

Jörg Künzli: Zwischen Recht und Politik. Der rechtliche Handlungsspielraum der schweizerischen Südafrikapolitik (1976-1994) [Twixt law and politics. The legal room for manoeuvre in Switzerland's policy towards South Africa (1976-1994)], Zürich, Chronos Verlag, 2005, 415 pages, 68 Swiss franks.

Comment

by Mascha Madörin

Nelson Mandela paid an official visit to Switzerland at the beginning of June 1990. This was four months after the Apartheid regime had declared its willingness to free Mandela (who had been in prison for 27 years) and all other political prisoners, and to commence negotiations with Anti-Apartheid organisations which had been banned and brutally suppressed until then. On the occasion of his visit Mandela called upon the Swiss government to impose sanctions on South Africa. The federal council (the government) rejected such a course of action out of principle. Two months after the visit, Switzerland fully participated in international trade sanctions against Iraq. Without even one iota of one single Swiss law or any foreign policy maxim having been changed, a course of action now suddenly became possible that had been declared for more than a decade to be against Switzerland's foreign policy principles, to be extremely problematical legally speaking and to be politically counter-productive.

Such examples, and countless others, can be found in this perceptive book written by international law expert Jörg Künzli on Switzerland's relations with South Africa during Apartheid (1948-1993). The book illustrates how Switzerland's refusal to take any diplomatic or economic measures against the Apartheid regime was in fact not imperative for legal reasons, or any other reasons related to Switzerland's policy of neutrality, but was rather of a purely political nature. This readable and easily-understood book should be compulsory reading for all members of both the upper and lower houses of the Swiss parliament, as the knowledge it presents could help them to recognise the government's mock arguments on international politics and to see through them.

Besides an introduction and a summary, the book contains three sections.

I. South Africa's violations of international law; the international community's and Switzerland's reactions

II. The right to react to South African violations of international law: Switzerland's room for manoeuvre

III. The duty to react to South African violations of international law: Switzerland's obligations to perform and obligations to desist

It is particularly worth mentioning that Switzerland's attitude to the Namibia and Bantustan issues are also addressed in this book – they are rarely touched upon in the other studies conducted in the framework of the NFP42+ programme.

Opportunism not human rights

The federal council denied performing a U-turn on its sanctions policy on the occasion of its Iraq decision. On this subject it added, in its security report published in October 1990, that "when the circumstances required, [Switzerland] joined the solid front presented by the community of states and also imposed economic sanctions against definite law breakers." This raises the question of what circumstances it would have required to move Switzerland to impose sanctions on South Africa.

There is no doubt that the Apartheid regime was a law breaker. There is hardly a crime against basic international law or human rights which the Apartheid regime did not commit. These include the illegal occupation of Namibia, the war against Angola, surprise attacks on cities in neighbouring countries, state-decreed and implemented radical racial segregation and discrimination, murder, torture, kidnapping,

organising the disappearance or secret detention of people engaging in political opposition, and the total lack of political rights for blacks in their own country, several million of whom involuntarily lost their citizenship through the creation of the Bantustans. All this was known at the time.

Apartheid was classified as a crime against humanity by the UN general assembly, just as National Socialism was. Apartheid was defined as such for the first time as early as the 1960s. But for Switzerland this obviously did not constitute a "decisive factor" for any sort of diplomatic or economic sanctions for decades. Not even the South African military attaché was denied accreditation in neutral Switzerland.

The federal council explained its decision to impose sanctions on Iraq with different circumstances, these being that, in contrast to economic sanctions against South Africa, this measure represented follow-up implementation of a binding UN security council decision, and was not based on individual countries' decisions, as was the case with South Africa. Thus it was not the extent of the crimes committed, but rather the question of who was conducting which policy that the federal council says was decisive for Switzerland.

Siding with the Apartheid regime

Even the sole decision to impose sanctions on South Africa made by the UN security council which was binding on all members of the UN, namely the arms embargo passed in 1977, did not represent sufficient circumstance for the Swiss to adhere to it. The Swiss ban on exporting arms, which applied to exports to South Africa on account of the Swiss law on the export of arms, included considerable loopholes in comparison with the UN regulations, above all concerning nuclear and technical cooperation and arms licences. The federal council repeatedly referred to Switzerland's ban on exporting arms when replying to parliamentary questions in Switzerland. It gave the impression that Switzerland was adhering to the UN arms embargo, because the ban on exporting arms to South Africa applied on the basis of the law on the export of arms. Vis-à-vis the UN, however, it invoked Switzerland's non-membership of the UN to justify its partial non-adherence to the UN arms embargo.

During large-scale military operations in June 1987, South Africa attacked the Angolan city of Cuito Cunevale, in order to occupy it. With this the long-running war between South Africa and Angola escalated into the largest conventional war in the world at the time. The South African attack lasted until spring 1988 and ended in a South Africa defeat. It can be elicited from Künzli's study, which does not go into this attack on Angola, that it was precisely in this period of war that Swiss officials received South African defence minister Magnus Malan (in December 1987).

Shortly before these large-scale military operations in March 1987, Edouard Brunner, who was then state secretary in the Swiss foreign affairs ministry, instructed the Swiss ambassador in South Africa to attend a parade commemorating the 75th anniversary of the South African armed forces, even though the ambassadors of the EC, Australia, Canada and Sweden had declined the invitation. Veterans of the war in Angola were honoured at the parade. A year earlier Swiss diplomats had also been forbidden by state secretary Brunner to attend funerals of murdered opponents of the Apartheid regime, even though diplomatic representatives from other countries attended such funerals, to protect people participating in them. In this case Brunner had preached absolute restraint from interference in internal affairs.

Concerning the military parade, he tersely instructed the ambassador "Vous irez à la parade du 6 avril!" (You will attend the parade of the 6th of April!)

No law would have obliged the Swiss government to act the way it did. It did not make use of the room for manoeuvre that was legally available to it in order to take a stance against the Apartheid regime. Quite the opposite. Switzerland partially even entered grey areas, where it was close to violating its neutrality and international law, in favour of good relations with the Apartheid regime. Whenever Swiss diplomacy raised its profile, showed independence and risked international condemnation, then it was in favour of the Apartheid regime and not in any way because it ever earned any special kudos as an opponent of the regime.

Secrets and lies

Countless critical questions were posed in parliament concerning the federal council's Apartheid-friendly policies and the scandals of arms deliveries to South Africa, which appeared in UN reports. What is revealed in the research reports which have been published in the meantime is not only the fact that these UN reports were mostly true, but also that the Swiss authorities and our government were obsessed primarily with the aim of not letting any facts concerning Switzerland's and Swiss trade and industry's actual behaviour reach the international and national public. Whenever such facts nevertheless became public knowledge they were either denied, or the federal council said it had not know about them, or that it was not responsible. The federal authorities cheated, concealed the facts and played matters down whenever they publicly answered questions. The lawyers in the Swiss administration seem to have been pre-occupied with justifying the government's political decisions with legal barriers which were de-facto non-existent, and legitimising them through loftier aims – with statements of intent on neutrality, sovereignty, universality, good services, solidarity and human rights. Swiss parliament accepted it all, probably not least because the bourgeois majority did not want any other policy at all, and was more than happy to let itself be deceived.

Open questions

The federal authorities' shocking attitude towards a critical public poses the question of whether this applied to all foreign policy fields to date, or whether it was pronouncedly so for matters concerning Apartheid. It is certain, however, that the federal authorities and parliamentarians will have to be ready to face quite a few questions concerning democracy and the duty to inform the public in Switzerland. Genuine democrats may have had differing opinions of the right policy towards South Africa, but tolerating so much secrecy and deception concerning the facts and the legal arguments contradicts the most elementary of democratic principles.

Individual passages in the research reports published so far lead us to assume that it was primarily massive pressure from the large Swiss banks and the export industry that was responsible for official Swiss policy – as is still the case today. But it nevertheless has to be ascertained that participating in funerals and staying away from a military parade would in all probability not have seriously harmed the flourishing South African business of the large banks. Least of all during the time of the sanctions, when the Apartheid regime was as dependent on the good services of the large Swiss banks as it had never been before – and perhaps also on that of Swiss officials, though this is not so clear. The question as to why Swiss officials chose to steer such an exaggeratedly careful course vis-à-vis the Apartheid regime remains unanswered. Perhaps they simply did not consider the regime to be all that bad.

The research reports published so far lead us to assume that the historians consider the cold war and Switzerland's battle against communism to be the main cause of Switzerland's behaviour. The question remains, however, whether this was not also part of the justification for policies which even the worst anti-communists could not seriously justify. How on earth could a state secretary such as Edouard Brunner not arrive at the conclusion - as some of his western colleagues did - that it was not primarily a battle against communism in South Africa, but that it was rather a battle against decolonisation and the abolition of white supremacy? In addition, the cold war was over in southern Africa in 1986, and in 1988 even George Bush senior, newly-elected Republican president of the USA, was in favour of sanctions against the Apartheid regime, in order to force it to enter into earnest negotiations with the Anti-Apartheid Movements and to force it into "genuine" negotiations – as it was formulated – concerning the abolition of Apartheid.

Mandela had good reasons to call upon Switzerland to impose sanctions as late as 1990, when the negotiations had already started. They were extraordinarily hard and a lot of pressure had to be applied to

the regime until, after three years, it was prepared to hold general elections. What was interesting about sanctions against South Africa was that they not only represented measures taken on account of a threat to peace and violations of international law by the Apartheid regime. Political conditionalities were connected to both the USA's as well as the Commonwealth's sanctions, in order to prevent the Apartheid regime from conducting mock negotiations and playing dubious power games. Clear conditions were set which had to be fulfilled for the sanctions to be lifted. This aspect of the sanctions does not feature in Künzli's study, nor in other researchers' studies.

My supplementary theory to the published research results is that not only was the political tool of sanctions rejected by Switzerland, but such conditionality was too. Switzerland immediately found words of praise for the Apartheid regime's willingness to reform, whenever it made any political concessions at the end of the 1980s, even if the government had once again jailed hundreds of people in opposition to Apartheid, banned organisations and torpedoed democratic elections in Namibia. I believe that the crucial aspect of Swiss foreign policy was not only that it rejected sanctions, but that it also rejected demands that the Apartheid regime commence negotiations for the abolition of Apartheid immediately and that it introduce a new democratic constitution and general suffrage. Leading Swiss foreign policy makers such as Edouard Brunner apparently seem to have adhered to the perspective that it would take a long time for South Africa to be ripe for the complete abolition of Apartheid – that is to say for "one person, one vote". This scenario was propagated by leading South African captains of trade and industry, and naturally also by representatives of the Apartheid regime, as well as being openly held in Switzerland. The question remains why this took place in the final phase of the Apartheid regime. It cannot have been due to the cold war alone, which in any case no longer existed.

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