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Volume 30 (1983) Numbers One and Two

IN THIS SPECIAL ISSUE

Editor's Note

As readers of this page over the years know, I have been the eternal optimist in predicting that we would soon catch up on our publication schedule. As I looked down the road it always seemed possible, even likely, that we would be able to produce two or three or four issues at two month intervals, but always some hitch developed. After resisting for several years the suggestion of a double issue, I have finally accepted the strong suggestion of the Associates that we go this route.

When the American Committee on Africa offered us the papers from last November's Namibia Seminar for consideration, the opportune time was at hand. Guest editor Robert Dillingham, who is completing his Ph.D. thesis on this theme, and senior editor George Shepherd read all the papers, and it was clear that only a double issue could do justice to the careful research they contained. Late in the process of preparing the issue an additional paper, a legal brief tracing the possibilities of enforcing Decree No. 1 in the U.S., was made available to us, enabling us to cover yet another aspect of the theme. We are proud to present this issue, and hope many of you will want to order extra copies for classroom use or for distribution to friends. (See ad p. 2.)

Since a normal issue is 80 pages, 128 pages is not quite double our single issue size, but we could not go beyond it without shifting to a more expensive binding, beyond our current means. We will therefore make each of the two remaining 1983 issues 96 pages in length, making the total size of Volume 30 equal to recent volumes containing four 80 page issues.

Despite the success of our gift appeal — $4,382 in outright gifts, plus an additional $821 in appeal generated sales and subscriptions — our financial status remains less than ideal. We are still searching for a donor with resources to match this total and bring us close to our $10,000 goal, but gifts (tax-deductible) of any size are always welcome, as are new subscriptions. Now is the time to consider putting Africa Today on your holiday gift list. (See ad p. 1.)

Edward A. Hawley

AFRICA TODAY is indexed in the Public Affairs Information Service (PAIS) the Social Sciences Citation Index, Social Sciences Index, Current Contents Africa a current bibliography of recent literature (Documentation Service Africa-West Germany) and the International African Bibliography and abstracted and indexed in ABC POL SCI, Historical Abstracts and/or American History and Life.

Introduction

Robert Dillingham, Jr., Guest Editor

The plunder of Namibia's natural resources continues almost ten years after the enactment of United Nations Decree No. 1 For the Protection of the Natural Resources of Namibia. This issue of **Africa Today** seeks to investigate the illegal extraction of Namibia's natural resources by South African and western transnational corporations. The articles appearing in this issue were papers originally delivered for the International Seminar on the Role of Transnational Corporations in Namibia held November 29 to December 3, 1982 in Washington, D.C. The seminar brought together 80 experts and activists from 54 organizations in 12 countries in Europe, Africa, North America and Japan. The seminar was organized by the American Committee on Africa with the support of the United Nations Council for Namibia and the South West Africa Peoples Organization (SWAPO).

Remember that statistical information on the Namibian economy is not published regularly due to the apartheid regime's policy of combining figures on Namibia with those of the Republic. Figures that are released are carefully selected to give the impression that Namibia is an economically unviable territory heavily dependent on South Africa. However, South African and western transnational corporations continue to reap substantial profits from the exploitation of Namibia's natural resources.[1] This can be demonstrated by examining the gap between Namibia's Gross Domestic Product (GDP) which represents the total value of goods and services produced in the territory, and the Gross National Product (GNP) which represents the total value after foreign payments. Studies indicate that over 60% of Namibia's GDP is appropriated as company profits before tax.[2]

Transnational corporations which plunder Namibia's natural resources exert tremendous power in determining the economic life of the territory. For example, two transnational corporations, Consolidated Diamond Mines and Tsumeb Corporation, control 90% of all mining production in the country. Consolidated Diamond Mines is a subsidiary of De Beers of the vast empire of Anglo-American corporation. Tsumeb Corporation which produces copper, lead, zinc, silver and cadmium, is owned by Newmont Mining,

1. Ann Seidman and Neva Makgetla, Outpost of Monopoly Capitalism: Southern Africa in a Changing World Economy (London: Zed Press, 1980).

2. Namibia in the 1980s (London British Council of Churches and Catholic Institute of International Relations, 1981) pp. 33-34.

Robert Dillingham, Jr. is the former Chairperson of the Black Studies Department at the University of Northern Colorado in Greeley (1977-83). He is currently the Southern Africa Intern for the American Friends Service Committee in Denver. He is the principal organizer for the Colorado Coalition Against Apartheid, and is also a member of the National Black Organizers Conference.

American Metal Climax Inc. and other U.S. and South African corporations. Studies in recent years portray the profitability of investments for transnational corporations. For example, from 1970-73, Consolidated Diamond Mines net profits rose from $34 million to $97 million per annum.[3]

Transnational corporations are extensively involved in the exploitation of Namibian uranium on a large scale. For example, in 1979, 29 of the 35 prospecting grants authorized were for uranium. The Rossing Uranium Mine, the world's largest open-pit mine, is 60% owned by the Rio Tinto Zinc Corporation of Great Britain.[4]

The articles appearing in this issue demonstrate the strategic importance of Namibia's natural resources for South African and western industrial development but, more importantly, the degree to which taxes paid by western transnationals support South Africa's continued illegal control of Namibia. This exploitation by South African and western transnational corporations is also reflected in the low wages and poor standard of living of black workers and their families in Namibia.

More than 40 papers were presented at the seminar, and the coverage of economic and political issues was comprehensive. We regret that more of the papers could not be included in this issue. For a complete list of papers and documents see pg. 63.

We have reprinted in their entirety the Seminar's **Message to the People of the United States** and its **Final Declaration.** The latter, in particular, calls upon anti-apartheid activists to get involved in the political process to insure the legal implementation of United Nations Decree No. 1. This should include efforts to recruit lawyers' groups in order to utilize their skills in writing legal briefs, etc., to further the implementation of the Decree at the national level.

The seminar called for political campaigns on the local presence of transnational corporations operating in Namibia, and strategic harbor facilities. Economic actions may incorporate divestment projects and consumer boycotts aimed at transnationals operating in Namibia. We must devote time and effort to get U.S. congresspersons to pass legislation curbing the activities of U.S. corporations in Namibia.

Africa Today, as our readers know, has been consistently supportive of liberation struggles in Africa since its beginnings under the auspices of the American Committee on Africa in 1954. Since that time 50 countries have achieved political independence, and we unequivocally support the right of Namibia to join this group, and to regain control of its natural resources for the benefit of its people.

3. Namibia: The Facts (London International Defence & Aid Fund, 1980), pp. 23-24.

4. Ibid.

The Council for Namibia's Decree No. 1: Enforcement Possibilities

Gay J. McDougall

On September 27, 1974, the United Nations Council for Namibia, in the exercise of its administering authority over Namibia, enacted Decree No. 1 for the Protection of the Natural Resources of Namibia. The Decree covers all natural resources, animal and mineral. Its key provisions fall within three categories:[1]

(1) The right to exploit natural resources.
The United Nations Council for Namibia is alone competent to authorize the exploitation of the country's natural resources (para. 1). Any permission, concession or license previously granted, including any granted on behalf of the Republic of South Africa, is null, void and of no effect (para. 2).

(2) Ownership of goods exported from Namibia.
No natural resources emanating from Namibia may be exported without the permission of the United Nations Council (para. 3). Any animal or other natural resource emanating from Namibia and taken from that country without the permission of the United Nations Council may be seized and shall be forfeited on behalf of the Council for the benefit of the people of Namibia (para. 4). The same measure shall be taken with respect to any vehicle, ship or container found to be carrying such animal or other natural resource emanating from Namibia (para. 5).

(3) Damages payable to the future government of Namibia.
Any contravention of the Decree entails damages payable to the future government of an independent Namibia (para. 6).

Purpose

The purpose of the Decree is clear. The natural resources of Namibia are the inviolable heritage of the Namibian people and the depletion of the natural resources of the territory as a reusit of the systematic plunder by foreign economic interests in collusion with the illegal South Africa administration is a grave threat to the integrity and prosperity of an independent Namibia. The Decree is a legislative act of the Council for Namibia aimed at protecting this natural heritage of the Namibian people. It is

1. As summarized in Francois Rigaux, "The Decree on the Natural Resources of Namibia Adopted on 27 September 1974 by the United Nations Council for Namibia," paper presented at the United Nations Seminar on Legal Issues Concerning Namibia (The Hague, 1981).

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hoped that if faced with the risk of seizure, companies might prefer to terminate their operations in Namibia. Secondly, the Decree is a means of exerting pressure on South Africa to terminate its control over Namibia by denying the Republic essential attributes to its economic control over the territory.[2]

Finally, the continued illegal occupation of Namibia by military force, the growing resistance to South African control both from within Namibia and outside its borders, and the ever-increasing frequency of South Africa's cross-border raids against neighboring states in defense of its illegal occupation of Namibia constitute a situation which endangers world peace and security. To the extent that implementation of Decree No. 1 will hasten the demise of South Africa's illegal occupation of Namibia, it will serve the interests of international peace and security.

Legal Basis for Decree No. 1

Decree No. 1 applies two fundamental principles of existing international law: the right of the people of Namibia to self-determination and independence as laid down by the United Nations General Assembly in its Resolution 1514 (XV) of 14 December 1960, and the right of that people to permanent sovereignty over its wealth and natural resources as stipulated by resolution 1803 (XVII) of 14 December 1962.

The exercise of those two rights has been persistently obstructed by South Africa's continued occupation of Namibia in defiance of the termination of its Mandate by General Assembly Resolution 2145 (XXI), 1966. The international community was compelled, therefore, to take a number of measures with the intention of safeguarding those inalienable rights of the Namibian people.

Two critical legal issues have been raised by those who question the validity of the Decree. First, assuming that the right to appropriate or alienate the natural resources of the territory can only be derived from the lawful authority over the territory, then, for that purpose, is the Council for Namibia the sole lawful authority over the territory? Secondly, can Decree No. 1 validly purport to establish a regime with legal implications for U.N. member states when it was adopted by a subsidiary organ of the U.N. General Assembly?

Decree No. 1 as a Legislative Act of the Only Lawful Authority over Namibia, the U.N. Council for Namibia

South Africa's original authority over the territory now known as Namibia

2. See, George R. Shockey, Jr., Enforcement in United States Courts of the United Nations Council for Namibia's Decree on Natural Resources, 2 Yale Studies in World Public Order 285, 286-290 (1976).

derived from a contractual or treaty relationship with the Council of the League of Nations.[3] The Council of the League, under the authority of Article 22 of the Covenant of the League of Nations,[4] exercised supervisory powers over Namibia. By the Agreement of Mandate for South West Africa (hereinafter cited as "the Mandate Agreement"), the Council made a contractual arrangement with South Africa to exercise administrative authority over Namibia. South Africa was to exercise an international function of administration on behalf of the League, with the object of promoting the well-being and development of the inhabitants of the Territory. It was termed a "sacred trust of civilization" for which a unique international regime was created.

With the establishment of the United Nations and the demise of the League, the supervisory functions over the mandated Territory previously exercised by the Council of the League were passed to the General Assembly of the U.N.[5] The General Assembly was empowered to exercise all the supervisory functions which the League might have exercised,[6] including the power to terminate South Africa's administrative authority over the Territory upon the determination of a material breach of the terms of the Mandate Agreement by South Africa.[7]

The General Assembly exercised this right by Resolution 2145 (XXI) of 1966, by which it terminated South Africa's administrative authority over

3. The International Court of Justice has characterized the Mandate as "a special type of instrument composite in nature and instituting a novel international regime. It incorporates a definite agreement . . ." The Mandate "in fact and in law, is an international agreement having the character of a treaty or convention." South West Africa Cases (Preliminary Objections), I.C.J. Reports 318, 330-331 (1962).

4. Article 22 of the Covenant of the League states:
   1. To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant.
   2. The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who, by reason of their resources, their experience of their geographical position, can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League . . .
   8. The degree of authority, control or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

5. In a 1950 opinion the International Court of Justice held that the supervisory role of the organized world community survived in the form of obligations owed to the General Assembly, since that body performed many of the functions of the old League Council. Specifically, the majority found that Article 80(1) of the U.N. Charter maintained the obligations of the Mandatory, while Article 10 created the supervisory power of the Assembly. International Status of South West Africa, I.C.J. Reports 128, 136-137, (1950) [hereinafter cited as International Status Opinion]. In a subsequent opinion the court stated: "[A]n institution established for the fulfillment of a sacred trust cannot be presumed to lapse before the achievement of its purpose." Advisory Opinion Concerning the Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), I.C.J. Reports 16, 32 (1971) [hereinafter cited as Namibia Opinion].

6. International Status Opinion, *supra* note 5. *See also*, Voting Procedure on Questions Relating to Reports and Petitions Concerning the Territory of South West Africa, I.C.J. Reports 67 (1955).

7. Namibia Opinion, *supra* note 5, at 49-50 (para. 103).

Namibia and brought Namibia under the direct responsibility of the United Nations.[8] In so doing, it acted in the capacity of the supervisory authority over the Mandate and as a party to a contractual or treaty relationship with South Africa.[9]

By resolution 2248(S-V) (1967), the General Assembly itself assumed the role and functions of administrating authority, as it was competent to do under Article 81 of the U.N. Charter, and established a subsidiary organ to exercise those functions, the Council for Namibia, under the authority of Article 22 of the Charter. The competence of the Council for Namibia as administrative authority is to be determined with reference to Article 22 of the Covenant of the League of Nations, the Mandate Agreement, and the terms of General Assembly resolution 2248(S-V). Article 2 of the Mandate Agreement gave the administering authority "full power of administration and legislation over the territory." Article 1(b) of Resolution 2248(S-V) authorizes the Council for Namibia to "promulgate all necessary laws, decrees and administrative regulations for the territory."

Decree No. 1 is fully within the scope of these provisions. It must be considered the domestic law of the territory of Namibia having been duly promulgated by the sole administrative authority over the territory as established in conformity with Article 22 of the Covenant of the League of Nations and the U.N. Charter and as confirmed by subsequent opinions of the International Court of Justice and Security Council resolutions. As domestic legislation of the territory it is opposable to all other legal persons irrespective of consent on the part of those thus affected. It has legal implications for United Nations member states.

The Competence of the General Assembly under the U.N. Charter and the Legal Effect of Decree No. 1

The General Assembly's actions as supervisory power over the Mandate of Namibia and the Council for Namibia's actions as administrative authority over Namibia and the legal consequences of those actions are *sui generis*.

In general, U.N. General Assembly resolutions are in the nature of recommendations. Their terms do not mandate compliance or encroach on the sovereignty of member states without their express consent. Article 13 authorizes the Assembly to make recommendations in the field of international cooperation and Article 14 authorizes the Assembly to recommend

8. The validity of the General Assembly's termination of the Mandate by resolution 2145(XXI) was recognized and endorsed in a series of subsequent Security Council resolutions: resolution 264 (1969), resolution 269 (1969), and resolution 276 (1970). The International Court of Justice upheld the validity of resolution 2145(XXI) in its 1971 **Namibia Opinion**, *supra* note 5.

9. **Namibia Opinion**, *supra* note 5, at 45-47 (para. 90-95). The court stated: "The resolution in question is therefore to be viewed as the exercise of the right to terminate a relationship in case of a deliberate and persistent violation of obligations which destroys the very object and purpose of that relationship."

measures for the peaceful adjustment of any situation which it deems likely to impair the general welfare or friendly relations among nations.

However, there are certain decisions of the General Assembly which are endowed with full legal effect in some spheres of the activity of the United Nations. Resolutions of the General Assembly which are directed at the regulation of the internal affairs of the United Nations are legally binding: resolutions dealing with budgetary assessments (Article 17), the establishment of subsidiary organs (Article 22), requests for advisory opinons from the International Court of Justice (Article 96), the suspension of rights and privileges of membership (Article 5), and the expulsion of members from the organization (Article 6).[10]

In considering the powers of the General Assembly, the International Court of Justice stated clearly in 1971 that there is an additional category in which the General Assembly has the capability to make decisions that have legal implications for member states. "It would not be correct to assume that, because the General Assembly is in principle vested with recommendatory powers, it is debarred from adopting, in specific cases within the framework of its competence, resolutions which make determinations or have operative design."[11]

Resolution 2145(XXI) by which the General Assembly, as successor to the Council of the League of Nations, terminated South Africa's mandate over Namibia was one such General Assembly resolution with "operative design." When, by that resolution, the General Assembly terminated the Mandate, it took an action which was dispositive in character. The International Court of Justice has determined that the General Assembly resolution in this instance was valid and legally effective.[12]

The General Assembly's powers in regard to the termination of South Africa's mandate and the supervision of the international territory of Namibia is in an area that is *sui generis*. The General Assembly's power to terminate South Africa's mandate and the legal consequences of that act are derived from the general princples of international law regarding the repudiation of treaties, rather than the limited terms of the General Assembly's decision-making authority as defined by the U.N. Charter. As stated by the American member of the International Court of Justice in a separate opinion in the **Namibia** opinion: "The power was conferred on the General Assembly

10. **Certain Expenses of the United Nations (Expenses Case)**, I.C.J. Reports 163 (1962); Judge Lauterpacht in his Separate Opinion in **Voting Procedure on Questions Relating to Reports and Petitions Concerning the Territory of South West Africa (Voting Procedures Case)**, I.C.J. Reports 115 (1955); F. Blaine Sloan, **The Binding Force of a 'Recommendation' of the General Assembly of the United Nations**, 25 Brit. Y.B. Int'l L. 4-5 (1948); D.H.N. Johnson, **The Effect of Resolutions of the General Assembly of the United Nations**, 32 Brit. Y.B. Int'l L. 121 (1955-6).

11. **Namibia Opinion**, *supra* note 5, at 50 (para. 105).

12. Id.

aliunde the Charter through the unique situation posed by the Mandate coupled with authority granted under Article 80 of the Charter, which constituted the bridge between the League of Nations and United Nations insofar as mandates were concerned."[13]

The competence of the Council for Namibia, as a subsidiary organ of the General Assembly, to pass a resolution with legal implications for member states was also conferred on it *aliunde* the Charter. Article 22 of the U.N. Charter authorizes the General Assembly to "establish such subsidiary organs as it deems necessary for the performance of its functions." Further, the International Court of Justice concluded in its **Administrative Tribunals** opinion that the General Assembly has the implied power to establish subsidiary organs whose decisions have binding effect with regard to functions otherwise within the General Assembly's competence.[14]

In this instance, the functions and competence of the General Assembly, and derivatively, of the Council for Namibia, are to be determined with reference to the League of Nations Mandate for South West Africa. The competence to legislate for a territory necessarily implies the competence to take actions and pass resolutions that have legal consequences for non-consenting states and parties. It should be considered coincidental that Decree No. 1 was passed by a subsidiary organ of the General Assembly which in other instances has only limited capacity to affect the rights of member states. Beyond its capability to act as an administrative authority (which is controlled by the Charter), its competency in that role is controlled by the terms of the Mandate.

While not mentioning Decree No. 1, *per se*, a series of Security Council Resolutions and the historic 1971 advisory opinion of the International Court of Justice[15] have called on States to recognize the illegality of South Africa's continued presence in Namibia and the consequent invalidity of certain actions taken under a presumed South African grant of authority. The provisions of these instruments track the language of Decree No. 1 in many respects and compound the illegality of actions that defy its terms. The most relevant extracts from these documents follow.

Security Council Resolution No. 276, dated 30 January 1970:

(. . .) Reaffirming General Assembly Resolution 2145 by which the United Nations decided that the Mandate for South West Africa was terminated and assumed direct responsibility for the Territory until its independence; Reaffirming Security Council Resolution 264 (1969) in which the Council recognized the termination of the mandate and called upon the Government of South Africa to withdraw immediately is administration for the Territory (. . .)

2. Declares that the continued presence of the South African authorities in Namibia is illegal and that consequently all acts taken by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid (. . .)

5. Calls upon all States, particularly those which have economic and other interests in Namibia, to refrain from any dealings with the Government of South Africa which are inconsistent with paragraph 2 of the present resolution (. . .)

Security Council Resolution No. 283, dated 29 July 1970:

4. Calls upon all States to ensure that companies and other commercial and industrial enterprises, owned by, or under direct control of, the State cease all dealings with respect to commercial or industrial enterprises or concessions in Namibia;

5. Calls upon all States to withhold from their nationals or companies of their nationality not under direct governmental control, government loans, credit guarantees and other forms of financial support that would be used to facilitate trade or commerce with Namibia.

Advisory Opinion of the International Court of Justice of 21 June 1971, ICJ Reports 1971 16:

(. . .) the decisions made by the Security Council in paragraphs 2 and 5 of Resolution 276 (1970) . . . were adopted in conformity with the purposes and principles of the Charter and in accordance with its Articles 24 and 25. The decisions are consequently binding on all States Members of the United Nations, which are thus under obligation to accept and carry them out (. . .) The Court is of the opinion (. . .)

As to non-member States, . . . the termination of the Mandate and the declaration of the illegality of South Africa's presence in Namibia are opposable to all States in the sense of barring *erga omnes* the legality of a situation which is maintained in violation of international law: in particular, no State which enters into relations with South Africa concerning Namibia may expect the United Nations or its Members to recognize the validity or effects of such relationship, or of the consequences thereof (. . .) The court is of the opinion (. . .)

1. that, the continued presence of South Africa in Namibia being illegal, South Africa is under obligation to withdraw its administration form Namibia immediately and thus put an end to its occupation of the Territory;

2. that States Members of the United Nations are under obligation to recognize the illegality of South Africa's presence in Namibia and the invalidity of its acts on behalf of or concerning Namibia, and to refrain from any acts and in particular any dealings with the Government of South Africa implying recognition of the legality of, or lending support or assistance to, such presence and administration; (. . .)

Security Council Resolution No. 301, dated 20 October 1971:

(. . .) Recognising that the United Nations has direct responsibility for Namibia (. . .) and that States should conduct any relations with or involving Namibia in a manner consistent with that responsibility (. . .)

4. Declares that South Africa's continued illegal presence in Namibia constitutes an internationally wrongful act (. . .)

7. Declares that all matters affecting the rights of the people of Namibia are of immediate concern to all Members of the United Nations and, as a result, the

13. Namibia Opinion, *supra* note 5, at 163 (Separate Opinion of Judge Dillard).

14. Effects of Awards of Compensation by the United Nations Administrative Tribunal, I.C.J. Reports (1954).

15. Namibia Opinion, *supra* note 5.

latter should take this into account in their dealings with the Government of South Africa, in particular in any dealings implying recognition of the legality of, or lending support or assistance to, such illegal presence and administration; (. . .)

12. Declares that franchises, rights, titles or contracts relating to Namibia granted to individuals or companies by South Africa after the adoption of General Assembly resolution 2145 (XXI) are not subject to protection or espousal by their States against claims of a future lawful Government of Namibia (. . .)

On the strength of the Security Council resolutions and the opinion of the International Court of Justice alone, one must conclude that the exploitation of Namibian natural resources under a presumed South African grant of authority is a delict of international law. Decree No. 1 compounds that illegality.

Enforcement

Without physical access to the territory, the United Nations lacks the capability to directly control Namibian natural resources. The Decree, however, suggests the possibility of enforcement through litigation in the national courts of other States. For example, shipments of Namibian resources could be tracked into countries of intermediate or final destination. Actions for seizure and forfeiture could then be brought in the appropriate courts of those countries, asserting that any title to the resources derived from the South African administration was invalid and naming the Council as the rightful owner.

The success of such litigation would vary from country to country based on a number of factors. An action for seizure of Namibian goods will probably fail if brought in the courts of countries which do not recognize the power of the General Assembly to revoke the Mandate of South Africa or to create a subsidiary organ to administer Namibia pending independence or the power of the Council to adopt decrees that have legal implications for UN member states.

For many national courts, the resolution of these issues is predetermined by executive foreign policy decisions. Doctrines that mandate separation of powers between judicial and executive branches of government would thereby render certain of these foreign policy issues nonjusticiable.Further, in the United States, and possibly other countries, the plaintiff would have to challenge the applicability of "the act of state doctrine," which in certain circumstances precludes US courts from examining the validity of the acts of foreign governments (in this case presumably South Africa).

Some countries, like the Netherlands, consider Decree No. 1, as the first legislative act of the Council, to be a domestic law of Namibia and would,

at least potentially, recognize it as such in any action brought in Dutch courts to seize Namibian goods.

Courts which do not give recognition to decrees of foreign States may nevertheless apply the Namibian decree since the foreign authority from which it emanates is unique. The Council is not an entirely foreign authority in that it was created by the international community and acts in its interests. All states are addressees of several General Assembly resolutions requesting the full application of the Decree. This makes the Decree of higher status than a decree of a foreign State. It is an instrument with international implications for all UN member States.

Even in States whose governments recognize the international status of the Decree or the obligation established by Security Council Resolution 301 (1971) to recognize the invalidity of concessions granted by South Africa relating to the exploitation of Namibian resources, the courts may lack the capacity to enforce certain international legal obligations in the absence of domestic enabling legislation.

These impediments to successful litigation to enforce Decree No. 1 are in some cases political in nature, and in other cases constitutional in nature. They should in neither case be considered insurmountable.

Proposals for Action

The following activities would enhance the likelihood of effective legal actions in appropriate courts to enforce Decree No. 1 for the Protection of the Natural Resources of Namibia.

1. Extensive publicity should be given to the Decree by having it further published in the appropriate legal, financial and other journals together with a statement by the Council of its intention to take legal action against those acting in contravention of the Decree.

2. The Council might usefully add a penalty clause to the Decree and notify corporations in violation of the Decree that fixed penalties are being assessed and compounded periodically. This would lay a necessary foundation for a stockholder's derivative suit against corporate directors for waste of corporate assets.

3. Further studies of Namibian resources should be undertaken to determine the routes by which they are transported and to what intermediate or final destinations. Even if the legal problems relating to seizure of Nami-

bian goods are resolved, seizure can only take place where the goods are located. Further, if a suit is to be successful, it would be necessary to offer concrete evidence that the goods whose forfeiture was being sought had originated in Namibia.

4. Legislation should be proposed in countries where it is necessary, to create additional remedies effective in domestic law to implement the Decree. For example, domestic laws could be amended to authorize seizure and forfeiture by customs officials of any or all resources originating in Namibia. Corporations or individuals found to have in any way disposed of Namibian natural resources without authorization by the Council could be subjected by law to penalties equivalent to the market value of those commodities, those penalties to be held in trust for the future lawful Government of Namibia.

5. Legislation should be introduced in all countries involved in uranium shipment and /or processing that would require raw uranium to display a certificate of origin before import, export or enrichment, and would require nuclear processing and enrichment plants to verify such certificates of origin under penalty of prosecution.

The International Monetary Fund and Namibia

Jim Morrell

International Monetary Fund assistance to South Africa has enormous significance for the future of Namibia. IMF loans to South Africa greatly encourage transnational investors in both the South African and Namibian economies.

IMF statistics include Namibia as a part of South Africa, even though the World Court held South African occupation of Namibia illegal in 1971. The IMF thus implicitly recognizes South Africa's occupation.

The recent $1.1 billion loan by the IMF to South Africa, the largest in South Africa's history, roughly equals the cost of the war in Namibia and Angola over the past two years. Under the South African economic retrenchment plan inaugurated this year, aggregate non-military expenditures are held nearly constant, leaving the military the fastest-expanding budget item. The IMF's loans may be fairly said to cover the costs of the Namibian campaign.

As London's International Institute for Strategic Studies reported,

> The costs to South Africa of carrying the war to her neighbors, and particularly her highly aggressive campaign in Angola, were substantial. Her defense budget rose by 30%, to a record level of almost $3 billion for 1981/82. Furthermore, by keeping under arms the large numbers of skilled men needed to support highly mobile warfare in Angola, the government was depriving the civilian economy of badly needed technical expertise.[1]

South Africa received $464 million from the IMF in 1976. That year it increased defense expenditures by $450 million. Total non-defense expenditures declined in real terms.

IMF money goes into the treasury of the recipient government which may use it for any purpose. There is absolutely no bar to South African use of the money for the war in Namibia or any other purpose.

If the price of gold falls, South Africa will be back at the IMF for a minimum of four hundred million, but more likely a billion dollars, within

1. Strategic Survey 1981-1982, London, 1982, p. 112.

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the year.[2] After it borrowed $93 million in January, 1976, it was back for second and third helpings in August and November, bringing the total for the year up to $464 million.

Therefore, the world community must devote particular attention to the relationship between the IMF and South Africa if it hopes to achieve independence for Namibia. Loans from the IMF confirm South Africa in its illegal occupation of Namibia.

A review of the recent loan will suggest ways of preventing a new one. Here it is essential to recall that in 1976 no nation formally opposed South Africa's three loans. The United Nations, although it had asked the IMF not to assist South Africa, made no special effort to enforce its resolutions.

This time, executive directors representing sixty-eight nations opposed the loan to South Africa at the November 3, 1982 executive board meeting of the IMB.[3] In the United nations, the General Assembly voted 122 to 3 against the loan, with 23 nations abstaining. Newspapers around the world covered the issue. In the U.S. Congress, the Congressional Black Caucus, the House Africa subcommittee chairman, the House foreign aid appropriations subcommittee chairman, and thirty-five other members of Congress wrote the Treasury Department opposing the loan. In Britain, the Labour Party spokesman Denis Healey, former chancellor of the exchequer, opposed the loan. In Canada, Pauline Jewett, foreign policy spokesperson of the New Democratic Party, questioned the government in parliament. In Holland deputies questioned the government.

The unprecedented show of opposition made this loan a Pyrrhic victory for South Africa. The $1.1 billion encouraged foreign investors, but the controversy surrounding it deeply disturbed them. Thus we have the opportunity before us to see that this loan, the largest IMF loan to South Africa, is also the last.

The particular opportunity is the prospective doubling of IMF quotas planned for next year, and the planned creation of an ad hoc loan fund attached to the IMF. Doubling of quotas would require contributions of $65 billion, largely from the industrial and oil-exporting countries. Financing the loan fund would require help from Saudi Arabia, who spoke strongly against the South Africa loan at the IMF meeting on November 3, as well as assistance from the industrial countries.

Fulfillment of these quota increases and contributions will require legislative consent of all IMF member countries who have legislatures. Coming at a time of budget stringency, these quota increases will require all the political support they can get.

2. Gold prices have not declined, and South Africa has not asked for additional funds. Only $602 million of the allocation has been drawn, and on June 30th South Africa announced that it would repay the loan ahead of schedule. (Washington Post, June 21, 1983.)

3. See appendix, pp. 17-18.

For the sake of world economic recovery, for the assistance of Third World economies, there is a strong case to be made for funding the IMF quota increase and loan facility. A multilateral solution to the world economic malaise must be sought. But basic humanitarian concerns — including the basic right of the people of Namibia to be rid forever of apartheid and live in dignity in their own country, governed by their own selected leaders — must not be overlooked in the process.

Therefore this conference should appeal to governments, legislatures, and a widening circle of concerned citizenry to condition their future contributions to the IMF on the adoption of minimum human rights standards.[4] The standards should govern how each country votes in the IMF. This can be done as a matter of national policy without requiring changes in the IMF charter.

Any country can oppose any loan from the IMF for any reason, or need not give any reason at all. A country may oppose an IMF loan for humanitarian reasons — Britain and Scandinavia twice opposed IMF loans to Chile in 1976 on these grounds — without violating any law or obligation. A simple majority of weighted votes can block a loan.

In the last loan to South Africa, if West European countries beyond Ireland, Greece and Malta had spoken against the loan instead of for it, and the Latin American countries had spoken against instead of keeping silent, the loan would have been defeated. A majority is certainly attainable given the requisite will.

A model legislative form is the human rights amendment as enacted into law in the United States since 1976. In all the other international financial institutions besides the IMF — all with the same nonpolitical charter — the United States has voted 128 times since 1976 to oppose loans to sixteen human rights violators. The votes have gone against dictatorships of the right and the left — an astonishingly nonpolitical result of what was supposed to be a fatal injection of politics. They added to the pressure for improvements in several countries and destroyed no bank or fund.

In the United States, concerned legislators and citizens should give particular attention to the Harkin human rights amendment, which the House extended to the IMF in 1978 by voice vote. The measure lost in the Senate and was dropped in conference.

If the Senate had passed that law, or if the House had rejected the conference report and insisted on the original language, then the ad-

4. As we go to press, the IMF has agreed to terms for this quota increase and President Reagan has called on Congress to vote promptly and favorably on funding the U.S. share. (NY Times, Sept. 28, 1983.) The opportunity to include such a condition is therefore before the congress now. An amendment along these lines was adopted by the House Banking Committee earlier this year and is included as Section 305 of the bill before Congress. (Washington Post, May 4, 1983.)

ministration would have been required under the law to oppose the recent IMF loans on November 3. For South Africa, with its grossly inhuman system of apartheid and its illegal occupation of Namibia, is easily the worst human rights violator in the world. The State Department human rights reports describe the evil of South Africa's skin-color oppression in unmistakable terms.

A majority is almost certainly available in the House for such an amendment; it only requires a devoted and articulate constituency, which it has now in the Congressional Black Caucus and other concerned members.

Abroad, allocation of the money the IMF seeks will in one guise or another require the support of the enlightened constituency of voters who support humanitarian foreign aid. These voters, and their parliamentary representatives, should insist on minimum human rights standards as a condition for making this money available to the IMF. Whether the approach be the Harkin amendment — itself modeled on language from the UN Universal Declaration of Human Rights — or some other concept, the principle should be accountability to human rights. There would be a minimum, objective, apolitical standard to be met before a country's executive director could assent to any loan from the IMF. Such a standard would prevent future loans to South Africa.

If such a standard were adopted by IMF member countries, there would be no need to earmark contributions explicitly or implicitly, to prevent them from going from South Africa. Earmarking would indeed present legal problems to the IMF, which has consistently said it cannot accept contributions so conditioned. Nor would there be need to amend the articles of agreement, a complex process.

As South Africa's intransigence on Namibia becomes intolerable to the world community, the next logical step is cutoff of IMF assistance. The IMF is the last international agency assisting South Africa. Now that South Africa has borrowed one and a half times the total amount in gold and rands that it deposited with the IMF, any further assistance comes purely from the international community and is in no practical sense a drawing right of South Africa's or a recoupment of previous deposits. Under the IMF's rules, the South Africans have access to a potential maximum of four billion dollars more from the IMF. This is all other people's money.[5]

Thus the circle of concerned citizenry around the world pressing for Namibia's freedom should put IMF assistance at the top of their action agenda. There is no way we can dissuade multinational corporations from investing in Namibia or South Africa itself as long as the regime receives assistance from this multilateral financial aid fund.

5. Subsequent to the vote, a strong case against the South African loan has been made on purely economic grounds, and these criticisms were included in an IMF staff report to the directors on June 30, 1983. (Washington Post, July 26, 1983.)

Appendix

Votes of the IMF Executive Directors on Loan to South Africa, November 1982

Votes are weighted in relation to the percentage of total contributions to the Fund. Six countries have appointed direct representation, the votes of the others are cast through directors elected by groups of countries, arranged more or less geographically. The first named country in each group supplied the elected director, with the alternate from the second (in parentheses). Remaining countries in the group follow.

Direct representation through appointed directors.

	Total votes[1]	% of Fund[2]	Vote on SA loan
U.S.	126,325	19.64	Yes
U.K.	44,125	6.86	Yes
FRG	32,590	5.07	Yes
France	29,035	4.51	Yes
Japan	25,135	3.91	Non-voting
Saudi Arabia	21,250	3.30	No
Elected representatives for groups of nations			
Mexico (Venezuela) Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Spain	31,325	4.87	Non-voting
Canada (Ireland)* Bahamas, Barbados, Dominica, Grenada, Jamaica,* St. Lucia, St. Vincent	26,944	4.19	Yes
Netherlands (Netherlands) Cyprus, Israel, Romania, Yugoslavia	26,885	4.18	Yes
Italy (Greece)* Malta, Portugal	25,255	3.93	Yes
Australia (Philippines) Korea, New Zealand, Papua New Guinea, Seychelles, Solomon Islands, Western Samoa	23,586	3.67	Non-voting
Libya (Iraq) Bahrain, Jordan, Kuwait, Lebanon, Maldives, Pakistan, Qatar, Somalia, Syrian Arab Republic, United Arab Emirates, Yemen Arab Republic, Yemen, People's Democratic Republic of	22,864	3.56	No
Belgium (Austria) Luxembourg, Turkey	22,765	3.54	Yes.
India (Sri Lanka) Bangladesh	21,990	3.42	No

Iceland (Norway) Sweden	21,440	3.33	Non-voting
Uganda (Guinea) Botswana, Burundi, Ethiopia, Gambia, Kenya, Lesotho, Liberia, Malawi, Nigeria, Sierra Leone, Sudan, Swaziland, Tanzania, Zambia, Zimbabwe	20,390	3.17	withheld approval by reserving position
Indonesia (Thailand) Burma, Fiji, Lao People's Dem. Rep., Malaysia, Nepal, Singapore, Vietnam	20,124	3.13	Absent
Brazil (Dominican Republic) Colombia, Ecuador, Guyana, Haiti, Panama, Suriname, Trinidad and Tobago	19,995	3.11	Non-voting
Iran (Morocco) Afghanistan, Algeria, Ghana, Oman, Tunisia	18,385	2.86	No
China	18,250	2.84	No
Argentina (Peru) Bolivia, Chile, Paraguay, Uruguay	17,520	2.72	Non-voting
Cameroon (Niger) Benin, Cape Verde, Central African Republic, Chad, Comoros, Congo, Djibouti, Equatorial Guinea, Gabon, Guinea-Bissau, Ivory Coast, Madagascar, Mali, Mauritania, Mauritius, Sao Tome and Principe, Senegal, Togo, Upper Volta, Zaire	14,351	2.23	withheld approval by reserving position
Totals	630,529[1]	98.052	

1. Voting power varies on certain matters pertaining to the General Department with use of the Fund's resources in that Department.

2. Percentages of total votes in the General Department and the Special Drawing Rights Department (643,098). The sum of the individual percentages may differ from the percentages of the totals because of rounding.

3. This total does not include the votes of Antigua and Barbuda, Belize, Bhutan, Egypt, Democratic Kampuchea, Rwanda, South Africa, and Vanuatu, which did not participate in the 1980 Regular Election of Executive Directors. The combined votes of those members total 12,569 — 1.95 per cent of those in the General Department and the Special Drawing Rights Department.

*Although these four countries, Ireland, Jamaica, Greece and Malta, were in groups whose elected director voted "yes," they asked to be recorded "no."

Source: Center for International Policy, Aid Memo, January 6, 1983.

American Corporate Investments In Namibia

Allan D. Cooper

American commercial interests are by no means newcomers to Namibia. In fact, Americans have been exploiting Namibia's resources from a time predating the American Revolution in the 1770s. By the 1820s United States commercial involvement had become significant enough to warrant proposals for American colonization of Namibia. While these schemes failed to attract a consensus among government policymakers, U.S. private interests continued to invest in the southwest African territory. Today, American transnational corporations play an influential economic role in South Africa's persistent illegal occupation of Namibia.

This paper reviews the history of American commercial interests in Namibia, and analyzes the types of U.S.-based transnational corporations that have come to invest and trade with Namibia. In brief, we will explore what role American transnational corporations have played in the maintenance of South African rule over Namibia, and assess the impact U.S. transnationals have in the current state of the Namibian economy. Furthermore, we will discuss the political implications represented by these investments regarding the U.S. Government's leadership in the negotiations aimed at resolving the Namibia dispute.

Historical Overview

America's initial commercial interest in Namibia centered on the territory's prolific whale stocks. From the 1760s through the 1780s New England whalers were competing with Great Britain for control over Namibia's whale stocks from which oil was derived for use in street lighting, paints, lubricants, and tanning hides. By the 1820s American whalers came to dominate the whale resources off the coast of Namibia and were establishing significant inroads into the mineral and cattle markets on the mainland.

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In the 1820s proposals were offered in the U.S. to colonize Namibia. Benjamin Morrell appealed to the U.S. Government to support his colonial scheme for Namibia, arguing

> There can be no doubt that a vast field for commercial enterprise remains to be developed in this part of Africa . . . I ardently hope and trust that my country will be the first to engage in exploring this interesting region of the World and open its boundless riches to her adventurous sons. I for one, should glory in leading the way, being perfectly willing to encounter all personal hazard which might attend a solitary pilgrimage across the Continent, for the purpose of opening a permanent and lucrative trade with different tribes and nations.[1]

The U.S. Government refused to directly encourage the colonization of Namibia yet they offered no interference to Americans wishing to exploit Namibian resources. By the 1840s Americans had rendered extinct Namibia's whaling stocks and, largely because of the trade in hides, American trade with Namibia and South Africa became second only to Great Britain's.[2] Even after Germany formally colonized Namibia in the 1880s U.S. commercial interests continued to be active in Namibia, especially in the copper industry. By the end of German colonization the United States accounted for 7% of all exports from Namibia, second only to Germany's 82%.[3]

U.S. Transnationals in Namibia

The transfer of political control over Namibia to South Africa during World War One heralded a new age for American commercial interests in the southwest African territory. In particular, it was during this period that U.S. transnational corporations first began trading in Namibia. The initial penetration of the Namibian economy was by U.S. transportation corporations — automobile firms such as General Motors, Ford, and Chrysler, and shipping companies such as Farrell Lines and Robin Lines. These transportation enterprises made operational a means of trade with which to facilitate further economic expansion into Namibia by other U.S. transnationals.

The next American industry entering Namibia was the fashion fur trade. Karakul wool, marketed as "persian lamb" in the U.S., has been produced in Namibia since the early 1900s when German colonialists began importing karakul sheep from Russia. But after South Africa took control of Namibia, Americans assumed an instrumental role in the development of this industry. During this time the American fur trade was dominated by individual fur traders or partnerships. Foremost of the American fur traders

1. Eric Rosenthal, "Early Americans in South West Africa," South West Africa Annual, 1972, pp. 25-27.

2. Alan R. Booth, The U.S. Experience in South Africa 1784-1870 (Cape Town: A.A. Balkema, 1976), p. 89.

3. Peace Handbook: German African Possessions (Wilmington: Scholarly Resources, 1973), p. 92.

in Namibia was Georg Geronimus who first introduced direct marketing of karakul from Namibia to the United States in the 1920s. Geronimus also pioneered the production of grey karakul in Namibia whose export market the U.S. continues to dominate.[4]

Immediately after World War Two U.S. transnational corporations began to invest directly in the mineral resources of mainland Namibia. The first American company to establish production facilities in Namibia was the Tsumeb Corporation, a business syndicate controlled by two U.S. transnationals, Newmont Mining Company and American Metal Climax. Control over the Tsumeb Corporation's four million shares have changed only slightly since the company's establishment in 1947, primarily due to the fact that Tsumeb is a private company whose shares are not publicly traded. Current shareholder ownership is illustrated below.

TABLE I
Shareholder Control of Tsumeb Corporation

Shareholder	Nationality	% Control
Newmont Mining Corporation	U.S.	29.6
American Metal Climax (AMAX)	U.S.	29.6
Selection Trust Ltd.	U.K.	14.2
O'Okiep Copper Co.	U.S.	9.5
Union Corporation	S.A.	9.4
South West Africa Co. Ltd.	U.K.	2.4
De Beers	S.A.	2.4
Other shareholders		2.9

Sources: Barbara Rogers, Foreign Investment in Namibia (New York: U.N. Council for Namibia, 1975), p. 18; Financial Mail, April 9, 1965, p. 102.

The Tsumeb mine has been Newmont Mining's most profitable operation, and according to one source, "No mine . . . ever returned so large a cash flow for such a relatively small investment."[5] The annual average rate of return on the original investment has been estimated at 347.79% for every year during 1954-1974.[6]

Other U.S. transnational corporations joined Tsumeb in directly investing in Namibia's mining sector after World War Two. Bethlehem Steel Corporation was the most active U.S. steel company to invest overseas, and their involvement in Namibia formally was initiated in 1952 when the Administra-

4. "Romance Brought and Perseverance Develops a Distinctive Breed: The Grey Karakul," South West Africa Annual, 1968, p. 109.

5. See Barbara Rogers, Foreign Investment in Namibia (New York: U.N. Council for Namibia, 1975), p. 18.

6. Ibid.

tion of South West Africa granted Bethlehem Steel a Deed of Grant to prospect in six areas of Namibia. In one of these areas near Kaokoveld some 500 million tons of medium to high grade iron ore was located, but production was not carried out since it would have required the building of a mining community, a railway, and an Atlantic harbor at Mowe Bay.[7] The resource is now held as a minerals claim by Desert Finds (Pty) Ltd.

The early 1950s also saw the introduction of U.S. fishing companies to Namibia. These companies, such as Del Monte and Star Kist, were less inclined to directly establish manufacturing facilities at Walvis Bay. Rather, these California fishing interests sold their processing equipment to local manufacturers and then purchased the finished product on a consignment basis. This system functioned well through the 1960s and 1970s with nearly a dozen different brands of Namibian sardines being distributed in the U.S. in the mid-1970s.

The last major economic sector to enter Namibia was the offshore mining industry. In the early 1960s there was a concerted effort by U.S. transnationals engaged in petroleum and diamond mining to prospect for these deposits on Namibia's coast. Those U.S. transnationals exploring for diamonds, namely Getty Oil Company and Marine Diamond Corporation, were much more successful than their petroleum-seeking counterparts, although transnationals such as Mobil Oil and Caltex have done quite well in the marketing and distribution of petroleum and petroleum products in Namibia.

Contributions to the Illegal Occupation

In 1966 the U.N. General Assembly revoked South Africa's mandate over Namibia, and the U.N. Council for Namibia assumed responsibility over the territory. One might have expected that this diplomatic milestone would have resulted in fewer transnational corporations becoming interested in trading with Namibia but just the opposite occurred. Beginning in 1967 the number of U.S. transnational corporations engaged in Namibian trade began to proliferate, and this corporate interest in Namibia was sustained even after the 1971 International Court of Justice decision ruling all commercial contracts with the South African administration in Namibia to be null and void. The most recent phase of corporate involvement consists of U.S. transnational subsidiaries based in South Africa establishing retail or marketing outlets in Namibia during the 1970s. This trend would suggest a relative overdevelopment of the South African consumer market by these U.S. transnational corporations.

7. Ibid, p. 26.

Altogether, about 170 U.S. transnational corporations have been involved in some manner of trade in or with Namibia in the past sixty years; approximately 150 of these transnationals trade in Namibia today. Of these, however, only about 65 have a direct presence in Namibia.[8] Most of the other corporations offer their products in Namibia from their sales outlets in South Africa. Still others, such as Engelhard, Buell Engineering, International Minerals and Chemicals Corporation, Tri-State Zinc, Inc., and Damson Oil have indirect or minority investments in Namibia which are controlled by other transnational corporations.

Of the 170 U.S. transnational corporations trading with Namibia over the past decades, over 70% entered Namibia after the 1966 termination of the South African mandate. Less than 10% of these U.S. transnational corporations have withdrawn since the 1971 World Court decision and most of these were petroleum companies which were unsuccessful in discovering significant oil resources. Only two American companies ceased operations in Namibia as a result of direct intervention by the U.S. Government. Weatherby Inc. of California terminated rifle sales to Namibia in 1974 following a ban on these sales by the U.S. Department of State. This ban followed reports that white farmers in Namibia had been using the rifles as part of their semi-official militia organized against SWAPO.[9] The other U.S. company forced to cease its trade with Namibia was the Fouke Company of South Carolina which was denied a license by the U.S. Department of Commerce in the mid-1970s to import Namibian seal skins since the slaughter of these seal skins violated the U.S. Marine Mammals Protection Act of 1972. It should be noted, however, that the Commerce Department acted on this application only after legal motions were filed by the Congressional Black Caucus and the Lawyers Committee for Civil Rights Under Law.[10]

Most of the attention devoted to U.S. transnational corporate involvement in Namibia has centered on the larger mining concerns, which employ thousands of Namibians and provide millions of dollars in taxes to the South

8. These companies include Tsumeb, Bethlehem Steel, Nord Resources, Phelps Dodge, Zapata Nomess, Hanna Mining, Marcona, O'Okiep, Superior Oil, Getty Oil, Brlund Mines, Mobil Oil, Caltex, Union Carbide, Delaware Nuclear, Midwest Uranium, Southern Uranium, Tristate Uranium, Gulf Oil, U.S. Steel, Utah Mining, Hertz, Avis, Budget, Coca Cola, Pepsico, Goodyear, Singer, Kodak, Moore McCormack Lines, Lykes Corporation, General Electric, Ingersoll Rand, Texasgulf, Milford Argosy, Bandag, Woodford Oil, Trans-American Mining, Waterford Oil, Canada Dry, Firestone, General Tire, Singer, 3M, Westinghouse, Arthur G. McKee Inc., Burroughs, Galion Iron, NCR, Hoover, Cessna Aircraft, Borden, Olivetti, Computer Sciences, Cummins Engine, Haubiain Inc., Gardner-Denver Inc., Atlas Copco, Ohio-Sealy Mattress Mfg. Co., Sun Chemical Co., Motorola Inc., Piper Aircraft Corp., Tupperware, Commodore International, EMI Music, and the Nashua Corporation.

9. United Nations, Report of the Special Committee on the Situation With Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, Vol. II, UN GAOR: 13th Session, Supplement No. 23 (A/10023/Rev. 1), 1977, p. 138.

10. See Allan D. Cooper, United States Economic Power and Political Influence in Namibia 1700-1982 (Boulder: Westview Press, 1982), pp. 88-89.

African administration occupying Namibia. The U.S. transnationals engaged in the wholesale and retail trades, although more numerous and possessing more widespread name recognition, have not received the same notoriety in the broader literature. Yet, in the face of a worsening depression in the Namibian economy U.S. transnational corporations involved in the wholesale and retail trade are playing a more important role in the overall economy of Namibia. As the following chart indicates, the contribution of mining to the Namibian GDP has dropped considerably since 1980 while the wholesale and retail trades increased their share of the GDP during the same period.

TABLE II
Namibia GDP
At Constant 1975 Prices (Rm)

Economic Sector	1980	1981
Agriculture & Fishing	78.6	74.1
Mining & Quarrying	241.9	212.1
Manufacturing	32.4	33.2
Electricity & Water	10.0	13.6
Construction	22.9	26.4
Wholesale & Retail Trade	97.3	102.3
Transport & Communication	48.4	55.3
F[illegible], Insurance, etc.	49.8	46.3
Co[illegible]nity, Social Services	10.5	11.2
General Government	79.6	103.8
Other producers	27.8	28.5
GDP AT FACTOR COST	699.2	706.8

SOURCE: Department of Finance, Namibia/SWA

The contribution of the mining sector to the Namibian GDP is expected to decrease even further during the next year. Tsumeb has acquired the Johannesburg Consolidated Investment's mine at Otjihase and has inherited, consequently, JCI's losses at this mine. It is not clear whether Tsumeb contributed any taxes to the South African administration in Namibia for 1981. In July 1982 Tsumeb announced production cuts and a freeze on hiring at its Tsumeb mine. These conditions are likely to persist considering copper prices are now depressed to the levels of thirty years ago.[11]

Other sectors of the Namibian economy also are severely depressed. Consolidated Diamond Mine's anticipated tax bill for 1983 is only R30 million, compared to R124 million in 1982.[12] Karakul prices and production levels have fallen, and the July 1982 auction of SWAKARA karakul was cancelled due to an insufficient number of pelts.[13] The giant Rossing

11. Windhoek Observer (July 17, 1982), p. 53.

12. Financial Mail (October 22, 1982), p. 378.

13. Windhoek Observer (June 12, 1982), p. 13 and (June 26, 1982), p. 33.

uranium mine begins paying tax this financial year but most of its sales are on long-term contracts which will delay state revenues.[14] Agriculture is suffering from a continuing drought, and the fishing industry is showing only a slight recovery from the pilchard depletion of the late 1970s. Manufacturing has been adversely affected by these economic downturns and is threatened further by the South African Government's policy of encouraging the development of Walvis Bay; current programs offer enterprises that invest in Walvis Bay a 40% rail rebate, employment incentives up to 80% of their wage bill, and relocation allowance.[15] Tourism in Namibia is down 50% from 1981 levels. Some of this drop-off is due to inflation which, although running at 16.25% over the past two years, actually represents a compounded rate of 100% over the past six years.[16]

The only sector of the Namibian economy recording great increases is in general government expenditures which currently stands at 37% of GDP. Much of this spending, however, goes to the military. South Africa contributes R450 million to government spending in Namibia (or nearly half of Namibia's budget) but with South Africa spending R1 million a day on the war against SWAPO it is estimated that the R450 million subsidy only balances the capital drain back to South Africa.[17] The 1982-83 budget for Namibia is R839,591,000 which is equal to 3% of South Africa's own budget, and is a smaller budget than that of South Africa's larger cities. This budget represents an increase of 2.7% over last year but in real terms, given the rate of inflation, this represents a drop of 13%. Domestic revenues in Namibia are expected to be R50 million less than last year, despite a 10% surcharge on individual income tax and a 5% impost on companies.[18]

The consumer market in Namibia also faces increasing hardship due to massive emigration of whites from the territory. The white population in Namibia has dropped 26% from 90,658 in 1970 to 71,530 in 1981.[19] With taxes increasing, it is expected that the consumer market will experience further deterioration.

It is in this context that we can appreciate the contribution of U.S. transnational corporations to South Africa's ability to finance its occupation of

14. Financial Mail (October 22, 1982), p. 378.

15. Ibid. See also, Windhoek Observer (August 14, 1982), pp. 39-40. (The enclave of Walvis Bay is not regarded as a part of Namibia by The Republic of South Africa. In the event of Namibian independence it will seek to maintain Walvis Bay as a part of the Republic, hence this policy. — Ed.)

16. Windhoek Observer (June 19, 1982), p. 12.

17. Financial Mail (October 22, 1982), p. 379.

18. Financial Mail (May 28, 1982), p. 990.

19. Financial Mail (April 9, 1983), p. 161.

Namibia. On the one hand, transnational corporations provide much-needed taxes to the South African administration in Namibia the absence of which would force the South African Government to increase its subsidies to its regime in Windhoek. On the other hand, a complete withdrawal of transnational corporations from the territory might leave an independent Namibia without substantial financial resources that now constitute an important part of its economy. This would force an independent Namibia to seek alternative capital markets with which to finance their own civil administration and could increase Namibia's dependency on these sources of aid.

We have reached a point in the struggle for Namibian independence where transnational corporations are feeling the economic pinch of South Africa's costly occupation of Namibia. In October 1982 the new executive director of the Rossing uranium complex proclaimed that his company would welcome a quick settlement to the Namibian conflict.[20]

Presently, U.S. transnationals in Namibia are cushioned against increasing taxation by South African authorities. Taxes paid to South Africa can be deducted from U.S. corporate income tax. Consequently the American public is indirectly bearing the cost of South Africa's illegal occupation of Namibia. In addition to these indirect expenditures the U.S. Government continues to subsidize those U.S. transnational corporations which extend shipping services to Namibia. Since the 1971 World Court ruling barring such government assistance, the U.S. Government has provided approximately one billion dollars in operating-differential subsidies to Farrell Lines, Moore McCormack, and the Lykes Corporation.[21] Moreover, it is important to note that South African expenditures to occupy Namibia are derived from sources internal to South Africa, including taxes from U.S. transnational corporations based in the Republic. In short, the financial contribution alone of U.S. transnational corporations in Namibia and South Africa, as well as the U.S. Government itself, play a significant and strategic role in South Africa's ability to occupy Namibia illegally.

The Political Implications

Clearly the United States is not a neutral observer in the process leading towards Namibian independence. The U.S. Government and its transnational corporations continue to violate international law in order to provide the financial and technological support South Africa needs to maintain its occupation of Namibia. At the same time the U.S. Government has taken upon itself the task of orchestrating a negotiated settlement to the Namibian conflict. The outcome of these negotiations has been, thus far, an extended postponement of Namibian independence, an accumulated exploitation of Namibia's economic resources, and prolonged suffering of the Namibian people. If the United States government were serious about mediating the Namibia

20. "RTZ Presses for Quick Settlement in Namibia," Grandnes (October 18, 1982).

21. Cooper, op. cit., p. 99.

dispute it could threaten to use its economic resources in white-controlled southern Africa to effectuate political change in Namibia. An American threat to comply with international law would, in itself, constitute substantial pressure on the South African Government to end its control of Namibia.

A failure by the United States to force South Africa to end its occupation of Namibia only invites SWAPO to expand its guerrilla war of attrition against the apartheid regime. The temptation for SWAPO to introduce outside military forces, as was necessary in Angola's post-independence struggle against Pretoria, may increase greatly if South Africa continues to ignore U.N. Resolution 435 which brings about U.N.-supervised elections in Namibia. Inevitably this will increase the human costs of Namibian independence and pose greater opportunities for direct superpower involvement in southern Africa. An expanded war in southern Africa most certainly will pressure the United States into the undesirable position of coming to the assistance of the white minority regime.

For the time being, South Africa is willing and able to pay the costs of holding on to Namibia. Although Pretoria spends more on occupying Namibia than it derives from the exploitation of Namibian resources, the net loss constitutes an insignificant fraction of the South African budget. The cost of the war in Namibia is made even more affordable for South Africa by the contributions of American transnational corporations trading with South Africa, as well as from recent billion dollar loans from the International Monetary Fund secured through American efforts. Still, the hope remains that the United States will bring itself into compliance with international law by terminating U.S. trade with the South African administration in Namibia, and by persuading South Africa to begin the implementation of U.N. Resolution 435.

Editor's Note: Professor Cooper's manuscript included an appendix listing by name 163 U.S. corporations doing business in Namibia. The date of arrival is included for 60 of these, and the date of departure for 12, with four others indicated as having left at an unknown date. It proved impossible for us to print this appendix, but we will supply it to any reader who sends a self-addressed stamped envelope.