SOUTH-WEST AFRICA

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IN what has sarcastically been called a 'non-judgement' the International Court at The Hague on July 18 rejected the case of Liberia and Ethiopia (acting for the African States) against South Africa in which they charged that the application of apartheid to South-West Africa violates the 'sacred trust' of the mandate. The rejection was on the grounds that Liberia and Ethiopia have no legal standing before the Court on this issue. A case begun six full years ago in which massive volumes of evidence were accumulated, interminable hours spent in the presentation and cross-examination of evidence and in abstruse legal argument, and on which millions of pounds have been spent, has thus ended in unparalleled futility.

Ethiopia and Liberia were asking the Court to confirm earlier advisory opinions that the mandate was still in force and that South Africa has obligations with regard to United Nations supervision. The applicants went further to ask the Court to declare that by a formidable catalogue of acts—establishing military bases in the territory, applying discriminatory legislation, thwarting self-government, unilaterally modifying the terms of the mandate—South Africa has violated the mandate.

The judgement given was a technical one. There was no decision on the merits. There is on record no finding for or against apartheid, or for or against the allegation of a breach of mandate principle. In effect the Court declined jurisdiction, stopping at 'the threshold of the case', as the strong dissenting judgement of the United States Judge Jessop said.

And this, in July 1966, was in flat contradiction of a decision on the identical preliminary procedural point which the same Court decided the opposite way four years ago, in 1962. Between then and now the bench of 17 judges was depleted by three (the UAR judge died, the judge from Peru was too ill to sit, and the judge from Pakistan recused himself under what now appears to be, from his post-judgement statement, the ominous pressure of the Court President, Sir Percy Spender of Australia). A 7-7 deadlock was swung to South Africa's side by Sir Percy Spender's casting vote, thus converting a 1962 minority of the Court into a 1966 majority, and reversing the Court's earlier stand that jurisdiction *had* been

established. (It is worth noting in passing that the point on which the Court disqualified Liberia and Ethiopia was not even advanced by South Africa's lawyers in their final submissions.)

It must also be recalled that the mandate agreement negotiated after Versailles imposed a special obligation in article 7 (2) on the submission to the International Court of disputes over the control of a mandated territory that could not be settled by negotiation. The Court has, by its latest judgement, neatly abdicated its responsibility as an international mediator, and this must confirm the suspicions of the Afro-Asian countries that the Court, like other international organisations and forums, is being used as an essentially Western Big Power instrument to forestall decision and action, specially where the liberation of subject peoples is at stake. For, essentially, this is the wheel of persistent procrastination that has once again come full circle.

The mandate system devised after world war one was a compromise offered in the face of demands for the self-determination of peoples. Blatant annexation of the spoils of conquest would not do in the face of brave speeches about the new world, but nor would full independence of former German colonies in Africa. So selected mandatory powers were given control of peoples 'not yet able to stand by themselves in the strenuous conditions of the modern world' and these powers, South Africa and Britain amongst them for South-West Africa and Tanganyika respectively, were shouldered with a 'sacred trust' to advance these peoples to independence. Smuts' South Africa used the mandatory system as a cover for virtual annexation of the territory, laying down patterns of administration à la segregation which Malan and Verwoerd inherited and absorbed only too easily into apartheid after the second world war.

In its day the League of Nations Permanent Mandates Commission as the international supervisory authority proved ineffective in achieving any reversal of South African policy. Criticism of South Africa was persistent if mild but for the most part the Mandates Commission was a conference room dominated by the colonial powers whose own policies would not bear too strong scrutiny, and Africa, Asia and the Socialist world had not yet come into their own. League machinery was in any case without power to correct abuses.

With the foundation of the United Nations, South Africa alone, of all the mandatory powers, refused to enter into a trusteeship agreement for South-West Africa. Then began years of prolonged

international inertia as South Africa defiantly thumbed her nose at the world body. Innumerable resolutions of condemnation have by now been passed, culminating in 1960, the year of Sharpeville and the accession of many African states to the United Nations, in the General Assembly characterisation of the apartheid presence in South-West Africa as 'a serious threat to international peace and security' (Resolution of December 18, 1960).

But, strong condemnation apart, the United Nations has to date proved as powerless to act as the League before it. Not that the United Nations lacks the machinery. The General Assembly could, as the next step in its handling of the South-West Africa issue, recommend that South Africa be deprived of the mandate, and the Security Council could apply binding force to such a decision, exercising its powers under Chapter 7 of the United Nations Charter. The machinery is there, but in crucial votes South Africa's principal trading partners have abstained from voting and have declined to use UN machinery because their policy is governed not by principle but by their financial stakes in Southern Africa. For all the unqualified condemnation of South Africa's policies and the far-reaching steps advocated by UN committees, within the Security Council three powers holding the veto—Britain, the United States and France—have not supported action under Chapter 7 of the Charter. Thus, in the demand for collective measures against South Africa to break her stranglehold on SWA, deadlock has been reached.

The case at The Hague was initiated by some of those anxious for action but rendered ineffective by the Western-created impasse on the Security Council. As the African states conceived it, the case was to lay the groundwork for the political enforcement of a judgement by the Security Council, and to use, in addition to all the other reasons for action, Article 94 (2) of the Charter which empowers the Security Council to decide upon measures to give effect to Court judgements. The African states which initiated the Court action looked hopefully to The Hague to remove the legal reservations to firm decision on which Britain and other powers leaned so conveniently. To the powers blocking action the Court case was seen in another light: it could while it lasted be yet another opportunity to place restraints on the Afro-Asian demand for action. Within the South-West African liberation movements political councils were somewhat divided on the advisability of taking yet another case (after the three Advisory Opinions already obtained) to The Hague but once the long-drawn-out procedures were begun there was no option but

to hope that the Court decision would reinforce the already powerful case for international action. There was, of course, always the danger that the Court would deliver a divided, ambiguous judgement giving South Africa, a past master at equivocation and temporising, fresh time in which to play on the reluctance of the Big Powers to act by going back and forth to the Court and the United Nations to ask for more detailed interpretations and 'guidance'. A strong Court judgement against South Africa would have left Britain and the West with fewer arguments for inaction to protect South Africa. For though it is political and not legal reservations that have inhibited Big Power action, satisfying the legal aspects of the Case with International Court authority would have helped erode the resistance to action.

The Court Case brooding over the United Nations has for the last six years afforded the Western Powers—with some notable exceptions like the Scandinavian countries which have sharpened their attitude to the issue—a continuing legal pretext for procrastination. Perhaps, paradoxically, the futility of the Court proceedings will do a service to the South-West African case in high-lighting the political realities of South-West Africa, and, indeed, of all Southern Africa. The SWA issue is not a legal problem, but a political one. Action against South Africa needs not the consent of lawyers and courts but the will and pressure of political forces. The United Nations is still fully seized of the SWA question. Nothing said or left unsaid at the International Court changes this. There need be no puzzlement about the next steps to be taken. These should be the declaration of South Africa's mandate over SWA to be null and void. South Africa's record in the territory, her intransigence in the world community, disqualify her for any future role *vis-à-vis* the future of the territory; and the practice of apartheid is too intrinsic a feature of her administration and control for it to be broken, even if there were, suddenly, any promise on the part of South Africa to chart new courses.

Six years have now been lost, six crucial years in which South Africa has tightened and extended the workings of apartheid in SWA, and in which South Africa herself has been strengthened by her western allies, with a happy accretion of profits to international as well as South African investors.

SWA is South Africa's colony but she is also the colony of Britain and the United States, a colony of the western world. An average of 32 per cent per annum of the country's domestic product was paid to foreigners in the years 1958 to 1962, and this drain has been

growing in recent years. SWA's large excess of exports over imports makes her capable of supporting balanced economic development for all her people, but at present this surplus is frittered away, and most of it accrues to the foreign corporations which exploit the mineral wealth of the country. The economic growth of the territory has been based on the exploitation of wasting assets, the wealth of the copper and diamond mines. This wealth has been used to finance high levels of consumption for the Whites and handsome foreign dividends and apartheid has been an invaluable instrument in laying down these lines of development. In SWA apartheid is more complete by far than in South Africa itself. Africans are restricted to the stagnant, subsistence sector of the economy; Whites have thrived in the modern, developed sector. The only exchange between the two sectors is African migrant labour which is permitted into the modern sector only for the duration of labour contracts. The few available figures of standards of living reflect an enormous disparity between white and African populations. The gap between the two groups is far greater than in South Africa, and in SWA even more than in South Africa, apartheid has blocked the African population from helping itself. Papers submitted to the International Conference on South-West Africa held at Oxford in March of this year show conclusively how the economic policy pursued by South Africa has been to achieve White advance at the expense of African stagnation, how the result has been to waste the wealth which a poor people needed for economic growth, and how the effects of these economic policies has been to ensure that economic development for the majority of the population will be a more difficult task in the future than it would have been had an independent administration been created before now.

This last point is important. Every year that a solution to the crisis is delayed, SWA stands to lose material wealth and possibilities for development. It is estimated that SWA's diamond resources will last another 12 years and copper another 20 to 25 years. South Africa, the United States and Britain are well set to exploit the wealth of the territory until the assets that were to be used for the subjects of a trust are exhausted. In less than a generation SWA will have to make do without the two main props of its existing prosperity.

The Oxford Conference went on record as follows, in the course of its lengthy findings:

> Mineral resources are being plundered; they may well be entirely exhausted in the next 20 years. The vast export surplus they yield, instead of being used for the development of the territory, flows out as dividends to non-residents.

> Income disparities are growing . . . The fragmenting and divisive effects of apartheid are steadily increasing. To avoid great human suffering; to safeguard the economic future of the territory; to remove almost unbelievable injustice; to eliminate a source of disaffection and instability for the whole continent, the removal of South-West Africa from the control of South Africa is a matter of desperate urgency.
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> (Findings of Commission 2.)

'A source of disaffection and instability for the whole continent.' Unresolved the SWA issue offers a licence for aggression against a state not only without the declaration of war (an old-fashioned notion, admittedly) but also under cover of an international system of trust and with international inaction that must, in practice, amount to acceptance. (The meaning of this for international law does not seem to have bothered its custodians at The Hague.)

Apartheid, left to entrench itself, has become a more powerful adversary: a modernised state within the borders of South Africa; a predatory colonial power over the borders into SWA; and the White-domination garrison state confronting all of Southern Africa, blocking the liberation of other as well as its own subject African populations, undermining the security and now threatening the consolidation and advance of African independence further north.

In a paper on *South-West Africa: The Defence Position* to the Oxford Conference, Richard Gott remarked that in strategic value alone SWA is worth more to South Africa than several years' defence budgets put together. Its geographic position makes it South Africa's defence against African advance in Angola; by almost completing the encirclement of Bechuanaland (to be independent Botswana shortly) it is a constant pressure against independent policies there. It is an additional bastion against possible majority rule in Rhodesia. And through its link with the tiny but crucial Caprivi strip (administered by South Africa as a part of SWA) it affords a forward base, 500 miles nearer to Independent Africa than the border of the northernmost province of South Africa. The construction of an £8 million South African airbase on the Caprivi strip and South Africa's aircraft with a range of 1,900 miles bring South Africa, within striking range of most of West, Central and East Africa.

SWA is, should be, a crucial international issue on its own merits. It is also crucial to the future of all Southern Africa. The Rhodesian crisis and the limping sanctions applied by Britain are part of the problem of a confrontation with Verwoerd, for behind Smith stands Verwoerd and a victory for Verwoerd on any issue is a strengthening of Smith. The stirring progress of Frelimo guerilla fighters in the

north of Mozambique striking formidable blows in Southern Africa's first armed struggle will need allied supporting struggles in other parts of the sub-continent. The African states, singly and in the OAU, will not rest secure while the Verwoerd-Smith-Salazar garrison further south supplies mercenary armies.

Some re-thinking and re-planning must be done in Africa on the problem of Southern Africa. All too often recently declarations of intent have foundered on sour realities of cold war alignment or the search for the glow of Western approval or comfort in high office. The statement issued by KANU in Kenya after The Hague judgement was absolutely correct. It called for 'a more militant and violent struggle against racialism in Africa' and for OAU to arm Africans under White domination. The African states, it added, are pledged to help freedom fighters to secure the independence of the whole continent. 'This pledge must now be redeemed. Oppressed people in Africa must be prepared to shed their blood.'

Nothing wrong with that. Just what Southern Africa needs and must prepare for. But who in Africa and in the OAU can so soon have forgotten that if Kenya had not played so subservient a role to Britain when a new loan of £18 million to compensate settlers for their land was being concluded, she might have stood by Tanzania in that country's lonely but principled effort to force Britain into action against Smith's UDI Declaration, and have left the OAU less enfeebled at a crucial stage in the Rhodesian crisis?

A sharpening of African states' policy on issues like SWA and all others related to the future of Southern Africa could bring a decisive weapon into play. Britain, the United States, France and other powers must be made to choose between the African states and the White dictatorships in Africa. The weapon is in the hands of the Afro-Asian states but even sharper weapons are in the hands of the peoples of the garrison states of Southern Africa. The end of an era of moral condemnation, of legal points and interminable debate must usher in a new period for joint strategy in Southern Africa where struggle will be the instrument to precipitate changes on a Southern African and an international plane.