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## WALVIS BAY: A WHALE OF A PORT

With Namibia's imminent independence, South Africa's claim to legal sovereignty of the port and settlement of Walvis Bay, an enclave of 1124 square kilometres, as well as to the Penguin Islands, twelve small guano islands strung along 400 kilometres of the Namibian coast between Walvis Bay and the Orange River, is bound to become a continuing issue in bilateral relations between Pretoria and Windhoek.

### Legal History

Walvis Bay's legal history began in March 1878, when the officer commanding the H.M.S. Industry of the Royal Navy landed at the port, hoisted the British flag, and proclaimed the annexation to the British Empire of the 'Port or Settlement of Walfisch Bay'.

This annexation was confirmed on December 14, 1878, by Letters Patent from Queen Victoria. These Letters Patent authorized the Governor and Parliament of the British Colony of the Cape of Good Hope to annex Walvis Bay, and that with such annexation Walvis Bay would form part of the Colony of the Cape of Good Hope.

Following German colonisation in 1884, Germany only agreed in 1911 to the previously fixed British boundary of Walvis Bay, having previously claimed the coast of Namibia from the Orange River north to the frontier of Portuguese controlled Angola. Meanwhile, in 1910 the Union of South Africa had become a British Dominion with Walvis Bay as part of it.

In terms of the Mandate Agreement of 1920, South Africa viewed Walvis Bay as an integral part of its territory. Accordingly, South Africa gave legal effect to this in October 1922, when the administration of Walvis Bay was transferred to the local South West African administration.

In anticipation of Namibia being granted independence, South Africa in 1977 transferred the administration of Walvis Bay from that of the local administration back to that of the Province of the Cape of Good Hope. This is the situation as of today, the South African Government maintaining the position that

Walvis Bay is an integral part of the Republic of South Africa: and that it will remain so notwithstanding that from 1922 until 1977 Walvis Bay had been administered by South West Africa/Namibia.

Since then the South African legal position has been rejected by the United Nations, the Organisation of African Unity (OAU) and SWAPO, all of which maintain that an independent Namibia must include Walvis Bay.

### Significance

The economic and strategic importance of Walvis Bay stems from its geographic location and its physical infrastructure. Walvis Bay is the country's only deep seaport and the centre of Namibia's important fishing industry. Replacement cost of existing infrastructure is estimated at R5 billion at current prices.

Strategically, Walvis Bay serves as a supply/support base for ships of the South African navy and aircraft - at the recently upgraded Rooikop military base (South Africa maintains a military presence there), while Walvis Bay is integrated with the early-warning maritime defence network based at Silvermine, near the Simonstown naval base.

The dominance of Namibia's fishing industry by South African owned or registered companies, as well as South Africa's claim to the Penguin Islands, raises additional complications for attempts by a new government to proclaim a 200-mile economic exclusive zone along the coast.

### Options

In considering the future relationship between South Africa and Namibia over the use of the port, a number of alternative options could conceivably be considered. These include:

- \* The establishment of a free port at Walvis Bay - an area within which goods may be landed, handled, manufactured, processed and reshipped without the intervention of the Customs authorities.
- \* The provision of free trade facilities at Walvis Bay - which would in any event become necessary if the hinterland of the port were linked to neighbouring economies such as that of Botswana and Angola.

- \* The establishment of a special port authority under the joint jurisdiction of South Africa and Namibia. Such a special port authority could operate on the basis of increased port and handling fees and could be partly privatised.
- \* Walvis Bay could become an autonomous zone under the Namibian flag and be supervised in conjunction with a third party.
- \* South Africa could enter into a long-lease agreement with Walvis Bay becoming the Hong Kong of southern Africa. Such an agreement could conceivably include eventual reintegration of the port into Namibia after a specified period.

In any event it seems that Namibia's claim on the port would become almost irresistible once a stable government has emerged and its economic influence over the port has been established. Free port status and a joint port authority might well greatly assist in these matters.