

THE ACCORD OF NKOMATI : CONTEXT AND CONTENT

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BACKGROUND

The conclusion on March 16, 1984 of the Accord of Nkomati between South Africa and Mozambique was a dramatic event.¹ The drama was caused not so much by the extravaganza and pomp of the signing ceremony as by the unexpected turn in the regional relations and the Southern African "peace initiatives" that it represents.

These peace initiatives have taken the form of a non-aggression pact between South Africa and Mozambique and an agreement on the disengagement of forces between South Africa and Angola. It has also become known that South Africa and Swaziland entered into a non-aggression pact about two years ago.

Although the words "peace" and "peace initiatives" are generally used, they do not have a technical meaning in the sense of indicating the end to a war. South Africa was not engaged in a war against Mozambique at all. In the case of Angola South Africa has been fighting the forces of Swapo (South West Africa Peoples' Organisation) and much of the fighting has taken place on Angolan territory. South Africa has, however, taken considerable care to prevent any impression of it being engaged in hostilities against the Angolan State. What these "peace initiatives" refer to is the apparently dramatic improvement in the relations between South Africa and her black neighbours.

The purpose of the present article is to focus on the Accord of Nkomati in the broader context of Southern African relations, to analyse its content and to compare it with the other non-aggression agreements concluded by South Africa. Part of the analysis will take into account the rules of international law and the function of non-aggression pacts as instruments for achieving peace in international relations.

The era immediately preceding the Accord of Nkomati was one of marked hostility. As late as October 1983 a special unit of the South African Defence Force had raided a base of the ANC (African National Congress) in Maputo, the Mozambican capital. It is the declared policy of the South African government to attack these bases wherever they might be.² Raids have been carried out in both Mozambique and Lesotho. This was done partly in retaliation for ANC attacks on targets inside South Africa. South Africa's view is that the ANC is a terrorist organisation. The ANC, of course, considers itself as being engaged in a liberation struggle on behalf of the black inhabitants of the country. This view is largely shared by South Africa's black neighbours, who are all opposed to her internal racial policies.

Elsewhere in the region the picture was equally bleak. In Angola the war against Swapo had escalated to the point where South Africa had launched several major military strikes well inside that country. The latest of these occurred in late 1983.

South Africa's policy of attacking ANC bases in neighbouring countries, together with its support of resistance movements like Unita in Angola and the MNR (Mozambique National Resistance Movement) is seen by its black neighbours as one of deliberate destabilisation.³ To this should be added the fact that economic cooperation between South Africa, the region's most advanced economy, and the other states in the area, also leaves room for considerable improvement. When the black Southern African states established the Southern African Development Coordination Council (SADCC) in 1980, it was with the objective of lessening the economic dependence on their white neighbour.⁴

What has caused the recent events? After all, Mozambique is a self-declared Marxist Peoples' Republic and an outspoken supporter of the struggle against South Africa. Ideologically the two countries are miles apart. The newly found pragmatism must be ascribed to several factors. It would be too simplistic to argue that the policy of destabilisation has worked. South Africa wanted to demonstrate that the harbouring of ANC and Swapo terrorists carried a certain price. Whether the force employed was absolutely necessary in order to raise this price to the level where compromise had to be forthcoming, is a different question. South Africa's declared strategy was to negotiate from a position of strength, and its strength is not limited to its military capacity.

Several other factors have drawn the region towards peace. They include the severe drought experienced by the whole of the region, the effects of a long liberation war. Misguided economic policies have also played a role. In the light of these circumstances accommodation with the region's most powerful state - especially if that held the prospect of ending an extremely costly international war - became essential.

Normalisation of economic relations with Pretoria holds considerable economic advantages for Mozambique.⁵ Although the picture will not change overnight,⁶ it is inevitable that Mozambique and South Africa will reap economic benefits from the normalisation of relations. In the field of tourism for example, Mozambique could make good use of the return by 500 000 South African tourists who used to visit that country annually before 1974. Agriculture and fishing, too, stand to benefit from closer cooperation and an agreement on the resumption to South Africa of supplies of electricity from the Cahora Bassa hydroelectric plant has already been concluded.

These factors indicate that the economic dimension of the Accord of Nkomati could be potentially just as far-reaching as the security and political ones. The change in economic policy by Mozambique, i.e. away from the close alignment with the Soviet Union which apparently could not provide for local needs, could herald the start of closer economic cooperation with the West. The economic profits of regional peace are not limited to the advantages of closer cooperation with South Africa. Such developments might, however, highlight the limited potential of SADCC as an alternative economic power house in Southern Africa. The complete "delinking" of the members of SADCC from South Africa is apparently a forlorn hope.⁷

It would be misleading to create the impression that South Africa was in an unassailable position throughout and that the relationship with neighbouring states is a completely one-sided affair. A broad spectrum of factors has contributed to the preconditions conducive to peace, as already mentioned. One that deserves mention is South Africa's own relative weakness. The recent announcement by South Africa that she plans to disengage from South West Africa is a case in point. South Africa's military expenditure has become extremely costly, the running expenses of the Namibian war being said to amount to a million Rand a day. Campaigns such as the recent Operation Askari add to this expense.

According to newspaper reports the SADF encountered sophisticated Soviet weaponry during that operation, for which they were not fully prepared. To become so would necessitate a further round of escalating arms development that South Africa can ill afford. Arms embargoes and the general state of our economy at this stage severely restrict such expenditures.

To this should be added the fact that South Africa directly subsidises the Windhoek budget with more than R600 million a year.

South Africa's own economy is experiencing severe problems. Drought relief, economic decentralisation, food imports, the implementation of a new constitutional system, continued high military expenditure and a poor gold price all amount to a clear message - cut unnecessary expenses at all costs.

Against this background it seems more realistic to explain the peace initiatives within the framework of the relative weaknesses of all the parties concerned. It remains true that on a basis of direct comparisons South Africa is without doubt the most powerful state in Southern Africa. However, in terms of the broader framework of internal and international political and economical considerations, it seems fair to suggest that South Africa, too, was forced to make peace.

WHAT ARE NON-AGGRESSION PACTS ABOUT?

Before focusing on the content of the various non-aggression pacts it could be useful to consider the nature of the instrument under discussion. Why is it that South Africa so insists on the conclusion of this type of agreement? Are the general rules of international law inadequate to deal with the needs of the region?

One of the most fundamental objectives of international law and society is to secure international peace. The freedom of sovereign states to use force has to be controlled. Through the ages various methods were devised in order to achieve this. Classical jurists distinguished between bellum justum (just war) and bellum injustum. But this was gradually abandoned to the point where, in the course of the nineteenth century, it was generally accepted that: "International law has no alternative but to accept war, independently of the justice of its origin, as a relation which the parties to it may set up if they choose, and to busy themselves only in regulating the effects of the relation".⁸ During that period political instruments such as the balance of power concept and the formation of alliances were employed to secure international safety.

The horrors of the First World War lent new impetus to the efforts aimed at curtailing a seemingly unlimited jus ad bellum, i.e. the right to resort to war. This led inter alia to the founding of the League of Nations. But the Covenant of the League did not prohibit war altogether. Member states, and only they, were under a duty to submit disputes to arbitration or judicial settlement or enquiry by the Council. The decision to resort to war had to be postponed for at least three months after the outcome of efforts at peaceful settlement.⁹ Members also remained free to decide whether or not to implement the sanctions recommended by the Council.¹⁰

Further efforts to impose a total ban on war culminated in the Kellogg-Briand Pact (the General Treaty for the Renunciation of War) of 1928. This agreement condemned recourse to war for the solution of international controversies and renounced it as an instrument of national policy in international relations. It remained, however, open to doubt whether the Kellogg-Briand Pact indeed had prohibited all acts of violence.¹¹

It was in the period between the two World Wars that states in addition tried to secure international peace through contractual obligations.¹² In the absence of a general prohibition on the use of force this made sense. The basic idea was to strengthen the political efforts at achieving peace by employing international law concepts such as the pacta sunt servanda (agreements are to be kept) rule. After all, if a state had taken upon

itself, through an agreement, the duty not to use force against another, was hoped that an additional barrier against aggression might have been created. The duty of a party to a non-aggression pact to maintain the peace arose not from a general rule of international law but from the obligation laid down in the pact. The international legal rule on the binding nature of agreements (the pacta sunt servanda rule) provided the ultimate source of obligation. The non-aggression pact became a type of agreement amongst states that could be distinguished from other agreements only on the basis of its content, not its legal character.

It was only with the adoption of the United Nations Charter in 1945 that the position was put beyond doubt, at least in theory. Article 2(4) provided that: "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations". It should be noted that this is a general prohibition which does not enumerate specific acts. This rule is now of universal validity and as part of customary international law, it binds states irrespective of whether they are United Nations members or not.

Since the Second World War the only exception to the rule that the use of force by states is prohibited, is the right of self-defence against an armed attack as laid down in Article 51 of the United Nations Charter. We may differ about what constitutes an "armed attack" or what is to be included under a state's "inherent right of individual or collective self-defence",¹³ but the fact remains that answers to these questions are to be sought within the framework of the legal order of the Charter and the practice that has developed subsequently, such as the adoption of the Definition of Aggression of 1974. It would seem superfluous to resort to the conclusion of non-aggression pacts in 1984. These agreements stem from a time when the regulation of the use of force through international law was rudimentary. Any contemporary agreement amongst states that would purport to sanction anything but the prohibition on the use of force would be void for being in conflict "with a peremptory norm of general international law".¹⁴ That the rule against the use of force is indeed a peremptory norm of general international law, i.e. jus cogens, is generally accepted.¹⁵

Our understanding of South Africa's reasons for opting for a seemingly obsolete device will benefit if we put this phenomenon in its proper historical perspective. It seems important to note that non-aggression pacts found their hey-day in the transitional period falling between the bellum justum/injustum era and the United Nations one of prohibiting the use of force. Non-aggression pacts contain stipulations to the effect that states should refrain from acts of aggression and that they should solve their differences peacefully. In many instances they also contain definitions of aggression or enumerations of acts of aggression.

This is the theoretical position. As will be shown later, considerable difficulty is encountered with applying this system effectively, largely owing to the veto power enjoyed by the five permanent members of the Security Council.

THE TRADITIONAL SCOPE AND FUNCTION OF NON-AGGRESSION PACTS

Under 18th and 19th Century conditions with the balance of power concept employed to control international violence, suspicion about the opponent's intentions was enough to start and justify a "preventive" war.¹⁶

International law of the time confirmed and sanctioned this approach. The governing principle was the much abused just war concept. Julius Stone has written the following on that period and its practices and subsequent efforts at establishing legal constraints on the use of force by states:

"This kind of view of international security corresponds, of course, to the view of war taken by customary international law, leaving states virtually uninhibited as to the grounds of recourse to war for the protection of the self-determined interests. And it is clear that the earlier phases of the effort to hem in this liberty by treaties, from League Covenant onwards, are designed, by one course or another to impose inhibitions additional to those inherent in the balance of power system. The new inhibitions thus sought to be imposed are, it is clear, different from those inherent in the old system in the respect that they are to be legal inhibitions".¹⁷

As pointed out, the League's treatment of aggression was incomplete.¹⁸ Steps not involving the League were taken to fill these gaps. The Genoa Conference of 1922 and the Moscow Disarmament Conference of the same year, however, failed to produce any binding agreements.¹⁹ The latter aimed at combining the prohibition on war with disarmament and the peaceful settlement of disputes. This proved to be too ambitious an undertaking. Then the League took up the task again. The Geneva Protocol of 1924 not only outlawed war, but also provided for the peaceful settlement of disputes and for disarmament. It even proposed collective sanctions, to be imposed on any state resorting to war. The British refusal to accept these additional obligations meant the end of the road for this endeavour.²⁰ These were all efforts at concluding multi-lateral non-aggression agreements.

These "grand designs" achieved a degree of success with the Treaty of Mutual Guarantee of Locarno of 1925. Belgium, France, Germany and Italy mutually undertook "that they will in no case attack or invade each other or resort to war against each other". Exceptions were allowed for "the right of legitimate defence" or action taken by the League in terms of Article 16 of the Covenant or authorised by the Council. This was a significant document because the contracting parties, which included the United Kingdom, guaranteed the maintenance of the status quo and the inviolability of the frontiers as fixed by the Treaty of Versailles. This treaty was of course violated by Hitler in March 1936 when German troops were sent into the Rhineland. The other signatories did nothing more than lodge formal protests.

The Locarno Treaty triggered off a considerable number of bilateral non-aggression agreements.²¹ The League contributed towards this development by preparing and adopting model treaties of this kind. The provision of the model bilateral treaties on non-aggression of 1928 on the duty not to attack or invade each other is identical to the one contained in the Locarno Treaty. So are the exceptions, save that the latter contains no guarantee on the frontiers decided upon at Versailles. The model treaty on the other hand contains elaborate proposals on the peaceful settlement of disputes.

The next great step was the conclusion of the Kellogg-Briand Pact of 1928.²² This document of course outlawed war as an instrument of state politics. It however did not bring the expected peace, inter alia because it did not enjoy universal support. States therefore continued to try and safeguard themselves through bilateral non-aggression pacts.

A striking feature of the subsequent diplomatic efforts at concluding non-aggression pacts was the extent to which the Soviet Union was involved.²³ This country's immediate aim was to conclude bilateral non-aggression agreements with neighbouring states. Agreements of this kind were concluded with Turkey,²⁴ Afghanistan,²⁵ Lithuania,²⁶ Latvia,²⁷ Persia,²⁸ Finland,²⁹ Estonia,³⁰ Rumania,³¹ China,³² Japan,³³ and Poland.³⁴ Some of these agreements were called neutrality pacts, such as those concluded with Czechoslovakia,³⁵ the one between the Ukrainian SSR and Czechoslovakia³⁶ and the one with Japan.³⁷ Non-aggression pacts were also concluded with a number of other European powers, which though not directly bordering on the Soviet Union, were nevertheless important for her security and prominent in the political developments immediately before and during the Second World War. The best known were those with Germany. The first agreement with Germany was concluded in 1926³⁸ and extended by protocol in 1931.³⁹ The last one was signed in 1939,⁴⁰ though was of course terminated by the German attack on the USSR in 1941. Violation of this agreement by Germany was made one of the offences for which certain German leaders were prosecuted at Nuremberg after the Second World War. Non-aggression agreements were also concluded with France (1932), Italy (1933), Bulgaria (1934) and Yugoslavia (1941).

These agreements were often intended to amplify and complete the Kellogg-Briand Pact. One article of the agreement between Poland and the Soviet Union provides that the parties "undertake to refrain from taking any aggressive action against or invading the territory of the other party, either alone or in conjunction with other powers".⁴¹ The type of activity amounting to acts of aggression was usually described in rather general terms⁴² such as the following, which is taken from Article 1 of the Pact of Non-aggression between the Soviet Union and Poland of 1932. "Any act of violence attacking the integrity and the inviolability of the territory or the political independence of the other Contracting Party shall be regarded as contrary to the undertakings contained in the present Article ..." In Article 1 of the Pact of Non-Aggression between the Soviet Union and France of 1932 it was laid down that the parties had to refrain "whether alone or jointly with one or more third Parties", from acts of war or any aggression by land, sea or air and "to respect the inviolability of the territories which are placed under the Party's sovereignty or which it represents in external relations or for whose administration it is responsible". In the Treaty of Non-Aggression concluded with Lithuania in 1926 it is stated quite simply that both parties "undertake to respect in all circumstances each other's sovereignty and territorial integrity and inviolability ... and to refrain from any act of aggression whatsoever against the other Party".⁴³

The German/Soviet Non-Aggression Treaty of 1939 is of interest because of the political conditions prevailing at the time of its conclusion. The two parties had to "desist from any act of violence, any aggressive action, and any attack on each other, either individually or jointly ..." Should one of them "become the object of belligerent action by a third Power," the other one had to stay completely neutral.

The general interpretation of this agreement is that it had given Hitler a green light to invade Poland.⁴⁴ A secret protocol on the demarcation of their respective spheres of influence was added and it provided for the partitioning of Poland⁴⁵ and placed Estonia, Latvia, Finland and Bessarabia within the Soviet sphere of influence. These were all states⁴⁶ with whom the Soviet Union had previously concluded non-aggression pacts.

This agreement was also peculiar in that it did not contain a stipulation found in most other non-aggression pacts, namely that if one of the

contracting parties should commit an act of aggression against a third party, the other contracting party would be entitled to denounce the pact.⁴⁷ The hurry with which the agreement was concluded is reflected by the provision that it "shall enter into force as soon as it is signed", which is rather unusual in diplomatic practice.

The official Soviet justification for this agreement was that it was of "tremendous positive value, eliminating the danger of war between Germany and the Soviet Union".⁴⁸ France, the United Kingdom and Poland were blamed for not accommodating Soviet demands. The agreement with Germany was justified because: "It is our duty to think of the interests of the Soviet people, the interest of the Union of Soviet Socialist Republics".⁴⁹

Such standard duties normally encountered in non-aggression pacts were further expanded to include the obligation not to support third parties when they attacked the other contracting party,⁵⁰ nor to give them any aid or assistance and further to solve disputes in a peaceful manner. In some cases explicit provision was made for the possibility of denouncing these non-aggression agreements but then only by giving ample notice or within a fixed period of time.⁵¹ This reflects the accepted position under international law, because the treaties in actual fact provide for denunciation clauses when they contain these stipulations of fixed periods.⁵² In the absence of such a provision the denunciation must be agreed by all the parties, making the matter one of denunciation by consent.⁵³ Non-aggression pacts most certainly do not contain an implied right of unilateral denunciation, that is in the absence of any breach by the other party. The country would be completely incompatible with the very purpose of preventing acts of aggression.

Finally the Soviet/French Non-Aggression Pact of 1932 should be mentioned because it contained rather explicit provisions with respect to the duties of the parties. It inter alia provided for access to free international trade. Neither of the two countries could become party to other agreements restricting the purchase or sale of goods or granting of credit to the other. The prohibition on interference in international affairs was interpreted to include the promotion or encouragement of "agitation, propaganda or attempted intervention designed to prejudice its territorial integrity or to transform by force the political or social regime of all or part of its territories".⁵⁴

Both parties also undertook "not to create, protect, equip, subsidize or admit in its territory either military organisations for the purpose of armed combat with the other party or organisations assuming the role of government or representing all or part of its territory".⁵⁵

Why was the Soviet Union so keen on concluding non-aggression agreements? The answer lies in her preoccupation with national security and the desire to prevent the formation of hostile coalitions. Russia immediately after the 1917 revolution was a weak and isolated state. Despite ideological differences with the capitalist world the maintenance of peaceful relations was an absolute necessity. Her weaknesses were both economic and military. The expected revolutions in Germany and Western Europe also failed to materialise and this meant that the Soviet leaders could not rely on the world revolution to strengthen their own socialist experiment. Policies adopted by the other European powers further convinced them that the West was determined to overthrow the Bolshevik regime.⁵⁶

For the whole period up to the Second World War the Soviet Government stressed the theory of "capitalist encirclement", which was their notion of a "total onslaught". This was done out of a sense of insecurity and

especially in order to justify the sacrifices demanded from the population as a result of the programme of rapid industrialisation and the collectivization of agriculture.⁵⁷

The extent to which her weakness and desire for peace have influenced Soviet behaviour towards neighbouring countries is demonstrated by the use of the concept "peaceful coexistence".

Prior to 1945 the Soviet Union applied this concept only intermittently and to buttress an essentially defensive strategy.

"It was the tactic of an elite whose capability of pursuing a 'forward strategy' was severely limited. However, since the late 1950s and early 1960s the cult of peaceful coexistence has been tailored to suit the foreign policy of a confident, powerful, assertive Soviet Union".⁵⁸

With Germany's resurgence immediately before World War II the Soviet Union sought security first through the collective security system of the League. When that failed, Soviet/German rapprochement was on the cards, culminating in the fateful Non-Aggression Pact of 1939.

The outcome of the Second World War caused the Soviet Union's fortunes to change dramatically. She came out of the war as member of the victorious Allies. Her own geopolitical security improved fundamentally as a result of the coming to power of communist regimes in Poland, East-Germany, Czechoslovakia, Hungary, Rumania and Bulgaria, thus constituting a buffer zone between the USSR and her enemies in Western Europe. In China too a communist regime came to power. The Soviet Union increased her own territory by incorporating the three Baltic States, despite the existence of non-aggression agreements with these countries. As a superpower even during the Cold War, the need for concluding non-aggression pacts, at least of the pre-World War II type, fell away. One commentator has put it in the following words: "With the outbreak of war, the Soviet Union abandoned its previous policy of nonaggression for a cause of aggression and territorial expansion. It rationalized its actions in terms of national security, exploiting, in true Machiavellian fashion, the preoccupation elsewhere of the other European powers".⁵⁹

International relations now entered a completely new phase, characterised by East/West block rivalry. Security needs hereafter found accommodation in defence alliances, nuclear deterrence and the collective security system of the United Nations, with the latter providing for big-five immunity. Non-aggression agreements became redundant.

Eastern European countries have tried unsuccessfully a number of times since 1945 to conclude non-aggression agreements containing provisions of the kind found in the United Nations Charter in a much watered-down fashion.⁶⁰ What the Soviet Union did conclude after the Second World War were alliances with other socialist states. These were called Treaties of Friendship, Mutual Aid and Post-War Cooperation and contained, inter alia, the obligation "not to enter into any alliance or to take part in any coalition directed against the other High Contracting Party".⁶¹ Through the Warsaw Pact an organisation for military cooperation and defence was created. With the West agreements were concluded dealing with nuclear arms control.

What does this rather brief analysis of Soviet treaty practice show us? It confirms that self-perceived security needs not only influence but sometimes radically change inter-state behaviour. Related to the question

presently under discussion it also seems to suggest that non-aggression pacts are the diplomatic tool of insecure and beleaguered states.

A number of multi-lateral conventions on the definition of aggression were adopted before the Second World War, again with the Soviet Union being prominent. These include the convention between the Soviet Union, Afghanistan, Estonia, Latvia, Persia, Poland and Rumania of July 3, 1933 (a similar one was concluded between the Soviet Union, Rumania, Turkey and Yugoslavia on the very next day). It defined aggression as any of the following acts: declaration of war, invasion by armed forces, naval blockade, support to armed bands invading another state or refusal to take measures to deprive them of assistance or protection in its territory. No political, military, economic or other considerations could justify such aggressive behaviour. In an annex it was further stipulated that neither internal conditions (the political, economic or social order, defects in administration, disturbances due to strikes, revolutions or civil war) nor international conduct (violation of or threats to rights or interests of other states, boycotts, economic disputes or minor incidents) could serve as justifications for aggression.

It would be misleading to suggest that definitions of aggression only appeared in non-aggression pacts concluded between European powers or that the Soviet Union was inevitably involved. As pointed out before, every collective security system functions on the basis of forbidding acts of aggression between members. In this sense Article 2(4) of the United Nations Charter also contains a general definition of aggression. Although non-aggression pacts eo nomine not involving the Soviet Union are hard to find, a number of mutual security treaties, neutrality agreements or even those on "Brotherhood and Alliance", as the one between Iraq and Transjordan of 1947 was called, were concluded which did not include the Soviet Union.⁶² Afghanistan, Iraq, Iran and Turkey signed a non-aggression treaty in 1937,⁶³ while the USA and Latin American states established their own regional security system, embodied in the Act of Chapultepec of 1945 and the Treaty of Reciprocal Assistance between the USA and other American Republics, signed at Rio de Janeiro in 1947.⁶⁴

One can conclude that bilateral agreements adopted for the specific purpose of formulating a non-aggression obligation can be distinguished from more general security arrangements, particularly if the latter is a collective security system. Bilateral non-aggression pacts were concluded, as in the case of the Soviet Union, because of specific and urgent security needs. The pre-World War II Soviet Union found herself isolated and in desperate need to secure her safety. Even her belated accession to the League of Nations in 1934 did not alter this predicament at all. The League lacked universality⁶⁵ and had a poor record when it came to checking aggression. Some of the most blatant acts of aggression were perpetrated by League members.⁶⁶ The fact that South Africa is, together with her neighbours, still a member of the United Nations, provides insufficient security for her requirements. On the contrary, the United Nations has become a platform for attacks on her and very much the source of the difficulties she experiences.

Both the Soviet and South African experiences suggest that isolated, beleaguered states find it useful to utilise non-aggression pacts as diplomatic and security instruments.⁶⁷ Whether this alone will suffice to meet security needs is doubtful. The existence of a non-aggression pact between the Soviet Union and Germany could not prevent Operation Barbarossa, nor did it deter the Soviet Union from attacking Poland and Finland. The extent to which South Africa relies on her bilateral non-aggression pacts and additional steps taken to buttress them, will be discussed below.

THE CONTEMPORARY COLLECTIVE SECURITY SYSTEM

Our "historical classification" of non-aggression pacts as falling between the eras of bellum justum and the United Nations would seem to suggest certain explanations for South Africa's behaviour. It might be that recently concluded agreements are not non-aggression pacts in the traditional sense of the word. A determination of their exact nature then will have to await an analysis of their content and a comparison with the earlier examples.

Another possibility is that the protective regime offered by the United Nations does not satisfy South Africa's needs and that additional arrangements have become necessary. This merits a brief analysis of the conceptual basis and structure of the UN's peace keeping machinery. It is often said that the principles of the UN Charter, even the international law defined by it, are honoured more in the breach than the observance. South Africa, it is argued, is far from the only state to find the UN system unsatisfactory in the field of security and to have resorted to pursuing perceived national interests by creative measures outside the system. The cases of Israel in the Middle East, Vietnam in Kampuchea, Soviet intervention in Afghanistan and United States involvement in Central America are cited as examples. This line of reasoning suggests a similarity in the position of South Africa and that of the other countries mentioned, but South Africa's peculiar position in organized international society deserves mention. First, however, the general framework within which international peace is sought, needs examination.

Preservation of international peace through the United Nations is based on the idea of collective security. A collective security system is one that joins together a number of states, usually on the basis of a formal agreement, and commits them to two things: A prohibition of the use of force as a way of settling disputes amongst themselves and an understanding to use force collectively against any of the members breaking this rule.⁶⁸ Collective security thus is based on the principle of deterring an aggressor "by the prospect of an overwhelming coalition".⁶⁹ Inis Claude has described it in an almost poetic fashion: "Collective security is a design for providing a certainty of collective action to frustrate aggression - for giving to the potential law-breaker the deterring conviction that the resources of the community will be mobilized against any abuse of national power".⁷⁰ In this "pure" form collective security is also based on the premise of the indivisibility of peace, that aggression in one area endangers the preservation of all international order. States should be prepared to make sacrifices in order to secure this ideal, even in those remote wars in which they are not directly involved. It also presupposes a shared set of values.

"The system will work only if the peoples of the world identify their particular interest so closely with the general interest of mankind that they go beyond mere recognition of interdependence to a feeling of involvement in the destiny of all nations."⁷¹ The implications of such an arrangement are far reaching. Even a brief look at these will show how improbable its achievement must be under contemporary international realities.

The implementation of collective security will demand from states an abdication to an international authority of their "sovereignty" and their freedom to control national instruments of coercion. For one, this would require an unprecedented degree of confidence in the bona fides, of impartiality and effectiveness of an international body completely beyond national control. No state will have such confidence unless the

international body has demonstrated itself to be worthy thereof. Some states, however, will have to take the initiative. The means necessary to get the system started can only come from them. This amounts to a circular argument that is unlikely to convince even the bravest to take the first plunge into the dark.

The required unity of values poses a problem of specific relevance to South Africa. When the UN was founded in 1945, it consisted of 51 members, one of which was South Africa. Today this figure is closer to 170. The influx of newly independent countries has fundamentally changed the orientation of that organization. Collective security problems of concern to the major powers were replaced by a campaign to eradicate the last remnants of colonialism, the most obstinate of which, in the eyes of the Third World states, is apartheid. The final result has been that South Africa has obtained a sui generis status. There now is universal agreement that she is an aberration so special that exceptional treatment is justified. She thus became the first member against whom the Security Council has adopted a mandatory measure, when in 1977, that body unanimously adopted resolution 418 on an arms embargo.⁷² In contrast to the response to Israel for example, none of the Security Council members was prepared to exercise their power of veto on behalf of South Africa. Following in the wake of certain actions taken by the South African government in October 1977, including the banning of certain Black newspapers and organizations as well as the arrest and restrict on certain individuals, this resolution determined, inter alia "that the acquisition by South Africa of arms and related material constitutes a threat to the maintenance of international peace and security".

With regard to the reasons why the concept of collective security had no hope of succeeding, a number of practical difficulties could be mentioned. The UN Charter did not create the conditions necessary for its implementation. It contained no guarantees of disarmament or the creation of a UN force. The pattern of power distribution, the American-Soviet dominance and rivalry, the impossibility of obtaining automatic reaction to aggression, i.e. without the flexibility of discretionary leeway, and the restraints imposed by nuclear capacities are all realities antipathetic to the ideal of "pure" collective security. What emerged was a United Nations, albeit imperfect, but perhaps more in line with some of the realities of international life. One of these realities is the existence of the power of veto within the Security Council. Although members soon turned to additional devices to secure their peace, such as the system of alliances (eg NATO) and the Uniting for Peace Resolution, which purports to give the General Assembly a function in this matter (but which instead became a tool in the hands of a Third World majority), the UN remains a fact of international political life. It may not be what some hoped it would be, but if it can generate consensus to the degree that mandatory sanctions are adopted, it must reflect a reality. In the rest of this article collective security will be mentioned against the background of the abovementioned qualifications.

The ideal position would be one where the institution responsible for implementing the collective security system could do so without any obstruction. No minority or any single state should be able to prevent collective action. In the United Nations the Security Council has the primary responsibility of preserving international peace and implementing the concept of collective security. The Security Council's five permanent members, however, enjoy a right of veto. Decisions to implement the system will thus only occur in those rare instances when the five permanent members are in full agreement. And since they represent the full ideological and power spectrum of the world such unanimity will be highly

exceptional. How is the veto to be justified? The basic reason is that the UN at its inception succumbed to the realities of international life.

The very existence of a privilege such as the power of veto, stems from the necessity of paying a price in order to ensure great power membership. The history of the League of Nations, as well as good sense, left no doubt as to the need for this. The veto further demonstrates that states are not equal, that some have a special role to play and will also bear greater responsibilities. A special privilege is therefore justified, even to the extent that it prevents action against a permanent member.

The veto power is however also a means for protecting the collective security system itself. It prevents the system from committing itself to a course of action that will lead to collision with one of the super powers. Smaller states are protected against the folly of their irresponsibility in demanding action against a super power that defies feasibility. In this sense the veto is a safety-valve that prevents undertakings by the organization in those instances where it lacks the power to fulfil them.

Non-permanent members can also benefit from the veto. Their interests may be protected in those cases where they are outvoted, provided one of the permanent members are prepared to use its veto power on their behalf. American support for Israel is the best example. On the other hand when the condemnation is unanimous, the result is the adoption of resolutions like the SC Resolution 418 against South Africa.

The implementation of the UN System is fraught with many difficulties. Defining aggression is a major one. The body responsible for preserving the peace must be in a position to identify state actions that really threaten the peace. Claude has written that collective security assumes "the assignability of guilt for a threat to or breach of the peace. It focuses, in short, upon the concept of aggression, with its implication that the parties to a military encounter can be characterized as aggressor and victim".⁷³ The body must, for example, be able to distinguish acts of aggression from acts of self-defence. This can be done in one of two ways - by a general and therefore wide and open-ended prohibition on the use of force or by laying down explicit criteria or enumerating specific acts of aggression. Some kind of definition seems indispensable.

Non-aggression pacts and collective security systems have at least one thing in common - their reliance on a definition of aggression. The United Nations system is cast within a specific legal framework with Chapter VII of the United Nations Charter laying down the rules pertaining to the powers and functions of the Security Council. Nowhere in the Charter, however, is aggression defined. There is only a rather vague stipulation that the Security Council is empowered to act "with respect to threats to the peace, breaches of the peace, and acts of aggression". Article 2(4) of the Charter contains a general prohibition of the use of force "against the territorial integrity or political independence of any state" but provides no additional clarity with respect to the actual definition of aggression. These terms are so broad that they accommodate with ease the widest range of subjective interpretations that the political and ideological diversity of world opinion can generate. Security Council practice abounds with examples of consequent inaction. The real effect of the arrangement of the United Nations is that aggression or a threat to the peace or a breach of the peace will in each case be whatever the Security Council says it is. As no permanent member will support measures perceived to be against its interest, it will veto whatever it finds unacceptable.

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After debating the issue for over twenty years in a special Committee on the Question of Defining Aggression, the General Assembly in 1974 adopted the Resolution on the Definition of Aggression.⁷⁴ It was adopted by consensus and therefore necessarily glossed over many of the differences.⁷⁵ It contains both the "general definition" and the "enumerative" approaches. Article 1 reflects the former and defines aggression as "the use of armed force by a state against the sovereignty or political independence of another state ...". The remaining articles enumerate specific acts which are considered acts of aggression. They include activities such as an invasion or attacks by armed forces, bombardment, blockade of ports, the sending of armed bands or mercenaries into another state's territory.

The list of prohibited activities contains two important exceptions. The Security Council retains the freedom to "determine that other acts constitute aggression under the provision of the Charter",⁷⁸ while nothing in this definition could in any way prejudice the right of self-determination of peoples, "particularly peoples under colonial and racist regimes ...". This latter exception contains a reference to South Africa's internal racial policies.

The theoretical attractiveness of a legal definition of aggression lies in the fact that it provides precise criteria which make possible the classification of certain state action as aggression. The inherent weakness of general definitions of aggression such as the prohibition on the use of force contained in Article 2(4) of the UN Charter is their lack of objectivity. Clear objective criteria will in theory provide a mechanism for distinguishing between acts of legitimate self-defence (which will not be branded aggression) and those impermissible acts of violence which will constitute punishable acts of aggression. It will also expel subjectivity from the decision making process. These have proven to be unattainable goals.

Definitions of what constitutes a state's vital interest and the nature of justice are by nature subjective. It is doubtful whether it is possible to achieve the ideal of objectivity in a world of sovereign states. It is even more difficult in a world displaying deep ideological cleavages and different concepts of justice.

The 1974 definition of aggression escapes none of these weaknesses. It reintroduces a general prohibition on the use of force à la Article 2(4) and retains the freedom of the Security Council to brand certain state behaviour acts of aggression. Article 7 of the definition yields to a subjective issue par excellence - the injustice of racial discrimination and the denial of the exercise of the right of self-determination. A well-known scholar in this field has once observed :

"that some of the most intractable problems of justice in a shrinking and ever-changing world lie deep at the core of this problem of defining aggression. The failures of states, international organs and individual thinkers to reach consensus may have to be explained (at least in part) in terms of the impossibility of containing the unceasing struggle for a minimal justice in international relations within the straight-jacket of precise formulae for the definition of aggression".⁷⁷

On both the following counts South Africa's regional behaviour will be faulted : the denial of self-determination to Namibia (and some will argue even to the black majority within South Africa) and the practice of racial discrimination that draws in its wake the struggle for national

liberation. The latter is seen by South Africa as terrorism that endangers the security needs of the country. Steps to suppress it are therefore regarded as justified. These steps include preventive and retaliatory military operations in neighbouring countries housing the "terrorists". It also includes a regional peace doctrine embodied in non-aggression pacts à la Pretoria and based on South Africa's military and economic capacities.

The United Nations system of collective security which is based on the current operational definition of aggression purports to deny South Africa the right to protect her position and to further her interests at least as she perceives them. A struggle against what the present South African government considers the very embodiment of her vital interests, namely the contemporary racial policy and its manifestations, is treated as an exception to what would normally constitute aggression.

The exact legal nature of Article 7 of the definition is controversial.⁷⁸ The term "struggle" is not defined. It is however indicative of the feeling against racial policies that a number of representatives on the Special Committee on the Question of Defining Aggression adopted the view that armed struggle by peoples under racist regimes was permissible and therefore not a form of aggression. Others were only prepared to accept struggle by peaceful means.⁷⁹ There is general agreement that peoples who have a legal right to self-determination are entitled to engage in wars of national liberation. This view is even supported by Western countries, although they might have reservations about the political desirability of encouraging such wars.⁸⁰ South Africa would of course deny that the ANC is engaged in a struggle for self-determination, considering rather her own policy of separate development, leading to independent homelands, to be based upon self-determination.⁸¹

It is not possible to discuss the complicated position of South Africa at the United Nations in any detail here.⁸² Suffice it to say that there is complete condemnation of her racial policies. The policy of apartheid is branded a gross violation of human rights⁸³ and a denial of the right of self-determination. Refusal to recognise the independence of the South African homelands has been one of the results. To this should be added the Namibian conflict. South Africa's presence there has been declared illegal by both the General Assembly and Security Council, a view subsequently confirmed by the International Court of Justice in its 1971 advisory opinion. South Africa's incursion into Angola in 1976 offered the Security Council its first opportunity for finding that acts of aggression have in fact occurred. The Security Council condemned South Africa for its aggression against Angola.⁸⁴

This has the further effect of excluding recourse to the protection offered by the domestic jurisdiction clause, Article 2(7) of the United Nations Charter. South Africa shares with former Rhodesia the distinction of having her internal policies declared a threat to international peace and security because of the potential for conflict in the region.⁸⁵ The underlying reasoning seems to be the following : South Africa's racial policies will lead to an armed struggle and to wars of national liberation which will spill over into neighbouring countries. The raids against ANC bases in Mozambique and Lesotho are seen as confirmation of this.

The brief exposition of the relationship between South Africa and the United Nations was given only in order to illustrate the country's peculiar problem. From South Africa's point of view her standing in international and regional relations has deteriorated to the point where a new just war concept has emerged, namely that of a war of national liberation. Other states are even called upon to lend their support to participate. Angola,

Lesotho and Mozambique have thus rendered assistance to SWAPO and the ANC respectively.

Seen against this background the conclusion of the Nkomati and Swazi accords amount to a concerted effort by South Africa to give a different de jure and de facto content to her relationship with her neighbours, i.e. one that differs from the generally accepted attitude which is to be found in the United Nations system and values.

SOUTH AFRICA'S NON-AGGRESSION PACTS

An outstanding feature of the Accord of Nkomati is the detailed list of prohibited activities it contains. This creates the impression of an agreement tailor-made for the conditions prevailing in Southern Africa. The Accord is essentially about two security problems : South Africa's demand that ANC attacks should end and Mozambique's demand that South Africa's military operations inside Mozambique and support for the MNR should cease. The first deals with actions from the territory of a country sympathetic to "a national liberation movement" while the latter also concerns the use of force by one state against another.

Inter-State Violence

Let us first consider the way in which this agreement deals with the problem of the application of force by one state against another. Although the obligations contained in this agreement are of a reciprocal nature, this is the part that reflects Mozambique's demands. After all, the tiny Mozambique defence force cannot really pose any threat to South Africa. (It should perhaps be added that the allegation was often made during the pre-Nkomati days that the Soviet Union was arming Mozambique with tanks and other conventional weapons and this constituted part of the "total onslaught" upon South Africa.)

The two states have written into their agreement that most basic of inter-state norms which they in any case always have to obey, namely to respect each other's sovereignty and independence and not to interfere in the other's internal affairs.⁸⁶ Disputes and differences which are likely to endanger mutual peace and security or the peace and security of the region are to be solved peacefully.⁸⁷ The agreement contains a list of dispute settlement procedures which includes the usual reference to negotiation, enquiry, mediation, conciliation, arbitration or other peaceful means. What is lacking is the standard reference to judicial settlement, as is for example found in the League of Nations model treaties on non-aggression. Judicial settlement in the context of international disputes is generally understood to mean settlement by the International Court of Justice or settlement by an Arbitral Tribunal.⁸⁸

It should be borne in mind that both South Africa and Mozambique are, as UN members, bound by Security Council decisions concerning acts of aggression. The Accord of Nkomati will not change this, neither will it relieve them of their obligations under Chapter VI of the Charter. In terms thereof disputes are to be settled peacefully : judicial settlement is thus included. Chapter VI also mentions "resort to regional agencies or arrangements" as a possible means to peaceful settlement.⁸⁹ Should these states fail to come to a peaceful solution, they are bound to refer the matter to the Security Council.⁹⁰

The parties further undertake "not to resort, individually or collectively, to the threat or use of force against each other's sovereignty, territorial

integrity or political independence".⁹¹ This entails a general definition of aggression. It contains a general prohibition on the use of force in the style of Article 2(4) of the United Nations Charter, although the latter contains an additional qualification, namely a prohibition on the use of force "in any other manner inconsistent with the Purposes of the United Nations ...". This is generally interpreted to include decisions by the competent organs of the UN. The use of force will be legitimate for example if authorised by the Security Council. The Charter also permits the use of force in the exercise of the right of collective and individual self-defence. In some cases it has been claimed that the use of force by regional organisations (Chapter VIII of the Charter), or when applied in order to implement the right of self-determination, will also be justified.⁹²

For the purpose of this agreement the use of force is understood to include, inter alia, attacks by land, air or sea forces, sabotage, unwarranted concentration of armed forces at or near the international boundaries of the parties and the violation of the land, air or sea boundaries. No assistance is to be rendered to the forces of any third state when deployed against one of the parties.

The list of forbidden acts of aggression is not exhaustive. The fact that naval blockade, for example, is not explicitly mentioned does not mean that it would be permissible. These examples are only to serve as indications of likely manifestations of aggression that may occur or have occurred in the past. The fact that sabotage is specifically mentioned is presumably to be explained in the light of Mozambique's past complaints about destabilisation. The thrust of this list, although not as detailed as the one contained in the Definition of Aggression, is apparently aimed at preventing the recurrence of South African raids into Mozambique.

Non-intervention

The content of Article 2 of the Accord confirms another well-accepted principle of international law, namely the rule against intervention. The "Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations", which is considered to be an elaboration of UN principles, reaffirms the prohibition on the use of force by states as well as "the duty not to intervene in matters within the domestic jurisdiction of any state, in accordance with the Charter". (It should be noted that South Africa has always objected to General Assembly resolutions concerning her internal policies and has referred to them as interference in domestic affairs and therefore in conflict with Article 2(7) of the Charter. This view is not supported by the United Nations and it is now widely accepted that Article 2(7) offers no protection in cases where the conduct complained of "amounts to ... a gross violation of human rights".⁹³

Propaganda

Article 5 of the Accord of Nkomati also obliges the parties to "prohibit within their territory acts of propaganda that incite a war of aggression ... and acts of terrorism and civil war" in the territory of the other. Not all propaganda has as its direct objective wars of aggression, terrorism or civil war, although it might have such consequences. It is uncertain whether a general prohibition on all forms of propaganda has ever been accepted in international law. A Convention signed in Geneva in 1936 outlawing broadcasting matter calculated to incite disturbances in other countries was, for example, never signed by the United States and the USSR.⁹⁴

The Accord creates a treaty obligation for these two signatories in this respect. An alleged infringement will be a matter for the Joint Security Council to consider.

Non-observance

It may be asked what will happen if one of these prohibited activities does indeed take place. This is of course the perennial question of international relations and South Africa and Mozambique are thus not in a unique position. In principle they are bound to solve their disputes peacefully. The only exception permitted by the Accord is the right of self-defence. "Nothing in this Agreement shall be construed as detracting from the ... Parties' right of self-defence in the event of armed attacks as provided for in the Charter of the United Nations".⁹⁵ This is simply an affirmation of their obligations under the UN Charter which the Accord of Nkomati has not altered. Even in wider political terms this agreement cannot be divorced completely from the UN. As before, the use of United Nations machinery like the Security Council remains relevant. As in the past, however, the involvement of the United Nations may lead to a condemnation of South Africa, and recourse to that body, at least by South Africa, is therefore unlikely. The very purpose of the Accord is to create, as far as possible, a specific bilateral arrangement outside the UN regime.

Significance

The significance of the Accord of Nkomati is not in the first instance to be sought in terms of the rules of international law. Its conclusion signifies an important diplomatic and political achievement. There is a great difference between the no-contact era of pre-Nkomati and the subsequent one. The former was a period of hostilities during which it proved impossible to solve problems peacefully. In a specific sense this is what the Accord of Nkomati is all about - the peaceful settlement of disputes. In this regard the Joint Security Commission, which is already in operation, could play an important role.

Support of the ANC and MNR

The other leg on which the Accord of Nkomati rests is to be found in those provisions dealing with South Africa's primary security concern - putting an end to ANC attacks. When we keep in mind that the real thorn in South Africa's flesh was the support and sanctuary given to the ANC (which is of course nowhere mentioned by name) it comes as no surprise that a great number of the provisions deal with this particular aspect. On the other hand, it should be remembered that the primary concern of Mozambique, and an important reason for signing this pact, was the desire to end South African assistance to the MNR.

The heart of the agreement is the obligation laid down in Article 3(1) :

"The High Contracting Parties shall not allow their respective territories, territorial waters or air space to be used as a base, thoroughfare, or in any other way by another state, government, foreign military forces, organisations or individuals which plan or prepare to commit acts of violence, terrorism or aggression against the territorial integrity or political independence of the other or may threaten the security of its inhabitants".

The specific manifestations of this principle are to be found in the remainder of the Article. The organising of irregular forces, armed bands and mercenaries⁹⁶ on the other territory of the two parties is forbidden and should be prevented. This entails the duty to "eliminate from their respective territories : bases, training centres, places of shelter, accommodation and transit for elements" who intend to carry out the forbidden acts.⁹⁷ And exactly this has happened. Mozambique has, since the conclusion of this agreement, expelled some 800 ANC members, reducing the organisation to a 10-man office in Maputo.⁹⁸

It is noticeable that 5 out of the 11 sections of Article 3 start with a duty to "eliminate" certain conditions and activities. This is obviously an effort to give precise content to this obligation. The list of forbidden activities or conditions includes the maintenance of arms depots, command posts, communication facilities and radio broadcasting stations.

The further aim is to prevent those prohibited elements from operating from bases elsewhere. Transit from the territory of either "or to a place in the territory of any third state which has a common boundary" with the contracting state against which the action is planned, is to be prevented. The two states themselves are to refrain from using the territory of third states to carry out or support any of the prohibited activities.⁹⁹

The ideal position would be to prevent an "element" such as the ANC or MNR from replenishing their ranks. Such replenishment need not be confined to South African or Mozambican sources. It is therefore laid down that "recruitment of elements of whatever nationality"¹⁰⁰ "or abduction or other acts, aimed at taking citizens of any nationality hostage"¹⁰¹ should be prevented.

During the first three months after the signing of the Accord of Nkomati, the MNR guerrillas have actually stepped up their activities.¹⁰² The Maputo government suspects freelance agents in South Africa of supplying and reinforcing the MNR.¹⁰³

The Joint Security Commission

How are these security goals to be achieved? If everything is going to work out as foreseen, it will mean close co-operation between the security forces of the two countries, something hitherto unheard of. In principle it is for the two governments to take the necessary steps, especially with respect to internal control. They have also pledged themselves, as stated in Article 4, to take individual and collective steps to patrol the common border. In the Joint Security Commission, comprising high-ranking representatives¹⁰⁴ the two states will find ample opportunity for frequent meetings.

The Commission's basic function will be to monitor the implementation of this Agreement and more specifically to consider infringements and to recommend measures for improving the whole arrangement. At present South Africa is involved in a similar arrangement with Angola. In the latter instance the nature of the joint task is somewhat different because it concerns an operation of a more limited duration namely the disengagement of forces. In the case of Mozambique the matter could be more complicated. It is well-known that the Mozambican forces have great difficulty in controlling MNR activity and in protecting roads and railway lines.¹⁰⁵ They experience considerable difficulty in safeguarding the supply of electricity to South Africa from the Cahora Bassa plant. The Cahora Bassa Agreement between these two countries provides for joint steps to ensure protection of the transmission lines.¹⁰⁶ This has already caused

an opposition political party in South Africa to criticise the Agreement on the ground of its permitting South African forces to operate on Mozambican territory - an allegation denied by the South African government. It nevertheless seems obvious that the successful implementation of the Accord of Nkomati will depend inter alia on close co-operation between the two signatories. Since Mozambique will find it difficult to perform all the tasks to the satisfaction of Pretoria, the latter will have to render some form of assistance.

The Commission will also fulfil some other important functions. Determining the difference between a "concentration of forces" and an "unwarranted concentration of forces" could be one. The latter constitutes an act of aggression. One of the Commission's tasks will be to "consider all allegations of infringements of the provisions of this Agreement".¹⁰⁷ Experience has shown that the right of self-defence is at the best of times a rather incomplete form of security. Who is, for example, to decide whether an armed attack is imminent? States generally consider this to be a matter of auto-interpretation. The Security Council in the majority of cases takes action only after the infringement has occurred, that is, if it can bring itself to the point of mustering the necessary consensus. Again, one hopes, the Commission will be able to show the way out of the impasse. Another of its functions concerns the taking of "interim measures ... in cases of duly recognised emergency".¹⁰⁸

A great deal of faith seems to have been put in this body. The de facto difference in power between the two participating states is not insubstantial. That has been and will be the position. This Agreement will not be implemented within a completely new environment. No treaty can in any case legislate peaceful intentions into the hearts of those acting on behalf of sovereign states. The following is therefore the more relevant question : how seriously committed are these two states to the task of achieving the objectives laid down in the agreement? It would be naïve to demand fool-proof mechanisms on paper. They simply do not exist.

Other provisions

The remainder of the Accord of Nkomati contains a preamble consisting of an enumeration of the principles on which the Agreement is said to be based : such as respect for sovereignty, territorial integrity, peaceful settlement of disputes and good neighbourliness. The affirmation of the "internationally recognised principle of the right of peoples to self-determination and independence and the principle of equal rights of all peoples" might sound slightly hollow. The totally different interpretation that South Africa gives to self-determination and equality lies at the root of her troubles with the international community. This is even more true of her relations with Black Africa.

Article 6 contains an unusual declaration, namely that "there is no conflict between their commitments in treaties and international obligations and the commitments undertaken in this Agreement". What are these other commitments? The relationship between various treaty obligations is governed by Article 53 of the Vienna Convention of the Law of Treaties of 1969. This article makes it clear that "a treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law". As far as the Accord of Nkomati gives content to the principle of non-aggression, which is a recognised peremptory norm of international law, it is fully in accord with the requirement and needs no further affirmation. Perhaps the answer is to be sought in Mozambique's other commitments. She is a member of the Organisation of African Unity which is opposed to South Africa and which, in the past, has supported

numerous United Nations resolutions condemning South Africa. The conclusion of the Accord of Nkomati has not changed Mozambique's opposition to South Africa's racial policies. This was made abundantly clear even at the signing ceremony. What it does suggest is the shifting of attempts at changing South Africa's policies away from activist ANC support to apparently more peaceful means. In explaining this agreement to other African states, Mozambican leaders have stressed their continued opposition to apartheid but have simultaneously emphasised the necessity of coming to terms with South Africa's economic and military power.

The Accord came into being on the date of signing. The Mozambican parliament did subsequently ratify this Agreement. South African Constitutional Law does not on the other hand, require any formal parliamentary approval. Amendments will be effected by an exchange of notes.

ECONOMIC CO-OPERATION

The Accord of Nkomati itself contains no provisions concerning economic co-operation. The regional conditions, however, are such that economic co-operation will be included of necessity. There can exist little doubt that the prospect of close economic co-operation with South Africa was one of the main reasons why Mozambique was prepared to conclude this Agreement.¹⁰⁹ Its own economy is in dire straits and South Africa is seen as a potential source of relief. Close co-operation in agriculture, tourism, transport, and fisheries are expected and agreements are being prepared. It is also hoped that the number of Mozambicans working in South African mines will increase and that the South African private sector will make direct investments.

Although the South African economy is much stronger, it also stands to benefit a lot from normalisation and improvement of economic conditions in Mozambique. Apart from long-term benefits resulting from increased markets, there are the more immediate benefits which will come from restored rail links and access to the harbour facilities of that country. Electricity from Cahora Bassa is another obvious example.

Official South African development assistance will be limited. The South African government has considerable difficulty in balancing its own books inter alia because of drought relief, an increasing defence budget, the implementation of a costly new constitutional dispensation, and a falling gold price. Its aim is rather to persuade the wealthier Western governments to become involved in Mozambique.¹¹⁰

One of the more immediate economic results of the improved relationship between these two countries was the conclusion, on May 2nd 1984, of the "agreement between the governments of the Republic of South Africa, the People's Republic of Mozambique and the Republic of Portugal relative to the Cahora Bassa Project". It is estimated that the supply of electricity to South Africa from the hydro-electric plant on the Zambezi at Cahora Bassa will result in an income of £11 million a year for Mozambique. This is certainly not a one-sided arrangement. The recent drought and disruption in electricity supplies in South Africa provide a striking example of interdependence.

The Cahora Bassa Agreement replaces an earlier agreement concluded between South Africa and Portugal in 1969. The changed circumstances since Mozambique's independence have necessitated a new arrangement. Portugal remains a party to the agreement because of her majority shareholding in Hidroeléctrica de Cahora Bassa (HCB) SARL, and limited liability joint-stock company.

This agreement in addition provides for export credit loans by South Africa to HCB, most favoured treatment to South Africa and the review of tariffs. The latter is to be undertaken by a Permanent Joint Committee, which will function as an advisory body for the parties to the agreement.

Sabotage of the transmission lines may constitute a grave threat to the viability of this project. It is therefore laid down in Article 8 of the agreement that South Africa and Mozambique have a joint responsibility for the protection of the lines. The Mozambican government still experiences considerable difficulty in controlling the MNR. South Africa may find it necessary to become directly involved, which would indeed be a case of reaping the bitter fruits of earlier ill-conceived policies - i.e. if allegations that she has actively supported that resistance movement are true.

SOUTH AFRICA'S OTHER NON-AGGRESSION PACTS

The Accord of Nkomati is undoubtedly the most sought after breakthrough in Pretoria's relations with Southern Africa. Among the Black States of the region Mozambique enjoys a unique position. It is a self-declared Marxist People's Republic and ideologically completely opposed to South Africa. President Machel is a highly-respected figure in African politics and no other African country was prepared to lend support to the ANC to the degree that Maputo had done, a factor of considerable annoyance to the South African government. In terms of economic co-operation, Mozambique also kept more separate from South Africa, especially after independence. She is not integrated into the South African economy to the extent that members of the Rand Monetary Area and the South African Customs Union are.¹¹¹

It has since been revealed that in February 1982, through an exchange of notes, South Africa and Swaziland also concluded a security agreement. This was however kept secret until after the signing of the Accord of Nkomati. Compared with the agreement with Mozambique, the South African/Swazi agreement is a more concise document, probably signalling a less complicated relationship. It does not contain the rather elaborate provisions of the Accord of Nkomati. Swaziland does not suffer the inconvenience of an internal resistance movement and presumably has no complaints about destabilisation. No Joint Security Commission is provided for either. The basic undertaking is to "combat terrorism, insurgency and subversion individually and collectively" and to assist each other in "eliminating this evil". It contains an affirmation of respect for each other's independence, sovereignty and territorial integrity, the duty to refrain from the unlawful threat or use of force and an obligation not to allow within their respective territories "the installation or maintenance of foreign military bases or the presence of foreign military units except in accordance with their rights of self-defence in the event of armed attacks as provided for in the Charter of the United Nations and only after due notification to the other".¹¹²

Why was this agreement kept secret for so long? According to press reports¹¹³ this was done on the request of Swaziland. Such close co-operation with the White regime of South Africa is not respectable in Black African politics. When President Machel broke the ice, however, and made his agreement with South Africa known to the world, the stigma was largely dispelled.

There are strong indications that South Africa is actively pursuing the same goal with other Southern African states. Lesotho has already been approached with "certain proposals in regard to security arrangements",¹¹⁴

although the Lesotho government is reported to be quite satisfied with the "present arrangement whereby the two governments hold talks at all levels to settle any differences".¹¹⁵ It is generally believed that South Africa applies "economic pressures against Lesotho over an ANC presence there"¹¹⁶ and that South Africa "is actively pressing its neighbours to sign a series of non-aggression pacts".¹¹⁷

South Africa has concluded non-aggression pacts with all the former homelands which have been given independence. These agreements all contain the same two basic obligations: not to resort to armed force against each other but to solve disputes peacefully; and not to allow their territories (and in the case of Transkei also the territorial sea or air space) to be used for military subversive or hostile actions against the other. The agreement with Transkei¹¹⁸ provides for the right of military aircraft to "peaceful overflight" through the air space of the other party. It explicitly grants naval vessels of the signatories a right of innocent passage in territorial waters and the right to take shelter in ports "in time of urgent distress", a term which is not defined any further.

It has been suggested that Transkei has terminated this agreement unilaterally a few years ago when diplomatic ties were severed,¹¹⁹ although the agreement did not provide for termination. Since then relations between the two countries have been restored and South African government officials consider the agreement to be still binding. The other pacts allow for termination, provided that six months written notice is given.

When comparing the Accord of Nkomati with the homeland pacts, one is struck by the terseness of the latter. This shows that activities from these territories pose a far smaller security threat to South Africa, at least at present. These countries are far more integrated into and dependent upon South Africa. They enjoy very little leeway for independent hostile action. The need for an elaborate list of prohibited activities, both with respect to acts of terrorism and destabilisation, does not exist to the same degree.

These homeland agreements have been criticised for adding nothing new to the regulation of regional security.¹²⁰ They do not, for example, commit South Africa to the defence of her former homelands. One commentator has even suggested the inclusion, in favour of South Africa, of a right of hot pursuit over their territories or, if they would be unwilling to concede to this, a unilateral statement by South Africa to the effect that she would consider intervention in the domestic affairs of these other states as a direct security threat to herself.¹²¹ Such a declaration would then, according to this view, "provide a basis for South Africa to intervene directly in the internal affairs of these independent Black States should South Africa's security be threatened by the interference by third states in the domestic affairs of these independent Black States".¹²²

Such a "solution" raises a number of very serious problems, such as the question whether a unilateral declaration which purports to sanction aggression could ever provide a legal basis for intervention in the internal affairs of other states. If the rule against aggression is indeed jus cogens,¹²³ the answer must be in the negative. Jus cogens cannot be set aside by treaty, acquiescence¹²⁴ or even less so by unilateral statements. Should the contrary be true, a more powerful state could simply "legalise" its own future aggression by well-timed unilateral statements. Those instances where unilateral statements have been recognised as creating legal facts, such as the Egyptian Declaration on the Suez Canal and the arrangements for its operation of 1957 and those made by France in the context of the Nuclear Test Cases of 1974, have actually

created obligations for the countries making these statements.¹²⁵ The requirement of consent is too fundamental an element in the creation of binding obligations among sovereign states to be discarded so easily.

What this reasoning does reveal, however, is the quality of the sovereignty and independence of the former homelands. These countries are recognised by no state besides South Africa. Arguments of this kind (they are not here ascribed to the South African government) will do very little to increase the eagerness of the world to reconsider their refusal to recognise them. The logical extension of this line of reasoning has led to the argument that South Africa should base its regional relations on its own Monroe or Brezhnev doctrine.¹²⁶ This admission brings the present discussion to its conclusion - the question as to the real nature of Southern African regional relations.

CONCLUSION : WHAT DOCTRINE IS IT TO BE - MONROE, BREZHNEV OR BOTH?

The real significance of the Accord of Nkomati lies in its regional political implications. This article has endeavoured to show that an old-fashioned diplomatic instrument has suddenly found a new application in the relations between South Africa and her Black neighbours. The Accord of Nkomati contains nothing on the termination or denunciation of the Agreement, although provision is made for amendments. Since it seems clear that no implied right of unilateral denunciation can exist, it must be concluded that the parties have intended to enter into a long term arrangement that can only be altered by mutual consent. When the Accord of Nkomati is compared with those non-aggression pacts dating back to the inter-War period, similarities with some of them are apparent. Of these the obligations with respect to non-interference in internal affairs could be mentioned.

Many of the pre-World War Two non-aggression pacts contain reference to relations with third parties, such as references to the duty not to act in conjunction with such parties against the other contracting state, or to the fact that an act of aggression by a signatory against a third state would entitle the other party to denounce the agreement. The Accord of Nkomati contains nothing of this kind, but this is not surprising. The brief discussion of earlier non-aggression pacts indicates that these agreements have always been concluded with specific political and security needs in mind. National interests always played a significant role. The following is probably the chief merit of this type of diplomatic device for South Africa : it offers an opportunity to give explicit content to a bilateral relationship in a manner that provides for partial safeguarding of national interests. It cannot, however, ensure peace. On this point the historical record is clear. In the case of South Africa, it is an effort at constructing a new regional arrangement. That will, however, only succeed if it is based on additional foundations such as close economic co-operation and if the root-cause of the racial conflict is also addressed.

We have discussed a number of pre-World War Two non-aggression pacts in order to explain the political conditions under which they have made sense. Countries that have used them extensively, such as the Soviet Union, have tried to achieve peaceful relations with hostile neighbours. During the Second World War the Soviet Union overcame this dilemma by actually assuming control of many of these countries. It was also pointed out that the creation of the United Nations for all practical purposes has brought to an end the era of non-aggression pacts. This was a result of the emergence of a new international political order which found its

constitution in the United Nations Charter. This document and international law in general have finally outlawed the use of force of inter-state relations, at least in principle. If international collective security organisations can muster support and compliance, non-aggression pacts are redundant. When they fail (and in the case of the two examples the world has seen, collective security was never fully implemented) other ways have to be found in order to provide for security. Until World War Two the Soviet Union opted for non-aggression pacts, the most important of which were of a bilateral nature. This did not so much stem from a respect for international law or a desire to assist in the consolidation of a definite prohibition on the use of force, but rather was the result of sheer necessity.

Since the establishment of the UN the formation of defence alliances and regional collective security arrangements have for all practical purposes become the only methods used. Not only does the Charter now outlaw aggression and provide for regional security arrangements, but very few states find themselves as isolated as the Soviet Union in the pre-United Nations era. These security alliances aim at effective protection through security co-operation among several states. Only in those very rare instances where a single state enjoys a preponderance of power (and can find no able and willing partners) will a bilateral non-aggression agreement make sense. Such a go-it-alone approach then also reflects isolation.

Collective security arrangements and non-aggression pacts have at least one thing in common - the availability of the means to ensure that the potential aggressor will respect the obligation to preserve the peace. The success of a bilateral non-aggression agreement in the final analysis also depends on the antecedent (and unwritten) condition that non-compliance will result in the use of force by the victim. Hopefully this knowledge will restrain the opposite party. In those instances where the initiator of the non-aggression agreement is an isolated state, it has only its own resources to rely on in order to achieve the necessary deterrence.

South Africa's choice of non-aggression pacts to regulate regional relations was explained with reference to its peculiar international problems and their relation to internal racial policies. A dominant feature of South Africa's environment is its hostile nature. The universal condemnation of South Africa's internal policies has reached a stage where some proclaim the blessing of a revived just war doctrine on the activities undertaken in the name of the struggle for self-determination. It was predictable that South Africa would seek her place outside the structure of the United Nations. She has no confidence in that body. The UN is after all the epitome of international condemnation of her policies. South Africa has opted for non-aggression agreements because they offer the opportunity to give specific and precise content to the sui generis nature of local relations.

To some extent these arrangements reflect South Africa's national power. This does not imply omnipotence or that these agreements contain final answers. On the contrary, they might rather be seen as the start of a new era, one in which one hopes a greater pragmatism will be displayed and which is in any case related to a broader political context. The latter aspect includes South Africa's still unsolved internal problems, the problem of Namibia's independence and the wider ramifications of this for the super powers. This, however, would necessitate greater involvement by Western states. South Africa, though the region's economic power, cannot generate affluence and stability for all.

One of South Africa's immediate aims was to end ANC attacks. Mozambique on the other hand wanted support for the MNR to cease. South Africa's basic strategy seems to be based on the denial of territorial sanctuaries to the ANC. The non-aggression pacts will therefore have to be expanded until a complete cordon sanitaire has been created. The Accord of Nkomati was only a first step - in its wake more will have to follow.

Some kind of regional organisation and provisions for economic co-operation are needed. The difficulties that South Africa has experienced in convincing other Southern African countries to join its Constellation of States, shows how difficult it will be to implement such a scheme. All collective security systems have as their fundamental aim the preservation of peace among their members. They pledge themselves collectively to punish aggression by any other member. This presupposes a minimum of common values and agreement on the source of insecurity. It seems unlikely that such a unity of purpose can develop alongside a racial policy such as South Africa's. Conflicting values go to the heart of what the two sides consider to be the irreducible minimum of their respective systems, namely the right of self-determination. Needless to say, their interpretations are diametrically opposed.

Is South Africa's blueprint for the region based on a Monroe Doctrine à la Pretoria? Although this might sound preposterous to some, there are those who seriously advocate this approach, albeit that theirs' is a somewhat antiquated version of that doctrine. The Monroe Doctrine came into being during the hey-day of colonialism when Latin American states were regarded as inferior. The purpose of the Monroe Doctrine was to keep the European powers from intervening in the Western Hemisphere. Insofar as this Doctrine still forms the basis of USA/Latin American relations, it has undergone a radical change. The following passage contains sufficient indication of the fallacy of transplanting such a concept to this part of the world :

"Beginning with the Good Neighbour Policy in 1933, however, the doctrine has gone through a process of multilateralisation that has produced political unity in the form of the OAS and a common security policy against foreign intervention embodied in the Rio Treaty. Consensus, however, is lacking on the question of whether and how the Monroe Doctrine should be applied to such problems as the establishment of a Communist government in Cuba, subversive activities elsewhere in Latin America, and United States intervention in domestic revolutions".¹²⁷

Who are the potential participants in such an arrangement and exactly what form will the foreign threat take? If South Africa's real security needs are to be safeguarded through non-aggression pacts with countries like Mozambique, the South African version of the Monroe Doctrine will have to cast its net considerably wider than the former homelands. The manner of casting the net will be important. We no longer live in conditions in which a unilateral Diktat seems to work.

Some understand a South African Monroe Doctrine to comprise a "joint declaration on the part of all Southern Africa that outside intervention will be neither entertained by any one state nor tolerated by all".¹²⁸ This seems to address a security problem quite different to that of the ANC attacks which the Accord of Nkomati tries to prevent. If this reasoning however is pursued long and enthusiastically enough the stage will be reached where the ANC will simply be equated with foreign intervention.

The Brezhnev Doctrine maintains that a socialist state has an obligation to interfere in another socialist state if the continuance of socialism is threatened. It depends on power and is based on the determination to preserve a sphere of influence. To that extent it may reflect the de facto relationship between South Africa and the former homelands. It must be remembered that the Transkei was originally part of South Africa. Czechoslovakia, on the other hand, was an independent state subsequently to be brought into the Soviet Union's sphere of influence.

It is on the level of intellectual justification that the suitability of the Brezhnev Doctrine is really revealed. The Brezhnev Doctrine is based upon the belief in the existence of socialist sovereignty and a socialist right of self-determination. The original exposition makes this clear :

"The sovereignty of each socialist country cannot be set up in opposition to the interests of the socialist world and the interest of the world revolutionary movement ... Such 'self-determination' as a result of which NATO troops would have been able to come up to the Soviet borders, while the community of European socialist countries would have been rent, would have encroached, in actual fact, upon the vital interest of the peoples of these countries and would be in fundamental conflict with the right of these peoples to Socialist self-determination".¹²⁹

So again we are left with the right to self-determination - but which version is it to be? And how does this assist us in gaining a clearer understanding of the Accord of Nkomati?

If the Soviet Union is to be our guide, let it rather be her practice before World War Two. It was during that period that the Soviet Union found it expedient to conclude a number of non-aggression pacts. She did so out of insecurity and a perception of herself as surrounded by a hostile world. But she could not stop there. Non-aggression pacts are often honoured in the breach. Only after she had created a subservient buffer zone did the need for non-aggression pacts fall away. She then had something better. It must be remembered that the Soviet Union achieved this without ever being prepared to change her internal policies.

Would it be possible to repeat this feat in Southern Africa? Since the conditions are quite different, and until a more apt term is coined, we might do as well to call our local version the "Botha Doctrine". Does there in actual fact exist such a policy? This article suggests that the South African government indeed has a regional security strategy which is based on bilateral non-aggression agreements. The extent to which a change in internal policies forms part of such a broader strategy has not been spelled out. This could be one of the most serious deficiencies of the present scheme. It was also argued, however, that, although the present policy might stop with non-aggression pacts, the only lasting security structure will have to include more. (The Constellation of States concept might suggest that Pretoria indeed contemplates an arrangement for tighter control.) Additional incentives will be necessary to keep the signatories to their contractual promises.

A cordon sanitaire surrounding South Africa will not provide the required security. It will not constitute a buffer against an outside enemy. The "enemy" is within. This presupposes, at least as long as the two opposing views are set on conflicting paths, the creation of a sphere of influence over subservient states. Creating and sustaining something of this kind and scope will necessitate economic and military commitment : the

financial, manpower and political implications of which have yet to be spelled out. It might be of such magnitude as to justify consideration of other alternatives.

NOTES

1. The Accord was signed on the banks of the Nkomati River, which is on the South African-Mozambique border.
2. See for example the 1982 White Paper on Defence. p. 5.
3. For a very thorough discussion of the destabilisation controversy, see Simon Jenkins "Destabilisation in Southern Africa", The Economist, 16 July 1983. pp. 15-28.
4. See further Deon Geldenhuys, The Constellation of Southern African States and the Southern African Development Co-ordination Council : Towards a new Regional Stalemate?. South African Institute of International Affairs, Johannesburg, 1981.
SADCC's achievements up till now have however been rather poor. See Financial Mail, 27 April 1984. p. 32.
5. It has been estimated that Mozambique has lost some \$4,2 billion since 1974. This resulted from a decline in South African cargo throughput in the port of Maputo, a reduction of the number of Mozambicans working in South Africa and the discontinuation of the preferential arrangement whereby a portion of mineworkers' wages were paid in gold. Financial Mail, 27 April 1984, p. 33. This estimates comes from Mozambican sources.
6. Trade between the two countries is unlikely to see immediate and spectacular improvement. Mozambique's foreign debts stand at about \$1 billion while her foreign exchange reserves are fully depleted. Financial Mail, 16 March 1984. p. 92.
7. The members of SADCC are Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, Tanzania, Zambia and Zimbabwe.
8. Hall, W.E., International Law, 5th ed. p. 82, quoted by Harris Cases and Materials on International Law, 3rd ed. p. 638.
9. League Covenant, Art. 12(1).
10. Ibid., Art. 16.
11. See Harris op.cit., p. 640.
12. Eckhart Thomas, "Nichtangriffspakt", Strupp-Scholchauer Wörterbuch des Völkerrechts, Vol. 2, de Gruyter. Berlin, 1961. p. 609.
13. See for example the different interpretations by Ian Brownlie, International Law and the Use of Force by States, OUP, 1963 and Derek W. Bowett, Self-Defence in International Law. Manchester Univ. Press, 1958.
14. Art. 53, Vienna Convention on the Law of Treaties.
15. See for example Ian Brownlie, Principles of Public International Law, 3rd ed. pp. 512-5.

16. See supra.
17. Aggression and World Order, Stevens and Sons, London, 1958. pp. 104-105.
18. See supra.
19. Eckhart Thomas, op.cit., p. 610.
20. Grenville, J.A.S., The Major International Treaties 1914-1973. Methuen & Co., London, 1974. p. 56.
21. Eckhart, op.cit., p. 611.
22. See supra.
23. Eckhart, op.cit., pp. 610-611. Practically all those treaties listed by Grenville (see supra note 20) as non-aggression agreements show the SU as a party.
24. Signed 17 December 1925 in Paris. See Slusser and Triska, A Calendar of Soviet Treaties 1917-1957. Stanford University Press, 1959. p. 54.
25. Signed 31 August 1926. Ibid., p. 57.
26. Signed 28 September 1926. Ibid p. 58.
27. Signed 9 March 1927. Ibid., p. 59.
28. Signed 1 October 1927. Ibid., p. 61.
29. Signed 21 January 1932. Ibid., p. 81.
30. Signed 4 May 1932. Ibid., p. 82.
31. Signed 9 June 1934. Ibid., p. 95. This specific agreement was dealing with "non-interference".
32. Signed 21 August 1937. Ibid., p. 118.
33. Signed 13 April 1941. Ibid., p. 143. Although this agreement was termed a neutrality pact the purpose was basically the same - to secure the SU's northern flank against an attack from Japan. See further Alvin Z. Rubenstein, The Foreign Policy of the Soviet Union. Random House, New York, 1972. p. 115.
34. Signed 25 July 1932. Slusser and Triska op.cit., p. 83.
35. Signed 5 June 1922. Ibid., p. 32.
36. Signed 6 June 1922. Ibid., p. 32.
37. See supra note 33.
38. Signed in Berlin on 24(?) April 1926.
39. The practice of extension was adopted in several of the other agreements as well.

40. Of August 23 1939.
41. Art. 1 of the Pact of Non-Aggression between the SU and Poland of 25 July 1932. In the Soviet-Chinese non-aggression agreement of 1937 the parties have undertaken to "refrain from any aggression against each other either individually or jointly with one or more other Powers". In the non-aggression agreement of 1932 with Finland it is stated : "Any act of violence attacking the integrity and inviolability of the territory or the political independence of the other High Contracting Party shall be regarded as an act of aggression, even if it is committed without declaration of war and avoids warlike manifestations".
42. These are quoted as examples of the so-called general definitions of aggression.
43. Arts. 2 and 3. Text in Grenville, op.cit., p. 144.
44. See Rubenstein, op.cit., p. 120.
45. Soviet troops attacked Poland 16 days after the German invasion.
46. Bessarabia was part of Rumania.
47. See for example Art. II(2) of the Finland/SU pact of 1932; Art. II of the SU/Poland pact of 1932.
48. Address by Molotov to the Supreme Soviet on 31 August 1939. Text in Rubenstein, op.cit., pp. 138-144, at p. 139.
49. Ibid., p. 140.
50. See Art. 3 of the Lithuanian treaty of 1926, Art. II of the Polish pact of 1932, Art. II of the French Pact and Art. II(1) of the Finnish agreement of 1932.
51. See for example Art. 1, Protocol prolonging the Soviet-Finnish Part of 5 May 1934, Art. VII of the Soviet-French pact of 1932.
52. See further O'Connell, D.P., International Law, Vol. 1, 2nd ed. p. 266. Note that the League's model Bilateral Treaty of Non-Aggression (text inter alia in League of Nations Monthly Summary, Vol. 8, pp. 335-340) explicitly provides for a fixed duration. (See Art. 32).
53. O'Connell, op.cit., p. 266.
54. Art. V.
55. Ibid.
56. Incidents like the landing of Japanese troops at Vladivostok in 1918, the involvement of British, French and American soldiers in this interventino, the Civil war, the action taken by the Czech Legion and the Polish offensive of 1920 only strengthened these convictions. See further Rubenstein, op.cit., pp. 43-50.
57. Rubenstein, op.cit., p. 12.
58. Ibid.

59. Ibid. p. 121.
60. Eckhart, op.cit., p. 611.
61. Grenville, op.cit., pp. 361-376.
62. Grenville, op.cit. contains a convenient list of these.
63. Stone, op.cit., p. 214.
64. For background see inter alia Pratt et al, A History of United States Foreign Policy. Prentice Hall, Englewood Cliffs, 1980. pp. 502 et seq.
65. The USA never became a member.
66. Germany, the SU's most feared adversary, withdrew from the League in 1933. Italy invaded Ethiopia while still a League member.
67. This would suggest that a state like Israel, and perhaps Taiwan, too, should also pursue this goal. This specific aspect has not been investigated. That Israel, which is not even recognised as a state by her neighbours, is eager to normalise relations with these countries, is well known. The Camp David Agreement with Egypt was an agreement of this kind.
68. For a valuable analysis of the concept of collective security, see David W. Ziegler, War, Peace and International Politics, 2nd ed. Little, Brown and Company, Boston, 1981. pp. 179 et seq.
69. Ibid., p. 180. On the erosion of the original "intellectual integrity" of the concept of collective security, see Claude, Swords into Plowshares, 4th ed. Random House, New York, 1971. pp. 246-248.
70. Op.cit., p. 252.
71. Claude, op.cit., p. 251.
72. For the text, see South African Yearbook of International Law (SAYIL), 1977, p. 254. This was a compromise text, interpreted by, for example, Britain not to contain a reference to acts of aggression in the "technical sense of Article 39 of the Charter".
73. Op.cit., p. 250.
74. GA Res 3314 (XXIV). Text inter alia in American Journal of International Law, 1975(2), p. 480.
75. For a discussion of the drafting history see Ahmed M Rifaat, International Aggression. Humanities Press, Atlantic Highlands, 1979.
76. Art. 4 of the Definition.
77. Stone, op.cit., p. 12.
78. Rifaat, op.cit., p. 278.
79. Ibid., p. 277 and the sources cited there.

80. Michael Akehurst, A Modern Introduction to International Law, 4th ed. George Allen and Unwin, London, 1982. pp. 256-257.
81. For an exposition of this view, see H Booyesen, Volkereg - 'n Inleiding. Juta en Kie, Cape Town, 1980. pp. 124-128.
82. The SAYIL is a useful guide to all General Assembly (GA) and Security Council (SC) resolutions adopted against the various aspects of her policies.
83. See further Akehurst, op.cit., p. 169.
84. SC Res. 387 (1976). The vote was 9 to 0. France, Italy, Japan, the Uk and USA abstained. China did not participate, apparently because of the failure to condemn the USSR and Cuba as well. See further Harris, op.cit., p. 650, SAYIL, 1976, p. 264.
85. See Harris, op.cit., p. 676.
86. Art. 1.
87. Art. 2.
88. See for example Art. 6 of the League's model treaty on non-aggression, supra note 52.
89. UN Charter, Art. 33.
90. Un Charter, Art. 37.
91. Art. 8
92. See further Goodrich Hambro and Simons, Charter of the United Nations - Commentary and Documents. Columbia, New York, 1969, p. 55.
93. Akehurst, op.cit., p. 169.
94. O'Connell, op.cit., p. 305.
95. Art. 8.
96. South Africa has often been accused of permitting the recruitment of mercenaries. After an abortive coup attempt in the Seychelles in which a number of South Africans were involved, the Defence Amendment Act 34 of 1983, was adopted. It prohibits members of the SA Defence Force from serving as mercenaries or recruiting them.
97. Art. 3(2)(b).
98. The Economist, 2 June 1984, p. 35.
99. Art. 3(3).
100. Art. 3(2)(i).
101. Art. 3(2)(j).
102. The Economist, 2 June 1984, p. 35.
103. Ibid.

104. The South African Commissioner of Police heads that country's delegation.
105. The Economist, 2 June 1984, p. 35.
106. Cahora Bassa Agreement, Art. 8.
107. Art. 9(4)(a).
108. Art. 9(5).
109. See "What's in it for us?", The Economist, 2 June 1984, p. 35.
110. This was one of the aims of the SA Prime Minister's visit to a number of European countries in 1984.
111. The importance of the latter is demonstrated by the fact that SA supplies 86% of Botswana's, and 90% of Lesotho's and Swaziland's imports. In 1982 Lesotho received 71% of its total government revenue from the customs union. In the case of Swaziland and Botswana the figures were 60% and 37% respectively. These countries also save considerable sums because SA administers the whole arrangement. See Financial Mail, 30 September 1983, pp. 88-90.
112. Art. 4.
113. See, for example, The Cape Times, 2 April 1984.
114. The Cape Times, 21 June 1984, p. 6.
115. Ibid. South Africa has apparently also decided against further co-operation with Lesotho on a joint water project in that country.
116. Address by Prof Deon Geldenhuys on the occasion of the golden Jubilee conference of the SA Institute of International Affairs, as reported in The Argus, 8 March 1984, p. 2. South African Foreign Affairs spokesmen are reported to have "confirmed the hope that Botswana, too, would sign a Nkomati-type agreement". Financial Mail, 6 April 1984, p. 45.
117. Financial Mail, 6 April 1984, p. 48. The South African policy is indeed to have such agreements concluded. In the words of the Primer Minister, "We have frequently told our neighbours that we advocate non-aggression pacts with all our neighbours ...". Hansard, 2 February 1982, col. 140, as quoted in SAYIL, Vol. 8, 1982, p. 230.
118. Govt Gazette No. 5320, 22 October 1976, p. 26. The pact with Bophuthatswana appears in Govt Gazette No. 5823, 6 December 1977; the one with Venda in Govt Gazette No. 8747, 10 June 1983.
119. Booysen, op.cit., p. 410.
120. Ibid., pp. 410-411.
121. Ibid., p. 411.
122. Ibid. Own translation.
123. And this contention is accepted by Prof Booysen, op.cit., p. 513.

124. Brownlie, op.cit., p. 513.
125. Ibid., p. 635.
126. This is the conclusion drawn by Prof Booyesen, op.cit., p. 412. Similar ideas were expressed by Otto Krause. See Sunday Times, 27 May 1984. Their interpretations as to the real meaning of such an adapted Monroe doctrine seem to differ.
127. Jack C Plano and Roy Olton, The International Relations Dictionary. Holt, Rinehart and Winston Inc., New York, 1969. p. 156.
128. Krause. See supra note 126.
129. Sergei Kovalev "Sovereignty and the International Duties of Socialist Countries", Pravda, 26 September 1968. Reproduced in Rubenstein, op.cit., pp. 302 et seq at p. 303.