

## **Namibia's Path to Independence: Historical and Legal Perspectives on the Legitimacy of the International Mandate and the Right to Self-Determination (1915–1990)**

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### **Abstract:**

This study examines the historical and legal trajectory of Namibia's independence, focusing on the interplay between the legitimacy of the international mandate and the principle of self-determination during the period from 1915 to 1990. It aims to analyze how legal frameworks and international norms influenced the political struggle of the Namibian people and the intervention of international institutions, ultimately shaping the country's path to independence. The study's significance lies in highlighting the role of international law as an intermediary in decolonization processes, showcasing Namibia as a unique case study demonstrating the convergence of legal norms with national liberation efforts. This convergence allows for a deeper understanding of the relationship between international law and political transformations in contemporary Africa.

The study employs a historical-analytical approach, combining United Nations resolutions, advisory opinions of the International Court of Justice, and specialized secondary studies in African political history. This methodology enables a comprehensive understanding of both legal texts and political realities, connecting international law to practical developments on the ground. The study concluded that the mandate system, despite its initial official legitimacy, lost credibility due to the excesses of the South African government, while the development of the principle of self-determination gave legal and international legitimacy to the national liberation movement, especially the SWAPO movement, which paved the way for coordinating international and local efforts, and ended with the achievement of Namibia's independence in 1990, confirming the practical role of international law in shaping the paths of national liberation.

**Keywords:** Namibia, International Mandate, Right to Self-Determination, Decolonization, United Nations.

### **Introduction:**

Located in southwestern Africa, Namibia spans a vast area characterized by significant geographical diversity and rich natural resources, making it a historically attractive target for European colonial interests. The country endured a series of colonial experiences, beginning with German occupation in the late 19th century. The German mandate continued until the end of World War I, after which the region was placed under an international mandate system by the League of Nations, before falling under South African control following World War II. This long period of foreign domination left profound political, social, and economic scars, contributing to a long and complex path toward independence.

Despite the legal justifications provided by the international mandate system for the presence of foreign powers, Namibia experienced widespread abuses by the South African government, including the imposition of discriminatory policies and the exploitation of natural resources. This led to a conflict between the international legitimacy of the mandate and the Namibian people's right to self-determination. This conflict escalated the issue internationally, prompting the

United Nations and its agencies to intervene to affirm the Namibian people's right to independence and subsequently monitor its implementation.

Studying this trajectory is of particular importance, as it combines the historical and political dimensions of the issue with the international legal framework that provided a context for political and social transformations. International law, through the mandate system and the principle of self-determination, was not merely theoretical, it became a practical tool that contributed to the internationalization of the Namibian issue, the international legitimization of the national struggle, and the exertion of pressure on the South African government. Thus, the Namibian experience represents a unique model of how international law interacts with colonial conflicts and national liberation movements in contemporary Africa.

In light of this complex historical and legal background, the central research question emerges: How did the legal legitimacy of the international mandate system and the principle of self-determination contribute to shaping the historical and political path to Namibia's independence, and what was the impact of this interaction on the role of international institutions in achieving independence?

## **1- The Legal and Political Dimensions of the International Mandate System**

The mandate system is one of the legal and political mechanisms established after World War I to regulate the administration of territories formerly under the control of defeated powers. This was done under international supervision, theoretically aimed at ensuring that these territories were administered in a way that served the interests of their indigenous populations and gradually prepared them for self-governance. The system was based on a combination of legal principles that emerged at the time, primarily the concept of international responsibility for territories incapable of self-governance, alongside political considerations imposed by the international balance of power in the postwar period. However, the dual nature of the mandate system—formally an international system, yet in practice an indirect continuation of colonial control policies—gave rise to profound problems concerning its legal legitimacy and the limits of its political legitimacy.

This system raised fundamental questions about the extent to which it respected the rights of the peoples under mandate, the nature of the relationship between the mandatory power and the international community, and the degree to which its practical application aligned with the stated goal of protecting the

interests of the populations and promoting their aspirations for self-determination. Consequently, the legal and political framework of the mandate system has been a fertile ground for legal and international debate, particularly in cases where the mandate has turned into a tool for consolidating long-term domination rather than a transitional phase towards independence.

The international mandate system emerged in the aftermath of World War I, in a context marked by the collapse of major empires, particularly the German and Ottoman empires, and the resulting sovereign vacuum in vast territories. This compelled the international community to seek a new formula for administering these territories, moving away from the logic of direct annexation, which had become the subject of increasing moral and political skepticism<sup>1</sup>. This coincided with the rise of a new conception of international relations based on the idea of collective peacekeeping and subjecting the exercise of power to common legal rules<sup>2</sup>.

Within this framework, the League of Nations played a fundamental role in codifying the mandate system by incorporating it into its Covenant, specifically Article 22, which stipulated that the welfare and progress of peoples constituted a “civilizational trust.” Under this trust, the administration of certain territories was entrusted to

mandatory powers exercising their authority on behalf of and under the supervision of the League, without transferring legal sovereignty to them<sup>3</sup>. This oversight was embodied in institutional monitoring mechanisms, most notably the requirement for mandatory powers to submit annual reports and the establishment of a permanent mandates commission. Theoretically, this reflected the introduction of a collective international dimension to the administration of mandated territories<sup>4</sup>.

However, the stated objectives of this system, primarily preparing the subject populations for self-government or independence, revealed from the outset problems concerning its legitimacy. The League of Nations Covenant distinguished between different categories of territories according to the criterion of “level of development,” a broad standard that allowed for significant variations in administrative styles. In some cases, it even permitted subjecting a territory to an administration closely aligned with the legal system of the mandatory power, while merely providing general guarantees for the protection of the indigenous population<sup>5</sup>. This disparity weakened the transitional nature of the mandate and paved the way for its transformation into a permanent form of control<sup>6</sup>.

It is noteworthy that the mandate system represented an attempt to

rehabilitate the colonial project within a new international legal framework, rather than a genuine break with it. This system allowed the mandatory powers to continue exercising broad de facto authority, while international oversight remained practically ineffective. This contradiction between the declared liberation rhetoric and the actual mechanisms of implementation reveals a structural crisis of legitimacy, which later contributed to the development of the principle of self-determination as a legal response to the shortcomings of the mandate system and its inability to guarantee a genuine transition to independence.

The legal framework of the mandate system was based primarily on the Covenant of the League of Nations, particularly Article 22, which served as the legal framework governing this system. It established the general principles for administering mandated territories and recognized that the welfare and progress of peoples was a “civilizing trust” for which the international community bore responsibility<sup>7</sup>. Under this framework, the mandate was not viewed as an act of sovereignty, but rather as a legal mandate exercised on behalf of the League and subject to specific principles and objectives. This gave the system a distinct international legal character compared to traditional forms of colonial control.

This framework was further developed through the individual mandate instruments concluded for each territory, which defined in detail the scope of the mandatory power's powers and obligations. These included the duty to respect the rights of the indigenous population, the prohibition of the slave trade, the guarantee of freedom of religion, and the prohibition of militarizing the territory beyond what was necessary for local security<sup>8</sup>. These instruments indicate a clear attempt to subject administrative practice to written and public rules, reflecting the League's endeavor to transform the mandate from a political practice into a relatively regulated legal system.

The mandate system was also based on a legal classification of territories according to what the League considered their "level of development," dividing them into three categories (A, B, and C). Category A was designated for territories recognized as temporarily independent nations requiring only administrative assistance, while Category B was subject to more direct administration. Category C, considered less developed, was permitted to be administered according to the laws of the mandatory power, with only general guarantees for the protection of the population<sup>9</sup>. This classification legalized a fundamental disparity in administrative styles and directly impacted the extent to which the

mandated peoples enjoyed their political rights.

In this context, the mandatory power was subject to a set of rights and obligations under international law, most notably the right to administer and manage the territory's public affairs, in exchange for the obligation to submit annual reports to the League of Nations and to respect the fundamental purpose of the mandate: serving the interests of the population and preparing them for self-government<sup>10</sup>. However, despite their explicit wording, these obligations were not supported by effective enforcement mechanisms, making their implementation largely dependent on the will and discretion of the mandatory power.

It can be argued that the legal framework of the mandate was characterized by a clear duality: on the one hand, it provided legal texts and regulatory instruments aimed at limiting colonial power and imbuing its exercise with international oversight; on the other hand, it enshrined legal inequalities between peoples through classification and granted the mandatory powers broad authorities that were rarely subject to effective oversight. This structural flaw contributed to weakening the legitimacy of the mandate and subsequently paved the way for the growing demand to enshrine the right to self-determination as a clearer and more binding international legal principle.

The political framework of the mandate system was shaped within an international context dominated by the victorious colonial powers of World War I. These powers played a decisive role in imposing this system on the territories detached from the defeated states, relying on their military and political superiority within postwar institutions, particularly the Peace Conference and the League of Nations<sup>11</sup>. This influence was reflected in the distribution of mandated territories and the drafting of their instruments, where the mandatory powers were determined more on strategic considerations than in response to the will of the peoples concerned.

At the strategic and economic level, the mandate was not merely a transitional mechanism of a humanitarian nature, but rather a tool to ensure the continuity of geopolitical influence and secure the economic interests of the mandatory powers, especially with regard to control over natural resources, trade routes, and locations of military importance<sup>12</sup>. The legal discourse surrounding the mandate allowed for the reorganization of these interests within the framework of an “international project,” enabling the mandatory powers to justify their expansionist policies under the guise of international responsibility and the gradual development of the territories.

An analysis of the political practice of the mandate system reveals a

complex interplay between the rules of international law and the national interests of the mandatory powers. Although the Covenant of the League of Nations placed formal limitations on the exercise of power, the application of these rules remained subject to the balance of power within the League. The mandatory powers were able to exploit the ambiguity of the legal texts and the flexibility of the control mechanisms to advance their national priorities<sup>13</sup>. This led to the dominance of political and economic considerations over declared legal obligations, especially in the absence of effective means of enforcing compliance.

Indeed, the mandate system represented a clear example of the politicization of international law, where legal rules became a tool for regulating influence rather than limiting it. The legal framework conferred formal legitimacy on political arrangements that served the interests of the mandatory powers, while the League's role remained limited in achieving a genuine balance between the requirements of international legitimacy and the demands of national sovereignty. This political-legal imbalance stands out as one of the fundamental reasons that later led to a reconsideration of the mandate system and its replacement with a system that more explicitly recognized the right of peoples to self-determination.

In the same vein, it should be noted that the mandate system, in its origins, possessed a formal and legal character derived from its inclusion in the Covenant of the League of Nations, particularly Article 22, which conferred upon it the status of international legal authority. This was because it was a system exercised on behalf of the international community, not as an expression of the sovereignty of the mandatory power<sup>14</sup>. This legal character was reinforced by the adoption of specific mandate instruments for each territory, defining the rights and obligations of the mandatory power and subjecting its actions to mechanisms of international oversight. This theoretically gave the mandate a legal basis that distinguished it from traditional colonial control<sup>15</sup>.

However, practical application revealed a wide gap between the legal framework and actual practice. Several mandatory powers exceeded the limits of their mandate, transforming the mandate into a form of permanent control. South Africa's conduct in the South West Africa region (Namibia) is a prime example. It treated the region as an integral part of its territory, imposing its legal and political system upon it, disregarding the international nature of the mandate and the obligations arising from it<sup>16</sup>.

These transgressions contributed to undermining the credibility and legitimacy of the mandate system

internationally. It became clear that the oversight exercised by the League of Nations was insufficient to prevent the abuse of power by the mandatory powers. This deficiency eroded confidence in the ability of the existing international system to protect the interests of the mandated peoples and achieve the stated goal of preparing them for self-government or independence.

Therefore, the crisis of the mandate's legitimacy stemmed not only from individual transgressions but also from a structural flaw in the system itself<sup>17</sup>, which was based on granting broad powers to the mandatory powers without providing effective enforcement mechanisms. This crisis intensified after World War II, with the changing structure of the international system, the decline in the legitimacy of colonial discourse, and the rise of the principle of self-determination as a recognized international legal norm. In this context, the continuation of the mandate system became incompatible with the new political and legal transformations, paving the way for its termination and replacement with the trusteeship system, and ultimately with the direct recognition of the right of peoples to independence.

It is worth noting that the legal legitimacy of the mandate system formed a fundamental basis for international claims to the right of self-determination in the Namibian conflict.

Recognizing the mandate as an international authority that did not transfer sovereignty to the mandatory power legally allowed for questioning the continuation of South Africa's administration of the territory after the dissolution of the League of Nations' institutional framework<sup>18</sup>. This same legitimacy was used to emphasize that South Africa's authority was neither inherent nor permanent, but rather limited to a specific purpose: serving the interests of the population and preparing them for self-government. This provided a legal basis for the subsequent internationalization of the Namibian question within the United Nations<sup>19</sup>.

In this context, legal legitimacy played a dual symbolic and legal role in the course of the national liberation movement in Namibia. On the one hand, it enabled national movements, most notably the South West Africa People's Organisation (SWAPO), to frame their struggle within an international legal discourse based on the violation of mandate obligations, and not merely on the political rejection of foreign domination<sup>20</sup>. On the other hand, South Africa's misuse of the concept of legitimacy—through its formal adherence to the mandate to justify its continued presence—contributed to undermining the credibility of this system and reinforced the international conviction that it must be terminated definitively<sup>21</sup>.

From the foregoing, it can be argued that the legitimacy of the mandate, despite its problematic nature, played a decisive role in transforming the Namibian conflict from an internal colonial issue into an international legal matter concerning the right to self-determination. This legal framework shifted the focus from the balance of power to the logic of international responsibility and the non-recognition of illegitimate situations, which contributed to lending increasing legal legitimacy to the demands for national liberation and paved the way for international recognition of the Namibian people's right to independence.

## **2- International Law and Political Considerations in Self-Determination**

The right to self-determination is one of the concepts that most clearly embodies the close interaction between international law and politics. It did not develop as an abstract legal principle, but rather emerged and crystallized within the context of international conflicts and profound political transformations linked to decolonization and the reshaping of the international order. This right gradually evolved from a political demand raised by liberation movements to a recognized legal principle, framed by legal rules and international institutions, while its practical effectiveness remains



contingent on the balance of power and prevailing political considerations. Therefore, studying the right to self-determination requires moving beyond the traditional separation between law and politics, and viewing it as a product of their ongoing interaction. Law is used as a tool to legitimize political demands, while politics redirects the interpretation and application of legal rules in the international arena.

The right to self-determination has undergone a gradual transformation in international law from a political principle associated with the discourse of nationalist and liberation movements to a recognized legal principle within the contemporary international system. This transformation began clearly with the establishment of the United Nations, where the principle of self-determination was explicitly included in the preamble to the Charter. Article 1 (2) stipulates that one of the purposes of the United Nations is “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples,” thus giving this principle, for the first time, a contractual basis in a binding international document<sup>22</sup>. Article 55 of the Charter further reinforced this trend by linking respect for the right to self-determination to the achievement of international peace and stability<sup>23</sup>.

The legal standing of the right to self-determination was further strengthened through the practice of the United Nations General Assembly, particularly with the adoption of Resolution 1514 (XV) of 1960, known as the Declaration on the Granting of Independence to Colonial Countries and Peoples. This resolution declared that the subjugation of peoples to foreign domination constituted a denial of fundamental human rights and was incompatible with the Charter of the United Nations. This resolution was a pivotal moment, as it not only affirmed the political nature of the principle but also presented it as a legal basis for the decolonization process, lending it a quasi-binding dimension through its subsequent reiteration in other resolutions<sup>24</sup>.

In this context, the jurisprudence of the International Court of Justice played a crucial role in consolidating the legal character of the right to self-determination. In its 1971 advisory opinion on Namibia, the Court affirmed that the continued South African presence in the territory constituted a violation of the Namibian people's right to self-determination, and that this right entails legal obligations for all states, particularly the obligation not to recognize illegal situations resulting from its denial<sup>25</sup>. In subsequent cases, the Court also considered the right to self-determination to be a fundamental principle of contemporary international

law, with legal implications that extend beyond the relationship between the occupying power and the subjugated people<sup>26</sup>.

Thus, the transformation of the right to self-determination from a political principle to a legal rule was not the result of abstract theoretical development, but rather the product of interaction between the founding texts of the United Nations, the repeated practice of the General Assembly, and international jurisprudence. This accumulation has given the right a normative character, making it a legal basis for holding accountable states that deny the aspirations of peoples under foreign domination. However, the activation of this right in international reality has remained linked to the political context, which explains the disparity between the broad legal recognition of it and the speed of its practical application in different cases.

The implementation of the right to self-determination in international practice has shown that it is not a neutral legal process, but rather the product of an ongoing interaction between legal rules and the political and strategic considerations of states. Despite the broad recognition of this right in the UN Charter and General Assembly resolutions, its interpretation and practical application have remained linked to the positions of influential states within the international organization and to the prevailing

balance of power in the international system. This has manifested itself in the selectivity that has characterized the support of some self-determination causes while ignoring or postponing others, according to specific political, security, and economic interests<sup>27</sup>.

In this context, states and international institutions have sometimes used the right to self-determination as a tool to legitimize pre-existing political choices. General Assembly resolutions, particularly those issued in the context of decolonization, have enabled the use of this right to support liberation movements that enjoy broad international support, while its implementation has remained limited or postponed in cases where it has clashed with the interests of major powers within the Security Council<sup>28</sup>. This disparity demonstrates that the legal framework, despite its relative clarity, has remained open to political interpretation according to the balance of power.

International institutions have played a dual role in this interaction. On the one hand, they have contributed to establishing the legal character of the right to self-determination through resolutions and advisory opinions. On the other hand, their practice has been subject to clear political constraints. The International Court of Justice highlights this overlap when it affirmed the legal character of the right to self-determination in several of its advisory

opinions, while implicitly acknowledging the limitations of its rulings in the absence of binding enforcement mechanisms, especially when the outcomes conflict with the interests of powerful states<sup>29</sup>.

Indeed, the interplay between political considerations and legal rules has been the dominant feature of the implementation of the right to self-determination. International law has provided the normative and customary language that legitimizes the demands of peoples, but international politics has determined the timing and practical limits of this implementation. This reality reveals that the effectiveness of the right to self-determination depends not only on its legal recognition but also on the availability of supportive international political will, making this right a dynamic field where legal legitimacy intersects with calculations of power and influence.

The right to self-determination was a central legal and political tool in Namibia's liberation struggle, used to transform the conflict from a colonial issue governed by the logic of force into an international legal matter concerning the responsibilities of the international community. As the debate surrounding the legal status of South West Africa intensified, this right was invoked to emphasize that South Africa's authority in the territory was not inherent sovereignty, but rather a temporary mandate limited to preparing the

Namibian people to freely determine their own destiny<sup>30</sup>. This legal basis provided a legitimate framework for the demands for independence, allowing the issue to be internationalized within the United Nations system.

In this context, UN General Assembly resolutions played a pivotal role in enshrining the Namibian people's right to self-determination, particularly Resolution 2145 (XXI) of 1966, which terminated the mandate over South West Africa, implicitly based on South Africa's failure to uphold its obligations regarding this right<sup>31</sup>. This decision represented a qualitative shift, as it went beyond mere political condemnation, establishing the legal delegitimization of the continued South African presence and explicitly linking the Namibian case to the principle of self-determination.

Furthermore, the right to self-determination in the Namibian case acquired a clearer legal dimension through the jurisprudence of the International Court of Justice, particularly in its 1971 advisory opinion. The Court affirmed that denying the Namibian people this right constituted a violation of international law and that all states had an obligation not to recognize or assist in maintaining the illegal situation<sup>32</sup>. This jurisprudence contributed to transforming the demands for independence from a political discourse of a liberation movement into a legal claim supported by international legal

implications, thus strengthening Namibia's position vis-à-vis South Africa.

It is worth noting that the use of the right to self-determination in the Namibian liberation struggle served as a clear example of the integration of legal and political dimensions. International law provided normative legitimacy to the demands for independence, while this legal framework was employed within a political strategy aimed at isolating South Africa internationally and mobilizing international and regional support for Namibia's cause. This trajectory reveals that the right to self-determination was not merely a fixed legal principle, but a dynamic tool that enabled the Namibian people to redefine their conflict with the occupying power as a matter of international law, not simply an internal or regional dispute.

### **3-International Institutions and Independence in South West Africa (Namibia)**

International institutions played a pivotal role in the South West African (Namibia) independence process. Their intervention marked the turning point, transforming the conflict from a legal debate over the legitimacy of the mandate into a practical process culminating in actual independence. These institutions, foremost among them the United Nations and the International Court of Justice,

contributed to delegitimizing the continued South African control and transforming the principle of self-determination from a normative rule into an international obligation that must be respected and implemented. In this context, the role of international institutions was not limited to condemning the status quo, it extended to accompanying a complex transitional process intertwined with legal and political considerations. This underscores the importance of international institutional action in resolving decolonization issues and achieving independence within a changing international order.

International institutions, foremost among them the United Nations and the International Court of Justice (ICJ), played a crucial legal role in delegitimizing the continued South African presence in South West Africa (Namibia) by reclassifying it as an illegal situation under international law. The ICJ's 1950 advisory opinion on the international status of South West Africa was a pivotal point, as the Court affirmed that the mandate system did not transfer sovereignty to the mandatory power and that South Africa's obligations continued even after the dissolution of the League of Nations, given that the international character of a mandate does not cease with the demise of the body that established it<sup>33</sup>. This opinion laid the groundwork for the possibility of

subjecting South Africa's conduct to subsequent international oversight.

This legal trajectory was further reinforced by the practice of the UN General Assembly, particularly Resolution 2145 (XXI) of 1966, in which the General Assembly decided to terminate the mandate over South West Africa due to South Africa's grave breach of its obligations, affirming that its continued administration of the territory lacked any legitimate legal basis<sup>34</sup>. This decision marked a qualitative shift, as it went beyond mere political condemnation and constituted a collective legal act based on the principle of international responsibility to respect the Namibian people's right to self-determination.

The delegitimization process culminated in the 1971 advisory opinion of the International Court of Justice on the legal consequences of South Africa's continued presence in Namibia. The Court explicitly concluded that South Africa's presence in the territory was illegal and that it was obligated to withdraw immediately<sup>35</sup>. More importantly, the Court affirmed that the illegality of this presence imposed obligations on all states, namely the duty not to recognize the illegal situation and the duty to refrain from providing any assistance that would perpetuate it, whether political, economic, or administrative<sup>36</sup>.

Clearly, the legal role of international institutions in the Namibian case transcended symbolic condemnation, establishing a legal framework based on the principle of non-recognition of illegal situations. The opinions of the International Court of Justice and the resolutions of the United Nations stripped South Africa of any legal basis for its presence in Namibia, transforming the conflict from a bilateral relationship between a dominant state and a subjugated people into a matter of international law that entails collective obligations. This trajectory reveals that international institutions played a key role in shifting the Namibian issue from the realm of political domination to that of legal legitimacy, subsequently paving the way for the transition from delegitimization to the organization of a path toward actual independence.

The enshrining of the right to self-determination in the Namibian case gradually shifted the issue from a legal debate concerning the legitimacy of the mandate and the South African presence to a practical path aimed at achieving actual independence. After the illegitimacy of South Africa's continued administration of South West Africa was established, the right to self-determination was no longer merely a normative principle, but rather a legal basis obligating the international community to take executive measures to guarantee its exercise by the

Namibian people<sup>37</sup>. This stage constituted a qualitative shift from a logic of legal condemnation to one of institutionalizing the independence process.

In this context, the United Nations played a pivotal role in translating the principle of self-determination into practical mechanisms, particularly through Security Council resolutions aimed at organizing a transitional phase that would enable the Namibian people to freely express their will. Resolution 435 (1978) is the most prominent embodiment of this shift, as it established a detailed framework for Namibia's transition to independence, including a cessation of hostilities, the withdrawal of foreign forces, and the holding of free elections under UN supervision<sup>38</sup>. This decision represented a practical step towards implementing self-determination through clear executive arrangements.

The practical nature of self-determination was further embodied in the establishment of the United Nations Transition Assistance Group in Namibia (UNTAG), which was tasked with overseeing the implementation of the UN plan, ensuring the integrity of the electoral process, and supporting the territory throughout the transitional period leading to independence in 1990<sup>39</sup>. This development demonstrates how self-determination transformed from a general legal principle into a

concrete institutional process involving multiple UN bodies.

Indeed, the Namibian case serves as a clear example of transforming self-determination from a legal principle into a practical path towards independence. The legal framework provided by UN resolutions and the opinions of the International Court of Justice delegitimized South African control, while international institutional mechanisms undertook the task of implementing this framework on the ground. This process reveals that the effectiveness of the right to self-determination is not achieved merely through legal recognition, but requires organized international intervention capable of supporting peoples under foreign control in their transition from legal legitimacy to actual independence.

Namibia's path to independence revealed clear limitations on the effectiveness of international institutions in achieving genuine independence, despite the pivotal legal role these institutions played in delegitimizing South Africa's presence. Although the United Nations and the International Court of Justice successfully established the illegality of South Africa's continued administration of South West Africa, translating this legal legitimacy into practical reality was hampered by international political considerations, particularly the positions of the major powers within the Security Council during the Cold War<sup>40</sup>.

These limitations were clearly manifested in the lengthy delay in implementing the independence plan, despite the Security Council's adoption of Resolution 435 in 1978. Political disagreements and the strategic interests of some states prevented the immediate implementation of the transitional arrangements, allowing South Africa to maintain its control over the territory for several more years<sup>41</sup>. This delay reflects the limited ability of international institutions to enforce their decisions in the absence of political consensus among influential powers, even when the legal basis is clear.

The Namibian experience also demonstrated that the effectiveness of international institutions remained contingent on the cooperation of the occupying power. The United Nations lacked the direct means to enforce South Africa's withdrawal by force. The International Court of Justice, despite its clear characterization of the illegal situation, affirmed that the implementation of its advisory opinions remained dependent on states' compliance, revealing the gap between the normative force of international law and the limits of its practical application<sup>42</sup>.

From the foregoing, we can conclude that the intervention of international institutions in the Namibian case was effective in establishing legal legitimacy and internationalizing the issue, but it was

limited in its ability to transcend the political considerations of major powers and impose immediate solutions. This discrepancy prolonged and complicated the path to independence, as the conflict dragged on for decades despite the clear illegitimacy of the existing situation. Nevertheless, the eventual success of international institutions in accompanying the independence process in 1990 confirms that their role, however slow and politically constrained, remains a crucial element in translating legal legitimacy into actual independence within the context of decolonization.

### **Conclusion:**

This research demonstrates that Namibia's path to independence constitutes a central model for the interaction of international law and political history in the context of decolonization. The territory transitioned from a mandate system with formal legal legitimacy to an illegitimate status, and then to a liberation movement based on the right to self-determination as a recognized principle of international law. The analysis reveals that the legitimacy of the mandate, despite its international character, was fraught with structural problems that allowed it to be transformed in practice into an instrument of control, as clearly exemplified by South Africa's actions in South West Africa.

Furthermore, the research concludes that the erosion of the mandate's legitimacy was not merely the result of legal developments, but rather the product of a complex interplay between UN resolutions, the jurisprudence of the International Court of Justice, and the struggle of the Namibian people, all within a changing international context that redefined the concepts of sovereignty and international responsibility. The right to self-determination represented a pivotal turning point in this process, transforming from a political principle into a legal framework that enabled the delegitimization of the South African presence, the internationalization of the Namibian question, and its transformation from a colonial conflict into a matter of international law with collective obligations.

In this context, the study highlighted the central role of international institutions, particularly the United Nations and the International Court of Justice, in establishing the legal foundations for independence, while simultaneously emphasizing the limitations of this intervention's effectiveness given the political considerations of major powers. The absence of enforcement mechanisms and the divergence of international interests prolonged and complicated the path to independence, despite the clear illegitimacy of the existing situation. This reflects the gap between the

normative force of international law and its practical ability to enforce compliance. The following are the most important findings of this research :

- ✓ Namibia's independence is the product of a cumulative legal and historical process that cannot be understood in isolation from the legitimacy crisis of the mandate system and the transformation of the right to self-determination into a binding legal principle.

- ✓ The right to self-determination has played a dual role, serving both as a legal tool for delegitimizing foreign powers and as a political instrument for mobilizing international support and internationalizing the conflict.

- ✓ The Namibian case demonstrates that international institutions are capable of establishing legal legitimacy, but their effectiveness in imposing swift solutions remains limited in the absence of international political consensus.

- ✓ Namibia's trajectory underscores that decolonization in international law is not a linear process, but rather a complex one governed by the interplay between legal texts and political practice.

In light of the findings of this research and the legal and political challenges it has uncovered that accompanied Namibia's path to independence, the following recommendations can be proposed:



✓ The need to strengthen the study of historical decolonization experiences, such as the Namibian case, as a laboratory for understanding the limits and effectiveness of international law in protecting the rights of peoples.

✓ The call for the development of more binding international mechanisms to guarantee respect for the right to self-determination, thereby reducing its dependence on circumstantial political considerations.

✓ Encouraging researchers to adopt an integrated legal-historical approach when studying independence issues, combining the analysis of legal texts with the political context in which they occur.

✓ Emphasizing the importance of international courts and UN institutions in delegitimizing illegitimate situations, while working to strengthen their future enforcement capacity.

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<sup>6</sup>- Pedersen, Susan, op. cit., pp. 60–63.

<sup>7</sup>- Covenant of the League of Nations, Article 22, 1919.

<sup>8</sup>- Pedersen, Susan, op. cit. pp. 55–58

<sup>9</sup>- Covenant of the League of Nations, Article 22, paras. 4–7.

<sup>10</sup>- Anghie, Antony. op. cit. pp 121–124

<sup>11</sup>- Mazower, Mark. op. cit. pp 120–124.

<sup>12</sup>- Anghie, Antony. op. cit. pp 124–128.

<sup>13</sup>- Pedersen, Susan, op. cit. pp. 70–75.

<sup>14</sup>- Covenant of the League of Nations, Article 22, 1919.

<sup>15</sup>- Pedersen, Susan, op. cit, pp. 55–58

<sup>16</sup>- International Court of Justice, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)*, Advisory Opinion, 21 June 1971, paras. 118–125.

<sup>17</sup>- Crawford, James. *The Creation of States in International Law*. Oxford University Press, 2nd ed., 2006, pp. 603–607.

<sup>18</sup>- International Court of Justice, *International Status of South West Africa*, Advisory Opinion, 11 July 1950, pp. 131–133.

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<sup>20</sup>- Crawford, James. Op, Cit, pp. 612–615.

<sup>21</sup>- ICJ Advisory Opinion on Namibia (1971), paras. 118–125.

<sup>22</sup>- United Nations Charter, 1945, Preamble; Article 1(2).

<sup>23</sup>- United Nations Charter, 1945, Article 55.

<sup>24</sup>- United Nations General Assembly Resolution 1514 (XV), *Declaration on the Granting of Independence to Colonial Countries and Peoples*, 14 December 1960.

<sup>25</sup>- ICJ Advisory Opinion on Namibia (1971), paras. 52–56.

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<sup>33</sup>- International Court of Justice, (1950), Op, Cit, pp. 128–132.

<sup>34</sup>- UNGA Res. 2145 (XXI).

<sup>35</sup>- ICJ Advisory Opinion on Namibia (1971), paras. 118–11

<sup>36</sup>- Ibid., paras. 122–125

<sup>37</sup>- ICJ, *Namibia Advisory Opinion* (1971), paras. 118–119.

<sup>38</sup>- United Nations Security Council Resolution 435 (1978), 29 September 1978.

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