

On Tuesday 14 November Ahtisaari, again speaking from the steps of UNTAG-HQ at Troskie House, certified that the electoral process in Namibia had at each stage been free and fair, and that it had been conducted to his satisfaction:

Its youngest democracy has given the whole world a shining lesson in democracy, exemplary as to commitment, restraint and tolerance. Accordingly, in this election, there have been no losers: the whole people of Namibia have been victorious, united in their dedication to peace, reconciliation and the future.

(Noisy applause from the press.)

#### *Wednesday, 15 November 1989*

We had lots of congratulations today, starting off with the Security Council. Evidently, everybody in New York is relieved and gratified and excited and they all feel it's their achievement too. Indeed, we seem to have a vast success on our hands. Good, the UN certainly needs it. The political counsellor at the Zimbabwean mission, Chris Mutsvangwa – Frontline Chris – who has more or less taken up permanent residence in our outer office since last April, came. He was gracious, exuberant, ecstatic about the process and result and, he said, about how good we'd been. "I didn't trust you people one inch, but in the end you ran the South Africans off their feet. They never dreamt, in their worst nightmares, you'd get such a grip on everything."

Ho ho, said I, so what was all that stuff about our being racist sell-outs all through the last seven months? Frontline Chris said he'd only just come to understand our strategy over the last month or two. The Indians said something similar. Congratulating us over dinner, they said they hoped we hadn't minded too much, or taken personally, some of the things they'd been instructed to say. "We of course knew it wasn't true – but we had to be sure you kept the South Africans by the throat."

It's nice, of course, to get such applause. Such polished compliments, such undiplomatic honesty, such exaggerated congratulations. I wonder, though, how many would we have had if the outcome of the incontrovertibly free and fair elections had been a reversal of the DTA/SWAPO ratio of votes?

We sat last night, half a dozen of us, drank a lot of champagne, massacred many oysters, tried to feel celebratory. But our mood was subdued, anti-climactic. For Namibia, today's declaration of results made 14 November 1989 the day that mattered. But, for us, Saturday's certification of the electoral process was the high point. "Who won?" was certainly interesting. But it was an almost academic issue. What was important was how fairly and efficiently we felt we ourselves had completed the process of national self-determination for this appallingly assaulted people. Exhausted, emotionally and physically, we stumbled off early to our beds. It's been a hard day's seven months.

#### *Saturday, 18 November 1989*

Driving north this morning to weekend at Etjo I met huge SADF convoys trundling slowly south, accompanied by a handful of UNTAG monitors.

Some were two kilometres long. Some rested at the side of the straight, interminable, two-lane road that runs north-south for 200 kilometres from Okahandja to Otjiwarongo.

Half their soldiers look like teenagers. Most are, indeed, young conscripts. Every ten miles or so another convoy rumbles along. Huge hordes of "the brutal, racist, occupying forces", going home to mum. Tomorrow, some may be having Sunday braai with the family in the back garden.

What nonsense all this dehumanising rhetoric for war has been. Everybody knows how much these young people have hated and despised the conflict into which most feel they've been dragged in defence of policies they loathe.

Quite a few, seeing my UN decals, flashed their lights and waved. I pulled over to the verge to take pictures. They waved even harder, jumping up and down. Some with SWAPO/ANC clenched-fist salutes, posing for their pictures – hilarious, ecstatic. They think everybody's their friend, now.

One young soldier, thin as a wafer, leans forward in the turret of an armoured personnel carrier, chin in hands, staring out across the vast, empty Namibian bush; craggy, purple mountains rising sheer from the pale-gold veld.

Further north, a tragic scene. A truck has overturned; medics and stretchers and a deep, ominously still ring of soldiers.

The end of their Namibian adventure. This week, especially, one feels the passage, the thrashing wings, of history, thrusting all aside.

### THE CONSTITUENT ASSEMBLY

#### *Tuesday, 21 November 1989*

The Settlement Plan provides for the newly elected Constituent Assembly to convene one week after the election of its members has been certified and, today, it did.

Last evening, we'd met with some of the SWAPO leadership to discuss the likely work of the Assembly, how they saw the start of governmental functions, how UNTAG could help, and how it might all fit together. Ahtisaari, Legwaila, Fanning, Opande and myself dined with Theo-Ben Gurirab, Hidipo Hamutenya and Ernst Tjiriange, SWAPO's legal chief. We'd also been speaking with other leadership people each of us knew. Earlier yesterday I'd talked with Peter Katjavivi, outlining the kind of help we could provide – as regards the police, the creation of a new army, the loan of managerial personnel, other technical assistance for development, and financial help. And, also important, the kinds of things UNTAG could not do. We could not, for example, conduct direct policing. Nor could we be drawn into constitutional debate, other than being assured that the Constitutional Principles were effectively enshrined. I told Peter of our continuing concern about the potentially disruptive role of SWABC, and said that we could also provide general assistance to the Assembly. Peter was going back to talk to Sam [Nujoma] about it all.

We have the impression that SWAPO hadn't really foreseen that they might have to spring into action. We talked with Theo-Ben and the others especially

about the ramifications of the police problem. SWAPOL was simply disintegrating in some parts of the country and there was only so much we could do. We ought to be putting a proposal together for recruitment and training within the next ten days so as to avoid any kind of vacuum at independence. But our discussions didn't stay focused for long, and soon we began swapping election stories. The SWAPO people spoke of how "incredibly supportive and accommodating" the South Africans were being. We felt they weren't yet quite clear about what they could do at this stage before a shadow government was appointed. They still seemed a bit dazed.

Ahtisaari suggested that their first need might be for accurate information, and that they might want to stay in touch with me on general political developments throughout the country until they had their own networks in place. He said that our information from all over Namibia is now second to none and was updated at least every morning. We could brief them as desired.

The SWAPO guys were especially nice to me, someone suddenly recounting again what they said was one of the high points when, as they put it, I'd "finally destroyed" *Koevoet's* founder and chief, Hans Dreyer – and therefore also *Koevoet* – in an epic encounter. "Ha," said Joe, "you should have seen him with the AG and the police generals over what SWAPOL was up to in Katutura!" It's always good to hear nice things about yourself from people whose judgement you respect, and, after the way the colleagues in New York have been kicking me around while I've been out here, well ...

We spoke about Paul Szasz, whom Martti has asked to attend the Assembly and keep us informed about events and trends there. Paul was sent to UNTAG three months ago by New York to keep us in order, but on seeing and hearing the reality down here, he changed his views, just a few days after arrival. Since then, he'd driven the AG to distraction throughout the negotiations on the election laws and on the Assembly Proclamation. Paul was relentless, in his Hungarian-accented English, ripping apart specious arguments presented by Pienaar, who must have been having nightmares about him. Paul has been such a star here. But, then, so many colleagues have been. Whatever will they find for them to do when they get back to New York?

These SWAPO guys think the Assembly will be over very quickly. They say they'll put forward the most liberal and democratic constitutional draft, and everybody "will just have to agree with it". Well, yes, Theo-Ben. But ... certainly there are great advantages in doing this fast. They could have the Constitution adopted by mid-February. But drafting, and negotiating a draft, almost always take so much longer than one imagines.

It was a most amiable evening. Theo-Ben kept taking notes. But are we not a bit too soon for this kind of conversation? OK, we don't have much time. But maybe we shall just have to settle for a good bit less than we'd hoped to be able to help them achieve before we leave. They're in charge, now, even if we are the United Nations. I don't think they know enough yet of what goes on here in terms of the machinery of government to decide just what they need, or to be able to choose where to find it. After all, they've been away one hell of a long time, and some realities must be very different to what

they've been propounding to the world in getting their case across over the last 20 years. Well, at least they know we are willing. I guess it's not at all a good idea to hurry them, except in terms of a timetable that is probably inexorable – that laid down by the Council.

Today the Assembly met, morning and afternoon. Hage Geingob of SWAPO was elected Chairman and a series of conciliatory speeches were made by the various party leaders. Nujoma referred to the "wonderful co-operation" they had been enjoying with the South Africans. DTA and UDF leaders spoke emphatically about the need to incorporate the "Constitutional Principles" that had been agreed among the parties at the initiative of the Western Contact Group, and incorporated into the Settlement. They reflected a Western liberal ideology but, judging by the attitude of the parties in the Assembly, this was the road the Namibian people wanted to follow.

### THE CONSTITUTIONAL PRINCIPLES

Just prior to the election there had been much confusion and mistrust over the inclusion of the Principles into the new Constitution. Nobody argued with the Principles themselves, but controversy had begun to develop over whether it was right for any external body, even the UN Security Council, to impose such an important part of Namibia's Constitution; and if it did so, then how the incorporation should take effect. This raised complex questions of the inter-relationship of national and international law, and of the nature and location of legal sovereignty in respect of Namibia.

An at times bitter discussion over this highly technical matter had occurred with the AG (especially), who wanted to impose the Principles as a part of South African law in an "AG" ordinance issued by him. It was eventually agreed that the obligation to incorporate was a part of international law, and that Ahtisaari, as the representative of the Secretary-General of the UN, should write to the Chairman of the Constituent Assembly, drawing his attention to the Principles.

But it would, formally at least, be for the Assembly to decide, of its own free will, to accept these basic concepts of freedom under law: inter alia, rights to life, liberty and freedom of movement; freedom of conscience, expression and assembly; the right to due process and equality before the law; freedom from discrimination; freedom from torture and arbitrary expropriation; and, the right to effective judicial remedies, should there be any allegation of infringement of rights.

Many people thought that a letter from Ahtisaari was all very well, but what would happen if the Assembly, or a major party, declined to comply with the letter and the Principles? The AG's answer was that an aggrieved person could bring an action in the South African courts. To us, that was unacceptable, legally or politically. In actuality, there was no clear, purely legal, answer. But a failure to incorporate the Principles would lead down an increasingly bleak political path to non-recognition of Constitution and Government by the UN and its members. In real world terms, it was unthinkable.

An Assembly Chairman having been elected, Ahtisaari's letter to him, recalling the Security Council decision of 1982, that had been in a folder at Troskie and all ready to go, was signed and hand-delivered this morning. SWAPO, with admirable acumen, took its decision.

As the afternoon session began, Theo-Ben Gurirab stood up and proposed, on behalf of his party, that the Assembly should immediately accept the Principles as the framework for the Namibian Constitution. The Assembly, astonished, but by unanimous acclamation, adopted Gurirab's proposal. Excellent timing, not merely preventing the issue from festering, but also further stimulating the atmosphere of national reconciliation that has taken hold in the last months. The timing and circumstances made it, really, a masterstroke.

### THEIR GRANDPARENTS' STRUGGLE

Now I've just come in from being the speaker at a Windhoek school prize-giving – the Holy Cross Convent, here in the centre of town, with mostly what are here called "coloured" kids, aged from 11 to 18. The school told me they'd like my speech to have a "spiritual or religious" content, which was a bit intimidating, as I already felt quite nervous before these hundreds of beady-eyed, no-nonsense, young people. Give me General Dreyer and the commanders of *Koevoet* any day.

I thought I would talk to them about the extraordinary events of the day. How human rights, for which their parents and grandparents had struggled over so many years were, as of today, the cornerstone of their new country, and about how the maintenance of freedom and justice would require their constant vigilance, if what their parents had gained by their determination was to endure. It wasn't exactly one of the greatest speeches ever, but I talked directly to them, and they sat very still, and maybe some of it hit home. And it was short. Some of the sisters weren't too sure that human rights were spiritual or religious enough. But I told them that that was my highest elevation, by far.

### THE FIRST QUARREL OF THE HONEYMOON

The Assembly established an all-party Standing Committee that concerned itself, mainly, with drafting the Constitution. It accepted SWAPO's paper as a draft, and quickly set to work. By early December it was reporting substantial progress, and in early January said that it had agreed on all substantive matters. A draft Constitution was tabled on 25 January.

Meanwhile, however, the first fracas between the media and the Assembly had broken out over what the newspapers called the "secretive atmosphere" in which deliberations of the Committee were being conducted. On 9 January 1990 *The Namibian*, a generally pro-SWAPO daily, published what it said was the current draft, still embargoed. Chairman Geingob stated that the press had no right to publish it, and publicly rebuked *The Namibian*. Its editor, however, understood this as the best form of encouragement, and wrote vigorous leaders about the public interest and the right to know.

The paper recalled our practice, during the pre-election period, of insisting that the AG publish the drafts of laws he was later to discuss with us for three weeks of public comment before we began our joint reviews. Most parties responded, the paper said, and "generally the outcome was acceptable because all had been consulted". The editor, referring not only to the three South African lawyers who had been helping draft the Constitution, but also to the various international bodies that had been given copies for comment, rammed home her point. "Namibians, at the end of a long life of colonialism, know what they want, and generally don't need 'foreign experts' to tell them what they need."

### PREVENTIVE DETENTION?!

*Saturday, 20 January 1990*

Paul Szasz, our standing liaison with the Assembly, came on my return from Christmas. The Assembly is, he said, about to adopt a provision authorising preventive detention. I hit the ceiling, incredulous. It was amazing not only because I thought it would probably be unlawful under international human rights law (and inconsistent with the 1982 Principles) but also because of unsavoury practices that had been followed by both South Africa and SWAPO against Namibians during the long independence struggle, always relying on some form or another of detention without trial. Indeed, many people believed that SWAPO's record in this area, from the mid-seventies on, had harmed their electoral performance, and was one of the reasons why they had failed by such a distance to obtain the two-thirds majority some of its leadership wanted, and others feared.

Yes, well, said Paul, the other part of this problem is that New York doesn't want to know. The ineffable Namibia Task Force is unperturbed by detention without trial, and has told him to leave the matter alone. They clearly don't want friction of any kind with the Assembly, just want to get on with it, and get us out. I think it's appalling – and I bet they'd not endorse it if it were to be included in a European country's Constitution. It's not only a legal issue. The UN will – rightly – get clobbered politically if it accepts this kind of rubbish. Loyal old Paul was a lot more surprised than I that his legal colleagues had not spoken up. I had no such thrilling expectation. As for the rest of the Constitution, we both felt that there was a lot of work still to be done. But that was more difficult for us. We had no right to comment on the Constitution generally, just the human rights and rule of law bits. Well, I'm on familiar ground, here. I guess I've learnt over the years how to deal with this sort of despotism nonsense.

*Sunday, 28 January 1990*

After more unsatisfactory exchanges with New York, Paul and I set off, this weekend, to see some of the senior judges here, whom I know quite well. They were not unanimous – juridical consciousness in this part of the world has often been blunted by the legal abominations put here to shore up

apartheid and colonialism. These have surrounded and coarsened the daily work of the courts. We ended up with Hans Berker, Namibia's Judge President. Berker was clearly relieved to see us and to have the chance to discuss all aspects of the issue.

We all three eventually endorsed Amnesty International's approach, which is that detention without trial is objectionable in principle from a human rights standpoint, but that if it is thought necessary in some kind of extreme emergency situation, then certain basic safeguards must be attached. These limitations were not in the draft. We spent two-and-a-half hours with Berker, and when we left, Paul and I felt even more rock-solid sure of our legal ground. What a joy to have such a meeting of minds with so senior and experienced a judge, and with such an excellent (and funny) lawyer as Paul Szasz. Martti had already given me the go-ahead, if we'd felt confirmed in our views, to do whatever seemed necessary. So Paul drafted a cable, and I spun it politically a bit here and there, took it to Martti for his signature, and sent it off to New York to make their Monday.

The bottom line was that Ahtisaari told them that he is not prepared to certify that this part of the proposed draft Constitution is compatible with the 1982 Principles.

If the Task Force decides to overrule us, on their heads be it. Paul said he didn't see many governments objecting to the preventive detention proposals – they'd just love to have such powers, especially if approved by the UN! It's lawyers, or some of them, and human rights organisations, that'd not be happy. But human rights – in practice, in their often-disturbing reality – form only a small and obscure part of the consciousness of several members of the New York Task Force on Namibia.

History would have judged them harshly. Much better to head History off, this time, though.

Berker also raised the continuing question of SWAPO ex-detainees, and I had to admit to them frankly that I was not satisfied with our work. We must continue to pursue the issue, though I don't know where we go next on it, considering Nigerian Ambassador B A Clark's report on UNTAG's mission last year to Angola and Zambia. We have given South Africa and SWAPO too easy a ride over the many unfortunates last seen in their un-tender clutches.

*Tuesday, 30 January 1990*

Ahtisaari, Legwaila and Szasz went to see Geingob and Gurirab today at the Assembly and told them that the UN would not be able to accept the compatibility of the detention provisions with the 1982 Principles. They would, they said, try to accommodate our concerns – though pretending to resist them as some kind of neo-colonial interference. Huh, what a joke. If I'd been there I'd probably have told Hage to come off it – that prime ministers and foreign ministers have also not been immune to extra-judicial imprisonment, and what often follows. But I guess that was one of the reasons why I wasn't (there). Anyhow, I think we'll hear no more of preventive detention.

## A GOVERNMENT OF RECONCILIATION

The Assembly gave impetus to the search for national reconciliation. Its debates and discussions were moderate and on the whole avoided old wounds. It seemed to some observers, indeed, that reconciliation could even be taken too far – or, at least, to a point where the idea of opposition in the Assembly began to disappear, because the opposition had been incorporated into the government's entourage. Liberal democracy needs a loyal opposition to help keep government on its toes and prevent abuse of authority.

It was a fine gesture when Namibia's initial delegation to the Joint Commission at Sanbonani in November 1989 consisted of Theo-Ben Gurirab and Andrew Matjila of the DTA – each of whom spoke, and supported and endorsed, what the other had said. And it was very impressive when the delegation to the General Assembly of the UN (convened in April 1990 to admit Namibia to membership), though led by SWAPO, was multi-party.

But Gwen Lister, editor of *The Namibian*, had also made an excellent point when she pirated and published a copy of Namibia's draft Constitution that was, in effect, being concealed from the electorate by party consensus. A decade later the absence of an effective opposition in the National Assembly, subjecting all aspects of governmental authority to informed criticism, is widely regretted in Namibia, and imposes a large democratic responsibility on the courts and the media.

UNTAG also, of course, played a major reconciliatory role prior to the elections in establishing channels of communication and discussion between the parties. (Many party leaders, at all levels, had never met before late 1989.) They came together at each level in regard to our Code of Conduct meetings where, in general, we sought to stimulate good relations between the various community leaders. We found that our reserves of confirmed information played an important part in the process of establishing trust between the various groups. Rumour, especially in Owambo, had usually been alarmist and destructive, and one of the main impediments to the creation of a more tolerant atmosphere. Our circulation of confirmed information there and elsewhere helped greatly to bring about stability and calm. UNTAG's more than 200 radio broadcasts throughout the country had a considerable and continuing impact.

While all UNTAG's offices – and we closed about 25% of them after the elections – were involved in the post-election programme of reconciliation, those in Kavango were especially focused. The regional office at Rundu, with its talented Director and Deputy, Linda Cohen (from Canada) and Mohamed Abdul-Aziz (from Libya), had been busy with various initiatives throughout the region almost before the election results had been declared.

Kavango, one of the largest districts, had gone to SWAPO, but by a relatively small margin, and the region had seen partisan incidents of violence since our arrival. An active SWAPO membership had clashed with DTA elements, including ex-*Koevoet*, and traditional rulers also had a higher profile than in many other vicinities. Cohen and Abdul-Aziz visited all the population centres, bringing with them teams of Finnish military and UNCIVPOL officers, as well, sometimes, as UNHCR people.

Essentially, they provided exact and confirmed information about what was happening and, especially, about what was going on in Windhoek, as the country moved towards independence. Then, at their village meetings, they had opened matters for discussion, themselves preaching "brotherly love" in a variety of practical and communal contexts. They had always involved the churches – UNTAG's faithful and potent collaborators in the countryside – and had taken full advantage of the status the UN had acquired in the previous months, and its reputation for providing truthful information, unlike the SWABC, whose radio broadcasts nobody, of whatever party allegiance, trusted.

Throughout the country our offices were compiling dossiers for the developmental agencies that would move in as we left. I sent out questionnaires to our regional and district heads asking for comprehensive information about their regions, including lists of valuable contacts they had made in the previous nine months, as well as suggestions regarding developmental priorities in their areas. As part of their jobs, our people had gathered a huge repertoire of useful information, and we were loath that any should be wasted.

A Cabinet, consisting of the President, Prime Minister (Geingob) and 16 ministers was designated on 21 December 1989. Not all ministers were SWAPO members, and it included several whites (though not Dirk Mudge, long-time DTA leader, about whom there had been much speculation, but who said later that he had not been asked, and would not have accepted) [interview with author, November 1998].

The Constituent Assembly agreed on a Constitution on 2 February 1990, and formally adopted it on 9 February at an outdoor ceremony before the facade of the Tintenpalast. This was covered by a huge banner reciting the Preamble to the Constitution. On 2 February, also, the Assembly adopted a national flag. Article 133 of the new Constitution provided that the Constituent Assembly would become the first National Assembly of Namibia, the first president being the person elected to that office in the Constituent Assembly. On 29 January it was announced that independence would be proclaimed on 21 March 1990.

## TWENTY

### BACK TO EARTH

#### HOW MUCH TROUBLE IN THE NORTH?

*Wednesday, 15 November 1989*

Despite the embarrassment the South African government has suffered over the "intercepted messages", there's been a spate of South African-borne rumours and allegations during, and even after, the elections. It's still about imminent SWAPO movement across the border. The Angolans are not helping much. They continue to drag their feet about inspection, and have not yet replied to the request by the Joint Verification Mechanism (JVM – set up by the Intelligence Committee of the Joint Commission) for access to four sites across the border.

Today I flew to Oshakati with Ed Omotoso and Peggy Kelley, both from our front office, to look at post-election arrangements, hear what's going on generally, and sit in, maybe, at part of the JVM meeting, where Ed will be representing us. (I thought it might also be nice to introduce the first-ever female in a Joint Commission body – the chaps had evidently never heard of them before.) But the Angolans didn't show, once again. Now they've promised, most faithfully, that they'll come tomorrow.

Otherwise, the main thing in the north is the strong sense of winding down, even of disintegration, of the South African administration, both civilian and police. Fanning says he expects the SWAPOL officers, all of whom are South Africans, to be withdrawn in the near future. Most of them are up to no good, anyhow, have never been up to any good, and should have been thrown out months ago, if we'd been able to provide any answer to the police-vacuum problem.

*Thursday, 23 November 1989*

Today I flew with Kobus Bauermeester, Director of the AG's office, to Oshakati again, together with Rachel [Mayanja] and Slava [Guerashev] to look, ourselves, at the current policing and law-and-order situation. There have been several outbreaks of violence in the last few weeks. A SWAPOL