence to its earlier position. Instead, he found SWAPO more willing than in the past to discuss points put to it by the Five, and open to negotiation on its own detailed proposals".⁴³⁹ He concluded that: "for its part, SWAPO views Botha's departure as a clear indication that South Africa is not prepared to negotiate realistically".⁴⁴⁰ Indeed, Botha's action prompted the Contact Group to delay the submission of its proposal before the Nigerian-chaired Security Council.⁴⁴¹ As a

⁴³⁷ **Financial Mail**, February 17, 1978, p. 465.

⁴³⁸ *ibid.*,

⁴³⁹ **Financial Mail**, February 17, 1978, p. 465.

⁴⁴⁰ *ibid.*, p. 465.

⁴⁴¹ **Financial Mail**, January 6, 1978, p. 14.

damage-limitation exercise, British Foreign Secretary, David Owen described Botha's walkout as only a temporary setback.⁴⁴² On his return to South Africa, Pik Botha disclosed that there was still hope for negotiations, if the Five were prepared to accept the "reasonableness of South Africa's position".⁴⁴³

It is tempting to conclude that Nujoma's flexibility wrong-footed Pik Botha. Botha's walkout, however, was a device to win more time for its protégé, the DTA, to solve its internal problems. In the wake of the assassination of Chief Clemens Kapuuo, the black leader of the DTA, South Africa wanted to seem to be tough on SWAPO, in order to cut the DTA's losses.⁴⁴⁴

5.6. The Post-Proximity Talks and the South Africa's Ascension Day military strike.

In March, the Contact Group presented Pik Botha with "amplifications and clarifications" of aspects of Namibian settlement plan. The German Ambassador to South Africa, H. J. Erick, represented the Group on this occasion. Afterwards, he briefed SWAPO representatives in Windhoek on the latest developments, and assured them that the basic proposals remain unchanged, but merely fine-tuned.⁴⁴⁵ The Contact Group tacitly appealed to the 'good faith' of both SWAPO and South Africa to gain their consent on the modified proposals. They stated that if South Africa failed to endorse the proposals, it would not be because of technicalities, but because it lacked the political will to agree to a process that might result in a loss of *de facto* control of Namibia. Likewise, they stated that if SWAPO rejected the proposals, it would not be because the proposals were unfair, but because it did not want to face the prospect of

⁴⁴² *ibid.*, p. 14.

⁴⁴³ *ibid.*, p. 14.

⁴⁴⁴ See, *Financial Mail*, March 31, 1978, p. 999, for Chief Kapuuo's assassination..

not winning in a democratic test of acceptability.⁴⁴⁶ In addition, the Contact Group employed a pre-emptive tactic to gain the consent of South African and SWAPO. On April 10, it formally handed over its proposals to Andrew Young, who was the Security Council President at the time, requesting that they be circulated among the council members as an official UN document. This was done- (UN Document S/12636).⁴⁴⁷ The content of the proposals was carefully packaged. The deferment of the Walvis Bay issue was to satisfy South Africa, while a call for a free and fair election, under the UN-supervision and control was to satisfy SWAPO. African states wavered in their support because of Walvis Bay, but there was no outright rejection of the whole proposals. Nevertheless, the Contact Group's pre-emptive tactics, as well as Pretoria's surprising offer of acceptance on April 25, 1978, prompted Nujoma to blow the whistle on the whole exercise.

In his address before the General Assembly, Nujoma pointed out that the manner in which the proposals had been handled had the effect of creating confusion in the UN, which was perhaps the objective.⁴⁴⁸ He further declared that, "SWAPO did not think that the timing of those developments was a mere coincidence, but had rather been done to hijack the deliberations of the session and to give the false impression that a settlement was at hand for Namibia". He accused the Contact Group of "deliberately framing in ambiguous terms the role of the UN Special Representative, so as to confuse the minds of those who read it".⁴⁴⁹ The strongest criticisms against the proposals came from the Soviet Union. Ambassador Mikhail Khalamov, told the Assembly that

⁴⁴⁵ *ibid.*,

⁴⁴⁶ **Financial Mail**, March 24, 1978, p. 912.

⁴⁴⁷ A History, *op cit.*, section 16; **United Nations Monthly Chronicle**, Vol. XV, No. 6. June 1978 [Special Session on Namibia]; **Financial Mail**, April 14, 1978, p. 115.

⁴⁴⁸ UNMC, *ibid.*, p. 6.

SWAPO must take over the nation: “the true goal of the Western settlement plan was clear: it was intended to make things difficult for SWAPO and it could involve the puppets of the Turnhalle conference”.⁴⁵⁰

The Contact Group, on their own found it difficult to persuade Nujoma to accept the proposals. They therefore solicited the support of Joe Garba, Nigerian External Affairs Minister. Nigeria’s role was predicated on the fact that Lagos was widely acknowledged to have provided political and financial support to SWAPO. Yet Garba’s efforts to persuade Nujoma to abandon his equivocation got nowhere.⁴⁵¹ Nujoma maintained that he would neither reject the proposals nor scuttle the negotiations, but instead called for substantive changes. However, Nujoma’s scepticism about the plan was less damaging compared to South Africa’s next course of action. On May 4, 1978, the South African military struck against two SWAPO bases in southern Angola. In his letter to the United Nations via the Contact Group, P. W. Botha, South Africa’s Defense Minister, termed the attack “a limited military operation”.⁴⁵² But its scale indicated that it was more than a mere reprisal for border violations. Its timing suggested a deliberate diversionary act. It was intended to inflict psychological wounds on SWAPO. For example, a South African Defense Force spokesman told newsmen in Windhoek after the attack that “we expect SWAPO to attempt an attack on a

⁴⁴⁹ *ibid.*

⁴⁵⁰ *ibid.*, p. 100

⁴⁵¹ Vance, *op cit.*, p. 95. It worth noting that SWAPO had established its first diplomatic post in Nigeria in early 1970s before the ANC and the PAC. In showing its further commitment to the independence of Namibia, the Nigerian government decided to create a N100 million (\$40 million) Namibia Solidarity Fund, on June 16, 1989. The Fund was chaired by Nigeria’s former representative to the UN, Ambassador Maitama Sule. See, Chukwuma, Odi. E. **President Ibrahim Babangida: Foreign Policy Triumphs.** (Lagos: Bisau Publications: 1991), p. 140-142- “Nigeria in the struggle to free Namibia”.

⁴⁵² . UNMC, Vol. XV, No. 6, June 1978, p. 12, (S/12697); **Randy Daily Mail** (South Africa), May 5, 1978.

prestigious target in Ovambo to show that it still has the right to exist".⁴⁵³ Its other political ends were to lift the morale of the DTA. Ben Amathila, SWAPO's Secretary for Economic Affairs opined this view in London when he said that: "the Kassinga raid was an attempt to reassure the whites in Namibia and the Turnhalle leaders of South Africa's ability to protect them".⁴⁵⁴

This was dangerous brinkmanship. The attack put the co-operation of the FLS, especially Angola, at risk. It increased the potential for escalating conflict on the Namibia-Angolan frontier. It reinforced Nujoma's view that South African forces must completely withdraw from the territory. As a result of the attack, Angola withdrew its effort in persuading SWAPO. Consequently, Nujoma broke off talks in New York and returned to Angola.⁴⁵⁵ The Contact Group's support for a Security Council Resolution 428 (1978) condemning the attack did not dissuade SWAPO from declaring that it was no longer interested in the negotiation.⁴⁵⁶

Pretoria's reactions to these waves of condemnation were confused. Immediately, it embarked on a damage limitation exercise by reaffirming its commitment to the Contact Group proposals for Namibian independence. It offered documentation to show that the strike had been aimed at a guerrilla base, not civilian targets. The South African government quickly abandoned this approach, and decided to play the 'Soviet and the communism cards'. First, it claimed that its troops had found USSR military uniforms and documents in rebel bases it captured. Secondly, Pik Botha attacked the United States for using double standards by calling the timing of the raid "unfortunate" while

⁴⁵³ **Financial Mail**, May 12, 1978, p. 437.

⁴⁵⁴ **Financial Mail**, May 19, 1978, p. 538.

⁴⁵⁵ **New York Times**, May 6, 1978, p. 4.

ignoring guerrilla attacks by SWAPO.⁴⁵⁷ Thirdly, Vorster accused the United States of seeking to make South Africa a scapegoat for the failure of the plan.⁴⁵⁸ Pretoria played the 'communism card' in the wake of the increasing tension in the Horn of Africa. Pretoria's allegations touched a raw nerve in the US government.

At this stage, the administration did not want to be seen to be soft on communism in any of its manifestations. Consequently, the State Department denied Pretoria's allegation that the US did not oppose SWAPO's terrorist activities.⁴⁵⁹ The United States also reminded Pretoria that President Carter had started calling for a Cuban military withdrawal from Angola, as early as April 1978.⁴⁶⁰ Carter, himself, spoke about "the very tight constraints" imposed by Congress on his ability to aid friendly African nations, in contrast to the eagerness of the Soviets and Cuba to provide military weapons to any group where they might see a foothold there".⁴⁶¹

While Pretoria's attempt to play the 'communist card' achieved little by way of policy changes, it successfully exposed the tension between regionalists and globalists. For instance, Young continued to maintain that the Cuban and Soviet presence in Africa did not constitute a threat to US strategic interests. He said he did not favour a repeal of the legislation barring US aid to Angolan guerrillas.⁴⁶² Cyrus Vance also declared on June

⁴⁵⁶ UNMC, *ibid.*, "Special Assembly Session on Namibia", p. 8.

⁴⁵⁷ *New York Times*, May 13, 1978, p. 3.

⁴⁵⁸ *New York Times*, May 29, 1978, p. 3.

⁴⁵⁹ *New York Times*, May 13, 1978, p. 4.

⁴⁶⁰ *Facts on File*, May 26, 1978, p. 383.

⁴⁶¹ *ibid.* In a speech to the editors' group on May 19, Carter expressed resentment over congressional restrictions on his power to commit the US to overseas conflicts. He contrasted what he said was a US incapacity to act in Africa with the USSR and Cuba, which he said were "quite eager to provide military weapons to any group where they might see a foothold there...".

⁴⁶² *Facts on File*, May 26, 1978, p. 383.

20, that the US would not “treat Africa simply as an arena for East-West competition”. Yet Carter’s concerns were a sharp contrast to both Young’s and Vance’s positions. The president’s concern was in line with that of Brzezinski, who preferred robust American action to check the Soviets and Cubans in Africa.

However, on June 11, after a month-long suspension of talks with the Contact Group, SWAPO announced their resumption after two-day meeting with the FLS in Luanda.⁴⁶³ The FLS demanded that the Security Council take adequate measures to guarantee the territorial integrity of Namibia including Walvis Bay. They added: “any attempt by South Africa to use Walvis Bay to sabotage Namibian independence should be regarded by the Security Council as a threat to international peace and security”.⁴⁶⁴

As important as were these FLS pressures, they were not sufficient. SWAPO was only finally jolted into action by internal disputes. For instance, on May 25, Andreas Shipanga, former SWAPO secretary of information, and 18 others, were released, after 2 years in Zambian and Tanzanian jails.⁴⁶⁵ They were jailed in April 1976 as a result of leadership tussle with Nujoma. Speaking in London after his release, Shipanga said that the Western proposal was the “only solution” for Namibia.⁴⁶⁶ He favoured a moderate political course for Namibia, and strongly criticised Nujoma. As far as he knew the only opponent to the plan was SWAPO’s Marxist leader Sam Nujoma, whom he described as a selfish power-seeker tyrant.⁴⁶⁷ Perhaps, Shipanga’s criticisms of

⁴⁶³ A History, op cit., section 18.

⁴⁶⁴ **Financial Mail**, June 16, 1978, p. 892

⁴⁶⁵ For a brief analysis of the SWAPO internal crisis of 1976, see, Iina Soiri and Pekka Peltola, **Finland and National Liberation in Southern Africa**, (Uppsalla: Nordiska Africainstitutet, 1999), p. 126.

⁴⁶⁶ **Facts on File**, June 23, 1978, p. 475-76.

⁴⁶⁷ *ibid.*

Nujoma were less threatening than the action he took with other released political prisoners, in forming a new political party, the SWAPO-Democrats, on June 19. And even more worrisome to SWAPO, was his action to forge an alliance with the Namibia National Front, under the leadership of Mr. Brian O'Linn. SWAPO felt vulnerable because Pretoria could use the combinations of SWAPO-D, the NNF and the DTA to justify a Namibian UDI.

The creation of SWAPO-D was also worrisome to the FLS. They did not want another "Angolan scenario". They wanted to avoid having to reconcile rival liberation movements or, failing that, to choose between them in Namibia as they had been forced to do in Angola. It was therefore not surprising that it was reported that President Nyerere told Nujoma bluntly at the Luanda meeting that: "I want the South African troops not only out of Grootfontein, I want them out of the whole of Namibia. The only way to ensure this is the acceptance of the Western plan."⁴⁶⁸ On June 20, when, unexpectedly, SWAPO announced the postponement of its discussion with the Contact Group,⁴⁶⁹ Vance warned SWAPO that the West could do little for Namibia if it continued to reject or stall Western proposals.⁴⁷⁰

For the second time, the Contact Group feared that its efforts would be derailed. The increase in the number of Soviet and Cuban advisers in the Horn of Africa fuelled the Contact Group's concern that the Soviets could exploit the consequence of a breakdown in the negotiations to its advantage.⁴⁷¹ To prevent this scenario, Don

⁴⁶⁸ **Financial Mail**, July 28, 1978, p. 301.

⁴⁶⁹ **New York Times**, June 21, 1978, p. 3.

⁴⁷⁰ **New York Times**, June 23, 1978, p. 1.

⁴⁷¹ **New York Times**, June 26, 1978, p. 5.

McHenry visited Angola between June 21-26.⁴⁷² This was the first official Washington-Luanda contact since Angolan independence in 1975. McHenry focused on the crisis in the Horn of Africa conflict and the Namibian issue.⁴⁷³ He received an Angolan pledge to influence SWAPO to accept the Contact Group plan. In exchange, the US promised to suspend support for Angolan anti-government guerrillas. On July 12, and following further discussions in Luanda between Nujoma and the Contact Group, SWAPO announced its acceptance of the plan.⁴⁷⁴

Having secured the agreement of both SWAPO and South Africa, the Contact Group put its proposals before the Security Council meeting on 27 July. However, Pretoria's interpretations of the draft resolutions nearly scuttled the proposals. The draft resolution called for early steps to "re-integrate" Walvis Bay into Namibia, and stated that the Security Council "would remain seized of the matter until Walvis Bay is fully integrated".⁴⁷⁵ South Africa believed that the Walvis Bay question had been upgraded to a status level with the main settlement proposals and that the incorporation of the port would run parallel with implementation of the settlement plan. The Contact Group members embarked on an intensive lobby to keep the resolutions "clean", and to prevent the Walvis Bay issue from becoming a pretext or an excuse to break off the exercise.⁴⁷⁶

By this stage, South Africa's tactics had become almost predictable: keeping the 'back door open' to pull out or raise a new issue at the last minute. The Group had to explain

⁴⁷² **Facts on File**, June 30, 1978, p. 487-88.

⁴⁷³ **New York Times**, June 28, 1978, p. 1.; **Facts on File**, June 30, 1978, p. 488.

⁴⁷⁴ **Facts on file**, July 21, 1978, p. 547.

⁴⁷⁵ **Facts on File**, July 28, 1978, p. 301.

⁴⁷⁶ *ibid.*

to Botha that the draft resolution was in no way represented a legal commitment by the Security Council to support moves for the incorporation of Walvis Bay before an independence government has been stalled in Namibia.⁴⁷⁷ This draft resolution, therefore, applied to a future situation, which would be dealt with only after successful implementation of the independence plan. They assured South Africa that the draft resolution did not affect the existing legal position and sovereignty of South Africa over Walvis Bay; it called for negotiations, not a direct transfer. Despite these assurances, Pik Botha was not fully convinced that the proviso on Walvis Bay had not become a secret addendum to the formal proposals.

All these ploys failed to derail the debate on Namibia in the Security Council. On July 27, the Security Council endorsed the Group's Proposal.⁴⁷⁸ The voting was in two parts. The first round of balloting approved a Resolution (431), which formally endorsed the formula for a UN troop presence to monitor a cease-fire, South African troop withdrawal and UN supervision of elections for a Namibian government. It was passed by a 13-0 vote, with the USSR and Czechoslovakia abstaining.⁴⁷⁹ The abstention by these two states demonstrated their dissent, but it was a relief to the Contact Group, as

⁴⁷⁷ *ibid.*

⁴⁷⁸ UNMC, Vol. XV, No. 8, August-September 1978, p. 5-18; **Facts on File**, July 28, 1978, p. 561-62.

⁴⁷⁹ The SCR 431 (1978) provided for the composition of the UNTAG. The UNTAG composition would consist of the military component and a civilian component under the over-all direction of the Special Representative of the Secretary General. The strength of the military component would be in the order of seven infantry battalions, totaling 5,000 plus 2,000 monitors. In addition, the command, communication, engineers, logistics and chain supports would be approximately 2,300. The civilian component would consist of two elements: the civil police, of about 360 experienced police officers on secondment basis from the UN memberstates; the non-police element consisted of 300 professional officers, supervising and controlling all aspects of electoral process. Thereafter, 1,000 professional and 200 field service and general staff. The UNTAG team would serve a duration period of one year. The cost was estimated at \$300 million. See UNMC, Vol. XV, No. 9, October 1978, p. 5. (S/12827).

they had feared a Soviet veto. The second resolution (432), adopted by 15-0 gave official UN support to the unification of Walvis Bay with an independent Namibia. The Secretary-General also announced the appointment of Mr. Marti Ovia Ahtisaari of Finland, who had previously served as the UN Commissioner for Namibia as the UN Special Representative for Namibia.

Four days later, on July 31, the South African Government accepted Resolution 431, but rejected Resolution 432. Vorster maintained that only the South African Parliament could change the status of Walvis Bay; and that South Africa would not be “dictated to” on the subject. He indicated however, that his government would permit Ahtisaari to visit Namibia, but would defer final approval of the plan until receiving Ahtisaari’s report.⁴⁸⁰

With a 47-member team, Ahtisaari embarked on 16-day mission (August 5-22, 1978) to prepare a plan on effecting a transition to independence.⁴⁸¹ The delegation met with Marthinus Steyn, South African administrator-general for Namibia, and the representatives of SWAPO and other political groups. Steyn, under the influence of South Africa refused to consider halting the voter registration. He also insisted that December 31 remain the date for Namibian independence following election for the new government. SWAPO, on the other hand, maintained its opposition to the South African unilateral action in registering voters and demanded a new registration drive under the UN supervision.

⁴⁸⁰ A History, op cit., section 20.

⁴⁸¹ A History, op cit., section 21; **Facts on File**, August 18, 1978, p. 633; **New York Times**, August 22, 1978, p. 23.

The Ahtisaari's visit was marred with a new fighting between South Africa and SWAPO in the Caprivi Strip. By now a pattern was evident. Each party was juxtaposing military action with negotiation. Whenever either side calculated it would be effectual, or found that it might have to conceded too much at the negotiating table, military action followed. For instance, SWAPO declared that "in accepting the West's offer of mediation, it was aware of the design that the Contact Group member states were allies of apartheid South Africa. But we proceed from the premise that political, diplomatic and military aspects of the struggle are not contradictory, but complementary, and as such they can be pursued concurrently".⁴⁸² Thus on August 22, SWAPO launched a military strike against the South African troops from Zambia. Military reports announced that nine South African soldiers were killed and 10 wounded in the 2-hour SWAPO assault. It was the highest South African death toll in any single battle with SWAPO in the guerrilla war. Due to its heavy casualties, South Africa initially accused Zambian soldiers of helping SWAPO out, but later withdrew the charge. Ahtisaari left Namibia on August 23, a few hours before South Africa made a three-day retaliatory attack.⁴⁸³

With the Caprivi Strip incident, the fragile settlement plan faced an uncertain future. The sudden resignation of John Vorster, due to ill health and the 'Rhodigate scandal'⁴⁸⁴ as South African Prime Minister, heighten the state of nervousness of the

⁴⁸² **NAMIBIA TODAY: OFFICIAL ORGAN OF THE SWAPO**, Vol. 6, No. 2, 1982, p. 7.

⁴⁸³ **Facts on File**, September 1, 1978, p. 669.

⁴⁸⁴ **Facts on File**, September 29, 1978, p. 741. The Rhodigate scandal involved the Information Secretary, Eschel Rhoodie over his agency misuse of money to buy influence abroad for South Africa. The Auditor-General, Gerald Barrie, found out that the Information Department had diverted some money to buy goodwill and influence overseas without the knowledge of the Parliament and approval of the Treasury. More damagingly, the money were said to be used to influence political campaigns in the United States to

negotiation, as hawkish, Pieter Botha became his successor. The Contact Group was now faced with two Bothas: Pik Botha and Pieter W. Botha. As demonstrated in chapter two, since the days of Generals Smuts Hertzog in the 1920s, the Namibian conflict has always been a factor in any leadership contest in the South African domestic politics. The game was not different now. Even Pik Botha, a dovish liberal seized on the Namibia conflict for political advantage. His reaction to the Waldheim's report, based on Ahtisaari's findings suggested extreme scepticism about the UN's role. On September 6, he wrote a lengthy letter to Mr. Waldheim, where he foresaw 'severe problems' with the size of the UN forces. A copy of the letter was given to the Contact Group ambassadors in New York on September 12, and asked for their reply within 72 hours, i. e. September 15. The Contact Group insisted that the Waldheim plan was un-negotiable.⁴⁸⁵

On September 20, he pointed out that the Waldheim plan contradicted the proposals South Africa had accepted in talks with the Contact Group. He declared that South Africa would not accept more than 5,000 UN peacekeepers in the territory, and that the UN plan for a 7,500 strong UN peacekeeping force was tantamount to installing the USSR-backed SWAPO to govern the territory. Pik Botha's language indicated that he had a wider audience in sight with his strongest criticism of the UN since the negotiation started 18 months ago.

oppose the reelection of Senator Dick Clark [D-Iowa], who was known for his anti-apartheid policies, and led the Congressional votes in 1976 that terminated the United States covert support to the UNITA rebels and assistance to South Africa based on its involvement on Angola. .

⁴⁸⁵ A History, op cit., section 23. For the implementation of the UNTAG, see, Thornberry, Cedric, op cit, p. 19-6.

Two days later, on September 22, SWAPO announced that it would intensify its war efforts. Nujoma told the press that SWAPO was now looking to UN, and not the proposals drawn by the Contact Group. His call on the “socialist countries to furnish SWAPO with weapons” to step up its guerrilla struggle, un-nerved the Contact Group. None of them was comfortable with the South African decision, nor interested in seeing the involvement of the Soviet Union, in any form. The State Department sharply criticised South Africa, and called for “urgent consultations” with the FLS and the other members of the Contact Group.⁴⁸⁶ Meanwhile, on September 28, 1978, the 172-member caucus of the ruling National Party elected P. W. Botha, the Defense Minister, as the new Prime minister.⁴⁸⁷

Pieter Botha was a militarist hawk. His election was a victory for the archconservative wing of the National Party. It signified the victory of the Cape Province faction of the party, over the Trasvaal wing led by Connie Mulder, minister of plural relations, and the more liberal Afrikaner faction, led by Pik Botha. During the leadership contest, Botha chose the Namibia negotiations as one of his campaign issues. He asserted that Western diplomacy was bent on installing a Marxist state in Namibia. Furthermore, in his first post-victory speech outside National Party headquarters in Cape Town, he not only ruled out any possibility of abandoning apartheid; but also maintained that South Africa was determined to remain in Namibia despite the UN decision. He stated that South Africa had no intention of challenging the world, but he would not allow other nations to push it around.⁴⁸⁸ The Vorster’s announcement in his farewell speech that

⁴⁸⁶ **New York Times**, September 22, 1978, p. 68.

⁴⁸⁷ **Facts on File**, September 29, 1978, p. 741-42.

⁴⁸⁸ **New York Times**, October 1, 1978, p. 39.

Pretoria would withdraw from the UN initiative,⁴⁸⁹ was a foretoken that the Contact Group now had to work against being fulfilled.

In any event, the Contact Group succeeded in convening a Security Council meeting on September 29. The Security Council approved the Contact Group documents as Resolution 435 (1978).⁴⁹⁰ The Security Council decided to send 7,500 peacekeepers; and ordered South Africa “forthwith to co-operate” with the Secretary General in facilitating the work of the UN. It also authorised the establishment of UNTAG for a period of up to 12 months.⁴⁹¹ All unilateral measures taken by South Africa to conduct an election in Namibia were declared null and void, and the Secretary-General was requested to report on the implementation of Resolution 435 by October 1978. The Afro-Asian bloc made clear to the Contact Group that they expected the Contact Group to support sanctions if South Africa compliance was not forthcoming.⁴⁹²

5.7. Resolution 435 (1978): a legal and political formula on the Namibian question

Resolution 435 augmented Resolution 385 (1976) and later served as the final legal ‘frame of reference’ on South Africa’s authority in Namibia. It strengthened other resolutions such as the 1966 General Assembly’s termination order, and the subsequent revocation order of the ICJ in 1971. These instruments detached all the intricacies of Mandate system, and brought the Namibian settlement from the realm of international law, into the political sphere. However, unlike the previous resolutions such as Resolution 385 (1976), Resolution 435 (1978) grew out of diplomatic manoeuvres. As both a legal and political formula, it assumed a life of its own, and like all similar

⁴⁸⁹ **Facts on File**, September 29, 1978, p. 741.

⁴⁹⁰ **UNMC**, Vol. XV, No. 9, October 1978, p. 5, 16.

⁴⁹¹ **New York Times**, October 1, 1978, *ibid.*, p. 13.

documents, it contained some inherent flaws. Its basic flaw was that it determined that a constitution for Namibia should be drafted after independence elections. Its main outcome would have secured the prospect of a SWAPO dominated government with no guarantee of minority rights. Its other implication was that given the volatility of the tribal politics in Africa, SWAPO would have a free ride in settling old scores through the use of state apparatuses against the minorities, whose rights are not guaranteed. Its main premise differed sharply from the usual practice in Africa. It had been generally assumed that a pre-independence constitution such as the one drawn up at Lancaster House for Zimbabwe was essential for the long-term stability of a new nation-state. Interestingly though, South Africa never seized upon these flaws, until the United States came on with the 'strengthening' of Resolution 435 in 1981 under the linkage politics. We shall focus on the linkage politics in the next chapter.

Its strength however, was that it put the burden of South African compliance on the Contact Group. The resolution was a little short of an 'ultimatum'. It had a specific, clearly defined objective, with a threat of punishment for non-compliance.⁴⁹³ It required the Contact Group to make sure that South Africa did not derail the plan. For the first time in 18 months, the Contact Group was faced with some tough decisions to make, should South Africa fail to comply. Should they vote for mandatory economic sanctions, partly to satisfy the Afro-Asian bloc; and partly to fulfil their threat of doing so, as made clear to South Africa in April 1977? Or should they veto the sanctions, even at the risk of damaging their own credibility and reputation for impartiality?

⁴⁹² Vance, *op cit.*, p. 308

⁴⁹³ George and Craig, *op cit.*, p. 198, for a detailed analysis of coercive diplomacy in general and a 'ultimata' in particular.

Meanwhile the African states were threatening to put the sanction issue to a vote. The Contact Group was in a difficult position, especially the United States and Britain. Collectively, the Group was being deprived of its reasoning for not supporting the sanctions resolution. For instance, at the end of 1977-the last occasion when Africa called for economic sanctions- the Contact Group dissuaded the Africans pushing on the grounds that Pretoria was co-operating with the Contact Group, and that South Africa might also help to produce an internationally acceptable settlement in Rhodesia. Sanctions, it was argued, would jeopardise hopes on both counts. This line of reasoning was no longer tenable. Yet a sanction vote would be a moral victory to the black African states and the Soviet Union.

Individually, each member of the Contact Group also had its own reasons for supporting or opposing sanctions. For Britain, at this time, was sensitive to the Bingham inquiry, which concluded that there was evidence of some enigmatic relationship between the government officials and the oil companies that led to sanction busting on Rhodesia.⁴⁹⁴ For instance, before leaving London for New York, Britain's foreign Secretary, David Owen specifically stated that he was not opposed to sanctions, although these would have to be carefully prepared if they were to have the desired effect. This, he said, was a lesson of Bingham inquiry.⁴⁹⁵ "Britain would not rush into anything-but neither would it lag behind".⁴⁹⁶

For the United States, Vance later revealed that the tough choice imposed by the sanction vote had led President Carter to convene an emergency meeting of the

⁴⁹⁴ **Financial Mail**, September 29, 1978, p. 1151.

⁴⁹⁵ *ibid.*, p. 1153.

⁴⁹⁶ *ibid.*

National Security Council on October 6, 1978 to review the whole southern African issue.⁴⁹⁷ Carter agreed that, failing positive moves by South Africa, the time had come for direct pressures. He wrote P. W. Botha a personal letter, to be delivered by Vance in company of other Contact Group ambassadors.⁴⁹⁸ This contained a personal plea for South Africa to ease its opposition to UN plan. Carter offered to meet Botha in Washington for discussions on how South Africa's international standing could be improved, providing Pretoria reversed its September 20 decision.⁴⁹⁹ As a further inducement, Carter offered that the Contact Group would squeeze SWAPO for more concessions. His intention was a re-scheduling of the UN supervised election for the spring of 1979, and a reduction in the number of the peacekeepers from 7,500 to 3,500 combat troops, but with an increase in the civilian personnel from 1,200 to 1,500 officials.

The NSC concluded that should Botha fail to respond positively to these proposals, a sanction vote was imminent. Yet when the vote was called, each of the five balked on total UN embargo. In New York, David Owen made it clear that, despite the Bingham report, Britain was not ready to take any measure that would be injurious to South Africa, or leading to significant economic loss for Britain.⁵⁰⁰ The Contact Group as a whole settled for 'soft sanctions' such as the restrictions on landing rights for South Africa civil aircraft and denying Pretoria access to export financing from Western sources.

⁴⁹⁷ Vance, *op cit.*, p. 308

⁴⁹⁸ *New York Times*, October 17, 1978, p. 32.

⁴⁹⁹ Vance, *op cit.*, p. 308.

⁵⁰⁰ *ibid.*

From the foregoing, it is discernible that the content of the Contact Group package contained too many “soft spots” that would undermine its capacity to convince South Africa to change course. Bearing in mind the “softness” of the package, their three-day “rapid-response mission” to Pretoria (October 16-18, 1978), was a futile one.⁵⁰¹ Vance admitted after he left Pretoria that “the West had no assurances on South Africa’s position”. “We will have to wait and see”.⁵⁰² The gulf between the two parties remained wide and was widening. For example, the South Africa Government stressed that it would not withdrawal it forces without a cease-fire. For its part, the Contact Group stated that it saw no way of reconciling South Africa’s unilateral elections with the proposal endorsed by the Security Council. The response of SWAPO to the Pretoria talks did not surprise many within the international community. Theo-Ben Guribab, SWAPO permanent observer to UN asserted that Contact Group should “concede failure” on Namibian question.⁵⁰³

As Vance and other members of the Contact Group left Pretoria empty-handed, they turned to the United Nations.⁵⁰⁴ Waldheim was called to send Ahtisaari to Windhoek to work the “modalities” of the UN-supervised elections with Steyn. For the first time, the United Nations was to be used by the Contact Group to salvage the negotiations. Two reasons could be adduced for this move. First, to get South Africa via the administrator-general to commit itself to going on with the settlement plans. Secondly, to manoeuvre Waldheim into underwriting the Pretoria agreement before SWAPO and the African states could have a chance to block it. Perhaps, having recognised that the UN had been largely marginalised in the negotiation process, Waldheim refused the Contact Group’s

⁵⁰¹ **Financial Mail**, October 27, 1978, p. 297.

⁵⁰² *ibid.*

⁵⁰³ **New York Times**, October 24, 1978, p. 63.

suggestion. His refusal was predicated on principle and credibility, rather than expediency. If Waldheim had sent Ahtisaari to Windhoek, the UN would have found itself in an impossible situation. It would have been tantamount to a breach of its own words. Most of the pre-conditions, on which the UN agreed to the Western plan, were yet to be fulfilled by South Africa. Under the plan, it was the UN military and civilian force that was to be responsible for enforcing the cease-fire, not South Africa. For the election to go ahead irrespective of the withdrawal of South African troops would be a clear breach of the UN favoured plan.

Meanwhile, the FLS were becoming increasingly irritated with the Contact Group's diplomacy. Consequently, Andrew Young embarked on another African tour.⁵⁰⁵ He visited Guinea, Nigeria, Mozambique, Tanzania and Zambia, to "cool off" their anger. Young's efforts came too late. Carter's signing of the legislation on November 10 restricting the Export-Import Bank in financing trade with South Africa also too late. Three days afterwards, the African states called for the sanctions vote in the Security Council. They believed that any negotiation with Pretoria without any sanction threat was to engage in a "dialogue of the deaf". The Security Council warned South Africa through Resolution 439 (1978) to cancel its planned elections in Namibia or face UN economic sanctions.⁵⁰⁶ Resolution 439 gave Pretoria an ultimatum of two weeks in which to change its plans. It was passed by 10-0 votes with abstentions by the five Contact Group members. Their abstentions undermined the strength of the resolution, and reinforced the 'credibility gap' being suspected by the African states. They now lacked the 'teeth' with which to force Pretoria abandoning its own strategy.

⁵⁰⁴ **Financial Mail**, October 27, 1978, p. 297.

⁵⁰⁵ **New York Times**, November 20, 1978, p. 1.

⁵⁰⁶ **UNMC**, Vol. XV, No. 11, December 1978, p. 5, 9.

It is tempting to deride the abstention. But such cynicism seems literally beside the point. The abstention marked a contrast with the Carter Administration policy of “strangulation by finesse”. The sanction issue highlighted the paradox embedded on the Contact Group objective, that it is a strange mixture of interests and idealism. A tension between the weight of the national interests over the letter of Resolution 435 (1978). They engineered the process that led to the passing of the resolution, yet refused to take action that would actualise its main goal, as other members of the international community had hoped. It was evident that the Contact Group did not want to weaken their own ally (South Africa), and, unwittingly strengthen their uncertain friends (the African states); or make the Soviet sense a stress on the West-South African relationship. As shown in chapter four, Pretoria believed that the West, especially the United States left her in the lurch at the most critical moment of the Angola crisis. P. W. Botha, (then Defense Minister), was a passionate believer of this view. For example, in his statement before the South African House of Assembly in April 1977, he said without deference that: “it is time the West heard in stern language that South Africa has never left it in the lurch, but it has left us in the lurch a number of times. The most recent time was last year in Angola”.⁵⁰⁷

In effect, the abstention aimed at not incurring the anger of the South Africans given that at this time, the Soviets and Cuban troops were helping Ethiopia against Somalia over the Horn of Africa. If they had voted for the sanctions, both Soviets and the Africans would have claim a moral victory of sort against South Africa. In addition, the Contact Group was concerned of not setting a precedent for a sanction against Israel, an

issue, which by itself reflected a division of opinion along the West/South Africa and Soviet Union/Africa divide.

Perhaps, a threat of sanction would have deterred Pretoria from announcing on November 25, 1978, that the December election would go ahead as scheduled. The FLS, although angered, did not waver. Three diplomats namely Gwendoline C. Konie (Zambia), Leslie O. Harriman (Nigeria) and Salim A. Salim (Tanzania) urged UN correspondents to stay out of Namibia during the elections in December, insisting that their presence will help to legitimise “sham elections” aimed at installing a puppet regime in the territory.⁵⁰⁸ The Contact Group embarked on a damage-limitation exercise for abstaining on the sanction vote. President Carter invited P. Botha to Washington. Vance warned P. Botha in New York that South Africa should not assume that the Contact Group, and the US in particular would continue to resist attempts to impose sanctions, if it failed to comply with Resolution 435. On November 30, during his meeting with P. Botha at the White House, with Vance and Brzezinski in attendance, President Carter warned him that the US would support economic sanctions against Pretoria unless it co-operates with UN on Namibia.⁵⁰⁹ The reactions of South Africa afterwards indicated that it felt susceptible, for the first time since the negotiation began in April 1977. Afterwards Pik Botha pledged that South Africa would not use internal elections to install a government in Namibia. He further declared that Pretoria would “recommend strongly” to the winners of the December elections that they accept Resolution 435 and agree to new elections seven months after the

⁵⁰⁷ **South Africa: Defense and Strategic Value: A Political Backgrounder**, (London: South African Embassy, 1977), p. 27.

⁵⁰⁸ **New York Times**, November 29, 1978, p. 1.

⁵⁰⁹ **New York Times**, December 1, 1978, p. 4.

introduction of UNTAG.⁵¹⁰ He added that South Africa would retain full authority in Namibia after the elections, hence the December victors would not form an interim government. Heretofore, South Africa was only interested in using its ‘best efforts’ to persuade the victors of the December elections to accept the UN plan. All these reflected a mild shift on South African position, nonetheless its insistence on the December elections.

Washington’s immediate reaction to Pretoria’s gesture is worth elucidating upon. Hodding Carter, the US Department spokesman said on early December that US was “gratified” by South Africa’s announcement that no power would be handed over to the winners of the December elections.⁵¹¹ Two days later, President Carter said, he was encouraged by recent developments regarding Namibia, and hoped that SWAPO would agree to terms of UN-sponsored elections in 6 months or so.⁵¹² Washington’s reaction went beyond belief when President Carter mistakenly said that South Africa had accepted the UN plan for Namibia; and that the next step was to find out whether SWAPO would also accept it. Recognizing its error, both the White House and the State Department retracted President Carter’s statement. They correctly pointed out that SWAPO had accepted the UN plan but South Africa has not yet accepted some of the UN’s proposals.⁵¹³

Elections were held in Namibia on December 4-8, 1978, with SWAPO boycotting the exercise. The Pretoria-backed DTA was declared the winner on December 15, by winning 41 of the 50 seats, with 82% of the votes cast in an 80% poll. The Aktur Party,

⁵¹⁰ **New York Times**, December 4, 1978, p. 3.

⁵¹¹ **New York Times**, December 5, 1978, p. 6.

⁵¹² **New York Times** December 5, 1978, p. 6.

a white conservative group came in second with 6 seats and 12% of the vote.⁵¹⁴ Three minor parties won one seat apiece: the National Christian Democratic Party, the Hertstigte National Party and the Liberation Front. As a reprisal for holding the elections, the Africans went to the General Assembly to call for mandatory sanctions against South Africa. The vote was 123-0, with 17 abstentions. Even at the General Assembly, the Contact Group feared the tyranny of the majority. They maintained that they were not prepared to take any action that would undermine their negotiations with South Africa.

Meanwhile, event in Namibia was moving in opposite direction to what the Contact Group had hoped. The Constituent Assembly was set up based on the recently concluded elections. The Turnhalle plan was a step short of being a government. Two days after its formation, although, it passed a resolution which it ‘agreed in principle’ to UN-supervised elections in Namibia, it then made a new demand on the UN. It requested the UN to withdraw its recognition of SWAPO as the sole representative of the Namibian people. Henceforth, South Africa attempted to secure international recognition for the Constituent Assembly, by presenting its decision as a joint one, based on consultation. For instance, on December 22, Pretoria informed Waldheim that, following consultations with the newly elected Namibian leadership, it would cooperate in the expeditious implementation of Resolution 435. There were a number of provisos: (a) There should be no reduction of the South African troop strength in Namibia until a comprehensive cessation of hostilities had been achieved. (b) The date for UN supervised elections should be no later than 30 September 1979. (c) The Administrator-General should be consulted on questions such as the size of the

⁵¹³ **New York Times**, December 13, 1978, p. 3.

UNTAG military force and the monitoring of SWAPO bases in neighbouring states. (d) The maintenance of law and order should remain the primary responsibility of the existing police force. (e) The Administrator-General should continue to exercise legislative and administrative responsibility during the transition period, and (f) that Ahtisaari should visit South Africa and Windhoek for consultation.

5.8. The Cease-fire Deadlock

Between 13 January and 13 February 1979, Ahtisaari visited Namibia, South Africa, the FLS and Nigeria to discuss the establishment of a UN presence in Namibia before the end of February. He proposed February 26, 1979 to the South African authorities, as the target date for dispatching of the first contingent of UN. However, both South Africa and SWAPO differed on the cease-fire issue. In a statement issued on 12 February, following talks with Ahtisaari, SWAPO declared that it was not prepared to be confined to bases in the countries bordering Namibia or to have them placed under UN supervision, as Pretoria demanded. At the same time Nujoma sought Waldheim's agreement to the confinement of 2,500 SWAPO forces to five bases to be established inside Namibia. Pretoria, which insisted on UN monitoring of SWAPO bases at their bases in Angola and Zambia, rejected SWAPO's demand. For their part, the Contact Group made clear to SWAPO that the settlement Proposal did not permit the introduction into Namibia of armed SWAPO troops. In a report to the Security Council on 26 February, drawn up after consultation with the Contact Group, Waldheim stated that, while the settlement proposals made no specific provision for the monitoring by UNTAG of SWAPO bases in neighbouring states, these countries had, nevertheless,

⁵¹⁴ *New York Times*, December 11, 1978, p. 3.

been asked to ensure that the provisions of the transitional arrangements would be respected.⁵¹⁵

In addition, Waldheim sought the agreements of the Governments of Angola, Zambia and Botswana to the establishment of UNTAG liaison offices in their countries. Waldheim suggested specific arrangements for dealing with SWAPO armed troops, differentiating between those inside Namibia and those outside at the time of the cease-fire which he propose should commence on March 15.⁵¹⁶ Any SWAPO armed forces in Namibia at the time of cease-fire were to be restricted to designated locations inside Namibia. Those forces in neighbouring countries would be restricted to bases in those countries. In a communiqué following a summit meeting in Luanda on March 4, the FLS agreed with SWAPO that its forces inside Namibia should be confined to UN controlled bases as provided for in the Waldheim plan, but those SWAPO forces outside Namibia should be independent of any neighbouring states control. The communiqué also said that the UNTAG military component should not be drawn from countries which belonged to “military alliances”. In essence, the FLS ruled out a contribution of troops from either the NATO or the WARSAW Pact bloc, and more specifically from the Contact Group memberstates.

In a manner reminiscent of South Africa’s Ascension Day attack of May 1978, SWAPO embarked on a “sneak attack” on South Africa’s Nkongo military bases on February 13, 1979.⁵¹⁷ Presumably, for tactical reasons, the Contact Group did not condemn SWAPO’s attack. This annoyed South Africa, and accordingly, on March 6, it

⁵¹⁵ UNMC, Vol. XVI, No. 3, March 1979, p. 18, “Secretary General Reports to Council on Namibian Issue”, (S/13120); A History, op cit., section 27.

⁵¹⁶ *ibid.*, section 28.

accused the Contact Group of bad faith in the negotiations and of conniving at measures aimed at giving SWAPO a decisive advantage. Furthermore, Pretoria claimed that Waldheim's report of 26 February contained two major "deviations" (that SWAPO bases outside Namibia need not be monitored by UN troops, and that armed SWAPO guerrilla should be allowed to establish bases inside the territory) which were inconsistent with the original Proposal. Waldheim rejected charges by Botha of "scheming" and "double dealing" by UN officials.⁵¹⁸ The Contact Group also issued a statement that rejected Pretoria's accusations of bad faith, and supporting Waldheim's report as fair and reasonable and consistent with the original Proposal.

5.9. The road to the second 'proximity talks'

At this stage, some US Department of State officials, were in private resenting Pretoria's schizophrenic attitude towards the negotiation. They resented Pretoria's rejection of the cease-fire proposal.⁵¹⁹ The question facing the Contact Group was no longer negotiation-fatigue, but whether they could resuscitate the settlement plan and overcome the intense mutual mistrust between South Africa and SWAPO. Differing interests motivated the US and Britain. In his meeting with Vance in Washington in early February 1979, David Owen, British Foreign Secretary emphasised that the implementation of UN plan for Namibia was crucial for invigorating the Anglo-American plan for settlement in Rhodesia. On the other hand, because the Carter Administration had invested considerable political capital in the Namibian issue, its failure would dent the administration's image. The fresh blood pumped into the negotiation was a suggestion of another round of "proximity talks".

⁵¹⁷ *New York Times*, February 15, 1979, p. 1.

⁵¹⁸ *New York Times*, March 10, 1979, p. 3.

⁵¹⁹ *New York Times*, March 7, 1979, p. 6.

The meeting was held in New York between March 19-23 1979.⁵²⁰ The day before, the Contact Group held private strategy talk and later conferred with Waldheim.⁵²¹ At Pretoria's request, a member of DTA participated on Vance's assurance that the DTA delegation would have the same access to the Contact Group as SWAPO. Although the status of the DTA delegation was unclear, their attendance legitimised the party at the international level. For the first time, SWAPO had an international competitor other than South Africa. Before leaving Pretoria, Pik Botha described the talks as the "last chance" for the UN peace plan. As part of his cat and mouse game, Botha cancelled meeting with the Contact Group on the ground that he had to follow the Security Council debate on Angola's charges that South Africa was intensifying attacks against SWAPO bases in Angola.⁵²² He then resumed talks with the Group, after an 'organised' breakfast meeting by Vance.⁵²³ As in February 1978, the Contact Group held separate talks with Botha and SWAPO officials. The main issue of discussion focused on controlling guerrilla infiltration. As a compromise, US proposed planting electronic monitoring devices along the Namibian border to detect SWAPO infiltration.⁵²⁴ SWAPO also accepted the restriction of its forces outside Namibia to bases in the countries concerned.

Following the talks, the Contact Group's ambassadors in Cape Town handed a message on March 26 to the South African Government containing proposals for implementing

⁵²⁰ A History, op cit., section 30.

⁵²¹ **New York Times**, March 19, 1979, p. 5.

⁵²² **New York Times**, March 20, 1979, p. 1.

⁵²³ *ibid.*

⁵²⁴ **Financial Mail**, March 23, 1979, p. 947.

the settlement plan based on the understandings reached in New York.⁵²⁵ Pik Botha replied on 7 May. He rejected the Waldheim's report of 26 February as a basis for implementing the Proposal, despite the clarifications in the Contact Group's letter of 26 March. He said that South Africa would implement the original Proposal as agreed by it in April 1978. He also stated that Pretoria had agreed to a proposal made on April 9, 1979 by the DTA, that an interim government should be formed in Namibia with an enlarged "National Assembly" vested with legislative powers.

What underpinned Pretoria's action was the April 2 meeting of the two Bothas with the DTA leadership in Windhoek. Pretoria's proclamation on May 8 that the Constituent Assembly was to be the Namibian national assembly, with powers to legislate anything short of independence, was a blow to the two-year Contact Group negotiation. For instance, the announcement of an interim government provoked a sharp rebuke from the Quai D'Orsay, the French Ministry,⁵²⁶ which was genuinely reluctant to condemn South Africa publicly because of nuclear projects being undertaken by the French companies with the South African government. None the less, in its five-point declaration, the Quai D'Orsay warned South Africa that there was no possible solution outside the UN plan. It maintained that South Africa held the entire responsibility for Namibia's destiny, insisting that SWAPO had shown definite and genuine signs of goodwill, *of which the same is required from South Africa.* (Emphasis mine).⁵²⁷ Unquestionably, the Contact Group diplomacy was heading for derailment; and more worrying still was a strained relationship between Washington and Pretoria.

⁵²⁵ A History, op cit., section 31.

⁵²⁶ **Financial Mail**, April 13, 1979, p. 118.

⁵²⁷ *ibid.*

5.10. London taking charge of the Contact Group

A good bilateral relationship is an effective facilitator in wider multilateral negotiations. It was therefore not surprising that in the wake of espionage charges between Washington and Pretoria, and the subsequent diplomatic friction between them,⁵²⁸ London took over the lead of the Contact Group. Between May 24-June 1, 1979, the British government dispatched Richard Luce, Parliamentary Under-Secretary of State, to Lusaka, Cape Town and Windhoek as the personal representative of Lord Carrington, the Secretary of State for Foreign and Commonwealth Affairs.⁵²⁹ His mission was to put the negotiation on the right track, especially from the South African side. Subsequently, Lord Carrington and Pik Botha held talks in London on June 20, 1979. At the end of this meeting, Botha agreed to a resumption of discussions between South Africa and the Contact Group on the implementation of Resolution 435. Differences over the UN plan were now narrowed down to how to restrict SWAPO forces to two locations inside Namibia and the question of monitoring SWAPO units in Angola and Zambia. London consolidated its position by securing the appointment of Sir James Murray, British Ambassador to the UN at Geneva, as the Contact Group

⁵²⁸ **Facts on File**, April 20, 1979, On April 12, Pretoria ordered the expulsion of three US Embassy staffs on charges of espionage. In a televised announcement, Prime Minister Botha charged that they had outfitted the US ambassador's airplane with an aerial surveillance camera. Those expelled were USAF Col. Alvin Crews, the defense attaché, Maj. Bernd McConnell, assistant air attaché, and Master Sgt. Horace Wyatt, the airplane crew chief. Botha expressed "profound shock and dismay over this reprehensible action..." "These actions against South Africa are actions which I would have anticipated from the Russians but not the leading Western country", he declared. The reaction of the US State Department was swift. It issued a communiqué expressing "regret" over the expulsion. Not surprisingly, the communiqué said: "It is particularly unfortunate that the South African government chose to act as it did at a time when we are engaged with it in seeking solutions to the problems in Namibia and elsewhere in southern Africa. The next day, Washington expelled two South African military attaches. In a tit for tat move Pretoria order, the men were given a week to leave the US. Those expelled were Commodore Willem du Plessis, defense attaché and Col. Gert Coetzee, the air attaché. Commodore William de Plessis would later be among the five South African military men that visited Washington on March 5-15, 1981.

special envoy. Sir James was entrusted with the task of exploring with the South Africa the remaining problems relating the cease-fire and the early arrival of UNTAG in Namibia. He visited Pretoria from August 9-23 1979.⁵³⁰

The departure of Andrew Young, as the US ambassador to the UN, was another setback on American position within the Contact Group. Young resigned in the wake of his July 26 meeting with Zehdi Labib Terzi, the PLO's UN observer, at the New York home of Abdala Yaccoub Bishara, the Kuwaiti delegate to the UN.⁵³¹ His replacement was Donald McHenry, his deputy at the UN. Although McHenry was the US chief negotiator for the Contact Group, in the wake of the rapid deterioration of US-South African relations, Pretoria was more disposed to listen to London. McHenry was a career diplomat, who had resigned in 1973 when Kissinger became the Secretary of State, but returned to government with the Carter Administration in 1977.⁵³² McHenry's displeasure of Kissinger's style and ideas was resurrected when Kissinger offered to meet both South African and the SWAPO officials on the stalled negotiation in November 1980. I shall examine this episode in the next section.

Through Sir James Murray, Britain resurrected a proposal, which had earlier been made to Waldheim by President Neto of Angola.⁵³³ This was that a demilitarised zone (DMZ) of 50-km wide should be created on either side of the Namibia/Angolan border and encompassing the entire Caprivi Strip. There were political elements to the making of the Neto proposal. First, Neto believed that the creation of the DMZ would sever

⁵²⁹ A History, op cit., section 33; **Financial Mail**, May 25, 1979, p. 671.

⁵³⁰ A History, *ibid.*, section 35.

⁵³¹ **Facts on File**, August 27, 1979, p. 605.

⁵³² **Facts on File**, September 7, 1979, p. 661. See **Who's Who 1997** (London: A & C Black, 149th Edition, 1997), p. 1245, for McHenry profile.

UNITA's supply lines and stabilise the situation on Angolan side of the border.⁵³⁴ Secondly, the plan itself was an outcome of the meeting between Neto and McHenry in late July 1979.⁵³⁵ More significantly, Neto now argued that SWAPO would be informed, but not consulted as the issue was now seen as being purely a matter between the two- border countries-Angolan and South Africa.⁵³⁶ Presumably, Neto conceded in anticipation for American recognition of Angola.

Following Sir James Murray's mission, the Contact Group and the UN Secretariat presented the demilitarisation arrangement to Pretoria, the FLS, Nigeria and SWAPO between October 1-5, 1979.⁵³⁷ To both South Africa and SWAPO, the notion of a DMZ had some important military and political implications. Both Pretoria and Luanda requested technical discussions from the Contact Group. Pretoria was not averse to the idea of DMZ, but it was sceptical, in view of the inhospitable terrain and massive force required to effectively sterilize both sides of the frontier. Its action resulted particularly from deep-seated mistrust of both the UN and the neighbouring governments that were required to co-operate with the sponsors of the plan. Then, too, Pretoria's control over the situation would diminish as it began its phased withdrawal from five frontier bases inside the zone. Pretoria was also concerned about security and stability during the transition period.

From the more important political point of view, Pretoria was determined not to accede to any transitional arrangements that would undermine the political influence of non-

⁵³³ A History, op cit., section 36.

⁵³⁴ **Financial Mail**, August 17, 1979, p. 632.

⁵³⁵ **New York Times**, August 11, 1979, p. 2.

⁵³⁶ **Financial Mail**, September 7, 1979, p. 930.

⁵³⁷ A History, op cit., section 36.

SWAPO parties inside Namibia. Pretoria's concerns about SWAPO bases inside Namibia were not purely for security reasons, but reflected the fear that SWAPO electioneers would exploit their presence in Namibia to secure a moral and tactical victory over the other parties. On the other hand, SWAPO's main concern was that the current proposal provided for no fewer than five bases at which South African troops would be confined under UN supervision. These points of clarifications and reservations on the DMZ were to be the subject of the UN-convened four-day all party conference in Geneva from November 12.

5.11. The Geneva Conference

The Geneva conference was a recasting of the 1976 Kissinger's model, but now with the UN in the driving seat. Waldheim led the negotiation by agreement with the Contact Group. These were the first all-inclusive talks, with the Contact Group, the FLS, Nigeria, SWAPO and the UN attending.⁵³⁸ Pretoria agreed to participate, having secured a place for the DTA representatives. To a great extent, the Geneva conference was another opportunity for South Africa to raise new obstacles, rather than solve the old ones. For instance, South Africa raised an objection to what it called the "vagueness of the new supplementary proposals" to the original settlement plan embodied in Resolution 435. It also challenged the incorporation of "designated locations" assigned to SWAPO forces, especially those inside Namibia when the cease-fire comes into operation.⁵³⁹ The UN officials refused to be taken in by South Africa's legalism. They emphasised that the supplementary document was merely a working paper, not a legal document. South Africa made it clear, however, that its acceptance of the Geneva

⁵³⁸ A History, op cit., section 37.

⁵³⁹ **Financial Mail**, December 7, 1979, p. 1089.

document would depend on its satisfaction with all the technical details. On this basis, all parties accepted the DMZ concept in principle.

The acceptance in itself did not resolve the problems of implementation. For instance, while Nujoma objected to the disarming or removal of SWAPO forces in Namibia at the time of the cease-fire, South Africa expressed reservations about the capability of a UN peacekeeping force to supervise adequately the huge area of the proposed DMZ.⁵⁴⁰

Prior to South Africa's confirmation of acceptance of the DMZ concept on December 5 1979, Lord Carrington and the West Germany foreign minister, Hans-Dietrich Genscher, had a meeting with Pik Botha.⁵⁴¹ For the umpteenth time, the meeting was to persuade Pretoria not to raise unnecessary obstacles to a settlement that could be seized upon to launch sanctions resolutions against her in the Security Council. Yet, Pretoria raised no fewer than six technical conditions.⁵⁴² These included: the number of South African bases in the DMZ; the arrangements for disarming SWAPO forces after UN-supervised elections in Namibia; the deployment of sufficient UN troops in the DMZ to meet the practical needs; an agreement between UNTAG commander and the South African military authorities on other practical arrangements; a confirmation that the Contact Group proposal accepted by South Africa on 25 April 1978 remained unchanged; and a confirmation that SWAPO would not revive its claim to bases inside Namibia.

⁵⁴⁰ .ibid.

⁵⁴¹ .Financial Mail, November 30, 1979, p. 909.

⁵⁴² .Financial Mail, December 14, 1979, p. 1153.

South Africa's acceptance of the DMZ once again led to optimism about the prospects for securing Namibian independence. The abolition of a series of racial laws to enfranchise more blacks by the Namibian National Assembly also reflected the spirit of optimism. However, South African sensitivity to the conservative opinion within South Africa threatened the negotiations. The conservatives in South Africa were increasingly uneasy about the perceived outcome of the Namibia negotiations. The National Party leadership regarded Marthinus Steyn as unsuitable for the position of Administrator-General, alleging that he was biased in favour of the DTA, and excluded the white-dominated Aktur party. Perhaps to appease this constituency, Professor Gerrit Viljoen of Rand Afrikaans University replaced Steyn. Viljoen's appointment was intended to serve two mutually exclusive interests. Viljoen, as head of the Broederbond, the powerful Afrikaner secret society, was thought by Botha to have the qualities to restore white unity, by bringing back the Aktur Party into the national stage in Namibia. He was seen as a 'third way' man. As a broeder, he had enough of the conservative in him to appeal to die-hard Afrikaners who favoured the status quo in South Africa; as a verligte intellectual, he was among those who believed that apartheid should be reformed to accommodate urban blacks in Namibia. In essence, Botha hoped that Viljoen had the political clout to 'soft land' the plans for Namibia, without upsetting white conservatives, excluding the black electorate, and appearing insensitive to the international community.

5.12. From stage of discussion to the stage of implementation

As a result of South Africa's acceptance of the DMZ concept, Waldheim announced the appointment of Lieutenant-General Prem Chand of India as UNTAG Force

Commander on 12 January 1980.⁵⁴³ A leap from the discussion stage to implementation required circular negotiations. Gen. Chand visited Angola, Zambia, Botswana and Namibia from February 5-29, 1980 to discuss with the Governments and authorities concerned the technical details of establishing a DMZ.⁵⁴⁴ From March 1-9, Gen. Chand joined Mr. Brian Urquhart, the UN Special General for Special Political Affairs, and Mr. Ahtisaari, in Cape Town for talks with the South African Government. The Urquhart team, accompanied by some members of the Contact Group held talks with leaders of Angola, Zambia, Tanzania and Mozambique on the implementation of the DMZ proposal. The team returned to New York via Botswana. Meanwhile, Pretoria continued to express reservations on a number of points, but agreed to give further consideration to the plan and to inform Waldheim on whether or not it found it acceptable. For his part, Waldheim reported to the Security Council on Urquhart's mission to southern African on 31 March. The date for implementation was fixed for June 15, 1980.

The number of issues in dispute continued to decrease, but slowly. On May 12, Pik Botha wrote to Waldheim, assuring him that South Africa would co-operate in implementing the UN plan once certain issues were resolved.⁵⁴⁵ Most significantly, he officially raised the issue of the UN partiality.⁵⁴⁶ The difference this time around was that South Africa was doing the bidding of the Constituent Assembly. To recap, the first resolution that was passed by the Constituent Assembly was on the UN partiality. He disclosed that Pretoria was upset over UN's grant to SWAPO totalling \$730,000 a

⁵⁴³ **Financial Mail**, February 1, 1980, p. 341.

⁵⁴⁴ A History, op cit., section 39.

⁵⁴⁵ **New York Times**, May 14, 1980, p. 3.

⁵⁴⁶ **UNMC**, Vol. XVII, No. 6, June 1980, p. 10, "South Africa Raises Issue of SWAPO as Sole Representative of Namibians", (S/13935)

year.⁵⁴⁷ Pik Botha demanded that: (a) The Secretary General and the UN Secretariat should refrain from giving effect to the General Assembly's recognition of SWAPO as the "sole and authentic representative of the people of Namibia". (b) The Secretariat should not single out SWAPO for preferential treatment not accorded to other Namibian political parties. (c) That the Funds from regular UN budget should not be used to further SWAPO's aims, including *inter alia* support for its office in New York and its inclusion in the activities of the Council for Namibia.⁵⁴⁸

Expectedly, SWAPO's reaction to Botha's conditions was hostile. At the OAU Liberation Committee meeting in Dar-es-Salaam in early June, Nujoma threatened that SWAPO was likely to retreat from its earlier endorsement of the UN initiatives.⁵⁴⁹ However, Robert Mugabe, the newly elected Prime Minister of Zimbabwe, counselled Nujoma on the costs of withdrawal. Other FLS leaders, which had been a stalking horse on Namibian negotiations agreed.

Whilst the FLS was trying to keep SWAPO's nerves, South Africa, in a ceaseless rhythm, displayed another two ruthless streaks. First, in a move reminiscent of the 1978 Ascension Day military attack, the South African Defense Force (SADF) commenced a major offensive against SWAPO's operational headquarters in southern Angola in early June.⁵⁵⁰ The three-week campaign was condemned by the Security Council Resolution 475 of June 27, 1980. General Jan Geldenhuys, commander of South African troops in Namibia described the attack as "mopping up" operations; but the numbers of

⁵⁴⁷ UNMC, Vol. XVII, No. 4, May 1980, p. 8, "South Africa Asks for Time to Study Proposal, Security Council Told"; **Facts on File**, May 16, 1980.

⁵⁴⁸ A History, op cit., section 40.

⁵⁴⁹ **Facts on File**, June 20, 1980, p. 466.

⁵⁵⁰ **New York Times**, June 14, 1980, p. 1.

casualties (360 SWAPO and 17 South African soldiers dead) indicated that the operation was bigger than any previous military confrontations.⁵⁵¹ In return, SWAPO switched its tactics from clashes with South African troops to sabotage with attack on energy installations both inside and outside Namibia. SWAPO's mortar attack on the border town of Rucana destroyed South Africa's contention that it had destroyed the former's operational headquarters.

Secondly, on July 1, South Africa swore in a 12-member 'Council of Minister' led by Dirk Mudge of the DTA.⁵⁵² Pretoria's game plan was to develop the DTA as the power *in situ* and make it impossible for it to be ignored in any settlement. Mudge had powers akin to those of a Prime minister. The Administrator-General's sphere of responsibility was reduced. The Council of Minister had other legislative and executive powers, exclusive of the Namibian foreign affairs, and security, that were the prerogatives of South Africa. In its response, Contact Group was deliberately restrained. A statement issued in New York on July 11, rejected the "Council of Minister", the establishment of which, they said, complicated an already difficult settlement process.⁵⁵³

Like the Contact Group, the UN refused to be distracted by the South African chicanery. Waldheim replied to Botha's letter of May 12 on June 20,⁵⁵⁴ reaffirming SWAPO's new concessions. These included, SWAPO abandoning its claims to bases in Namibia, and an acceptance of South Africa's offer to reduce its bases from 40 to 20. On the question of impartiality, Waldheim referred to his report of August 28, 1978 in

⁵⁵¹ **Facts on File**, July 11, 1980, p. 524.

⁵⁵² *A History*, op cit., section 42.

⁵⁵³ *ibid.*, section 43.

⁵⁵⁴ UNMC, Vol. XVII, No. 7, August 1980, p. 58, "South Africa Assured of Impartial UN Position in Namibian Election", (S/14011); *A History*, op cit., section 44.

which it was stated that UNTAG would act with complete impartiality. He added that, despite the various General Assembly resolutions to which Botha alluded, the UN Plan would be carried out under the authority of the Security Council. Britain described Waldheim's letter as a "significant step forward in an early and speedy resolution of the Namibian conflict".⁵⁵⁵ However, these concessions did not satisfy Pretoria. Pik Botha replied to Waldheim on August 29,⁵⁵⁶ stating that Pretoria was ready to discuss the composition of UNTAG, the status of forces agreement and the implementation of SCR 435, subject to Waldheim's confirmation that certain assumptions that he (Botha) had made were valid. These included that the conditions laid down for bases in the DMZ (20 on the South African side, seven in the Angolan and Zambian sectors) should apply equally to all parties, with SWAPO being excluded from the Angolan/Zambian bases. (b) Angola and Zambia should accept responsibility for the peaceful return of SWAPO personnel to Namibia. (c) That all parties involved in the implementation of SCR 435 should henceforth maintain a strict impartial approach with preferential treatment of SWAPO ceasing immediately.⁵⁵⁷ He went further than previously in criticising the UN. He called the UN "the most ardent protagonist" of SWAPO, and argued that it was too prejudiced to supervise free elections in Namibia.⁵⁵⁸ He also called Waldheim to include the internal parties on any future dealings on Namibia.

It was clear that the Waldheim's letter of June 20 had been intended to checkmate Pretoria on the issue of the DMZ by agreeing that the UN peacekeeping force would be responsible for sterilizing the entire DMZ on both sides of the Namibian border. Certainly, there was no flash of genius on South African negotiating tactics. It was just

⁵⁵⁵ **Financial Mail**, June 27, 1980, p. 1447.

⁵⁵⁶ A History, op cit., section 45.

⁵⁵⁷ *ibid.*

playing the old game of resurrecting an old issue in a new format. As Botha's reply suggested, as South Africa experienced drought on new issues, it always back to the issue of the partiality of the UN.

Pretoria's charges of the UN partiality did not go down well in the United States. For instance, McHenry, [now the US ambassador to the UN] defended the world body and its top officials before the US House of Representative Foreign Affairs subcommittee on Africa on September 9. He called Botha's charges "distorted" and "unjustified". He rebuked Pretoria's demand that the UN General Assembly should retract its recognition of SWAPO as the "sole legitimate representative" of the Namibian people, by stating that Pretoria sought to "extract a major concession without committing itself to an agreement." McHenry concluded that Pretoria's demands were detractions, as the UN Security Council, which would be in charge of the Namibian elections, had never recognised SWAPO.⁵⁵⁹ Paradoxically, it was not only the Security Council that had not recognised SWAPO; the United State had not done either. In fact, the UN Council on Namibia revealed that there were secret efforts by the US and South Africa to promote Chief Clemens Kapuuu of the DTA as an alternative figure to Nujoma, and his party as a credible and effective force to SWAPO.⁵⁶⁰

In the main, at this stage, it was evident that Pretoria's best-case outcome would have being the transfer of power to a friendly, pliant regime that would have at least secure

⁵⁵⁸ **New York Times**, September 4, 1980, p. 3.

⁵⁵⁹ **Department of State Bulletin**, (September 29, 1980)

⁵⁶⁰ The UN Council on Namibia revealed that both Washington and Pretoria wanted to establish Chief Kapuuu as a 'credible international figure. Kapuuu got legal counsel from a New York law firm, *Burns and Jacoby*. A New York Marketing firm, **Psychographic Communications Inc.**, according to its founder Jack Summers, is marketing Kapuuu and

international recognition. But after three years of intense negotiation with the Contact Group, this was increasingly difficult to achieve. Moreover, Pretoria's attempt to asphyxiate or smother the negotiation had been unsuccessful. By raising the question of the partiality of the UN, Pretoria hoped to shunt the negotiation exercise into another lane, the most obvious being an all parties' conference, similar to Zimbabwe's Lancaster House conference. Arguably, the all-parties conference was based on two beliefs. First, it could present Pretoria with a face-saving formula under which to leave Namibia, without incurring the anger of the conservatives in both South Africa and Namibia. It would be possible for South Africa to present itself as the 'Britain of Namibia, rather than as a defeated colonial power, a counsellor guiding all parties to an acceptable outcome, whilst protecting its own kind from the predators. Second, Pretoria may have reasoned that a Lancaster House type conference had the potential to throw up more problems than it would solve, especially on the status of the delegates. It would therefore provide new opportunities for stalling, possibly until the DTA had the capacity and ability to compete on equal terms with SWAPO. Meanwhile, as Pretoria was working on this plot, SWAPO embarked on a diplomatic offensive.

Nujoma called on the African members to call a UN Security Council meeting not later than October 15, 1980. He lobbied them at the international conference on Solidarity with the Struggle of the People of Namibia, held at the UNESCO Headquarters in Paris between September 12-15, 1980.⁵⁶¹ In Paris, he had a discussion with the French

all the anti-SWAPO black groups at the Turnhalle conference. See, **Sunday Times**, (London), November 21, 1976; and **Africa Report**, January-February 1977, p. 33.

⁵⁶¹ . UNMC, Vol. XVII, No. 9, November 1980, p. 5; **Financial Mail**, September 19, 1980, p. 1347.

Foreign Minister. A week later, he met the German Foreign Minister, and in late September, he met Sir Ian Gilmour, British Deputy Foreign Secretary.⁵⁶²

Back on the negotiation track, a UN delegation led by Brian Urquhart held a discussion with the South African government in Pretoria on October 20-25, 1980.⁵⁶³ The purpose of the delegation was to allay the South African fear concerning the impartiality of the UN. Dr. Brand Fourie, the South African Director-General of Foreign Affairs, led the South African team. Dr. Fourie maintained that the UN could not be an impartial and a fair administrator of a Namibian cease-fire if it continued to give political and financial support, reportedly over \$10 million over a decade to SWAPO. Urquhart's assurance that the assistance would end as soon the cease-fire plan was implemented failed to convince the South African team.

5.13. The Return of Kissinger

On November 24, 1980, four weeks after the Urquhart's mission, Waldheim announced to the Security Council that South Africa had committed itself in principle for the first time to a specific date for commencing the UN supervised process that could lead to the Namibian independence.⁵⁶⁴ He noted that Pretoria had conditionally agreed to a March 1981 cease-fire and independence by the end of 1981. He stated that Pretoria had agreed to a multiparty meeting as a means of facilitating agreement with all the parties concerned. Pretoria's acquiescence did not come out of a void. Two major events provided it. These were the intervention of Henry Kissinger and the defeat of the DTA

⁵⁶² **Financial Mail**, October 3, 1980, p. 42.

⁵⁶³ A History, op cit., section 47. Other UN team members included Mr. Ahtisaari, Gen. Chand of India and Abdulrahim Farah.

in the Legislative Assemblies elections of November 11-13. Kissinger met with Pik Botha in Paris on November 15.⁵⁶⁵ He sought to convince Botha to soften its obstructionist policy and give credible undertakings. He also had a meeting with Nujoma on the settlement plan. Kissinger's meeting with Nujoma was without precedent.⁵⁶⁶ It echoed the similar meeting the two had in October 1976, in which Nujoma told Kissinger that he was ready to negotiate with South African representatives at a UN meeting.

What led to the re-involvement of Kissinger at this stage remains unclear. It could be argued that he thought that he needed to prod the main parties into a conclusive end, having initiated the process in the first instance. Thus, the Namibian question was a pet project that he had a duty of care for, whether in or out of office. On the other hand, it could be argued, as the leading Carter administration officials believed that the incoming Reagan administration had encouraged him. For instance, Kissinger's re-involvement did not go well with the leading Carter Administration officials, especially McHenry, or some of the Contact Group members. They feared that Kissinger, and the incoming Reagan administration would hijack and take the credit for their own three-year laborious negotiations. They also feared, justifiably so, that South Africa would exploit any time lag between the old and the incoming administration to further delay any moves towards securing independence to Namibia. In a coincidental manner, after meeting with Kissinger, Botha informed the UN that South African delegations would attend

⁵⁶⁴ UNMC, Vol. XVIII, No. 1, January 1981, p. 5, "SWAPO and South Africa Agree to All-Party Talks", (S/14266); *Facts on File*, December 19, 1980, p. 967; *A History*, op cit., section 49.

⁵⁶⁵ *New York Times*, November 15, 1980, p. 1.

⁵⁶⁶ *Africa Report*, January-February 1977, p. 33.

the pre-implementation conference, but as a “non-participating adviser/observer”,⁵⁶⁷ while the internal Namibian parties should participate as independent negotiators, led by the Danie Hough, the new Administrator-General. It is worth recalling that in the aborted Geneva conference of late 1976 devised by Kissinger, South Africa also agreed to attend as an “observer”.

The second reason was the defeat suffered by the DTA in the ethnic ‘second tier’ elections held between November 11-13. The South West Africa National Party won 11 of the 18 seats while the DTA won only seven seats.⁵⁶⁸ The DTA defeats damaged South Africa’s claim that the multiracial group had support of the majority of Namibians and was therefore entitled to international recognition of its rule. The Namibian political landscape as designed by South Africa suddenly look very different. The ground had not radically altered, but previously impregnable position no longer look so secure. Yet South Africa refused to politically adjust its position and expected outcome.

5.14. The collapse of ‘second’ Geneva

The defeat of the DTA did not sap Pretoria’s resolve to put its protege on equal footing with SWAPO. The move was to undermine SWAPO’s status as the sole representative of the Namibian people. No other fora presented a better opportunity than the UN-sponsored pre-implementation multiparty conference. First, it could provide the propaganda leverage to sell the idea inside Namibia that SWAPO was no longer the “franchised child” of the international community, with consequent harm to its prospects of electoral success. For its part, SWAPO

⁵⁶⁷ **Facts on File**, December 19, 1980, p. 967.

maintained that it was ready to talk to the Namibian internal parties provided they were part of the South African delegation. South Africa had wanted to portray SWAPO as a party that feared opposition; and by implication it exhibited the basic trait of a Marxist-Leninist organisation. Secondly, South Africa had been the *de facto* power in Namibia for over 60 years; its role now as “adviser, in the background”, would also detract from SWAPO status as a principal, while at the same time elevating the status of the internal political parties.

Three African capitals- Zimbabwe, Maputo and Gaborone- expressed interest to host the conference. All however, lost to Geneva, being the only acceptable venue to both South Africa and SWAPO.⁵⁶⁹ Waldheim opened the meeting on January 7, 1981.⁵⁷⁰ In his opening speech, he made no reference to eight political groups that were seated with the members of South African delegation. This implied that these internal parties had equal status with SWAPO. The meeting, chaired by UN’s Brian Urquhart, began with procedural difficulties over the exact status of these eight internal parties led by Danie Hough. Mudge and Katuurie Kaura of the DTA maintained that UN had disqualified itself as impartial supervisor of transition to independence by supporting SWAPO.⁵⁷¹ SWAPO responded by stating that the UN Secretary-General was bound by the decisions of the General Assembly, and not the Security Council, as it was the former that had passed the resolution acknowledging SWAPO’s special status.⁵⁷²

⁵⁶⁸ **New York Times**, November 15, 1980, p. 6.

⁵⁶⁹ President Mugabe of Zimbabwe offered Zimbabwe as the venue at the Paris UNESCO Conference in mid September 1980; while Mozambican officials disclosed that its capital, Maputo would hold the conference; so also there were hints that Gaborone, Botswana’s capital was also in the line of proposed venue. See **Financial Mail**, September 19, 1980, p. 1305; and **Facts on File**, December 19, 1980, p. 967.

⁵⁷⁰ A History, op cit., section 51.

⁵⁷¹ **New York Times**, January 11, 1981, p. 1.

⁵⁷² A History, op cit., section 52.

At a stage, Urquhart noted that the UN was ready to take steps to break its ties with SWAPO in exchange for South Africa's agreement on the date for cease-fire.⁵⁷³ This offer did not satisfy the internal parties. In a major speech, Mudge ruled out any possibility of signing a cease-fire agreement during the conference. He said that more time was necessary to create a climate of confidence in the ability of the UN to supervise an election in an impartial manner.⁵⁷⁴ In conclusion, Mudge declared that "not only would the UN have to rescind its special recognition of SWAPO, it would also have to demonstrate its impartiality over a considerable period of time by mounting a publicity campaign to restore the equality of the parties which would fight the election".⁵⁷⁵ Finally, Mr. Hough and Mr. Mudge jointly declared that it would be "premature" to put into effect the UN plan, in the form, that South Africa accepted it three years ago. These statements brought the meeting to an end on January 14.⁵⁷⁶ Events that followed were predicable: accusations and counter-accusations.

Mr. Theo Ben Gurribab, speaking for SWAPO, blamed the breakdown of the conference on South Africa's "intransigence and prevarication".⁵⁷⁷ While reaffirming SWAPO's support for the UN plan, he said his organisation would now intensify its guerrilla war and would call on the Security Council to impose comprehensive economic sanctions, including an oil embargo, on South Africa. On the other end, in his address before the South African Parliament on January 30, Pik Botha noted that UN's partiality towards SWAPO led to the breakdown of talks in Geneva.⁵⁷⁸ Britain's Lord

⁵⁷³ New York Times, op cit., p. 1.

⁵⁷⁴ New York Times, January 14, 1981, p. 2.

⁵⁷⁵ A History, op cit., section 53.

⁵⁷⁶ UNMC, Vol. XVIII, No. 3, March 1981, p. 5-6, "Namibia Conference Ends After Failing to Agree on Central Issues".

⁵⁷⁷ A History, op cit., section 53.

⁵⁷⁸ New York Times, January 31, 1981, p. 6.

Carrington deplored the action of the South African Administrator-General. In his statement to Parliament on January 19, 1981, he said: "Her Majesty's Government are deeply disappointed by the failure to achieve agreement on a date for a cease-fire in March leading to independence for Namibia by the end of 1981. This is an especially regrettable set-back after the great efforts of the UN, the Western Five and the Front-line States to meet the reasonable concerns of South Africa and the internal parties".⁵⁷⁹ "The Five will review their position with other participants in the negotiations and we shall discuss the problem with the new American Administration", he stated. Indeed, the new American Administration would redefine and reconfigure the whole settlement plan by introducing the idea of 'linkage' politics. This is the theme of the next chapter.

In his report to the Security Council on January 20, 1981, Waldheim appealed to South Africa to reconsider its position on its refusal to sign a Namibia cease-fire agreement. However, in his reply of January 28, Pik Botha, once again criticised the UN's lack of impartiality. He insisted that the Secretary General should cease "ignoring" the internal Namibian parties.⁵⁸⁰ Thus the abortive Geneva conference put a stop to Contact Group diplomacy. The prospect of securing a breakthrough looked further away than ever.

Suffice to point out that several reasons have been offered for the failure of the Contact Group. According to Ohlson and Stedman, it failed to resolve the Namibian conflict for two reasons.⁵⁸¹ First, it lacked the resolve to give teeth to its efforts by imposing deadlines and making alternatives that could be painful to South Africa. Secondly, that

⁵⁷⁹ A History, op cit., section 54.

⁵⁸⁰ A History, op cit., section 55.

⁵⁸¹ Ohlson, Thomas and Stedman, Stephen. John . **The New Is Not Yet Born: Conflict Resolution in Southern Africa.** (Washington, D.C.,: The Brookings Institution, 1994), p. 94.

internal changes within South Africa restrained any move toward negotiated settlements. These included the replacement of Vorster by the hawkish Botha and Pretoria's intent on implementing its "total strategy" of domestic and regional security problems. Such criticisms are advanced from a third party intervention vantage point with limited attention to fundamental questions such as, (1) what did the composition of Contact Group tell us about the balance of power politics? (2) How did the Contact Group derive its legitimacy within the prevailing view of the international law? (3) What were the constraints of the Contact Group diplomacy? And more importantly, how the essence of international law not only exerts real influence on self-determination, but embeds and interacts with and shaped how the political game is played out in international arena. Each of these questions will be addressed in turn

5.15. The origin and the composition of the Contact Group

Earlier studies have confronted two puzzling issues namely: who initiated the idea of Contact Group; and when was it formed to pursue the possibilities of a peaceful settlement of the Namibian problem. For instance, Karns⁵⁸² pointed out that some of her interviewees traced the idea to three different individuals. These were Ambassador Gerald Helman, who was in the US Department of State's Bureau of International Organisation; Ambassador Donald McHenry, the US deputy representative to the UN; and President Nyerere of Tanzania. But McHenry's account of the origin of the Contact Group helped to provide answers to these questions. In his address before the Cape Town Press Club in late April 1978, McHenry revealed that Ambassador Young took the initiative over a breakfast at the Waldorf Astoria Hotel. Young, said McHenry,

⁵⁸² Karns, Margaret. P. "Ad hoc multilateral diplomacy: the United States, the Contact Group, and Namibia", *International Organization*, Vol. 41. No. 1. Winter 1987, p. 93-123.

invited member of the Security Council-including the Africans, but excluding the socialists-to an early morning breakfast. What, he asked them, was to be done about the Namibian question? "We don't want more resolutions", he added, "we want a serious undertaking".⁵⁸³ The response of Young's guests was to suggest that the South African government be drawn into a discussion of the question. But they pointed out that the initiative should come from the West, which had working contact with both sides, and not from the African or non-aligned blocs. In addition, they stated that the initiative would have to be taken without a mandate, but with the Council's covert blessing.⁵⁸⁴

An inference could be drawn that the non-inclusion of Soviet Union and other socialist bloc countries was a deliberate policy of the United States. It was designed to limit the influence of Soviet Union on the outcome of the negotiation. This was incongruous with the views of Andrew Young and other regionalists that African issues should be dis-entangled from East-West confrontation. According to Jabri, it was the conviction of the western five that by acting as mediators, they would be able to influence the settlement process and its outcome.⁵⁸⁵ In the context of our theoretical discussion, the Contact Group could be termed an 'informal Western alliance'.⁵⁸⁶ Unlike

⁵⁸³ **Financial Mail**, "Breakfast Breakthrough", May 5, 1978.

⁵⁸⁴ *ibid.*, p.

⁵⁸⁵ Jabri, *op cit.*, p. 67.

⁵⁸⁶ The concept of an 'informal Western alliance' is useful for analytical purposes. For convenience, I still employ the term Contact Group in the study. Nations form alliances to deal with deficiencies of power. Self-interested and autonomous states join to offset their relative weakness vis-à-vis stated and potential enemies. Because the power of the coalition exceeds that of individual states, its creation aids each in its search for security. Alliances are formed because of consideration of power and aggregation of military capabilities. NATO and the Warsaw Pact are classic examples of institutionalised alliances for a purposive security consideration. Not all alliances are institutionalised as NATO or the Quadruple Alliance-Great Britain, Austria, Prussia and Russia which defeated Napoleon in 1814-15. So far, the discussion has focused on

institutionalised alliances such as NATO or the Warsaw Pact, an informal alliance is formed not primarily for military purposes, but for political reasons, and its existence serves as a deterrent signal to non-allies.⁵⁸⁷ This type of alliance is not bound by legal or treaty paraphernalia, but formed to manage a specific problem which is predominantly political in nature, partly for the enlightened self interest of the alliance members and partly to deny others from performing its predetermined main task, such as conflict-management.⁵⁸⁸ It is by describing the Contact Group as an informal alliance, that we can establish a pattern of continuance between it and Henry *Africanus*. Thus, Contact Group did not emerge *in vacuo* of the earlier Kissinger's diplomatic initiatives. As shown in the last chapter, it could be argued that Kissinger started the idea of contact grouping. His round-robin visit to London, Paris, and Bonn during his Africa tours could be said to be a catalyst to the formation of the group. In short, Kissinger started what the Chinese called *quanxi*, which meant contacting.

military alliances. Most military alliances are institutionalised, formed for deterrent or offensive purposes. Like other forms of alliances, within an informal alliance, there is also a pole of convergent interest and of autonomous self-interest. Each alliance member seeks simultaneously to promote its individual interests and the joint interests. However, an alliance dilemma or what Stein termed 'dilemma of entanglement' arises when individual self-interest points in a different direction from conjoint interest. This produces an asymmetry of impact. That is a choice between a dominant strategy of maximising one state's interest and of maximising the interest of the alliance. As it has been shown, although the Contact Group acted *una voce* on Namibia, their interests were wide and varied. It will be shown in the next chapter how the collapse of the Contact Group could be attributed to the problem of the asymmetry of impact or the dilemma of entanglement. Alliance dilemma occurred in the Contact Group when the United States intended to pursue the linkage issue, that is the withdrawal of the Cuban forces from Angola as a condition to seeking South Africa's compliance to the agreement on Namibian independence.

⁵⁸⁷. Stein, Arthur. A. **Why Nations Co-operate: Circumstance and Choice in International Relations**. (Ithaca: Cornell University Press, 1990), p. 153.

⁵⁸⁸. Fedder, Edwin. H. "The Concept of Alliance", **International Studies Quarterly**, 12 (1968).

Karns⁵⁸⁹ acknowledged Kissinger's initiative as a timely application of what Fisher and Ury termed as a negotiation *jujitsu*.⁵⁹⁰ To her, Kissinger's initiative directed attention to new mechanism, as it was evident that the UN- the principal vehicle for previous settlement efforts-had reached a dead end for the time being.⁵⁹¹ To quote her at length:

"For the first time a high level official of the U.S. government focused attention on Namibia; with this attention a significant amount of background work was done, and with American support, the UN Security Council adopted Resolution 385 (1976) which embodied key points for a negotiated settlement. The stage was set for the Carter administration to pursue further a negotiated, internationally solution to the Namibian problem".⁵⁹²

Leading Carter administration officials later averred to *Henry Africanus* as the foundation (albeit informally) on which the administration built. In his address before the United Nations Association of Chicago on July 13, 1977, the US Assistant Secretary for International Organisation Affairs, Charles W. Waynes, said:

"... More specifically, in the realm of dealing with African issues, I believe that it is generally accepted that the international community has made the most promising beginning in years, particularly on the Namibian issue. Incidentally, so that you don't misinterpret my main point here as being just partisan, let me say that we are trying to build on what others began. Previous US Permanent Reps at the UN succeeded in convincing the US Government that we should take the UN more seriously. They began the process of reaching out to a broader circle of like-minded

⁵⁸⁹ Karns, op cit., p. 97.

⁵⁹⁰ Fisher, Roger and Ury, William. **Getting to Yes: Negotiating Agreement without Giving in.** (New York: Penguin, 1983).

⁵⁹¹ Karns, op cit., p. 97.

⁵⁹² Ibid., p. 97.

countries. This administration is only continuing and building on that process.⁵⁹³

Sceptics might argue that Kissinger's 'like minded countries' did not include Canada. Canada's exclusion from Kissinger's trips pointed to two reasons. First, it indicated Canada's lack of colonial influence in Africa. Secondly, Canada's participation in the Contact Group was partly because it was a member of the Security Council in 1977, and more importantly, partly due to its sympathy for the Third World concerns, especially on decolonisation. To a greater extent, it could be argued the UN Council for Namibia was instrumental to Canada's participation in the Contact Group. Although with the other four, Canada abstained from Resolution 2248 of the General Assembly of 19 May 1967 which established the Council as the legal authority for the territory, but unlike them, Canada had a sympathy with the decision to establish the Council for Namibia. Prior to the formation of the Contact Group, the Canadian government had invited the Council for a discussion on the Namibian question. At its 16 February 1977 meeting, the Council decided on Canada's invitation.⁵⁹⁴ The Council visited Ottawa and Toronto between 9-12 March 1977. Its mission had a discussion with the Canadian Prime Minister Pierre Elliot Trudeau and held a substantive talk with Donald C. Jamieson, the Secretary of State for External Affairs.⁵⁹⁵ It also held talks with the Canadian International Development Agency (CIDA) and some NGOs with

⁵⁹³ Maynes, Charles. W. "United States Approach to the United Nations: New Direction", An address to the UN Association of Chicago, July 13, 1977. **Department of State Bulletin**, Vol. LXXVII. No. 1992., August 29, 1977, p. 289.

⁵⁹⁴ United Nations, **United Nations Monthly Chronicle**, Vol. XIV. No. 3. Mar. 1977, p. 19.

⁵⁹⁵ United Nations, **UN Monthly Chronicle**, Vol. XIV. No. 4. April 1977, p. 29-30. Rikhi Jaipai of India headed the mission. Other delegates included: Thomas Tlou (Botswana) and Roberto Rosenzweig-Diaz (Mexico).

interests on the situation in Namibia. At the end of the visit, the Council through its leader Rikhi Jaipal (India) said that the visit was very successful with mutual understanding achieved; it expressed the hope that Canada would take a seat on the Council, an invitation rejected by Ottawa.

5.16. The Contact Group and its legitimacy under the international law

The existence of the Contact Group leads us to the second question: that is its legitimacy and relationship with the bounds of the international law and within the United Nations practice. A caveat needs to be entertained here. This section benefits largely from the works of international lawyers, especially Richardson's analysis on the question whether the power exercised by the parties to the negotiations is authorised under international law.⁵⁹⁶ Richardson noted that the Contact Group per se exercised no constitutive authority in relation to Namibian independence, through the Security Council. He demonstrated that when the Contact Group presented their proposal on April 27 1978, they requested that it be circulated as a Security Council document. This implied a prior lack of formal delegated authority from the Council, since otherwise there would have been no need for such a request, and indeed there was no record of any such delegation. As it turned out, Resolution 431 (1978) *takes* note of the proposal for a settlement of the Namibian situation, of 10 April 1978", but does not take note of or otherwise recognise the Contact Group. The Security Council recognised the validity of *the* proposal as a separate issue from the overall authority of its originators.⁵⁹⁷

⁵⁹⁶ Richardson III, Henry. J. "Constitutive Questions in the Negotiations for Namibian Independence", *American Journal of International Law*, Vol. 78, No. 1. January 1984, p. 78.

⁵⁹⁷ *ibid.*

In effect, the Contact Group negotiation operated outside the normal negotiation processes of the UN. Although members belonged to the UN, they negotiated in their capacity as aggregate of interested states rather than as UN agents. Given that the Security Council did not delegate negotiating authority to the Contact Group,⁵⁹⁸ it lacked a formal mandate, and it received no formal legitimisation of its actions until the passage of Resolution 435 in September 1978.⁵⁹⁹ This resolution gave a post-hoc legality and legitimacy to the Contact Group's actions.⁶⁰⁰ In the same vein, Soni described the Contact Group as "an extra-legal regime rather than an illegal one".⁶⁰¹ Karns termed it as "an ad hoc multilateral mediating and facilitating team in close proximity to but not directly linked with the United Nations".⁶⁰² The Contact Group had neither *de facto* nor *implied agency* relationship with the Security Council. Article 29 of the UN Charter provides that:

"The Security Council may establish such subsidiary organisations as it deems necessary for the performance of its functions. The repertory of UN practice has classified such subsidiary organisations into (1) standing committees, (2) commissions, and (ad hoc drafting committees). There is not evidence of any such action here".⁶⁰³

⁵⁹⁸ *ibid.*, p. 84.

⁵⁹⁹ Karns, *op cit.*, p. 100.

⁶⁰⁰ Security Council Resolution 435, UN Security Council, 33rd Session 2087 Meeting, UN Document S/12865 (1978).

⁶⁰¹ Soni, Sushma. "Regimes for Namibia's Governance", *Columbia Journal of Transnational Law*, Vol. 29. No. 3., (1991), p. 594.

⁶⁰² Karns, *op cit.*, p. 93.

⁶⁰³ Richardson, *op cit.*, p. 85. This is extracted from footnote 45.

More significantly, UN literature for the most part refers to these Governments as “the five Western members of the Security Council”, not as the “Contact Group.”⁶⁰⁴ An example from the UN Commissioner, Martti Ahtisaari, supports the above view. An extract from his interview by the **Africa Report** is given below:

AFRICA REPORT: How do you view the role and the proposals of the group of Western ambassadors who are seeking to effect a solution towards Namibian independence?

AHTISAARI: This is the initiative of the five Western members of the Security Council. It has not been initiated by the United Nations.⁶⁰⁵

Perhaps mindful of a lack of any *de facto* arrangement with the Contact Group, there was no statement in the text of Resolutions 431, 435 or 439 that the Security Council had “endorsed” or adopted the proposal, only in 431, that it had “taken note” of it.⁶⁰⁶ By implication therefore, the Contact Group consisted of a coterie of the great powers that explored their competencies in such a way to impart a degree of central direction on how an international conflict should be resolved. Its action in effect served as an essential part of the management of balance of power, both locally and globally. The big question is whether another group of states would have the same competencies, effects and leverages on the main parties. Important as it is to state this question, it can only be answered speculatively. It seems wiser, therefore, to leave it open and proceed to the outcome of the Contact Group diplomacy and the international law.

5.17. Resolutions 385 (1976) and 435 (1978) and the international law

We have established that the Contact Group took Resolution 385 (1976) as its legal ‘frame of reference’ of seeking independence for Namibia. The resolution became a

⁶⁰⁴ UN DEPARTMENT OF PUBLIC INFORMATION, NAMIBIA: A UNIQUE UN RESPONSIBILITY, 24 (March 1981).

⁶⁰⁵ **Africa Report**, Vol. 22, No. 6. November-December 1977, p. 18. ‘Interviewed by Anthony J. Hughes.

legal 'frame of reference' which had to adhere to and within which the dispute had eventually to be resolved. By so doing, its *raison d'être* was to seek the deference of South Africa to the principle of self-determination and her compliance to the provisions of the Universal Declaration on Human Rights. From the international law point of view, Resolution 385 in part consolidated the attempt by the international community to remove all the intricacies of the erstwhile Mandate system. The process of detaching the Mandate system began with the termination of the Mandate by the General Assembly in 1966 and the endorsement thereof by the Security Council in 1969. The revocation of the mandate by International Court of Justice, with the ruling of 1971 ended this process.⁶⁰⁷ Thus, the extrication of the contentions surrounding the Mandate system, put the Namibian question within the ambit of the United Nations' instruments governing the processes of self-determination of colonial countries and peoples. In continuum, through Resolution 435 of 1978, the Contact Group's diplomacy was to give effect to the United Nations instruments on self-determination. This had two implications. First, international law was no more a mere norm, but it contained a germ of political action, which exerts a pull on South African action. It also communicated the prevailing view of the international community to South Africa concerning human rights and self-government.

The second implication is central to the argument of this study. This concerns the confluence of contending paradoxes of practice of power politics and international law. As suggested in chapter two, the mandate system, whilst being a product of power politics, it also set off the idea of international accountability and a duty of care of the

⁶⁰⁶ Richardson, op cit., p. 84.

metropolitan powers to the colonised peoples. The paradox is that having activated the process of transfer of power, it became the platform in which succeeding practice of power politics would be played out, concerning decolonisation issues. In the same vein, the Contact Group, succeeded to limit the influence of Soviet Union on the outcome of the negotiation, yet worked within the edges of international law to mould Resolution 435.

Suffice to point out that Resolution 435 has some flaws. Although William Barton, Canadian ambassador to the United Nations, who presided over the Security Council in April 1978, described Resolution 385 (1976) as unrealistic,⁶⁰⁸ but Resolution 435 (1978) as it were, was an imperfect document. For example, Landis observed that while the Group claimed to have addressed all elements of Resolution 385 (1976), it none the less, contained some elements which were at odds with Resolution 385. It left in place, to the day of independence, the South African administrative structure, including the police (and the administrator). The plan accepted by silence the South Africa fiat of 1977 excising Walvis Bay. It did not seek from Pretoria a declaration of compliance or to dismantle the native reserves.⁶⁰⁹

⁶⁰⁷ Wiechers, M. "The Settlement Plan for Namibia: A Critical Analysis", in Hough, M. and van der Merwe, M. (eds.), **Namibia: Current and Future Perspectives** (Pretoria: Institute for Strategic Studies, 1989), p. 52.

⁶⁰⁸ Sanger, Clyde. "Namibia: The Black Man's Burden", **Canadian Annual Review of Politics and Public Affairs**, No. 6. Summer 1990, p. 7. Clyde Sanger is a staff of the Department of External Affairs, Ottawa Canada. I got the Canadian view and its role within the Contact Group from materials send by Heather Wharton, the Reference Librarian, Department of Foreign Affairs and International Trade, Ottawa, Ontario, Canada, on November 29, 1996.

⁶⁰⁹ Landis, Elizabeth. "The Never-Ending Namibian Negotiations", in **LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW, A SPECIAL REPORT: SOUTHERN AFRICA, at SOUTH AFRICA-1** (October, 1982), see Richardson op cit., footnote no. 6.

Taking the Namibian question as South Africa's violation of the principle of self-determination, and a disregard for the UN Declaration of Human rights, the Contact Group caught the minds and hearts of the African states. Yet, the commitment of the Contact Group to the other elements of international law upheld by the African states was questionable. None of the Contact Five recognised SWAPO as the sole representative of the peoples of Namibia as proposed by the UNGA in 1973, and some of them supported the DTA discreetly. None of the Contact Group recognised the legal authority of the UN Council for Namibia, and for three times in succession voted against the sanctions.

By the end of the Group initiatives, South Africa was nearer to achieving internal settlement than it had been before. It is the fissure between a commitment to the spirit international law, as exemplified in Resolutions 385 (1985) and 435 (1978) and the consequence thereof with the quest to defend respective memberstates economic and strategic interests with South Africa that undermined the Contact Group efforts.

In the final analysis, if negotiation involve the narrowing of the gap between initial positions, for the most of the four years, South Africa gave the loosest of undertakings to any agreement with the Contact Group, and used its military and political resources to undermine SWAPO. The Contact Group was not ready to offer either the carrot or the stick that would have made South Africa to fundamentally change its position. As a result, by the end of the Geneva conference in January 1981, the Contact Group effort had lacked the scent of a future success. It required another stimulus on the rationale of balance of power, that is 'linkage politics' to bring the Namibian conflict into its final endgame.

Chapter Six

The Endgame of the Namibian Conflict

6.1. Introduction

From the last chapter, it was clear that the Namibian internal parties fostered the breakdown of the Geneva Conference. With its failure the UN lost its leading role in promoting dialogue between the main parties. Even in Geneva, the invisible presence of the incoming Reagan administration and its much-expected reaction to the resurgent Soviet expansionism haunted each of the main parties. Within a period of six years, (1974-1980) fourteen third world pseudo-Marxian revolutions had occurred, with the assistance of the Soviets and the Cubans. The Reagan administration believed that its predecessor had allowed the Soviet Union to get away with too much, in Latin America, in Africa and in the Middle East. The Iran hostage crisis reinforced the view that the United States was no longer respected as it had been before the Vietnam War. The Soviet invasion of Afghanistan and the failure of the Carter administration to 'draw the line among the superpowers' sharpened Reagan's characterisation of the Soviet Union as an "evil empire". It prompted the need to cure the Americans of the Vietnam Syndrome, revived the spirit of American exceptionalism and ushered in the 'Second Cold War'.⁶¹⁰

America's new containment policy had two irreconcilable goals. The first was the restoration of American prestige by promoting negotiations on regional conflicts and support for anti-Communist forces. The second goal was to instil fear in the Soviets

⁶¹⁰ See Halliday, Fred. *Cold War, Third World: An Essay on Soviet-American Relations*. (London: Hutchinson Radius, 1989).

through military strength with the Strategic Defense Initiative.⁶¹¹ Each goal fed on the other. The Reagan administration was ready to take the Namibian question into the heart of the new Cold War. By so doing, the ability of the Soviet Union to exploit third world conflict would be greatly reduced. The SDI was to test the limits of Soviet superpower status. Consequently, it would be able to reconfigure the structural relationship between the two superpowers.

This chapter focuses on the re-location of the Namibian question within the new logic of the balance of power. It also explores the tension which embedding Namibia in the new Cold War caused between the United States and its allies in the Contact Group, and accordingly with the legal approach that they had framed. In line with the main thesis of this study, this chapter re-establishes the argument that the Namibian question was essentially driven by the imperatives of the balance of power. In the end, the Namibian people became beneficiaries of power politics.

It will be sufficient to illustrate three changes in the Soviet-American relations of the early Reagan administration. These were: the withdrawal of the exclusive symbolic privilege of Moscow's ambassador to the United States, Anatoly F. Dobrynin; President Reagan's interview of March 3, 1981; and the composition of his foreign policy team.

(1) According to Alexander Haig, the Soviet ambassador was the only diplomat in Washington who entered the State Department by driving into the basement garage,

⁶¹¹ President Ronald Reagan's interview to the Commission on the Bicentennial of the Constitution. The BBC 2 broadcast this interview; Open University programme on 3 December, 1997.

entering a private elevator to the office of the Secretary of State.⁶¹² The other 150 ambassadors had to drive to the main entrance on C Street, walk across the lobby and ride in the public elevator. This privilege however, ended, the first time, Ambassador Dobrynin met Haig. Haig claimed that bureaucratic pique influenced the withdrawal of this privilege.⁶¹³ But, whatever the cause, it sent a clear message to Moscow that a new phase had emerged in the superpower relationship. The role of Cuba in southern Africa and Latin America was Washington's main preoccupation. Haig told Dobrynin that Cuba's role in Angola and El Salvador was contravening the understandings on the role of Cuba within the Kennedy-Khrushchev non-aggression agreement that ended the Cuban missile crisis of 1962. "These understandings did not include the right of Moscow and Havana to inspire, train, equip and arm insurgencies in Central America or elsewhere in the world".⁶¹⁴

(2) During his interview with Walter Cronkite of CBS News on March 3, 1981, President Reagan asked rhetorically whether the U.S could abandon a country that has stood beside us in every war we have fought, a country that strategically is essential to the free world in its production of minerals we all must have and so forth...[I]f we are going to sit down at a table and negotiate with the Russians, surely we can keep the door open and continue to negotiate with a friendly nations like South Africa".⁶¹⁵ Indeed, the statement indicated an American tilt towards Pretoria, although it also revealed Reagan's willingness to adopt a political view of history-many hundreds of

⁶¹² Haig, Alexander. M. **Caveat: Realism, Reagan and Foreign Policy.** (New York: Macmillan Publisher Co., 1984), p. 101.

⁶¹³ *ibid.*

⁶¹⁴ *ibid.*, p. 98.

⁶¹⁵ See **Weekly Compilation of Presidential Documents**, March 9, 1981, p. 235-236; **American Foreign Policy Documents, 1981**, (Washington: Department of State, 1984), Document 592, p. 1090.

thousands of ex-colonial nationals had also fought with the Allies in both world wars. Moreover, the National Party of South Africa-the governing party since 1948 had opposed South African entry into the Second World War and some of its leaders had been interned for their Nazi sympathies.

(3) Reagan's foreign policy team was composed of realists. The principal figures were Alexander Haig, Chester Crocker (the Assistant Secretary of State for African Affairs), and Jeane Kirkpatrick (the Ambassador to the United Nations). Haig was an outgoing Supreme Allied Commander in Europe (SHAPE). Previously, he had been deputy assistant to Kissinger at the National Security Council. He saw Havana as the cutting edge for Moscow both in Africa and Latin America (El Salvador); and believed that the interests of peace in the subcontinent and the rest of Africa were best served by getting rid of the Cubans.

Jeane Kirkpatrick, a prominent national Democrat, was known for her geopolitical mindset.⁶¹⁶ She was always sceptical of the very nature of UN bloc politics and Third World diplomatic authoritarianism. Unlike her predecessors, Young and McHenry, who saw the UN as a helpful forum for reaching peaceful solutions, she considered it a "dangerous place" where conflicts tend to be exacerbated, an arena for the Cold War. While McHenry and Young cultivated the African representatives at the UN, she saw the Soviets opportunistically side with the Third World majority on issues like South Africa and the Israel-Arab conflict, frequently leaving the United States in the

⁶¹⁶ See *Who's Who in America*, Vol. 1, 43rd Edition, 1984-1985, (Chicago: Marquis Who's Who, 1984), p. 1793.

minority.⁶¹⁷ For instance, in one of her speeches before confirmation, she said “It is difficult to understand why we support some UN agencies that are undermining the work of the US and some of its allies”. Although she was speaking in the context of UNESCO’s expulsion of Israel after accusing it of racism, her deprecation of the UN would later manifest itself on the Namibia issue. Her article in *Commentary* magazine entitled “Dictatorships and Double Standards” during the 1980 presidential campaign attracted candidate Reagan’s attention.⁶¹⁸ Her views came to symbolise Reagan’s approach to the Third World: i.e. to favour authoritarian governments, where American vital interests were perceived to be at stake.

Chester Crocker regarded Africa as his second home for two reasons. He was married to a Rhodesian, Saone, the daughter of one of the Barons of Bulawayo. He was also a leading African academic expert. His doctoral thesis from John Hopkins was entitled: “The Military Transfer of Power in Africa: A Comparative Study of change in the British and French systems of order”. Before his nomination, he had been Director of African Studies at Georgetown University’s Centre for Strategic and International Studies. Like Haig, he had served under Kissinger, and was associated with the preparation of the NSSM-39 in 1969. However, the archconservatives in the Administration saw him as a pragmatist, and more of a regionalist, than a true globalist.

Like Kirkpatrick, Crocker announced his political ambitions with an article in the winter 1980/81 Edition of *Foreign Affairs*. In it, he jettisoned Nixon’s half-measures

⁶¹⁷ Finger, Seymour. Maxwell. “Ronald Reagan and the United Nations: His Policies and His Representatives”, in Eric J. Schmertz, Natalie Datlof and Alexej Ugrinsky (eds.), **President Reagan and the World**, (Westport, Conn.: Greenwood Press, 1997), p. 11.

⁶¹⁸ Falcoff, Mark. “Latin America: Was There a ‘Kirkpatrick Doctrine’?”, in Schmertz et al, *ibid.*, p. 393.

and criticised Carter's ethical foreign policy for throwing away valuable allies such as South Africa, positing his own "policy of constructive engagement".⁶¹⁹ There was, he argued an opportunity to help shape a regional climate conducive to political accommodation in both southern and South Africa if Western governments were prepared to engage in "a sustained and nimble diplomacy" involving leadership in regional problem-solving".⁶²⁰ His policy called for a strong bilateral relationship between the United States and South Africa that would change the perception that the communists had unchallenged rights to exploit and militarise regional tensions in southern Africa. It recognised an understanding for the sequencing and interrelated nature of change within South African society and its polity, without embracing either of the previous policies.⁶²¹

Much has already been written on constructive engagement, amongst which Coker's Oxford doctoral thesis and the book he based on it is the most important reference point. Coker argued that Crocker's constructive engagement was based on three central premises, all of which touched upon South Africa's relationship with the outside world, and particularly with the United States.⁶²² These were: (1) that the United State could not disengage itself from the evolutionary changes in South Africa, but should work with rather than against Pretoria. In the process, though, engagement must not be seen as accommodation. (2) That the changes the United States hoped would preferably be in response to US government initiatives. This had two implications: (a) a preference

⁶¹⁹ Crocker, Chester. (a) "South Africa: Strategy for Change", **Foreign Affairs**, Vol. 59, No. 2, Winter 1980/81, p. 346. Full discussion of the regional proposed for southern Africa can be found in Crocker's other articles: **Africa Report**, January-February, 1981, and "African Policy in the 1980s", **Washington Quarterly**, Summer 1980.

⁶²⁰ Crocker, Chester. (b) "Southern Africa: Eight Years Later", **Foreign Affairs**, Vol. 68, No. 4, Fall 1989, p. 145.

⁶²¹ Chester Crocker, (a), *op cit.*, p. 346.

for unilateralism in relations with South Africa; and (b) that the United States policy should not be driven by domestic pressures and public opinion; and within South Africa, incline towards the white governing elites, but show some sensitivity in relating with the liberation movements such as the ANC and the PAC; (3) that Botha's internal reform within South Africa should be recognised and commended.

It was not clear however, whether constructive engagement was an end in itself or a means to a different goal. Herman J. Cohen, Crocker's successor argued that "constructive engagement was not a policy. It was a diplomatic tool, a method for the purpose of certain objective".⁶²³ He observed that the methodology of "constructive engagement" was applied to all of the governments of southern Africa, and not only to South Africa. Cohen defined "constructive engagement" as a "methodology that seeks to deal with power structures as they exist rather than as we would like them to be, and which seeks incremental results that are achievable within reasonable time-frames".⁶²⁴ On this view, constructive engagement gave Crocker extensive exposure to all the parties, except the Cubans between 1981 and 1988, thereby enabling him to shape the negotiations.

Constructive engagement, as originally defined by Crocker was a slippery concept. The tone of his article suggested multilateral co-ordination with other Western powers. Yet once in office, Crocker embarked on unilateral diplomacy to the discomfort of the Contact Group. Constructive engagement, it turned out, was no more than a means,

⁶²² Coker., op cit

⁶²³ Cohen, Herman. J. "Constructive Engagement at Work in Southern Africa: A View from the Inside", in Glickman, Harvey. (ed.), **Toward Peace and Security in Southern Africa**, (New York: Gordon and Breach Science Pub., 1990), p. 215.

⁶²⁴ *ibid.*

with the ultimate ends of changing the southern African international relations to the American advantage, values and interests. In this respect, there was more continuity than change. Nixon's active communication with Pretoria was a precursor and a milder form of constructive engagement. Crocker's main innovation was to adapt Kissinger's "linkage politics" to Southern Africa. In this way, he tied Namibia to the machinations of the second Cold War.

Crocker noted that there existed an empirical, as well as a functional relationship between the continuing Cuban presence in Angola and the objective of achieving an independent Namibia.⁶²⁵ His contention was that the Namibian and Angolan conflicts were "empirically connected", that is the Namibian issue transcended self-determination, and raised issues of regional stability (or instability), with global implications. He reckoned that regional stability would be restored if the Cubans could be persuaded to leave and the armed forces of South Africa, UNITA, and SWAPO laid down their arms. Such an outcome would certainly attract strong support from the FLS and the OAU, which were becoming increasingly irritated by the "overstaying" of the Cuban forces in Angola. The rationale was that the prize for a negotiated peace between all the warring factions in the region would prove irresistible. Conceivably, the Cubans would go home. Angola would be drawn closer into the Western sphere of influence, and new corridors of trade and co-operation would be opened in which South Africa could play an important part. Thus, "linkage politics" encapsulated a confluence of

⁶²⁵ The intimate relationship otherwise known as 'empirical connectedness' between the conflicts in Namibia and Angola was the main theme of the linkage politics. See *Remarks by the Secretary of State (Haig) Before the National Foreign Policy Conference for Editors and Broadcasters, Washington, October 29, 1981*, Department of State Press Release 364, October 30, 1981, p. 18-20; and *Address by the Assistant Secretary of State for African Affairs (Crocker) Before the Foreign Relations and National Security*

interests from which all parties would gain. To achieve the desired outcome was more daunting, than anticipated. It took eight years of intense negotiations.

Linkage strategies involve attempts by foreign policy makers to tie together disparate issues in bargaining with their counterparts. They have characterised inter-state diplomacy since the Peace of Westphalia, if not before. None the less, they took on a special significance during the Nixon-Kissinger years, as an instrument for securing trade-offs over security issues in what was conceived of as a “pentagonal world”, that required “balanced power”. Linkage was used during the Nixon administration as an instrument for ensuring Soviet participation in détente. It involved tying the exchange of economic aid, credits, or technical information to progress on arms control or internal liberalisation and freer emigration to the United States from Soviet Union. In general, it suits great powers rather than weaker ones, as they have multiple economic, military, and diplomatic competencies. Viewed in neutral terms, it brings in the concept of additionality in situations where de-coupling of issues is vital. In a situation, where security issues, cry out for selectivity, linking issues, may hinder progress. Most often, it is important to decouple issues wherever possible. Linkage can give each of the parties the opportunity to divert attention to peripheral issues. In addition, bureaucratic footdragging by interests groups whose issues have been coupled together could hamper progress on the main issues. Most of these limitations would later haunt Crocker’s linkage politics in the subsequent years.

In general, there exists a similarity between Kissinger and Crocker’s idea of linkage. Both were construed to contain and pre-empt any further Soviet gains. As we have

Committee of the American Legion, Honolulu, August 29, 1981, AFPCD, 1981,

seen, *Henry Africanus*, firstly 'linked' Africa into the global system whose structure was largely shaped by American interests. Southern Africa in particular became a crucial arena for defining the rules of international conduct. Preliminary to a further analysis of US linkage diplomacy on Namibia, it is important to detect the logic behind it.

According to Crocker,⁶²⁶ the decision to engage in Namibia rested on three policy options, of which one was taken. These were: (1) to soldier on with the inherited Namibia-only approach; (2) to downgrade Southern African diplomacy or scuttle the Resolution 435 process, join in full support of UNITA's military efforts, and at least tacit support to Pretoria's "internal" option in Namibia; or (3) to restructure fundamentally the negotiations to incorporate the Angolan factor and strengthen Resolution 435.

To Crocker, the first option failed the tests of both feasibility and desirability. He reasoned that to continue the inherited policy would produce no fresh leverage to break the logjam. More importantly, it would not address the Reagan administration's concerns about the Soviet-Cuban influence in both Angola and Namibia. The second option—a "no-policy policy" could cause the fracturing of the Contact Group, weaken the reformists within the Botha's government, rupture the credibility of America in the eyes of the black African states and by implications present a gift to the Soviets. The chosen option, variously described as "the strengthening of the Namibia settlement package", "the parallel settlements", and "the two track approach" was based on the perceived need to counter Soviet expansionism and Cuban adventurism in southern

Document 610, p. 1111.

Africa, and on scepticism about the ability of the UN to achieve these goals. The primary goal was to prevent a “less friendly” regime from taking over power in Namibia and to maintain opposition pressure on the Soviet-dominated MPLA-regime in Angola. It involved a rejection of both the Namibia first, and Angola first settlements in favour of parallel settlements in Angola and Namibia. Crocker maintained that Ronald Reagan had not been elected to make Africa safer for Marxism, still less to work for yet another Marxist take-over in the wake of the 1975-87 Soviet-Cuban gains in Angola, Mozambique, and Ethiopia, and the Mugabe’s 1980 victory in Zimbabwe. Thus “the strengthening of the Namibia settlement package” involved the altering of the context of the Namibian question, the expansion of the agenda with the incorporation of issues of regional security. In other words, South African exit from Namibia under Resolution 435 was conditional on the withdrawal of the Cuban troops from Angola.

It later turned out that linkage politics was a resurrection of Kissinger’s diplomatic style: realism, unilateralism and secrecy. It sought to limit the influence of SWAPO within the United Nations system, but to maintain continuous contacts with Pretoria in secret talks. In detail, it included: the drafting of a democratic constitution before elections in Namibia; internationally guaranteed neutrality for Namibia; Cuban troop withdrawal from Angola as well as political reconciliation between UNITA and the MPLA; the avoidance of noisy UN debates and strains in allied relationships; improved relations with both South Africa and the other African states; and multiple setbacks to the Soviets and Cubans in the region.⁶²⁷

⁶²⁶ Crocker, (c), op cit. P. 58.

⁶²⁷ Crocker, (c), *ibid.*, p. 66.

Since, the primary objective was to undercut Soviet Union expansionism, linkage reinforced the realist view of the primacy of the balance of power over international law. Consequently, Resolution 435 (1978)-and the diplomacy through law approach that it represented-was sidelined. Negotiations were conducted over the head of the UN. It put more emphasis on the calculus and interests of the great powers, as it concerned the United States and the Soviet Union in particular. It remained indifferent to the opprobrium of the other members of the international community, especially the African bloc, which continuously called for justice against South Africa's illegal occupation in Namibia. It is important to tease out these issues in detail with a narrative of the eight-year linkage diplomacy. Until 'confidential' documents are published in 2010 a full analysis of the negotiations will be impossible. In the meantime, there is no alternative than to rely on memoirs of the participants as well as such documents that have already been released into the public domain.

6.2. The beginning of the end of the Contact Group diplomacy

Two events- Haig's remarks on the Geneva conference during his confirmation ceremony, and Crocker's failure to attend the conference despite having been invited by McHenry- illustrated the contempt, which the Reagan exhibited towards the Contact Group.

The confirmation of Haig as the Secretary of State coincided with the Geneva conference. During the proceedings, Haig remarked that:

“Anyone should not be surprised that the South African Government would enter into these discussions in a very sceptical way and in a very cautious way. There are aspects of the issue from their point of view, strategic aspects that have been long-standing and historic... I guess this (the Namibian question) had been described as the last vestige of colonialism

that loaded term. So it is in our interest, of course to bring about a solution which is not going to put in jeopardy the interests of those who share our values and the interest, above all, of a broad, strategic sense”.⁶²⁸

Haig's statement was not made in a vacuum. Previously, Crocker had refused McHenry's advice to attend the Geneva conference, as a private and anonymous observer.⁶²⁹ Like the withdrawal of the Soviet privilege alluded to earlier, Haig's statement and Crocker's refusal to attend Geneva were signs that Washington was ready to take a new course on the Namibian question. Washington moved from mere signalling to action by inviting five South African military officers to visit the US between March 9-15 after an 18-year ban on such visits.⁶³⁰ To drive its intention home, these officers trip coincided with talks with Jonas Savimbi, the UNITA leader in Washington and the US visit by the DTA's Dirk Mudge.⁶³¹

The clustering of these three visits more or less at the same time surprised the other members of the Contact Group and the Frontline States. In the wake of domestic opposition from the anti-apartheid groups, Washington initially denied that Ambassador Kirkpatrick was unaware of the identity of these visitors, because, the US's mission in Pretoria had committed 'an administrative oversight'. Kirkpatrick's assertion that there was an error of omission suggests an act of being economical with

⁶²⁸ Alexander Haig, *Testimony by the Secretary of State-Designate Before the Senate Committee on Foreign Relations*, January 14, 1981, [Ninety-seventh Congress, First Session, Part 2], (Washington, 1981), p. 9-10; and **American Foreign Policy Current Documents, 1981**, {hereafter **AFPCD**}, (Washington, Dept. of State, 1984), Document 589, p. 1088; *New York Times*, January 13, 1981, p. 5.

⁶²⁹ This was a disclosure made by John Seiler. See Seiler, John "Crocker's Southern African Policy: A Critical Review", *Journal of Contemporary African Studies*, Vol. 13, No. 2, 1995, p. 197.

⁶³⁰ *Testimony by the Acting Secretary of State for African Affairs (Walker) before a Subcommittee of the House Foreign Affairs Committee, March 31, 1981, AFPCD*, Document 597, p. 1092.

the truth. For instance, amongst the visitors was Admiral Du Plessis who was undeniably known as a military man. Du Plessis had previously served as a military attaché in the Washington embassy, but was declared *persona non grata* in retaliation for South Africa's expulsion of American diplomats after the spy plane incident in April 1979.⁶³² In any event, the visit of the DTA could not be a mere coincidence, as the DTA leaders requested in their letter to President Reagan on February 17, 1981 their intention to visit Washington on the week of March 13.⁶³³ Their visit took place on March 16 following an invitation from Crocker on March 6.⁶³⁴ The DTA's visit also highlighted the United States position that SWAPO should not be regarded as the 'sole representative' of the Namibian people.

Another way in which Washington showed that southern Africa was of immediate concern occurred on March 31, when both Crocker and Haig made major policy pronouncements. Crocker announced an extensive round of consultations with African governments, and declared that the administration's objective on southern Africa was to strengthen the security of the region,⁶³⁵ while Haig declared that "as we launch into a new peace effort in southern Africa, we should not be inhibited by unnatural anomalies in our ability to conduct our executive branch foreign policies freely".⁶³⁶ De-coded, he was signalling Washington's intention to repeal the Clark Amendment. As shown in chapter four, South Africa felt betrayed over this Amendment, as it had ended United States covert support to the UNITA forces and South Africa in the Angola.

⁶³¹ **Financial Mail** (South Africa), March 20, 1981, p. 1196.

⁶³² See footnote 528.

⁶³³ *Letter From the Chairman and President of the DTA (Mudge and Kalangula) to President Reagan, February 17, 1981*, AFPCD, Document 590, p. 1089.

⁶³⁴ AFPCD, Document 594, p. 1091.

⁶³⁵ **Weekly Compilation of Presidential Documents**, April 6, 1981, p. 376-377.

⁶³⁶ AFPCD, Document 598, p. 1094.

Other members of the Contact Group watched Washington's move with interest. The visit of Savimbi and the DTA leaders signalled to the Contact Group that the United States viewed Namibia and Angola as a joint strategic exercise. The French concluded that Washington was no longer committed to an independent Namibia governed by whoever won a free election. *Le Figaro* warned that Washington was more likely to allow the Soviet Union to strengthen its reputation as the friend of African nationalism was, by adopting an anti-SWAPO line and showing more sympathy for Pretoria.⁶³⁷ The shared values that had bonded the Contact Group during the Carter administration began to crack, even at the UN. For instance, Ambassador Rudiger von Wechmar (West Germany) accused the South African delegation of staging a show when it tried to take its seat at the UN debate on Namibia.⁶³⁸ This criticism was directly connected with the knowledge of South Africa's intransigent action on Namibia.⁶³⁹

Washington's divergence from the plan devised by the Contact Group came to the fore when Reagan declared that the United States would embark on a "Zimbabwe formula". He said: "we want to see a peaceful solution to the Namibian situation. We think it begins with an election but I think an election, just as we did in Zimbabwe, should follow the adoption of a constitution that guarantees equal rights to all people in that

⁶³⁷ **Financial Mail**, March 20, 1981, p. 1196.

⁶³⁸ **New York Times**, March 16, p. 6.

⁶³⁹ When South Africa joined in the debate on Namibia, the African group raised a point of order on the 'illegal presence' of the South African delegation. Only the US voted against the Credential Committee's decision to reject South African credentials. In his concluding remark on the issue, Wechmar said that: "he could not assume but that the activities of the representatives of South Africa were a carefully planned attempt to produce a predictable decision by the Assembly majority which could later serve South Africa's own purposes". See **United Nations Monthly Chronicle**, Vol. XVIII, No. 4, April 1981, p. 5.

country-property rights, minority rights” (sic).⁶⁴⁰ This ‘building block’ formula involved drafting the constitution first, before discussions could move on to the transition agreements, and only when that had been agreed could the cease-fire be discussed.

Washington was attracted by the Zimbabwe formula primarily as a way of reducing the control of SWAPO over an independent Namibia. The protection of the minority would be enshrined into the draft constitution, and by implication cut into the winner-takes-all scenario favoured by SWAPO. A secondary attraction was the ‘speed factor’. Taking a cue from the Lancaster House, which had run a marathon of 14-week negotiation, Washington believed that not only it could breathe new life into the negotiation, but also quicken its pace and intensity.

This model diverged from the style and substance of the Contact Group diplomacy. In the Contact Group plan as enshrined in the SCR 435, Namibia’s law was to be worked out after elections. Whoever won the constituent assembly could conceivably independently write the constitution. Should SWAPO win, Washington feared that the country’s constitution would lean towards a centralised economy. The implication of the Zimbabwe formula was that Resolution 435 (1978) was no longer sacrosanct. Indeed, the United States had set the stage for the tearing apart of its main provisos. As far as the United States was concerned, this resolution could only function and serve the greater good if and only if it were shaped by, and suited its national self-interest. It remained for the United States officials to sell the American plan to its allies and foes alike. This responsibility fell to Crocker.

⁶⁴⁰ *Transcript of an Interview With President Reagan, March 27, 1981, Washington*

Crocker embarked on a 10-nation trek through Africa in early April 1981 first visiting London for discussion with British Parliamentary Under-Secretary of State, Richard Luce. He returned to London on April 22 to meet the other four Contact Group representatives and to report on his mission.⁶⁴¹ April 22 was also the day set for a Security Council debate on the General Assembly resolution calling for sanctions against South Africa due to its illegal occupation of Namibia. The timing of the Security Council meeting was demanded by OAU, which at one stage even pressed for the debate to be staged in Algiers to underline “Africa’s impatience” on the Namibian stalemate.⁶⁴² In keeping with the new American thinking about the balance of power, Crocker blamed the Africans’ call for sanctions on the Soviets: “the Front-line States organised the showdown in the Security Council because they were backed by the full weight of the Soviet-East Bloc-Cuban diplomatic machinery in New York”.⁶⁴³ Previous FLS calls for sanctions had never been interpreted in this way, but as part of their quest for justice and fairness.

By April, the Contact Group diplomacy was, in biblical terms, *the hands of Jacob, but the voice of Esau*. Britain continued to direct the Group at the United Nations as it had done since the resignation of Ambassador Young in 1979. On March 6, Sir Antony Parsons speaking on behalf of the Contact Group indicated, that there was a need “for

Post, March 29, 1981.

⁶⁴¹ Crocker visited the following 10 countries: Kenya, Tanzania, Zambia, Zimbabwe, Mozambique, Angola, Botswana, Nigeria, Zaire and South Africa. The height of Crocker’s visit was in South Africa. Pik Botha objected to Crocker’s statement that SWAPO was not necessarily USSR-controlled because it received USSR arms. See **Financial Mail**, April 17, 1981, p. 295.

⁶⁴² **Financial Mail**, April 10, 1981, p. 169.

⁶⁴³ Crocker, (c), op cit., p. 93.

mature reflection and reconsideration” on the question of Namibia.⁶⁴⁴ He further revealed that “their Governments were not prepared for a specific course of action in the future”, and was waiting for the Reagan administration to conduct its review of its southern African policy. In essence, the outcome of Washington-Pretoria contacts would define the agenda for the Contact Group. On April 23, 1981, Mr. Whyte, British Deputy Representative at the United Nations read to the Security Council *in toto* the London communiqué issued by the Contact Group: “The Five recognised that the settlement plan as endorsed by SCR 435 (1978) with the complementary measures that had been added to it, such as the proposal for a DMZ, had not proved sufficient to bring about implementation. They urged that the search for a settlement should be intensified and the ways to strengthen the existing plan should be considered”.⁶⁴⁵ The wording was Washington’s, although read by a Briton. The Contact Group as a unit has conceded the initiative to the United States.

The United States then moved to break the monopoly of SWAPO in the UN. It persuaded the Contact Group to request that Mr. Kalangula, of the DTA should address the Security Council under of Rule 39 of the body,⁶⁴⁶ but in contravention of GA

⁶⁴⁴ UNMC, Vol. XVIII, No. 5, May 1981, p. 6, (UN Document A/35/PV.109). This statement in particular angered the African group. For instance, Ferdinand Leopold Oyomo, of the United Republic of Cameroon, speaking on behalf of Africa said that Sir Anthony Parson’s words were a real failure of the part of these States to meet the responsibility they had assumed towards the international community for the implementation of SCR435 (1978), p. 6.

⁶⁴⁵ UNMC, Vol. XVIII, No. 6, June 1981, p. 6. “The Five Powers State that Namibia Settlement Plan Should Be Strengthened”.

⁶⁴⁶ Rule 39 of the Security Council provides that the Council may invite person whom it considers competent for the purpose, to supply it with information, or to gain assistance in examining matters within its competence. Within the provision of this rule, the Security Council had invited the UN Council for Namibia, the Chairman of the Special Committee on Decolonization, the Secretary of Foreign Relations of SWAPO, Peter Mueshihiange; Representative of ANC of South Africa, Johnstone F. Makatami; and the Permanent

Resolution 3111 (XXVIII) of 1973 which, had recognised SWAPO as the authentic and sole representative of the Namibian people. The motion was defeated by a vote of 9 to 6.⁶⁴⁷ The opposing nine members claimed that Kalangula represented the fruits of the 1979 internal elections, which had been declared null and void by the UN and therefore had no right to recognition. In protest, Jeane Kirkpatrick declared that, “The Security Council damages its capacity to act as a forum, as a peacemaker, as an impartial mediator that can be trusted to all parties fairly”.⁶⁴⁸ A week later, she not only criticised the United Nations as a “would-be referee with somewhat tarnished credentials”, but also denounced Resolution 435 as a ‘holy text’. She insisted that the United States would not accept Resolution 435, if incompatible with America’s two goals: (1) preventing Namibia from sliding into the Soviet sphere; and (2) an independent, stable, democratic Namibia.⁶⁴⁹

The call for the “strengthening of Resolution 435” angered the African group. They again called for economic sanctions against South Africa if Security Council failed to implement Resolution 435 unconditionally. Once again, the United States, France and Britain exercised their veto powers. It is tempting to conclude that a unity of purpose over Namibia prompted the triple veto. Rather their concern was setting a precedent of sanctions against their allied states, especially Israel. Germany, Canada and Britain were uneasy about the emerging US view that Resolution 435 was a “dead letter”. They

Observer of the League of Arab State, Clovis Maksoud. See *UNMC*, Vol. XVIII, No. 6, June 1981, p. 10.

⁶⁴⁷ The nine states were: China, German Democratic Republic, Mexico, Niger, Panama, Philippines, Tunisia, Uganda and the USSR; the other six states were: France, Britain, the United States, Spain, Ireland and Japan. See *UNMC*, *ibid.*, p. 6.

⁶⁴⁸ *Statement by the Representative at the United Nations Before the UN Security Council, April 21, 1981*. See, *AFPCD*, 1981, Document 602, p. 1099.

⁶⁴⁹ *Address by the Representative at the United Nations Before the Overseas Press Club, New York, April 29, 1981*, *AFPCD*, 1981, Document 604, p. 1102.

feared that America's plan could exclude the UN with its long-held "special responsibility" for Namibia. Yet none of them was ready to go public on the breakdown of consensus. For example, at the NATO meeting in Paris on May 3, 1981, a communiqué was issued, reaffirming that Resolution 435 "provides a solid base" for a deal.⁶⁵⁰ This was consensus by default. It was nothing more than an effort to tranquillise the African group, which was grossly disappointed over the triple veto.

Meanwhile, all eyes were fixed on the Haig-Botha talks scheduled for May 14.⁶⁵¹ The talks concluded with the US demanding a 'conclusive list' of South African concerns on regional stability. Five days later, Botha sent Haig a letter containing these conclusive lists including: a firm agreement between South Africa and the United States on a set of categorical strategic goals relating to the exclusion of all external Communist forces from the southern African region, UN civilian observers instead of the UN military component, and a regional cease-fire, that guaranteed stability before any settlement. France, Germany, Canada and Britain began to doubt Washington and Pretoria's sincerity to deliver a settlement within the UN framework. The consequence of this letter showed that the Contact Group as a unit was now more concerned with coalition-maintenance than coalition-consolidation. It is worth recapitulating Crocker's words at length:

"The allies took fright upon seeing the letter: the grievous damage Botha's position would do to the entire UN framework

⁶⁵⁰ **Financial Mail**, May 8, 1981, p. 648.

⁶⁵¹ The US State Department invited Pik Botha to Washington for talks with Alexander Haig on May 14. While Botha preferred a *de facto* strategic alliance on USA-South American relations, Haig went for a *political* strategy integrating the African, Cuban, allied and Soviet dimensions into a southern African regional policy. See, *Statements and Remarks by the Secretary of State (Haig) and the South African Foreign Minister (Botha) at a Press Conference, May 14, 1981*, AFPCD, 1981, Document 606, p. 1104.

was obvious. German Foreign Ministry quivered with indignation at this blatant example of “Boer cheekiness”. Their Canadian counterpart added that Canada’s virginity on South African issues was what gave the Contact Group its “credibility”, and hinted darkly that Ottawa would have to assess its continued participation. We knew that the Germans were privately predicting the early collapse of the Group over the issue of American tactics. The French had two positions: a Socialist one at ministerial level mirroring the German malaise, and a far more practical and creative line from my ministerial counterpart, Jean Ausseil, who understood exactly what we were doing. London fretted supportively; the Brits were anxious, above all, to get the process back on the rails and keep the Group intact. Joint activity by our Group was placed effectively on hold, while we prepared the Clark mission”.⁶⁵²

The fear of other Contact Group members was not misplaced. Botha’s conclusive list was ‘linkage’ written in Pretoria. In fact, there was a remarkable similarity between the South African Foreign Affairs director-general, Brian Fourie’s three requisites for a settlement and Crocker’s proposals. These were: equal treatment of all parties, the protection of the rights of minority groups, and the guarantee of the fundamental principles of democracy for the future.⁶⁵³ The new plan sought to overcome South Africa’s misgivings about the original Western proposals, which were to have been implemented in terms of SCR 435. It gave rise to renewed SWAPO suspicions, which were shared by FLS, as Pretoria and the DTA immediately endorsed it. These suspicions grew as the United States impressed on Pik Botha that the Namibia settlement was just one element in the strategy to rid southern Africa of the Soviet-Cuban presence in Angola. It was the American, and not the South Africans that perceived an opportunity to deal with Soviet expansionism in southern Africa. Washington was now less concerned about the real or imagined international opprobrium of its moves on the Namibian settlement. As Washington was offering

⁶⁵² Crocker, (c), op cit., p. 96.

graduated rewards to Pretoria and being sympathetic to the DTA, it did not have any direct contact with SWAPO,⁶⁵⁴ contrary to the wishes of the international community and SWAPO itself. It was not until after the Clark mission had met the Namibia internal parties in Windhoek between June 10-13, that Crocker met SWAPO's UN observer in Washington in early August 1981. Abraham du Plessis, the leader of the National Party of SWA (Namibia) pointed out the importance of Clark's meeting with the Namibia internal parties. He said that, "everything now depends on Washington. In about as many words, I made it clear that any solution that militates against white interests will lead to political collapse, followed by a white exodus, followed by economic collapse. I was favourably impressed with Judge Clark".⁶⁵⁵

The Clark mission produced the basis for Haig's approach to the negotiating process. The 'Clark paper' was very clear about the US objective on the Namibian settlement. The intention was first to oppose a Marxist regime coming to power in Namibia; second to force the Cubans to leave the region, and to this end to provide Savimbi with appropriate help; third, to safeguard the rights of minority groups; and finally to place

⁶⁵³ See Brian G. Fourie speech before the Security Council on April 22, 1981, **New York Times**, April 23, 1981, p. 1.

⁶⁵⁴ The secret memo written by Crocker to Haig, but leaked to Randall Robinson, the leading anti-apartheid activist, and the founder-director of TransAfrica, contained some of the graduated rewards offered to South Africa. The memo showed that the United States was ready to work to end South Africa's isolation "if that nation cooperates in achieving internationally acceptable settlement of Namibia's independence. If there was a steady dismantling of apartheid and if the Soviet-Cuban presence in the region could be removed, then Washington would provide Pretoria with the protection and friendship of the major powers it needs to evolve peacefully for the rest of this century". See, **Financial Mail**, June 5, 1981, p. 1130. Other rewards, some that were contrary to the spirit, if not the letter of the arms embargo included: the upgrading the rank and number of military attaches between Washington and Pretoria, an increase in the number of honorary consuls South Africa can appoint in the US, the training of the South African coastguard, as well as support for the South Africa's loan application to the IMF, and the rejection of sanctions as an instrument for ending apartheid. See **New York Times**, May 30, 1981, p. 3.

the UN as the implementing agent in the settlement strategy.⁶⁵⁶ Haig refined the Clark paper into a three-phased approach, which he discussed with the Contact Group at the Ottawa Summit of the G-7 on July 19-21. Unsurprisingly, none of them supported such explicit linkage. They made it known that linkage policy could not be taken as an official Contact Group position, and that the withdrawal of the Cuban forces from Angola was and should be a separate endeavour, which should not be pursued in tandem with the Namibian question. Once again, the Ottawa communiqué produced a fragile and an ambiguous Contact Group consensus. It promised a return to the basic UN idea in a manner that would command international approval.⁶⁵⁷ The fragility of the Ottawa consensus became clear two weeks later when the US disregarded the damage that it would do to Contact Group unanimity, and unilaterally vetoed a Security Council resolution that strongly criticised South Africa's 'Operation Protea'.⁶⁵⁸

Operation Protea was a South Africa military attack in Angola against SWAPO forces. While the Soviet Union, Britain, France and Germany demanded South Africa's withdrawal, the State Department issued a statement saying that the South African military operation underscored the need for urgent movement towards a settlement of the Namibian problem.⁶⁵⁹ Secretary Haig announced that the South African incursion should be understood in 'full context', that is along with the continued presence of large numbers of Cuban forces and Soviet advisers in Angola.⁶⁶⁰ The veto had more than a

⁶⁵⁵ Abraham du Plessis's interview with the Financial Mail, see **Financial Mail**, June 19, 1981, p. 1373.

⁶⁵⁶ Crocker, *op cit.*, p. 98.

⁶⁵⁷ *Communiqué Issued Following the Meeting of the Contact Group, Ottawa, July 22, 1981, Department of State Bulletin*, October 1981, p. 70.

⁶⁵⁸ *Statement by the Alternate Representative at the United Nations, Charles M. Lichenstein, Before the UN Security Council, August 31, 1981, UN Document S/PV.2300*

⁶⁵⁹ **New York Times**, August 27, 1981, p. 3.

⁶⁶⁰ **New York Times**, August 29, 1981, p. 1.

demonstration effect. This was American unilateralism in action. It revealed the high premium that the United States placed on the containment of the Soviet expansionism in Africa. Washington used Moscow's admission that two of its soldiers died during Operation Protea to buttress its claim of the need to contain the Soviet thrust in southern Africa.

Other truths emerged from the US veto. One was that Washington was tired of the fudging and consensual politicking of its allies. Another was that a declaration of clarity and firmness about US strategic interests, showed that the United States was ready to take extreme measures to promote its national interests, regardless of what its allies thought. Linkage was to be achieved even if it involved dispensing with allied sympathy. Third, it added to the lesson that power must rule, no matter how great the moral outcry of the Third World. It set a collision course between power politics and international public opinion. The veto increased the frustration of the African states, which held meeting with the American officials in Washington after the veto.⁶⁶¹

The veto also confirmed the problem of alliance entanglement. To recap: in chapter four, we conceptualised the Contact Group as an informal alliance, and noted that the dilemma of entanglement arises when individual self-interest points in a different direction from conjoint interest. As the individual and collective interests overlap, a choice of dominant strategy of maximising individual self-interest over the collective stake becomes necessary.

⁶⁶¹ Robert Ouko, the Foreign Minister of Kenya, in his capacity as the Chairman of the OAU Council of Ministers led the delegation. The delegation had a meeting with Alexander Haig, and it expressed the view that the African continent was impatient with the delay on the implementation of Resolution 435, See AFPCD, 1981, Document 612, p. 1117.

From this time, Washington's commitment to Contact Group diplomacy was undeniably half-hearted. The signal was clear, if the Contact Group did not support the American agenda, the US would ride roughshod over the group. Washington did not outrightly denounce its membership of the group, but in a Machiavellian manner, 'ghost-wrote' the South African response to any correspondence with the Contact Group. To quote Crocker: "to circumspect the other members of the group, Washington was coaching Pretoria on how to respond to any correspondence from the Group. Washington also planted the idea that its team should constitute a reliable channel for assessing the intricate and difficult issues on the negotiation".⁶⁶² Thus it effectively controlled the negotiation from the two sides: within the Contact Group and with Pretoria. This ploy aimed to tailor the outcome of the negotiations to the American design.

The unilateral veto was also a deliberate tactic within the broader Soviet-United States relationship. It was an action taken to cause anxieties amongst the Soviet leadership, and its protégés in Africa, especially Angola. It removed the pretence that Washington was not serious in containing Soviet expansionism, both politically and territorially. To drive the point home, the Reagan administration triggered the move to repeal the Clark amendment. The intention was to confer psychological and military advantages to the UNITA forces, and cause ripples in Luanda. In addition, the veto indicated that Washington did not want to abandon South Africa. Yet, Washington's belief that the veto would make South Africa 'deliver' quickly on its own (Washington's) game-plan on Namibia-Angola proved over-ambitious, as Pretoria had embarked on its strategy of

⁶⁶² Crocker, (c), op cit., p. 107.

immobility until the internal parties had been nurtured to a point where they could compete on equal terms with SWAPO.

The veto upset the FLS. In a bitterly worded UN resolution they called for the total isolation of South Africa, a worldwide trade boycott, and increased armed support to SWAPO.⁶⁶³ Most of the UN member-states also reacted angrily to the 'strengthening of Resolution 435'. They maintained that Namibia was a question of colonialism and illegal occupation of South Africa. For instance, Cuba said that the imperialists were trying to distort the essence of the Namibian problem by placing it in the context of East-West confrontation.⁶⁶⁴ Guyana maintained that elements unrelated to the nature of the struggle in Namibia were being introduced as a 'red herring' intended to serve as a pretext for delaying and placing limitations on Namibia's independence.⁶⁶⁵ Other states such as Togo and Ethiopia denounced the veto as a manifestation of naked power divorced from responsibility, and stated that the struggle was not between communism and capitalism, but between oppression and freedom.

Perhaps, mindful of the consequences of publicly displaying the split within the Contact Group, all five states (including the United States) abstained on the resolution. However, the abstention of Botswana, Swaziland, Lesotho and Tanzania on the sanction resolution was a shock to the other African states,⁶⁶⁶ particularly as two of the four, Botswana and Tanzania were members of the FLS. Their abstention was a deliberate calculation related to their national survival and economic dependence on

⁶⁶³ UNMC, Vol. XVIII, No. 10, November 1981, p. 13, "Assembly Calls for Increased Military Aid to SWAPO, Complete Boycott of South Africa, 3-14, September 1981".

⁶⁶⁴ *ibid.*, p. 16.

⁶⁶⁵ *Yearbook of the United Nations*, Vol. 35, 1981, (New York: Dept. of Public Information, 1984), p. 1141.

South Africa. They mentioned the vulnerability of their economies should sanctions be imposed on South Africa. The GA resolution passed with 117 to 0, with 25 abstentions. It was not binding,⁶⁶⁷ but the abstentions highlighted the frailty on the consensus within the FLS. The abstention of Botswana and Tanzania was not of equal significance as the US veto, but it pointed to the same conclusion. It showed that states were ready to shunt moral principles for economic and political gains.

In response to the veto, the FLS held an emergency meeting in Lagos, on September 11, 1981. Crocker noted that, “the FLS would point to the veto as ‘Exhibit A’ in their charge that the US supported South Africa’s regional policy”.⁶⁶⁸ The FLS reaction was predictable. In an attempt to appease them, the Group issued a statement in New York, on September 24, 1981, maintaining its commitment to Resolution 435.⁶⁶⁹ More significantly, three days earlier, Crocker had a meeting with a six-member South African officials in Zurich, led by Brand G. Fourie to ‘dot the i’s and cross the t’s of the settlement package. A SWAPO spokesman described the talks as “a fresh gimmick to delay the Namibian problem instead of resolving it”.⁶⁷⁰ The New York communiqué was upbeat, stating that it was hoped to start implementing a settlement on Namibia by January 1983. The communiqué developed a timetable for ‘final negotiations’ and set the stage for discussions on constitutional principles. To limit the anger and frustration of SWAPO on its exclusion since the ‘strengthening of Resolution 435’, the Contact Group agreed to put the package on the “table for these disgruntled parties”: SWAPO and the FLS. From now on, the FLS would have no effective active role as it had

⁶⁶⁶ *ibid.*, p. 1146.

⁶⁶⁷ *New York Times*, September 15, 1981, p. 1.

⁶⁶⁸ Crocker (c), *op cit.*, p. 106.

⁶⁶⁹ *Statement Issued by the Contact Group, New York, September 24, 1981, See AFPCD 1981, Document 616, p. 1119.*

during the Carter administration, although it continued to serve as a buffer from any disruptive interference from the Moscow-Havana axis.

To get the African leaders on side, Washington played a psychological game. It used the 'fear factor' and 'positive incentives' simultaneously. It interpreted the presence of the Soviets and Cubans in Angola to the FLS as a symptom of a weak sovereignty of the MPLA government. The truth was that, setting aside the legalism of the principle of non-intervention being expressed by the FLS whenever an opportunity arose to attack the 'linkage', the prospect of a Cuban withdrawal from Angola, was an offer that they could not refuse. The OAU itself was becoming sceptical of the continued presence of foreign troops in Africa. Washington believed African states regard sovereignty as a priceless possession. They were not ready to share it with foreigners in perpetuity.

Foreign Aid was the incentive. The United States used the promise of aid as a leverage to secure the support of the African states on the Namibian question, and to ward off the temptation of Soviet offers. The message was clear from Washington that US assistance to the Third World would no longer have a charitable purpose. Instead, it was being defined in terms of strategic and political advancement for the United States. The administration warned that American foreign assistance resources were finite. In Crocker's words: "the United States cannot be the financial "angel" for Africa any more".⁶⁷¹ After the Soviet invasion of Afghanistan, military assistance was beefed up to \$210.5 million (1982 FY) with Kenya, Sudan and later Somalia, as the prime recipients. Sudan's \$100 million foreign military sales credits were an attempt to blunt Libya's

⁶⁷⁰ **Financial Mail**, September 25, 1981, p. 1491.

expansionist aspirations into Chad, the Sudan's western neighbour. More relevantly, was Kenya's \$50 million for mobile anti-tank force and additional \$1.3 million in military training assistance. This assistance had a political and strategic objective. It was partly designed as a facilitator for President Moi to push for a Namibian settlement during his tenure as the OAU chairman for 1981-82.⁶⁷² This dramatic increase in US aid to these states was also to secure their strategic co-operation. Kenya, Sudan and Somalia-the three main recipients-had ports that could be useful as stations for the American troops and supplies heading for the oil-rich Persian Gulf.

In some instances, Washington leaned on London to dissuade the African leaders from any un-welcoming attitudes. For instance, Crocker and Sir Walter Allison, British Under-Secretary of State (Africa), met the FLS leaders in October 1981. Britain's Foreign Secretary, Lord Carrington had warned the Commonwealth leaders in Melbourne on early October 1981 of the consequences of a failure of the new plan.⁶⁷³

South Africa seems to have been taken in by the linkage idea. For example, when Jaap Marais, the leader of the extreme wing Herstigte Nasionale Party vowed to make it impossible for South African Government to reach agreement on independence for Namibia, Pieter Botha replied that he would not allow right wing to block any agreement.⁶⁷⁴ The offer of 'linkage' was too seductive for Pretoria to let any internal dissent undermine it. Although, the favoured option of internal settlement was un-

⁶⁷¹ *Address by the Assistant Secretary of State for African Affairs (Crocker) Before the Foreign Relations and National Security Committee of the American Legion, Honolulu, August 29, 1981, See AFPCD 1981, Document 610, p. 1112.*

⁶⁷² **Financial Mail**, April 17, 1981, p. 297. These

⁶⁷³ **Financial Mail**, October 9, 1981, p. 170.

⁶⁷⁴ **New York Times**, October 25, 1981, p. 1.

realisable, the new proposal at least guaranteed and protected white rights and interests.

It envisaged a three-phased approach to the Namibian settlement. In the Phase 1 parties would commit themselves to a set of constitutional principles for the Constituent Assembly. Phase 2 would include negotiation of other issues preventing implementation (primarily the size and role of UNTAG and assurance on the impartiality of the electoral process. In Phase 3 the parties would agree on a date during 1982 for the beginning of the implementation of Resolution 435.

The content and packaging of the proposal met with mixed reactions. For South Africa, it guaranteed the rights of the white minority in Namibia. To SWAPO, the package still guaranteed majority control, and other minor political groupings concerns were equally addressed. The principle of an elected constituent assembly and a Namibia independence constitution resembled closely the proposals drafted by John Kirkpatrick and Bryan O'Linn of Namibia's Federal Party in 1978.⁶⁷⁵ The Contact Group first visited Nigeria and Angola, both of whose Governments were believed to have responded favourably to the new proposals, before visiting South Africa on October 28 and Namibia on October 29, 1981.⁶⁷⁶

Negotiations were stalled early in 1982 because of the differences between South Africa and the SWAPO on electoral process. When they met in London on January 13-14, 1982 SWAPO conceded to the demand for specific provisions for the representation

⁶⁷⁵ **Financial Mail**, October 30, 1981, p. 548.

⁶⁷⁶ **Kessing's Contemporary Archives**, Vol. XXIX, March 1983, p. 31997.

of Whites.⁶⁷⁷ Consequently, Mr. Marais Viljoen, the South African State President stated that South Africa was ready to move to the second phase of the Contact Group package.⁶⁷⁸ However, SWAPO had still not agreed to the first phase. It rejected the proposal for a mixed electoral system proposed for the Constituent Assembly elections, combining proportional representation and a single member constituency system. On the day of the Viljoen speech, Mr. Luis de Almeida, the Angolan ambassador to France, warned that the dual voting system posed a “fundamental problem in the current rounds on negotiations, questioning whether it would be possible to explain such a complicated system to people who were largely illiterate”.⁶⁷⁹ Nujoma notified the UN Secretary General that the dual voting system had to be rejected as “peculiar, undemocratic and confusing”. Further to the joint FLS/SWAPO rejection of the Phase 1 proposals, on January 25, 1982, the phased-approach suffered a setback when, on 4 May 1982, the Foreign Ministers of the FLS in Dar-es-Salaam notified that they “shared SWAPO’s deep disenchantment with the current protracted and sterile phased approach”.⁶⁸⁰

Faced by SWAPO’s strong opposition to the dual voting system, the Contact Group reconsidered the option. A new formula was mooted when they met in London on March 18-19, 1982. This involved a process where only one vote would be cast for the constituent assembly, but would be counted twice under systems of direct and proportional representation. SWAPO feared that the stage-by-stage approach was a device to tie its hands in advance on the constitutional aspects of a settlement. The impasse was resolved on June 2 during a meeting between the Contact Group and

⁶⁷⁷ *New York Times*, January 19, 1982, p. 4.

⁶⁷⁸ *Background Brief Series, Foreign and Commonwealth Office*, (London), July 1982, p. 4.

⁶⁷⁹ *KCA*, op cit., p. 31998.

⁶⁸⁰ *ibid.*, p. 31998.

Nujoma, after which he declared that the “Contact Group had agreed to negotiate one package of proposals rather than phased approach”.⁶⁸¹ This was an important concession to SWAPO. As a result the Tanzanian Foreign Minister, Salim Salim announced on June 14 that the FLS “had unanimously agreed to the new revised proposals”.⁶⁸²

Two days later, the talks suffered another setback, when P. W. Botha stressed that South Africa could not ‘complete the three phases unless the Cubans leave Angola’.⁶⁸³ Botha’s statement soured Crocker’s earlier optimism that the parties had ‘shown a will to move ahead rapidly, that differences were narrowing, and a predicted successful conclusion of talks by the end of 1982’.⁶⁸⁴ SWAPO was not taken in by Botha’s statement. Mr. Peter Manning, SWAPO’s information officer for Western Europe stated on July 6 that the ‘contact group was making a settlement appear nearer than it was, so that when it failed to materialise SWAPO would be seen as uncooperative and destructive’.⁶⁸⁵ Through the government-news agency *Angop*, the Angolan strongly condemned Botha’s statement. The editorial accused South Africa of bringing up the question of the Cuban troops as “a manoeuvre, through infantile arguments, to delay Namibian independence”. It stated that the Cuban troops would leave Angola “only by the sovereign decision” of the Angolan Government “once all aggression or armed invasion was completely ceased”.⁶⁸⁶ The Angolan position on the withdrawal of Cuban troops was reinforced by Mr. Lopo Ferreira do Nascimento, the Angolan Planning

⁶⁸¹ *ibid.*, p. 32000.

⁶⁸² **Background Brief Series, Foreign and Commonwealth Office, (London), July 1982, p. 7.**

⁶⁸³ **New York Times**, June 18, 1982, p. 3.

⁶⁸⁴ **New York Times**, June 15, 1982, p. 4.

⁶⁸⁵ **KCA**, Volume XXIX, March 1983, p. 32000.

⁶⁸⁶ *ibid.*, p. 32000.

Minister, who told a meeting of the South African Development Co-ordination Conference in Luanda on June 25, 1982, that Angola denied “to anyone whatsoever the right to determine what kind of aid [was given] to SWAPO and how it should be given, as well as where and in what manner Cuban troops should be withdrawn”.⁶⁸⁷

6.3. The end of the Contact Group

The question of the withdrawal of Cuban troops increasingly came to dominate the negotiations with both Angola and South Africa adopting firm positions. The cracks within the Contact Group became wider. United States efforts to force Cuban troop withdrawal were transparently Machiavellian, thus adapting means to ends. They rested on (i) a minimum contact with SWAPO, (ii) a political contact, but not diplomatic contact with the Angolan Government and (iii) a full engagement with the Pretoria government. It was not until June 1 1982, that Crocker had a first personal contact with Sam Nujoma in Bonn, Germany, in attendance with Herr Hans-Dietrich Genscher, the West German Foreign Minister. Crocker’s meeting with the Luanda government was archetypal high politics. Washington was ready to squeeze concessions on Cuban troop withdrawal through its refusal to grant diplomatic recognition to the Angolan government, maintaining that they had to “cut a deal” with UNITA’s Savimbi.⁶⁸⁸ With the Cuban troop withdrawal at the centre of the negotiations, a US State Department official, Mr. Robert Cabelly had a meeting with SWAPO in Luanda on July 4,⁶⁸⁹ to prevent further ‘souring’ of the atmosphere over the issue. The United States then unilaterally sponsored talks on Namibia in New York on

⁶⁸⁷ *ibid.*, p. 32000.

⁶⁸⁸ In a memo disclosed in *New York Times* on June 1, 1981, Crocker argued that United States recognition should not be considered until Cuban troops had left the country and the Angolan Government had cut a deal with a deal with Dr. Savimbi. The leak of the memo was an embarrassment to Crocker, least being an Assistant Secretary of State designate.

July 6. However, the Angolan Government insisted that the problem of Namibian independence and that of the Cuban presence in Angola were “two distinct issues which must be treated differently”. Meanwhile, P. W. Botha reiterated his country’s desire for Namibian settlement but said there could be no final agreement on an election unless Cuban troops left Angola.

Within the Contact Group the centre could no longer hold. In late July, Mr. Jean-Pierre Cot, then the French Minister-Delegate for Co-operation and Development, declared after a three-day visit to Angola that the withdrawal of Cuban troops should not be linked to a Namibian settlement.⁶⁹⁰ Britain, America’s closest ally ambiguously demurred on the linkage. On July 28, Mr. Cranley Onslow, a Minister of State at the British Foreign and Commonwealth Office claimed that Britain was not attempting to link the two issues. He said that a “Cuban withdrawal was not a formal precondition for a Namibian settlement, but that the British Government “believed that a Cuban withdrawal would greatly facilitate it.”⁶⁹¹ Britain’s conditional opposition of linkage was due to two reasons. Like others, the British saw linkage as a deviation from the principle and letter of SCR 435. Secondly, there were pressures from both the Anti-Apartheid Movement in London and the Commonwealth Heads of Governments. For example, Mr. Onslow made the above statement following a meeting with a delegation from the Anti-Apartheid Movement. In the same vein, on 1 December 1982, Mrs. Thatcher, the Prime Minister reported to the House of Commons on the Commonwealth Heads of Government Meeting in New Delhi that “the concept of a conditional linkage

⁶⁸⁹ *New York Times*, July 5, 1982, p. 1.

⁶⁹⁰ KCA, op cit., p. 32001.

⁶⁹¹ KCA, op cit., p. 32001.

was rejected, but clearly the fact that other nations (the United States in particular) have made the linkage is material to how and when the problem will be resolved”.⁶⁹²

International opposition to linkage grew considerably during the latter part of 1982, with the FLS, Cuba and the Soviet Union taking a particularly firm position. For example, following a meeting on August 9 between the FLS and SWAPO in Tripoli, Libya during the OAU Summit, Mr. Salim A. Salim, described prospects for negotiations as “bright” provided that the issue of Cuban troops was not raised. On the anniversary of the “Namibia Day” on 26 August 1982, the OAU stated that linkage was unacceptable. So also, the Islamic Minister’s Conference in Niger denounced the linkage, and reaffirmed SWAPO’s armed struggle to attain national independence for Namibia. The FLS also issued a communiqué that unequivocally declared that the linkage issue was against the letter and spirit of the SCR 435, and that it also constituted an interference in the internal affairs of Angola, and consequently, could only impede the process of negotiations.

The Soviet Union announced its own rejection at the United Nations. Mr. Richard Ovinnkov, the acting Soviet permanent representative at the UN, circulated a letter to members of the Security Council on September 11-12 calling upon the UN to renounce formally the “infamous link” with the Cuban military withdrawal and advocating an end to the “secrecy surrounding the negotiations”.⁶⁹³ Moscow’s criticism was doubly understandable. First, Moscow feared that there was an increasing accommodation between Luanda and Washington, due to series of talks between Crocker and Mr. Paulo George, the Angolan Foreign Minister. Moscow expressed its concern during a visit by

⁶⁹² **Background Brief Series: (FCO)**, July 1983, p. 5.

the Angolan delegation to Soviet Union early January 1982, when Mr. Nikolai Tikhomov, the Soviet Prime Minister, warned the Angolan delegation of a US plot to return Angola to the US sphere of influence. To allay Moscow's fear, Mr. Lucio Lara, (the MPLA-PT secretary-general and Col. Pedro Maria Pedale (Angolan Minister of Defense) told the Soviets that Moscow's interests in the Angolan and Namibian situations would not be prejudiced by contacts with the United States. Angola's enduring loyalty to, and friendship with, the Soviet Union, was underlined by the signature of a \$2,000 million economic and technological co-operation agreement for the period of 1981-1985.⁶⁹⁴ But secondly, the linkage wrong-footed the Soviet Union. The presence of the Cuban troops and Soviet advisers in Angola was Moscow's sole effective means of influence on Luanda. The absence of such a means would amount to the end of any influence. The withdrawal of Cuban troops would undermine the stability of the MPLA-PT government; and consequently increased its vulnerability to external attacks from South Africa. President Santo himself publicly expressed this threat of vulnerability. He said that "Angola did not want a repeat of what had recently happened in 'another African country' [presumably Chad], where the government had fallen after the withdrawal of troops from a neighbouring State [Libya] which had guaranteed internal stability and territorial integrity".⁶⁹⁵

⁶⁹³ KCA, op cit., p. 32001.

⁶⁹⁴ Tass: the Soviet news agency reported of the visitation on January 24, 1982. See KCA, ibid. It was reported in *The Guardian* (London) of September 14 1981 that President Santo had declared that Angola was "ready to increase cooperation, which is justly, based either with countries in the socialist world or with those in the Western world". As a demonstration of a deepening economic relations between Washington and Luanda, albeit the absence of a diplomatic relations, the US Export-Import Bank granted a loan of \$85 million to finance the further development of Angolan oilfields undertaken by a Gulf Oil subsidiary and the state-owned Sonangol. All these developments indicated that Luanda was ready to weaned itself from the Soviet Union, and these worried Moscow.

⁶⁹⁵ President Santo made the statement on 10 December 1982 during the anniversary of the founding of the MPLA. See **Background Brief Series, Foreign and Commonwealth Office [London]**, February 1983, p. 9.

Angola's rejection of the linkage was not consistent. It sent confusing signals to allies and foes alike. For instance, in mid October, Mr. de Almeida, the Angolan Ambassador to France released a statement saying that Angola was prepared, as a goodwill gesture, to advance progressive withdrawal of Cuban forces, provided that all threats and acts of aggression against his country ceased.⁶⁹⁶ In addition, during the secret talks between Luanda and Pretoria on the island of Sal in Cape Verde, the Angolan delegation did not take the issue head on with the South Africans. The Angolan delegation conceded that the withdrawal of Cuban troops was the "task of the Americans".⁶⁹⁷ Undeniably, it was the Americans that factored in the linkage, but the South Africans immediately seized the opportunity and hardened their position, whenever a window of opportunity of resolving the impasse on Namibia opened. On the other side, whether the Angolans were in the company of the FLS or alone, they always voiced their rejection of linkage.

Neither opposition from the international community nor the ambivalence of its trusted ally, Britain, led the United States to soften its position on the Cuban troop withdrawal. In a confidential letter sent to the FLS leaders in early September 1982, President Reagan warned that unless there was an agreement on the withdrawal of Cuban troops 'this summer' then a 'fragile, historic opportunity' to achieve a Namibian settlement would be lost. He also declared that Washington could not and would not "put aside the Cuban issue".⁶⁹⁸ Mr. George Bush, the US Vice-President stressed this position during his 12-day tour of seven African countries in mid-November 1982. In Nairobi, Mr. Bush reiterated that despite criticism by African leaders, Washington would continue to

⁶⁹⁶ *ibid.*, p. 7.

⁶⁹⁷ *KCA*, *op cit.*, p. 32992; and *New York Times*, December 9, 1982, p. 1.

⁶⁹⁸ *ibid.*, *New York Times*, December 9, 1982, p. 1.

labour on until all foreign troops had withdrawn from southern Africa, so Namibia might be free.⁶⁹⁹

Washington's resolve irritated France, which unilaterally increased contacts with the SWAPO/Angolan leadership. Mr. Jean Ausseil, head of the African Department of the French Foreign Ministry, had talks with the Cuban officials in Havana on 19 September 1982. Less than a week later, Mr. Nujoma held talks with French Foreign Ministry officials and members of French Socialist Party on 24 September 1982. Then on October 11, 1982, Mr. Claude Cheysson, the French Foreign Minister declared in Dar-es-Salaam on 11 October 1982 that the French Government saw no justification for any request being put to the Angolan Government regarding the withdrawal of Cuban troops. He revealed that France had received assurances from both the Cuban and Angolan Governments that the Cuban troops "would be quite ready to leave Angola the day Angola finds it proper". He further stated, that the 'Contact Group had finished its work and the present "stagnation" on the Cuban issue was outside its competence'.⁷⁰⁰ There was even a rumour, later denied by Mr. Cheysson, that France was planning to send troops to replace Cuban forces in Angola.⁷⁰¹ Unlike the other three members of the Contact Group, France did not want to go out quietly. On December 7, 1983, it announced the suspension of its membership of the Contact Group on December 7, 1983. Cheysson stated that "France now considered that the group was unable to carry

⁶⁹⁹ *New York Times*, November 22, 1982, p. 4. As a reaction to the arrogance of Mr. Bush's statement, a group of 31 African leaders issued the famous "Tripoli Declaration on Namibia". It condemned in strongest terms the linkage. See, **Background Brief Series**, (FCO), London, February, 1983, p. 9.

⁷⁰⁰ **Background Brief Series**, op cit., p. 6.

⁷⁰¹ *ibid.*, p. 6.

out its mandate because of the introduction of, and subsequent problems concerning, the 'linkage argument.'⁷⁰²

6.4. The Lusaka Accord: a false optimism

While Luanda was reluctant to negotiate the linkage directly with Pretoria during the secret Cape Verde talks;⁷⁰³ Washington seized the initiative. Crocker had secret talks with Mr. Leonid Ilyichiev, the Soviet Deputy Foreign Minister on December 7, 1982,⁷⁰⁴ and simultaneously encouraged direct talks between Pretoria and Luanda. Washington's direct contact with Moscow was designed to outmanoeuvre Havana, and dictate terms of settlement to Moscow. Moscow, at this stage was in a dilemma. It needed to go along with Washington in order not to be excluded altogether and be seen as a spoiler, whilst it did not want to kowtow Washington. Meanwhile, the mass exchange of prisoners between Angola and South Africa in late 1982 under the auspices of the International Committee of Red Cross⁷⁰⁵ signalled the possibility of an improvement between Pretoria and Luanda. The outcome of a series of secret talks between them and between Washington and Moscow, and between Washington and

⁷⁰² **KCA**, Vol. XXX, December 1984, p. 33265.

⁷⁰³ President Aristides Maria Pereira of Cape Verde initiated the Secret Cape Verde talks between Angola and South Africa. President Pereira used his influence as chairman of the Head of States of the five Portuguese-speaking African countries, with the Angolan Government. He had previously chaired the Third-Summit of these countries on 22 September, 1982. The Angolan-South African meeting was held on 8 December 1982. Lt. Col. Alexandre Rodrigues, the Minister of the Interior and Mr. Fernando Faustino Muteka, the Minister of Transport led the Angolan delegation. Mr. Pik Botha, the Foreign Minister, and Gen. Malan led the South African delegations. The meeting was more than a symbolic one. It marked the first bilateral contact between the two governments. The essence of the talks was to ease the mistrust between the two countries, as a precursor to tackling the larger questions. See, **KCA**, op cit., p. 32002.

⁷⁰⁴ **New York Times**, December 14, 1982, p. 3.

⁷⁰⁵ Among the prisoners exchanged were 94 Angolans, three US citizens, three Soviet citizens and one Cuban. Coffins containing the remains of four Soviet citizens, two South African and one Cuban were also exchanged. The exchange showed the complicity of both the United States and the Soviet Union on the Angolan conflict.

Pretoria was an experimental one-month truce offered by the South African government.

Pretoria promised to pull out its forces from Angola on the basis of assurance given by Crocker that the Angolan and SWAPO troops would not “exploit the resulting situation” by making attacks across the border into Namibia. The timing of the South African offer was important. Pik Botha communicated the proposal to the UN Secretary-General on December 15, 1982, in the hope of influencing the Security Council debate on December 20. In the event, the Security Council demanded South Africa’s “unconditional withdrawal” of all its “occupation forces. The impact of the offer and its timing was minimal-only the United States abstained on SCR 545 (1983) in a vote of 14 to none. Initially both SWAPO and the Angolan government rejected the experimental cease-fire. However, Washington’s pressure bore fruit, when on February 16, 1983 in Lusaka, Crocker persuaded Angola and South Africa to formalise the cease-fire unilaterally declared by Pretoria. The agreement was commonly known as the Lusaka accord.⁷⁰⁶

The Accord provided for the establishment of a Joint Monitoring Commission (JMC) to consist of 200 military personnel from Angola and South Africa, with sub-provision for US participation if all parties deemed it necessary. A draft timetable was also drawn up for the total withdrawal of all South African troops numbering about 1,000. More

⁷⁰⁶ *New York Times*, January 23-24, 1983, p. 1 and p. 5. Washington’s role in brokering the agreement was firstly flatly denied. For instance, according to the *New York Times* when the Portuguese Radio reported a secret trip of one US official to Cape Verde for talks on Namibia, Washington denied the trip. A few days later, Washington declared that Frank G. Wisner of the State Department went to Portugal, but denied that he was participating in talks with Angola and South Africa. The following day however, Wisner’s

importantly, it stipulated that South Africa would end logistical and other support to UNITA from Namibia. The Lusaka Accord was rich in breadth, but shallow in depth. Firstly, it was no more than a 'gentleman's agreement. Secondly, although Crocker had been instrumental in bringing it about, the Accord was not officially guaranteed by United States, such an American imprimatur would have lessened cheating from the main parties. Thirdly, each party went to Lusaka for different reasons. South Africa was suffering from financial-fatigue. This was clear from P. W. Botha's speech to the South African Parliament on January 31, 1983, when he stated that South Africa was no longer prepared to shoulder the tremendous financial burden of South West Africa. Botha's secret proposal to the European leaders during his European tour in May-June 1993 suggested that South African enthusiasm for its Mandatory power was exhausted. 'South Africa' he claimed would "gladly withdraw" from Namibia within two months, if one or more Western nations would assume administrative, financial and defence responsibility for the territory.⁷⁰⁷

In addition, prior to the Lusaka Accord, South Africa's prevarication had engendered dissension amongst the South African-favoured internal parties. There were increasing tensions in the relationship between the different Namibia governmental structures. The tension between Mudge's Council of Ministers and Hough's Administrator-General's office widened due to impatience at the slow pace of change towards self-government and the policy of Namibianization and phasing out of apartheid legislation. Indeed, internal divisions within the DTA and the problem of locating authority between the chairman of the Council of Ministers and the Administrator-General prompted the

mission to Cape Verde on Namibia was acknowledged by the State Department spokesman

⁷⁰⁷ KCA, Vol. XXIX, March 1983, p. 32001.

resignation of Mr. Mudge as the chairman of the Council of Minister effectively on January 18, 1983.

The tension between the two structures reached its peak in late 1982, when Mudge declared that the DTA would take up the struggle as a “liberation movement” against any interim government formed by Mr. Hough. During a press conference on January 18, 1983, Mudge and his Council of Ministers resigned accusing South African government of dishonesty and manipulating Namibian politics. This was a new development. It showed that the internal parties, heretofore, South Africa’s shield against SWAPO had lost confidence in Cape Town. More worrying for South Africa, the outgoing ministers used the same kind of language as SWAPO itself.⁷⁰⁸ By contrast, Angola’s participation in the Lusaka Accord was primarily driven by the prospect of US recognition, and anticipated military benefits. Washington’s recognition of the MPLA government would ultimately deny full military support to the UNITA forces.

The first setback faced by the Lusaka Accord occurred on February 24, when a follow-up meeting between Angola and South Africa broke down after only three hours.⁷⁰⁹ During the meeting, the Angolan delegation protested at the low level of the South African delegation, that it did not include a cabinet minister. South Africa, however, had decided to reduce the level of its delegation because of its anger at SWAPO’s offensive into Northern Namibia-only days after the Accord- from a base in Angola’s Huila province. In reality, the breakdown of the talks had little to do with the status of the delegations; it reflected acute mutual distrust between the main parties.

⁷⁰⁸ *ibid.*, p. 32004.

Parallel to the Lusaka Accord, SWAPO proposed SWAPO-South Africa bilateral talks.⁷¹⁰ South Africa, however, maintained that it “would not oppose talks taking place directly between SWAPO and a delegation led by the administrator-general, whereas SWAPO reasoned that it should meet with the Pretoria officials, and not the internal administrators. Pretoria had limited room for manoeuvre, which decreased partly due to the structure of the Lusaka Accord, and partly due to the economic and political constraints of Namibia on South Africa itself.

Faced with a crisis, South Africa was adept at re-cycling its old strategies, in order to achieve a desired outcome. Thus, during a secret meeting on January 29, between representatives of South Africa and SWAPO, South Africa suggested the setting up a government of national unity involving SWAPO and other Namibian political groups.⁷¹¹

On March 1, South Africa next released a Namibian nationalist leader, Mr. Herman Toivo ya Toivo from Robben Island. Mr. Toivo who had been sentenced under the draconian Terrorism Act of 1968 for attempting to overthrow the South African regime in Namibia was released four years early, having served 16 years in prison.⁷¹² The release was clearly an attempt to divide the SWAPO leadership, and to undermine Nujoma, who had only succeeded to the presidency following Toivo’s incarceration.

⁷⁰⁹ **KCA**, Vol. XXX, December 1984, p. 33265.

⁷¹⁰ **Facts on File**, January 13, 1984, p. 124.

⁷¹¹ **KCA**, op cit., p. 33265. The details of this secret meeting between a SWAPO, delegation including Sam Nujoma, and the South Africa officials, headed by Professor van Niekerk, the new Namibian Administrator-General was later revealed four months later

⁷¹² **Background Brief Series, (Foreign and Commonwealth Office, London)**, July 1984, p. 3. Toivo ya Toivo was amongst the SWAPO leaders that were arrested in the wake of the first armed encounter between SWAPO and the South African security forces at Omgulumbashe, in Ovamboland on 26 August, 1966.

On March 11, Pretoria finally proposed an inclusive regional peace conference on Namibia that would include all the parties.⁷¹³ The participants would be South Africa, Angola, UNITA, SWAPO and a South African sponsored coalition in Namibia known as the multiparty conference.

This offer of inclusive talks increased the suspicion that Pretoria was bent on circumventing SCR 435. Perhaps, because it had not been consulted beforehand, Washington reacted cautiously. John Hughes, the spokesman for the US State Department only stated that “We take note of the foreign minister’s latest idea. Our position on such a meeting would depend on further developments in the negotiations and the desires of all the parties.”⁷¹⁴ Washington refrained from endorsing the South African plan, as it was suspicious that South Africa wanted to cut a deal on its back. There was no prescribed role for either the United States or the United Nations in the proposed conference. Two week previously the United States had upgraded its role in the negotiation by establishing a mission in Windhoek, to complement its role as a mediator, with monitoring the disengagement of forces from the Angolan border. In any event, both Angolan and SWAPO officials rejected the proposal for similar reasons. The Angolan government refused “categorically” to attend a conference that included UNITA representatives, while Sam Nujoma stated that SWAPO would not agree to the inclusion of Angolan affairs in any Namibian talks.⁷¹⁵

None the less, United States pressure had started to count with the Angolan government. Havana was incensed at Washington’s leverage over Luanda, and

⁷¹³ *ibid.*, p. 4.

⁷¹⁴ **Facts on File**, March 30, 1984, p. 226.

⁷¹⁵ *ibid.*, p. 226.

consequently felt excluded. For Angola, it was therefore imperative to re-assure Havana. President do Santo visited Cuba on March 17, 1984 for the first time since 1980. He discussed with Castro the withdrawal of 25,000 Cuban troops from Angola. The outcome of the meeting indicated that both Luanda and Havana had conceded the inevitability of withdrawal. Firstly, Luanda recognised that Washington was not ready to budge on the issue, and would not recognise the MPLA government without withdrawal. Secondly, the Lusaka Accord had offered Angola, the prospect of the South African cease-fire. Angola wanted to obey the spirit and letter of the Accord to deny South Africa any opportunity for cheating. Thirdly, on the Cuban side, there was a sign of Luanda-fatigue. For instance, in an interview on March 14, 1984, the Cuban Vice-President, Carlos Rafael Rodrigues, was reported as saying that: "We have never envisaged an over-long presence of our forces. We are prepared for the moment when it is necessary and appropriate to begin the process of withdrawal".⁷¹⁶ A joint statement issued at the end of the visit set out four conditions for withdrawal: (i) the unilateral withdrawal of South African troops from Angola; (ii) the "scrupulous implementation" of SCR 435; (iii) the cessation of all acts of direct aggression or threats of aggression against Angola by South Africa, the USA or "their allies"; and (iv) the cessation of all help for UNITA or any other dissident group in Angola. Although these conditions were not radically different from those made in August 1982, South Africa would now interpret them in the spirit of the Lusaka Accord.

In response to the communiqué, Pretoria accused the Angolan government of being in breach of the Lusaka agreement by seeking to impose conditions for the withdrawal of Cuban troops. Henceforth Pretoria would use the Lusaka Accord both as a disguise for

⁷¹⁶ **Background Brief Series (Foreign and Commonwealth Office, London), July**

its own bad faith in the negotiations, and as a benchmark to judge the deviation of the other parties from the 'agreed' course for Namibian independence. Pretoria also objected to a phrase that described SWAPO as the "sole legitimate representatives" of the black majority in Namibia.⁷¹⁷ Luanda replied that its recognition of SWAPO was a matter of principle,⁷¹⁸ in apparent ignorance of the fact that the United Nations was ready to de-recognise SWAPO as the sole representative of the Namibian people, as a result of earlier deal between Pik Botha and Perez de Cuellar.

The United States response to the communiqué is worth comment. Secretary Shultz described the terms of Cuban troop withdrawal as a "positive development" if it took place.⁷¹⁹ The unresolved question was which withdrawal: was it a simultaneous withdrawal of Cuban troops from Angola and South African troops from Namibia or should the South Africans leave first. It is this question that would dominate the Namibian issue for the next three years. Nonetheless, Washington had scored a first diplomatic coup, by convincing Luanda and Havana of the inevitability of withdrawal, and was now watching with great attention the moves of South Africa and Angola concerning the Delphic multiparty conference. At this stage, President Kaunda of Zambia, personally offered himself as convener of the regional peace conference on Namibia on May 12.

Unlike other FLS leaders, Kaunda was ready to do business directly with the South African government. As indicated in chapter five, the FLS had no authoritative chairperson, although the onus of leadership rested largely on Tanzania's Julius

1984, p. 4.

⁷¹⁷ *New York Times*, March 21, 1984, p. 1.

⁷¹⁸ *KCA*, Vol. XXX, November 1984, p. 33198.

Nyerere. While economic interests were a factor behind Kaunda's rapport with the Pretoria regime, he saw himself as a contender for the leadership of the FLS. President Kaunda served as co-chair of the conference with Prof. William van Niekerk, the South Africa's administrator-general in Namibia. In his opening speech, Kaunda said that the main purpose was to produce an agreement between SWAPO and the coalition of internal Namibian parties known as the Multiparty Conference to implement SCR 435. Although scheduled to end on May 12, the conference was extended to May 13, but renewed differences among the delegations resulted in a failure to present a final joint communiqué. It was significant however, as being the second direct meeting, and the first to be publicly declared, between SWAPO and the Namibia's administrator-general. Furthermore, there was an indication that South Africa was ready to stand by any agreement reached at the conference.

On two separate occasions, Pik Botha declared that the South Africa was ready to honour any agreement from Lusaka. On April 27, 1984, he said that "If the political parties, including SWAPO can come to some agreement with regard to the future of their country, South Africa will not stand in the way of implementing such an agreement".⁷²⁰ On May 9, he said that: "If the internal parties of the territory and SWAPO can come to an agreement, whether the South African government likes it or not, we are bound by a commitment of prime minister upon prime minister that the people of South West Africa can decide their own future."⁷²¹ In the light of past examples, the credibility of South Africa's commitment not to disrupt the agreement is debatable. What is even more debatable is Botha's assertion that: "the people of South

⁷¹⁹ **New York Times**, March 21, 1984, p. 1.

⁷²⁰ **Facts on File**, May 18, 1984, p. 349.

⁷²¹ *ibid.*,

West Africa cannot wait indefinitely for a breakthrough on the Cuban question. Pretoria would comply with a decision by Namibian parties regarding the future of the territory even if no agreement was reached on the withdrawal of Cuban troops from Angola”.⁷²² It was clear that the Namibian question was entering the end game, where each party had started to count the cost of maintaining the status quo.

It also became increasingly clear that political and military necessities were driving South Africa out of Namibia. In a speech on January 31 to the South African Parliament, Botha reiterated that South Africa lacked the financial capacity to sustain its control. He repeated the message during his first tour of eight European capitals. Botha suggested to Chancellor Kohl of West Germany and Margaret Thatcher of Britain that one of the Contact Group should assume responsibility for the administration of Namibia, which was costing Pretoria \$525 million a year. Botha said, “South Africa would gladly withdraw from the territory within two months if a contact group nation would assume administrative, financial and defense responsibility for the territory”.⁷²³ Neither Kohl nor Thatcher was prepared to take up the offer, but Botha’s strategy was, if possible, to shift the burden of responsibility to one or other of the two states that had historical connections with Namibia.

There were two other important events on Botha’s European tour, his meeting with Chester Crocker in Rome in June 12, 1984, and his private visit to France. Unlike the other seven European nations, France’s Socialist government refused to grant Botha a state visit. Botha went to France to honour the 18,500 South Africans killed during the two wars. Like Thatcher and Kohl, SWAPO’s leader, Nujoma dismissed Botha’s

⁷²² *ibid.*

proposal that either Britain or Germany should assume responsibility for Namibia. Speaking in Washington on June 9, he described it as “nothing more than a mere rhetorical farce without any political significance”. It “would add injury to insult”, by substituting “one form of colonialism [for] another”.⁷²⁴

The hope for resolving the Namibian impasse was strengthened by other events in American-Soviet relations. Reagan’s speech before the 39th session of the United Nations General Assembly not only signalled the end of a poisoned relationship, but was also a catalyst for the resolution of regional conflicts. In sharp contrast to his speech the previous years, on this occasion, Reagan’s address did not contain a single direct criticism of Moscow. He omitted the standard references to the Soviet military presence in Afghanistan and alleged Soviet human rights violations. Instead, he appealed to the Soviet Union to join the US in constructive negotiations on arms reductions and the de-militarization of space, regional conflicts and other issues of vital interests to both countries. The two superpowers, Reagan said, had “a particular responsibility to contribute to political solutions” to regional conflicts, which could “set off the sparks leading to world-wide conflagration”.⁷²⁵ He proposed “that our two countries agree to embark on periodic consultations at policy level about regional problems” and said the US would “be prepared, if the Soviets agree, to make senior experts available at regular intervals for in-depth exchanges of views”. He continued, “In this historic assembly hall, it’s clear there’s not a great distance between us. Outside this room, while there will still be clear differences, there is every reason why we

⁷²³ **Facts on File**, June 22, 1984, p. 444.

⁷²⁴ **Facts on File**, June 22, 1984, p. 445.

⁷²⁵ **Facts on File**, September 28, 1984, p. 705.

should do all that is possible to shorten that distance. And that's why we're here. Isn't it what this organisation is all about?⁷²⁶

Reagan had not been converted to idealism. His core concern remained how to make the United States stronger in relation to the Soviet Union. The central question raised by the speech was whether the administration was embarking on an idealist path to achieve a realist objective, or was continuing its realist policy to achieve idealistic ends. The conundrum raised by this question remained unresolved throughout Reagan's administration, but there was an indication that from the late 1984 onwards, the preference was for pursuing realist ends through idealist means.

A critical twist for the administration in embarking on this policy concerned superpower perceptions of the emerging balance of power between them. The Soviets invasion of Afghanistan had over-stretched their capacity. The United States, having learnt the lesson of Vietnam, was in a position to exploit its advantage. Indeed, by late 1984, the Soviet Union was a superpower only in name. It was this attainment of dominance, reinforced by the SDI programme, that would put the United States in a pivotal position in conflict resolution diplomacy in peripheral regions. It would also redefine the structure of the international politics with the end of the Cold War. As Reagan himself put it: "the United States had attained the position of strength it needed to negotiate with Moscow. America has repaired its strength".⁷²⁷

The tone of Soviet Foreign Minister Gromyko's speech to the 39th General Assembly contrasted sharply with the conciliatory stance adopted by Reagan; however, it was

⁷²⁶ *ibid.*, p. 706.

more moderate than his last speech to an international body, delivered in Stockholm in January 1984. More importantly, it was clear that the Soviet Union agreed to the US's view that both superpowers had a particular responsibility to contribute to political solutions to those regional conflicts which could 'set off the sparks leading to world-wide conflagration. The Soviet Union did not oppose Reagan's proposal that the two countries should embark on periodic consultations at policy level about regional problems. Indeed, with regard to Namibia, Crocker met with Soviet officials on March 6, 1986. As important as it was for the Namibian settlement, however, the institutionalisation of ministerial or cabinet-level contacts, should not be overestimated. In the final analysis, it was American political and diplomatic resolve and patience that made the resolution possible.

The next two years proved to be years of activity rather than progress. Negotiations moved at a snail's pace, held up by bouts of violence on the Angola-Namibia border, and hampered by a lack of momentum from Washington owing to domestic disquiet. In November 1984, in its *Plataforma* sent to the UN Secretary-General, the MPLA government accepted the reality that Namibian independence could be achieved in the context of a Cuban troop withdrawal from Angola. President dos Santo proposed a phased withdrawal of the 30,000 Cuban troops over a three-year period. Symbolically, the *Plataforma* was made on November 11 1984, to mark the ninth anniversary of Angola's independence. This three-year timetable did not satisfy either Washington or Pretoria. Washington wanted a fast-track withdrawal with about 80 percent of the troops leaving within a one-year period. South Africa presented a set of counter-proposals to Crocker. These included among other things the withdrawal of all Cuban

⁷²⁷ *ibid.*, p. 706.

troops within a period of 12 weeks after South Africa had begun the implementation of the UN independence plan. In addition, a joint peace commission would be set up to monitor and verify the Cuban withdrawal, which should be allowed to move freely within Angola. South Africa also specified that the Cuban troops were not to be replaced by another surrogate force: that East German, Soviet and other communist advisers should be limited in numbers, and that their presence should be made known to the South African government.

Anxious to bridge the gap between Pretoria and Luanda, Crocker held a further round of talks with the two governments separately in late March 1985. This initiative took the form of a compromise draft agreement, to which each side was requested to reply by early April 1985. In characteristic South African fashion it played a double game. On April 17, 1985, it informed the international community that it had unilaterally completed the withdrawal of its troops from Angola, without agreement with Angolans on any post-withdrawal monitoring arrangements. Simultaneously, it inaugurated the TGNU (Transitional Government of National Unity). South Africa's withdrawal of its remaining 450 soldiers and 100 civilians from the border post of Santa Clara in southern Angola, was in compliance with the terms of the Lusaka Accord.

Yet the inauguration of the TGNU was a complete violation of any existing UN resolutions on Namibia. Far from being a government of national unity, the TGNU, composed of the DTA and five smaller parties whose support came largely from one ethnic group, the Herero. Accordingly, it derived legislative and executive authority under the State President (South Africa) Proclamation No. 101 of 1985 which was inconsistent with Resolution 385 (1976), Resolution 345 (1978) and the final advisory

opinion of the ICJ in 1971.⁷²⁸ All these international instruments declared that any government in Namibia must derive its powers and legitimacy from the people in true and fair election. The inauguration reaffirmed Pretoria consistent effort to bypass the UN and SWAPO through its 'internal settlement option'.

The inauguration of the TGNU prompted a wave of international condemnations. No Western state recognised the TGNU and each of the 'dysfunctional' Contact Group states rejected any unilateral measures by the South African government to transfer power in Namibia as null and void.⁷²⁹ Yet, when Bishop Trevor Huddleston, President of the Anti-Apartheid Movement in Britain, led a deputation to the Foreign Office arguing that South Africa's action on the TGNU was a challenge to the Security Council and to Britain as a member of it, the Foreign Secretary, Sir Geoffrey Howe, rejected an appeal for economic sanctions to bring about implementation of the UN plan for Namibia.⁷³⁰

The inauguration of the TGNU was as damaging to the settlement of the Namibia conflict, as South Africa's clandestine military operations in Cabinda, and the repealing of the Clark amendment by the US congress on June 15, 1985. These two actions, by South Africa and the United States respectively, were directed against Angola. The Cabinda operation involved a nine-man South African force under the command of Captain du Troit whose aim was to destroy six oil storage tanks in Malongo, with a capacity of 1,675,000 barrels. It was later revealed that United States support for UN

⁷²⁸ **THE CHOICE!-NAMIBIA PEACE PLAN 435 OR SOCIETY UNDER SIEGE!** A publication of the Namibia Peace Plan and Contact Group (NPP 435). (Windhoek: 1986), p. 15.

⁷²⁹ **Europa Yearbook**, 1989, p. 749-51.

Security Council Resolution 567 that condemned the Cabinda incident, was premised on the view that any military action in Cabinda would pose a threat to lives of US citizens in that area and a danger to the property of US Gulf Oil Corporation.⁷³¹ At this time, however, constructive engagement itself was in a serious trouble both within and outside the United States.

Constructive engagement was a victim of its own success. At the onset, it offered South Africa three incentives to co-operate: improved relations with the US, constitutional guarantees on the Namibian peace plans; and the Cuban connection on the Angola-Namibian conflict.⁷³² It was difficult for Washington to have stress-free relations with South Africa given the latter's unprovoked military attack on neighbouring states such as Botswana and Zambia. The decision for the withdrawal of the Cuban forces was to be made jointly by Havana and Luanda based on security terms, which favoured the MPLA government. Washington refused to talk directly with Havana. Meanwhile, the Americans continued to supply arms to the UNITA rebels. As the United States resumed armed assistance to UNITA, after a ten-year hiatus, domestic opposition to the efficacy of such a policy grew. The conservatives believed that the objective of blocking a military victory by the MPLA to be excessively modest. The liberals declared aid to UNITA to be immoral, as UNITA also accepted help from South Africa.⁷³³ For instance, South Africa's Minister of Defense, General Magnus Malan

⁷³⁰ **Background Brief Series: Foreign and Commonwealth Office**, London, No. 443, July 1985, p. 2.

⁷³¹ *Statement by the Representative (Clark) in the UN Security Council, June 20, 1985*. See, **AFPCD 1985**, Document 465, (1986), p. 849).

⁷³² Zartman, I. William. "Deadlock in Namibia", **SAIS Review**, Vol. ?, No. ?, p. 252.

⁷³³ Freeman Jr., Chas. W. "The Angola/Namibia Accords", **Foreign Affairs**, Summer 1989, p. 131.

said on 20 September 1985 that his country supported UNITA—a position that had not been previously admitted officially.⁷³⁴

On the issue of the deadline for Namibian independence, according to Crocker's proposals, the constitutional guarantees were to be negotiated in 1981 and the details of withdrawal established during 1982, providing for independence in 1983. The constitutional guarantees were secured in late 1981, whilst, South Africa's internal settlement was also on course, as noted with the inauguration of the TGNU. Although, South Africa knew that a unilateral solution was not a solution, its two-track solution organically developed as a policy on its own. To recap, it was: internal settlement without SWAPO if possible, with SWAPO if necessary; and a negotiated independence acceptable to both the international community and South Africa. After four years of constructive engagement, South Africa was still engaging on a strategy of immobility: unable to force its will on the first track, but preferring a stalemated negotiation on the second,⁷³⁵ as the internal parties remained feeble, factious and lacking international credibility.

At this stage, Washington thought that it ought to do more by using other levers against South Africa and Angola. The first warning shot was fired against Angola on June 11, 1985, with the repealing of the Clark Amendment. In response, with some encourage from the Soviets, the Angolan government announced the suspension of talks with the

⁷³⁴ **Background Brief Series: Foreign and Commonwealth Office, London, January 1986, No. 464, p. 2.** General Malan admitted that these helps have been provided for 'a number of years' and would be suspended until all foreign forces had been withdrawn from Angola. The support for UNITA was intended to undermine foreign interference by Cuban and other communist power in Africa and sought to halt Marxist infiltration and expansionism. See, **KCA, Vol. XXXI, December 1985, p. 34028.**

⁷³⁵ Zartman, *op cit.*, p. 267.

US on the Angola-Namibia issue. Washington now turned on South Africa. It believed that it had not pushed Pretoria beyond its strategy of making the track one parties able to win on track two. It had to deal with Pretoria on other fronts, because it was under pressures from domestic critics of its policy in Congress, and to regain the initiative on the grounds. No other means were available other than to respond to the call for the imposition of sanctions over its apartheid policies. Washington not only had to be seen to be acting tough but to act tough. The signing of an Executive Order (12532) on September 9, 1985 marked the imposition of economic sanctions against South Africa. Although, the sanctions were limited to the issue of apartheid, the signals were clear. This Executive Order, as it were, was a device to circumvent tougher Congress-imposed sanctions.⁷³⁶

Beneath the seemingly anti-apartheid, democratic veneer of this move lay a Machiavellian strategy. The Executive Order allowed US to abstain from potential multilateral sanctions. Yet it showed that the myth of constructive engagement had been dispelled. Washington was ready to take another route. To drive the point home, Washington supported Resolution 571 (1985) of September 20, 1985, and Resolution 574 (1985) condemning South Africa's attack on Angola. Henceforth, it would not be constructive engagement as originally conceived,⁷³⁷ but a strategy reminiscent of the 'finesse strangulation' favoured by the Carter administration. These votes have to be

⁷³⁶ For an insider view of the sanction debates between the Congress and the State Department, see, Menges, Constatine. C. "Sanctions '86-How the State Department Prevailed", **National Interest**, No. 13, Fall 1988, p. 68.

⁷³⁷ For a broader criticisms of the constructive engagement, see, Thompson, Alex. "Incomplete Engagement: Reagan's South African Policy Revisited", **The Journal of Modern African Studies**, Vol. 33, No. 1, 1995, p. 86; Wolpe, Howard. "Seizing Southern African Opportunities", **Foreign Policy**, No. 73, Winter 1988-89, p. 62; and Seiler, John. "Crocker's Southern African Policy: A Critical Review", **Journal of Contemporary African Studies**, Vol. 13, No. 2, July 1995, p. 197.

put into a proper context. It is worth recalling that in 1981, the United States had cast the only dissenting veto on UN resolution condemning South Africa's Operation Protea. Then Secretary Haig reckoned that the South African incursion into Angola should be understood in 'full context' that is along with the presence of large numbers of Cuban and Soviets advisers in Angola.⁷³⁸

Luanda was relieved that Washington was taking a 'zero-tolerance' posture on South Africa's prevarication on Namibia and 'hot pursuit' of SWAPO forces into Angola. In turn, in mid-July 1987, it decided to resume talks with Washington.⁷³⁹ On an optimistic reading, the 18 months of no serious negotiations can be seen as a cooling off period, which was unwittingly needed to break loose from negotiation-fatigue and re-assess strategies. The talks resumed, whilst, each party redoubled its efforts on the military side of the equation. The outcome of incremental militarism would consequently determine the process and substance of a final breakthrough: 1985-86 saw a dramatic rise in South African military expenditure while the Soviets supplied an extra \$2 billion of military aid to the MPLA, including more MiG-23 fighter planes.⁷⁴⁰

It is tempting to suggest, with Zartman and others, that by late 1987, the Namibian conflict was ripe for resolution. Presumably, events on the battlefield in Angola, spontaneous escalation and war weariness, tilted in favour of the 'moment is ripe' argument. There were underlying currents both within and outside the negotiation perimeter and the ensuing military conflicts that created circumstances that favoured a final settlement. With a casual observation, it is possible to see them as sequential, but

⁷³⁸ See, footnote 660 of this study.

⁷³⁹ Bender, Gerald. J. "Peacemaking in Southern Africa: the Luanda-Pretoria tug-of war", *Third World Quarterly*, Vol. 11, (1), January 1989, p. 22.

such an insight is devoid of rational analysis. Not all of these factors and events were within the 'cause-effect' model of the ripe for resolution paradigm. The drivers for final resolution are not bundled as a unit, but driven by competing interests and rationalities. These factors could be categorised as: (i) the re-configuration in the global balance of power between the United States and Soviet Union; (ii) the 'knock on effect' of the American unilateral sanctions against South Africa on its war policy; (iii) international pressures on SWAPO; and (iv) the TGNU's reform and reduced-dependence on South Africa (v) Crocker's own patience.

6.5. International pressures on SWAPO.

As earlier noted, SWAPO was never recognised as the sole representative of the Namibian people by any Contact Group member, although it maintained an office in London for its Western Europe contacts. However, by early 1987, SWAPO faced mounting pressure from leading British members of parliaments on its human rights records. On March 20, 1987, 50 British parliamentarians wrote a strongly worded letter to Mr. Shapua Kaukungua, SWAPO's Western European representative condemning his organisation's treatment of the SWAPO One Hundred.⁷⁴¹ Another MP, Rev Martin Symth attacked Resolution 435 and the UN's recognition of SWAPO:

"To persist in perpetuating the charade that SWAPO is the 'sole' representative of the Namibian people is not only illogical within the heterogeneous nature of Namibian society, but does lasting damage to the UN credibility and in so doing, it obstructs the independence process it is its function to promote. To use a

⁷⁴⁰ *Africa Contemporary Record*, 1985-86, p. A33.

⁷⁴¹ See, *Namibia Digest*, Issue No. 5, April 1987, "Parliament Demands Information on SWAPO 100", p. 8-9. The *Namibia Digest* is a publication of the Namibia Office, London. These were one hundred SWAPO dissidents who had been imprisoned by the SWAPO leadership.

much quote analogy-you cannot referee a contest if you wear the colours of one side".⁷⁴²

Rev Smyth's statement echoed what Ambassador Jeane Kirkpatrick of the United States had said five years earlier when the Security Council failed to listen to Mr. Kalangula of the DTA.⁷⁴³ In addition, in late 1986, Nicholas Winterton MP, Chairman of the British Parliamentary All Party Namibia (BARN) group declared that the European Economic Community saw no reason to extend sanctions imposed on South Africa to Namibia. Winterton claimed that apart from the EEC's economic, defence and general strategic interests, the reforms being implemented by the TGNU was also a factor in the decision. This action itself was a blow to SWAPO, which had hoped that the sanctions would be extended to Namibia.⁷⁴⁴ Most of SWAPO's misfortunes at this time helped the TGNU. When the TGNU repealed the infamous AG-8 in early 1986 opening schools to all race groups, it won international support although not international recognition. For instance, Sir Fergus Montgomery, a British parliamentarian, and PPS (Private Parliamentary Secretary) to the Prime Minister, Margaret Thatcher spoke of a new mood in Namibia: "The move by the Legislative Assembly may have well produced a revaluation of the British Government's attitude to Namibia, with senior British figures privately conceding that the Namibian

⁷⁴² Rev. Martin Smyth MP, "Independence: Is the UN assisting or obstructing progress?", **Namibia Digest**, Issue No. 1, March 1986, p. 1-2.

⁷⁴³ See footnote 644.

⁷⁴⁴ Nicholas Winterton MP, "Namibian Sanctions-EEC Says No", **Namibia Digest**, Issue No. 3, October 1986, p. 1-2. In fact, before the imposition of sanctions on South Africa, the EEC had abstained on UN Special Session on Namibia, which was held between 17-20 September, 1986. The British Representative speaking for the 12 EC countries declared that 'none of the political groupings in Namibia should be designated in advance as the sole and authentic representative of the Namibian people'. See, **Background Brief Series: Foreign and Commonwealth Office, London**, No. 501A, October 1986, p.5. Yet the EEC continued to reject the linkage proposals.

experience (TGNU formula, with the exclusion of SWAPO) could amount to a new formula for the achievement of independence”.⁷⁴⁵

SWAPO compounded its own image problem in Britain when Nujoma failed to reply to an invitation by the British All Party Namibia Group to address a House of Commons meeting on October 26, 1987. He also failed to turn up to address a meeting at the Royal Institute of International Affairs on November 3, 1987. Although he cancelled these appointments for logistical reasons, when he learnt that SWAPO forces had been attacked by the South Africans in Angola and left for immediate consultation in Moscow, the cancellation was seen as a snub to those concerned. Nicholas Winterton (Chairman of BAPN) said: “It is tragic for the people of Namibia that Mr. Nujoma who purports to lead a ‘government in exile’ is not prepared to take part in free and open discussions and to exchange views with British Parliamentarians. He chose instead to fly to Moscow. I can only conclude that Nujoma is not willing to discuss his policies with audiences in the United Kingdom and that he prefers to consort with Communists”.⁷⁴⁶ Thus SWAPO was simultaneously facing external diplomatic pressure and military pressure from South Africa on the battlefield

6.6. Resource constraints on the South African military.

In 1981 article in *Foreign Affairs*, John de St. Jorre had described the war in Namibia as:

“...of low intensity, probably unwinnable but not a serious threat. It has admittedly choked off foreign investment, slowed down local business and cast a pall of uncertainty over the future

⁷⁴⁵ Sir Fergus Montgomery MP, “Action Stations in Namibia”, *Namibia Digest*, Issue No. 5. April 1987, p. 3.

⁷⁴⁶ *Namibia Now*, “SWAPO Leader Ignores Namibia Group”, Vol. 2, No. 5, November 1987, p. 1-4.

of Namibia. But South Africa can afford it in terms of cash and blood. It is also, in the words of one South African military analyst, excellent “on-the-job” training for South Africa’s citizen army”.⁷⁴⁷

By late 1987, this was no longer the case. There had been a reversal of fortunes. As we have seen, on two important occasions, Pieter Botha revealed that Pretoria could no longer afford the war. By 1987, the Namibia/Angola war was consuming more than 4 billion South African Rand yearly. South Africa was not only short of cash, it was increasingly short of men. Many young white conscripts regarded Namibia as South Africa’s Vietnam. After more than 30 years, they were no longer enthusiastic to sacrifice their lives for a cause they did not believe in. Indeed, by April 1983, there were already 355 men in South African Defence Force detention for refusing to undergo military training.⁷⁴⁸ South Africa had committed more than 20,000 SADF officers as well as over 22,000 SWATF (South West African Territorial Force) into the conflict.

Within Namibia, the process of Namibianisation was being undermined by a deliberate ploy of potential black recruits. Most of them declared themselves to be card-carrying members of SWAPO and made legal application against conscription.⁷⁴⁹ The pool of recruits could not be replenished, while casualties on fronts increased as South Africa lost its air superiority, and on September 1987, the Soviets supplied Angola with the most ultra modern air defence system and Cuba increased its forces to more than

⁷⁴⁷ de St. Jorre, John. “South Africa”, *Foreign Affairs*, Fall 1981, p. 119.

⁷⁴⁸ *Star* (Johannesburg), 2 April 1983.

⁷⁴⁹ Hackland, Brian, Murray-Hudson, Anne and Wood, Brian, “Behind the diplomacy: Namibia, 1983-85”, *Third World Quarterly*, Vol. 8, No. 1, January 1986, p. 62.

50,000.⁷⁵⁰ As the numbers of troops increased, and new weapons systems became available to all the parties, the military confrontation escalated.

6.7. The shift in the military balance in Angola: From Mavinga to Cuito Cuanavale

Having secured a Soviet radar system, the Angolan government resolved to fight. In August-September 1987, under the direction of Soviet General Shanovitch, the Angolan army, FAPLA, attacked UNITA-held Mavinga in Southern Angola. With South African support, UNITA successfully defended the town, but the battle showed that the Soviet equipment had considerably enhanced the FAPLA's military capacity. South Africa's traditional air superiority was at an end. After Mavinga, South Africa decided to turn its military success into a major rout of MPLA troops by attacking the key town of Cuito Cuanavale. This proved a fatal error. Cuito Cuanavale was the FAPLA's most important strategic base in southern Angola. The area served as its main airfield, and has been the staging-ground for successive FAPLA attacks against UNITA's stronghold at Jamba. In Cuito Cuanavale, the SADF wanted to 'finish' and 'annihilate the FAPLA forces, while FAPLA had to fight for its survival. For more than five months, (December 1987-April 1988) Cuito Cuanavale witnessed the most heavily fought battle in southern Africa, with a combined 4,000 SADF and SWATF troops, 8,000 UNITA and 10,000 FAPLA forces. Initially, South Africa thought it had Cuito Cuanavale in the bag; but by mid January, with an order from Castro himself to his

⁷⁵⁰ von der Ropp, Klaus. Freiherr., "Peace Initiatives in South West Africa", *Aussen Politik*, Vol. 40., No. 2, 1988, p. 187.

troops to bolster the FAPLA's defences; the SADF operation became more vulnerable. Eventually, in May 1988, the SADF withdrew its forces from the town.⁷⁵¹

The military reverses experienced in southern Angola allowed 'doves' like Pik Botha to gain the initiative in Pretoria, and Botha used his ascendancy to win support for a revised strategy that favoured a less conditional settlement. The failure of the SADF to retake Cuito Cuanavale was a watershed on both the diplomatic and military fronts. The stalemate was no longer military, but diplomatic. Yet, Jaster's warning that "in analysing a conflict, it is tempting to seek a 'Picket's charge'-that is one event that can be identified as the crucial moment or turning point",⁷⁵² needs heeding. The changing military balance altered South Africa's posture, but each of the major players, the United States, Cuba, Angola and SWAPO also reassessed the cost and benefits of the Angolan/Namibian conflict; whilst the USSR's 'glasnotian constructive engagement' both to South Africa and the United States, was amongst the factors that prompted a final breakthrough.

6.8. The Soviet Union's gladstonian constructive engagement

Since *Henry Africanus* and the Contact Group's diplomacy, the Soviet Union had been effectively marginalised at the negotiating table. The Soviet Union was a member of the Security Council in 1977, when the Contact Group was formed, yet the Carter administration never proposed that it should be a part of the multilateral team. It was not until resolution was in sight in mid-1988 that the United States offered the Soviets a recognisable mediating role and guarantor role in any agreement reached. Crocker

⁷⁵¹ Bender, Gerald. J. "Peacemaking in Southern Africa: the Luanda-Pretoria tug-of-war", *Third World Quarterly*, Vol. 11. (1) January 1989, p. 27.

started meeting with the Soviets back in December 1982, but as late as July 1987, when Crocker tried to sell 'linkage' to the Soviets, Deputy Foreign Minister Anatoly Adamishin insisted that it would not work. By summer 1988, however, Adamishin was iterating Soviet interest in playing a positive role in resolving the conflict. The Soviets were thus only directly involved in the negotiations at the eleventh hour. When they met in Geneva, Anatoli Adamishin, told Crocker that the Soviet Union would seriously consider playing a more direct part in the four-nation talks if all the parties involved agreed.⁷⁵³ In fact, the Soviet's acceptance came after the target date set by the United State for a settlement, September 29 (the tenth anniversary of Security Council Resolution 435 (1978) had passed, and after eight of the ten rounds of peace talks.⁷⁵⁴

The direct involvement of the Soviet Union at this stage was, arguably driven by historical and pragmatic factors. We saw in chapter four that the Soviet's intervention in Angola was partly underpinned by its own reasoning about the utility of the international law of wars of national liberation, and partly by its ideological affinity with the MPLA. The Soviets saw the war against colonialism as a 'just war', in which liberation was expected to serve as a basis for transition to socialism. Initially, the Soviets were confident of 'total victory', and saw little prospect, or need for multilateral

⁷⁵² Jaster, Robert. S. "The 1988 Peace Accord and the Future of South West Africa", *Adelphi Papers* 253, Autumn 1990, p. 20.

⁷⁵³ *Namibia Now*, Vol. 2. No. 16, November 1988, p. 3.

⁷⁵⁴ For a chronology of the ten rounds of talks in 1988, see, Berridge, Geoffrey. "Diplomacy and the Angola/Namibia accords", *International Affairs*, Vol. 65, No. 3. Summer 1989, p. 467. The rounds were as follows: 3-4 May 1988, round one, London; 13 May, round two, Brazzaville (Angola and South Africa only); 24-5 June, round three, Cairo; 12-14 July, round four, New York; 20 July, 'Principles for a peaceful settlement in southwest Africa' published; late July, secret talks, Cape Verde; 2-5 August, round five, Geneva; 8 August, cease-fire agreement; 7-9 September, round six, Brazzaville; 26-9 September, round seven, Brazzaville; 8-9 October, 'informal talks' in New York; 11-15 November, round eight, Geneva; 3-5 December, round nine, Brazzaville; 12-13

efforts at resolving the conflicts of southern Africa. MacFarlane pointed out that most Soviets were consistently critical of efforts at a negotiated settlement during the period leading to the Lancaster House Agreement on Rhodesia and came around to support the outcome only after the talks had been concluded. He also argued that 'even where further advances have been registered in the process of liberation in Southern Africa, as in Zimbabwe case, the results were not to the Soviet liking.⁷⁵⁵ To that extent therefore, the belated involvement of Soviet Union in 1988 had some historical resonance. Meanwhile, having seen the prospect of a settlement, the Soviet Union needed to maintain its visibility by playing both the 'hard ball', and the 'soft ball' towards South Africa and Cuba respectively. Consonant with Gorbachev's new thinking, Moscow wanted its share of the peace glory.

Many informed analysts have written extensively on the factors and forces that underpinned Gorbachev's 'new thinking' on Soviet domestic and foreign policies; and ultimately the disintegration of the Soviet empire. The debate is polarised between those who believed that the changes were brought about by the West's policy of containment, and those who viewed it as a consequence of internal developments. For the first group, containment was reinforced by a technological arms race, economic denial and psychological warfare, which eventually drove Gorbachev into reforming communism and the Soviet state itself. In essence, the conflict between the superpowers generated its own dynamics that made it impossible for the Soviet Union to act and react as an equal player.

December, round ten, Brazzaville; 13 December, 'Brazzaville Protocol'; 22 December, official signing of three- and -two party accords in New York.

For the second group, *perestroika and glasnot* were engendered by the internal contradictions within communism. These included: the inertia of the Soviet economy in the late 1970, which was heightened with the collapse in the oil prices in early 1980s, the Soviet state aspiration to achieve greatness, and the emergence of Mikhail Gorbachev, who amongst the gerontocratically-inclined Soviet leaders seemed like a *deus ex machina*, destined to reform. What is manifestly evident was that Reagan Doctrine resulted in an increase in the US Defence spending to 7% of the GDP. CIA Director, William Casey, was also successful in 1982 in persuading Saudi Arabia to co-operate with the US in lowering the oil prices in a way that was designed to weaken the Soviet Union.⁷⁵⁶ If the domestic problems did sow the seed of change in the Soviet Union, the United States resurgence played an important role in compelling reform. Once launched, the reform unravelled the Soviet system and foreign policy agenda. Arguably, Reagan Doctrine stretched the Soviet Union beyond its sustainable limits on the practice of power politics.

In the wake of the new foreign policy agenda, Soviet Union blew hot and cold towards South Africa, not least in the context of the ending of the Angolan-Namibian conflict. Initially, as diplomatic contacts were too sensitive, the Russians encouraged academic contacts in their place; and Soviets scholars became a little less hostile to South Africa. In June 1986, Gleb Starushenko, a member of the Soviet Union's African Institute boldly suggested the idea of "comprehensive guarantees for the white population and special constitutional arrangements calculated to allay white fears."⁷⁵⁷ On July 7, 1987,

⁷⁵⁵ MacFarlane, Neil. S. "The Soviet Union and Southern African Security", **Problems of Communism**, Vol. XXXVIII, March-June 1989, p. 80.

⁷⁵⁶ Pipes, Richard. "Misinterpreting the Cold War: The Hard-Liners Had It Right", **Foreign Affairs**, Vol. 74, No. 1, January/February 1995, p. 159.

⁷⁵⁷ **The Economist**, May 28, 1988, p. 69.

Mr. J. Primakov, director of the influential Soviet INEMO Institute, wrote in *Pravda* that “the new philosophy” of Soviet foreign policy favoured leaving regional conflicts to their own dynamics, while superpowers observed non-intervention. In early 1987, Radio Moscow started beaming an Afrikaans-language service to South Africa, which was quick to respond to these signals. On at least 10 occasions in 1987, South African diplomats contacted Soviet officials to explore the possibilities of a Soviet-SA understanding. In August 1987, Dr. Phillip Nel, Director of the Institute for Soviet Studies at Stellenbosch University, visited Moscow, officially to read a paper at a philosophy conference, but mainly to explore possibilities of rapprochement.⁷⁵⁸ Yet Moscow was juggling both hard and soft balls simultaneously.

Besides supporting the MPLA decision in July 1985 to suspend talks with the United States, the Soviet increased the amount and speed of its arms supplies to the Angolan government. The Kremlin ordered General Kostantin Shaganovitch, arguably the highest ranked Soviet officer ever signed to Africa to supervise Soviet military activities in Angola.⁷⁵⁹ As late as November 1987, Soviet Foreign Ministry Spokesman, Yuri Gremitskikh had depicted American policy in the region as “worthless in promoting a peaceful settlement of the conflict in southern Africa”,⁷⁶⁰ and supplied Angola with radar and MiG 23s. Between May and July 1988, the Soviet Union delivered the following to Angola: Naval equipments and spares (May 6), 70 tons ammunition and explosives (May 23), 40 T64 tanks, 20 jeeps, 10 trucks and small

⁷⁵⁸ **Front File: Southern Africa Brief**, Vol. 2, No. 5, April 1988, p. 4.

⁷⁵⁹ Heitman, Halmond-Romer. “Angola: Crucial Confrontation Ahead”, **Jane’s Defense Weekly**, October 24, 1987, p. 950.

⁷⁶⁰ Cited in **Reuters**, November 12, 1987.

arms; troop carrier, (May 27); 16 Scania 112 tank transporters, (June 10); and military vehicles-BTR 70 AT and PT 76 (June 27).⁷⁶¹ All these were delivered after Angola peace talks had started in London on May 3, 1988. Clearly the Soviet policy was to strengthen Angola's and Cuba's negotiating position as a prelude to compromise.⁷⁶²

6.9. Cuba: from a saviour to an overstayer

Cuba and Angola declared the battle of Cuito Cuanavale a great victory. However, South Africa's declaration that it was extricating all of its forces from Angola put Cuba in a difficult position. As Pretoria wanted to turn a military predicament into a diplomatic victory, it became increasingly difficult for the Cubans to justify why they would have the only foreign troops left in Angola. Moreover, Moscow which was now willing to co-operate with the United States on regional disputes found it difficult to continue to bankroll the Cuban forces. Moscow wanted to nudge Angola into a negotiated settlement as early as practicable, and sent frequent signals to Havana that as it was contributing about £2.7 billion annually to the Cuban economy, it could no longer finance Cuba's foreign adventurism as well.

There were also indications that both Cuba and Soviet Union pursued incoherent battle strategies. For example, after the battle of Mavinga, Castro criticised the Soviet Union. Speaking of the ill-fated Angolan offensive, Castro said: "History will tell what the mistakes were and why they were committed. I'm just going to say that Cuba had no responsibility for those mistakes".⁷⁶³ There was also a sign that he was reading the

⁷⁶¹ **Front File: Southern Africa Brief**, Vol. 12, No. 12, August 1988, p. 6.

⁷⁶² Lunn, Jon. "Angola and Namibia: The Regional Settlement in South West Africa", **Background Paper No. 234: House of Commons Library**, (London: House of Commons, 1989), p. 20.

⁷⁶³ **Front File: Southern Africa Brief**, Vol. 2, No. 12, August 1988, p. 5.

forthcoming November 1988 US presidential elections with great attention. He was hedging his bets in the hope that a Democrat victory would put Michael Dukakis in the White House.

This was not a well thoughtout move. If Dukaki's had carried out his threat to oppose South Africa, Pretoria would no longer have accepted the US as a mediator. In that event, there would have been a distinct possibility of the talks collapsing, and of a further confrontation between the Cubans and the SADF.⁷⁶⁴ Prospects of a peace in the region could have receded overnight. Meanwhile the Reagan administration had invested eight years in making peace in southern Africa. In all, since the days of *Henry Africanus*, the United States had sought a solution to the Namibian question for a total of eleven years. As the military exhaustion suffered by South Africa stimulated serious and genuine negotiation, the Reagan administration, and Crocker in particular wanted to claim success before time ran out. It was not surprising, therefore, that despite Cuban prevarication, the ten rounds of talks started in London on May 3-4 and ended in New York on December 22, 1988,⁷⁶⁵ with the signing of the Final Tripartite Agreement by Cuba, Angola and South Africa, with the United States and Soviet Union as the guarantors. The most important part of these negotiations was the emergence in New York of a 14-point agreement committing the three negotiating parties to implement UN Resolution 435 (1978) on Namibian independence and the withdrawal of Cuban forces from Angola.⁷⁶⁶

⁷⁶⁴ **Front File: Southern Africa Brief**, Vol. 2, No. 11, August 1988, p. 3.

⁷⁶⁵ For a fuller account of the diplomacy leading to the December agreements, see Berridge, Geoffrey. **International Affairs**, Vol. 65, No. 3, Summer 1989, p. 463-480; and MacFarlane, S. Neil. "The Soviet Union and Southern African Security", **Problems of Communism**, Vol. XXXVIII, March-June 1989, p. 71-89.

⁷⁶⁶ See Jaster, Robert. S. "The 1988 Peace Accords and Future of South-Western Africa", **Adelphi Paper 253**, for a detailed implementation of the transition to the Namibian

To recap: after the failure of the 1981 Geneva Conference, the UN lost its leading role in promoting dialogue between the parties involved in the Namibian conflict. Now with the New York Agreement in hand, the UN was brought back to implement the transition to independence. Although the UN Security Council had consistently rejected 'linkage' for eight years, on January 12, 1989, it effectively endorsed it in UN Security Resolution 628 by giving its 'full support' to the New York Accords. The 'strengthening' or to put it crudely but more accurately, the United States's watering down of Resolution 435 (1978) produced an outcome which made all the parties better off. In the final analysis, it had taken the logic of the balance of power to temper international law into a useful policy instrument.

independence; and Cedric Thornberry, **The International Development of Peacekeeping: LSE Centenary Lectures**, (London: LSE Books, 1995) for an insider account on the operations of the UNTAG. Cedric Thornberry was the Assistant Secretary General of the UN on Political Affairs in charge of the UNTAG in Namibia.

Conclusion

The key insight provided by balance of power theory is simple: that a stable international order can emerge as the unintended consequence of the actions of many states, each seeking its own interest. Most critiques of balance of power derive from the neglect of this insight, from the tendency to assume that one state can gain only at the expense of another. Like Adam Smith's price system, the balance of power works so well that most of the time we do not appreciate it. We never realize how effective its functions are until it is prevented from functioning; and even then, we often assume that alternatives exist. Most of these alternatives however, can, and will only function under the climate of order generated by the balance of power. Yet balance of power alone cannot sustain the order which it helps to create. International law as exemplified by the UN Charter and resolutions complements it. As has been argued in this study, the balance of power and international law are underpinned by different rationales; yet both worked in tandem to resolve the Namibian conflict. International law made annexation impossible for South Africa. Balance of power made resolution possible.

The primary focus of this thesis has been upon the subtle and complex relationship between power and law in international society. In the main, the controversy surrounding the relationship focuses on the competing values of order and justice. But there is another issue to take into account, namely that power and law is not only complementary, but also symbiotic. To varying degree, each could serve as the instrumentality of the other. And this is the view adopted in this study. But such a proposition has not always received universal assent. The fact that early publicists such as Grotius, Kant, and some contemporary realists such as Waltz argued for the mutual exclusiveness between power and law, is not clearly sufficient to deny the complementarity between the two, as Gentili,

Vattel and most recently, Oppenheim, and Bull argued. As demonstrated in chapter one, both balance of power and international law are concerned to restrain the excesses of a potential hegemon, regulate disturbances within the international system, preserve order, and limit wars. In tandem, each reinforces the idea that vigilance, moderation, and flexibility are necessary for the protection of a society of competing states.

Yet the fundamental questions concerning how they intersect and diverge remain. So also does the question, which is dominant. Balance of power creates the optimal bargain of incentives and costs necessary to affect the behaviour of states. By itself, international law is impotent to secure change in opposition to the realities of power and the interests of the great powers, but it serves as an institutional device for communicating the prevailing norms of the international community to a 'deviant' state. The politics of the mandate system underscored the intellectual bankruptcy of the approach that denies the relationship between law and power. As the Bismarck letter, which was discussed in Chapter two showed, even at the height of balance of power in Europe, Germany could not contain British expansionism willy-nilly, without twinning political objectives with legal assertion. Taylor's account of Germany's colonial claims was largely narrowed in the sense that it failed to appreciate Bismarck's desire not to overthrow the existing European order by giving due concern to the norms of international law. By contrast, as shown in chapter three, on the mandate system, lurking behind the idea of international accountability lay the strategic and political interests of the Allied and Associated Power at Versailles. The Treaty of Versailles symbolized the international law of power, yet its idealistic object shaped and metamorphosed into the trusteeship and decolonisation regime that offered the prospect of statehood for the colonised peoples.

Following from one of the fundamentals of Versailles, it is interesting to note that, the UN did attempt to secure solution to the Namibian question on the basis of legal order. With four advisory opinions from the International Court of Justice, and 73 resolutions, the UN had to 'outsource' its search for a solution in 1960 in the hope that Ethiopia and Liberia would secure a binding judgement. Yet the posturing between the United States and the Soviet Union along ideological and political lines, as well as the failure of the Western powers to recognize the competence of the UN Council for Namibia undermined the UN's faith in the legal approach. The implication of the acquiescent attitude of the Western powers was that South Africa had the opportunity to evade its legal obligations. In contrast though, without deference whilst not confrontational to the Western powers, the newly independent African states kept Namibia on the agenda of the international community. While their action was done, partly to legitimised their participation in the international arena, yet it constantly revealed the frailty of international law concerning the issues of self-determination, and as well as the quest for fairness and justice within the international system.

A common theme runs through chapters two and four. In a move reminiscent of Bismarck's attempt to contain Britain expansionism of the late 19th century, the United States, through Henry Kissinger discovered that securing a solution on Namibia and Rhodesia would pre-empt further Soviet gains in Southern Africa. Each of these actions, though not of the same kind, had similar objective in sight: how to limit the growing ascendancy of the perceived most powerful competitor. Craftily, *Henry Africanus* had to be worked out in a way that respected international law. In effect, power politics had to capture the essence of idealism in order to achieve its own ends. This dilemma about the existence (or absence) of a relationship between power and law

remained evident in the Contact Group's diplomacy. The Contact Group sought to deny the symbiotic relationship between the two, by exclusively seeking to secure a solution within an idealistic mindset. This denial is perhaps difficult to understand, but not to account for.

The Contact Group in its design and composition deliberately excluded Soviet Union from its multilateral team, and refused to recognise SWAPO as the sole representative of the Namibian people. The dilemma confronting the Contact Group was how to succeed in creating a synthesis between the framework of power politics it inherited and the universalist liberal values, which it professed. Within this context, as discussed in Chapter five, the Contact Group diplomacy appeared to be a radical departure from power politics of Henry Africanus. Yet it could not extricate itself from realism of the shadow of Soviet Union presence in Africa. The linkage politics gives us a sense of what is at stake when the belief in balance of power is dignified. Allies that were committed to a liberal agenda felt puzzled, and foes felt a sense of injustice and betrayal. France 'excused' itself, while other three members of the group retreated to the background quietly. The African group, which in the broader scheme of things, was freeriding on the order created and guaranteed by balance of power strongly criticized linkage politics. There is much to say about the conceits of the critics of 'linkage'. Yet through 'linkage' the United States moderated the South African behaviour through the adroit application of incentives and penalties. It secured an outcome that guaranteed regional stability and Namibian self-rule, and outcome that had eluded its critics, and international law for more than four decades.

The account above has theoretical implications that move in two directions: towards the familiar and the seemingly unfamiliar. On the familiar side, it links this dissertation with an aspect of the 'research programme' of the English school, indeed one that distinguishes the international society research programme as a living tradition in the study of international relations. In contrast to its classical realist cousin, which see post-colonial African states as primarily part of the great game, the English school, observed that post-colonial African states gave new territorial footholds to the idea of self-determination. In particular, the inclusion and participation of the African states not only continued on the Westphalian norms of non-interference and sovereign equality, but also stretched the rules of statehood and sovereignty beyond the bounds of the mandate system. Although they put more emphasis on 'juridical' and positive competencies of sovereignty rather than the 'negative' formulations, which the European statesmen endorsed in Westphalia, but they constantly communicated the emergent norm on self determination to South Africa. Consequently though, there was the proliferation of 'quasi states'.

On the 'unfamiliar' side, study has also described new empirical evidence, which contributes to our knowledge of international society. In chapter two, we drew attention to the issue of quasi-states. In Jackson's case, the quasi-states used international law, and external legitimacy to enhance their sovereign status. Chapter two drew attention to the issue of quasi-states. This study suggests that we need to take a fresh look at this debate. The Montevideo Convention of 1933 on the Rights and Duties of States summarises the major components of statehood. A state must possess a permanent population, a well-defined territory and a government capable of ruling its citizens and of managing formal diplomatic relations. Essentially, the acquisition of

statehood depends on a political entity's recognition as such by other states. The point should not go unnoticed. League membership did not guarantee international recognition of the Dominions' including South Africa's sovereign independence, until 1926 when the Balfour Declaration formally empowered South Africa to formulate and execute its own foreign policies. In this sense, there were Quasi-States long before the transfer of power to Africa in the 1960s. In effect, a distinction has to be made between those 'quasi states' that used external legitimacy to sustain their statehood after *de jure* recognition and those that used external legitimacy after *de facto* recognition. To a great extent, South Africa was dependent on the entitlement of being a Mandatory power to complete its international status.

Since we started this study with a paradox, perhaps, it not out of order to end with another. The outcome of the conflicts in Bosnia and Kosovo presents a paradox of increasing utilisation of power to secure idealist ends, namely compliance with international law and/or the norms of international society. So here is the puzzle of post-Cold War international relations. Is power alone sufficient to solve a small problem such as ethnic conflict? Is international law on its own insufficient to solve a big problem of those peoples struggling for self-determination?

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