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SOUTH WEST AFRICA - THE AFTERMATH
OF THE JUDGMENT.

By

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JOHANNESBURG.

June 1967.

SOUTH WEST AFRICA - THE AFTERMATH OF
THE JUDGMENT.

Dr. Gail-Maryse Cockram's address
given to the Witwatersrand Branch
of the Institute on 21st June,
1967.

The revocation by the United Nations General Assembly of South Africa's mandate over South West Africa, and the appointment of a United Nations administration for the territory, was the culmination of a dispute between the Assembly and the Government of South Africa which had existed since the creation of the United Nations organisation after World War II.

In 1946, the League of Nations, which had supervised the administration of the mandate, ceased to exist. At the last session of the League Assembly in April, 1946, the South African delegate, our Chairman, Mr. Egeland, explained to the Assembly that "the Union Government have deemed it incumbent upon them to consult the peoples of South West Africa, European and non-European alike, regarding the form which their own future government should take." South Africa, acting in accordance with this statement of intention and with a unanimous resolution of the South West African Legislative Assembly, subsequently conducted a survey of the native tribes of South-West as to what they desired the future of their territory to be. The result of this survey was that 208,850 of the native inhabitants declared themselves to be in favour of union with South Africa, while only 33,520 voted against. One headman in Ovamboland answered, in those almost Churchillian phrases that one has come to expect from friendly Africans, (when they are not friendly to South Africa their English for some reason degenerates appallingly), that "we are like a man who has lived a long time with a good wife. A man who likes his first wife does not get rid of her. It is so with this Government of ours."

Mr. Bottomley, the representative of the British Labour Government at the United Nations, commented at the time that 87% of the population were in favour of union with South Africa, and that the British Government "was satisfied with the steps taken to determine the people's wishes", and "it would appear strange if the United Nations were to gainsay the freely expressed wishes of these people." Nevertheless, the UN General Assembly did disregard these wishes, declaring that the population was not sufficiently advanced to make a decision of this kind, and the Assembly then proceeded to apply pressure on the Union to conclude a trusteeship agreement for the territory, which would place it under the supervision of the United Nations. South Africa refused to do so, and Dr. Evatt, the Foreign Minister in the Australian Labour Government, agreed that South Africa was justified. He commented that "everybody at San Francisco who had anything to do with the Trusteeship system knows that it was never intended to make this matter anything but a voluntary action on the part of the mandatory Power. If this Assembly, by indirect methods, is going to put an implied censure on the Union of South Africa, it

/will be

will be transforming what should be a voluntary undertaking, entered into with complete free will by the state concerned, into pressure from the highest international political tribunal in the world on South Africa to do what is a voluntary act on its part. This gives a new meaning to the word "voluntary". It is like the famous story which is frequently told of a passer-by walking along the street and, in passing a police officer's station, he hears screams, groans, and yells from one of the windows. He hears shouts of "Murder. You are killing me". After hearing this repeatedly, being a good citizen, he goes to an officer at the door and says, "What is this terrible trouble that is going on inside?" The officer replies, "That is the office of the detectives taking a voluntary statement from the accused"."

This is exactly what the United Nations Assembly proceeded to do. First it tried to persuade South Africa to conclude a trusteeship agreement. Then it tried to establish that South Africa was unfit to administer the territory at all. In 1958, Sir Charles Arden-Clarke, the British Chairman of the United Nations Good Offices Committee on South West Africa, and the last Governor-General of Ghana, commented that "as I listened to the innumerable speeches made on this subject in the UN Fourth Committee, I gained the impression that the dispute was not really about the status of South West Africa at all, but about the Union's racial policy of apartheid. A picture began to form in my mind of the Union, withdrawn into its laager, determined to "shoot it out" with those members of the United Nations engaged in sniping to kill apartheid. I trust that picture is wrong. Duelling is out of fashion as a means of settling disputes, and it certainly conflicts with the provisions of the United Nations Charter".

The General Assembly proceeded to obtain three advisory opinions from the International Court of Justice at the Hague, in 1950, 1955, and 1956, to the effect that the mandate continued in existence, and that the General Assembly had succeeded to the League's powers of supervision over it. These opinions, being advisory, did not bind South Africa, which had refused to take any part in the Court proceedings, but in 1960 Ethiopia and Liberia brought a contentious case on the administration of South West Africa before the Court. Mr. de Villiers, South Africa's counsel before the Court, later commented that the Court litigation had not been of South Africa's choosing. "We were taken to Court by others in an attempt to forge a new weapon in a political struggle."

The Court's decision in such a case would be binding on South Africa, and, if she refused to comply with an adverse judgment, this could be enforced against her by the United Nations Security Council. If South Africa refused to appear, the case could go against her by default. South Africa therefore appeared before the Court in order to contest its jurisdiction to hear the case. Mr. Bingham, a United States delegate to the United Nations, noted at the time that "it was a hopeful sign that the Government of South Africa has been taking part in the proceedings before the Court, even if only to oppose the Court's jurisdiction".

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At the end of 1962, the Court decided against South Africa, that it had jurisdiction to hear the dispute. The Court's decision was taken by a majority of only eight votes to seven, and Judges Spender of Australia and Fitzmaurice of the United Kingdom delivered a vigorous joint dissenting opinion arguing that South Africa was correct in her assertion that the Court did not have jurisdiction. Dr. Verwoerd subsequently announced that South Africa would proceed to contest the case on the merits, the jurisdictional point having been decided against her, since otherwise the case would go against South Africa by default.

Grave concern was now shown in South Africa about the possibility of an adverse judgment of the Court, in view of its earlier adverse advisory opinions. The Prime Minister refused to discuss this possibility in Parliament, stating correctly that the matter was 'sub judice', but Sir de Villiers Graaff commented that "the Prime Minister reminds me of nothing more than the Duke of Sidonia who commanded the Spanish Armada in 1588. He knew that his expedition was under-gunned and under-provisioned, and when this was pointed out to him he is known to have replied, "God is on our side, we can hope for a miracle." Now, it seems to me that the Prime Minister is hoping for a miracle. He is not only under-gunned and under-provisioned, but he is very alone on very stormy seas in a very dangerous world". That Dr. Verwoerd was, however, well aware of the dangers of the situation was revealed by his warning in his New Year message in January, 1965, that "the teeth are already being sharpened in the hope of an adverse judgment by the International Court."

However, the miracle occurred. On July 18, 1966, the Court delivered a judgment which did not deal with the merits of the dispute at all, but reverted to the question of jurisdiction, which had supposedly been settled by the Court in 1962, and to which the Court had not referred again during the extensive oral proceedings held subsequent to 1962. Nevertheless, in 1966 the Court decided that Ethiopia and Liberia, as former members of the League, had no right to ask the Court for a ruling as to whether the mandate still existed and, if so, as to whether South Africa's administration of the mandate had been in accordance with its terms. Although League members had had an interest in seeing that the obligations under the mandate system were respected by the mandatory, this was an interest which they could exercise only through the appropriate organs of the League, and not by individual application to the International Court. Since the League had ceased to exist, there was now no method of legal redress against a mandatory.

This judgment produced jubilation in South Africa. Mr. Vorster has commented that "the strain of waiting was totally overshadowed by our great joy when the decision in our favour was announced." Dr. Verwoerd described the judgment as "a major victory" for South Africa, and commented "that attempts to use the Court's machinery as a basis for a drastic attack against South Africa in the Security Council had failed." Sir de Villiers Graaff said that the judgment was wonderful news which would be of immense advantage. The State President said that the judgment was a justification of South Africa's rejection of any rights to interference by other states in South Africa's

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administration of South West Africa, and that any further attempt at interference by other means would spring from a spirit of persecution, and should find no support from any respectable state or organisation of states. The writer of a letter to the "Transvaler" even went so far as to propose the recognition of the South African legal team as a Springbok team, who should each be given "a blazer in our traditional green and gold with a suitable badge consisting of a Springbok, the symbol of justice, and the legend : 'The Hague, 1966'".

This enthusiasm was not shared outside South Africa. In the International Court itself, there was bitter division. The death in 1965 of Judge Badawi of the United Arab Republic, who in 1962 had voted with the majority that the International Court had jurisdiction to hear the case, had left 14 judges to decide the dispute, and these judges had divided equally. Sir Percy Spender, the Australian President of the Court, had then cast a second vote as President in favour of South Africa, and delivered a judgment which closely resembled in reasoning the joint dissenting opinion which he and Judge Fitzmaurice had delivered in 1962. The Soviet judge, Koretzky, attacked the judgment as simply revising that of 1962, and thereby reverting from the stage of merits to the stage of jurisdiction. South Africa's ad hoc judge, Judge van Wyk, agreed, but commented in a separate opinion, dealing also with the merits of the dispute, and nearly three times as long as the main judgment, that the Court was not bound to "perpetuate faulty reasoning". The Pakistan judge, Sir Zafrulla Khan, even found it necessary to explain why he did not sit, possibly because, as Judge van Wyk commented, some newspapers said that he had voted for South Africa. Judge Khan said that Judge Spender, as President of the Court, had asked him not to sit because he had at one time been nominated as an ad hoc judge by Ethiopia and Liberia.

The judges' agitation may have been increased by the fear that they as individuals, for the first time in the history of the Court, would now be singled out for attack. And the expected attack came from all sides. The bitter Afro-Asian reaction was to be expected. Professor Falk, one of the counsel for Ethiopia and Liberia in the South-West case, has commented, that "the African countries had been reluctant to delay action for the period of years needed for the judicial proceedings, but their statesmen had been persuaded that a judicial decision subject to enforcement by the Security Council would greatly strengthen the hand of those states that wanted the United Nations to bring maximum pressure to bear upon South Africa. The disappointment caused by the decision generated a wave of cynical reactions about the merits of the Court as an adjudicating tribunal". The agitation of the Afro-Asians was doubtless increased by the high legal costs of a case lasting six years, to which all members of the Organisation for African Unity had contributed. Mr. Malecela of Tanzania, the Vice-Chairman of the General Assembly's Special Committee on Colonialism, said that the whole world had been slapped in the face by an international institution. It defied belief that the Court could sit for six years and then come up with the conclusion that it ought not to have listened to the case in the first place. He concluded that the Court had abdicated its responsibility by the judgment, and

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needed to be reappraised to bring it into conformity with modern times.

However, equally sharp attack came from the European nations. Poland expressly disassociated herself from the concurring judgment of the Polish judge on the Court, Judge Winiarski, saying that Poland was in full solidarity with the African states. The Soviet News Agency, Tass, referred to the "unlawful act" of the Court, which had "brought shame on itself, embarking on the road of encouraging criminal racists and colonialists". It noted the "pro-Western majority" of the Court, and the "obvious need to change the Court's composition", in order to permit representatives of the Afro-Asian countries to occupy an appropriate place on it. In Canada, the Prime Minister, Mr. Lester Pearson, referred to charges that the Court had now "shown itself to be a White Man's tribunal, dispensing White Man's law at the expense of Black Man's justice". The United States found itself in a particularly embarrassing position, since it had evidently anticipated that the Court would deliver a judgment adverse to South Africa. In November, 1965, the United States delegate to the United Nations Fourth Committee had said that "his country attached great importance to respect by Member States of judgments of the International Court, and he hoped that all parties would abide by the Court's decision." On July 15, 1966, three days before the judgment, a U.S. State Department Memorandum announced the intention of the United States to see that the Court's decision was enforced. When the judgment was delivered, Judge Jessup, the United States judge on the Court, described it as "completely unfounded in law". (Judge Jessup in 1951 had been appointed U.S. delegate to the United Nations. This appointment was not confirmed because the U.S. Senate, bearing his pro-Communist record in mind, refused to approve it. Soviet delegate Vyshinsky said at the United Nations that he had "learned with dismay" of the Senate's decision. He was later nominated by the State Department as a candidate for the World Court, the Senate having no veto in the selection). Subsequently, a U.S. State Department representative, Mr. McCloskey, said that the judgment was "of limited scope", and had "not diminished the legal authority" of the earlier advisory opinions of the Court that the mandate continued in force and that the General Assembly was entitled to supervise South Africa's administration of it. On this point, Professor Falk, a counsel for Ethiopia and Liberia, has written that "despite the rhetoric of the release issued by the U.S. Government, the 1966 decision did definitely weaken the authority of the 1950 advisory opinion."

The South African Government protested that the United States now "sought to minimise the effect of the judgment favourable to South Africa", and requested "that in view of the stand taken by the U.S. Government before the verdict, it will support the judgment of the Court, will abide by the decision, and instruct its United Nations representatives to oppose any renewal of the vendetta against South Africa". Despite this protest, Mr. Arthur Goldberg, the U.S. Ambassador to the United Nations, subsequently commented after a conference with President Johnson that the judgment was "technical" and "very unhelpful", and that "this is an age where technical decisions no longer seem appropriate".

The American reaction caused considerable bewilderment in

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Mr. Vorster commented that "the reaction of the adolescent and Communist states was naturally expected, but the reaction of the other states, both as far as the judgment of the Court and the attacks upon the Court and the judges were concerned, came as a great shock", that the issue was moving out of the legal into the political arena, and that South Africa was "back to before 1959". Sir de Villiers Graaff said that he believed that there was a great deal more in the judgment than was admitted by the U.S. State Department, since it would prevent further action on a legal basis by the United Nations. But he warned that South Africa was not yet out of the wood, and that the battle for South West Africa was not yet over. The future attack would include an attempt to deprive South Africa of the mandate.

Sir de Villiers' prediction proved correct. The General Assembly proceeded on its convening in October, 1966, to attack both the Court and South Africa. The United Nations budgetary committee in an unprecedented move refused to approve a \$72,500 additional appropriation for the Court's budget, the Soviet delegate on the committee commenting that the Court had "disgraced itself" by its verdict. Next, on October 27, 1966, the General Assembly, by an almost unanimous vote (Portugal and South Africa voted against, Botswana and Lesotho were absent, and the United Kingdom, France, and Malawi abstained), purported to revoke South Africa's mandate over South West Africa.

South Africa has rejected the legality of this action, since there is no evidence that the mandate survived the demise of the League of Nations. As Professor Manning said, as a witness before the International Court, "you cannot terminate something that does not exist". South Africa's position has always been that the mandate ended with the League, but that South Africa has continued to administer the territory "in the spirit of the mandate". No transfer of supervision over the mandate was made by the League to the United Nations when it terminated its existence, nor for the following two years did any state suggest that such a transfer had taken place. Admittedly the International Court in its advisory opinions had said that the mandate continued in existence, but these opinions had been expressly based on those so-called moral and humanitarian principles, such as the necessity for continuing the sacred trust, which the Court dismissed in 1966 as being non-legal and irrelevant. Even if the advisory opinions of the Court were correct and the supervisory powers of the League had been transferred to the United Nations, this could not have given the United Nations any additional powers to those formerly possessed by the League. The League had never revoked a mandate, not even when, as with Japan, it had found a mandatory power to be guilty of aggression, and it is very doubtful whether it had the power to do so, since the mandates were not granted by the League, but by the Principal Allied and Associated Powers, and there was no provision in the mandate agreements for revocation or for any other sanctions against the mandatory. Such revocation would in any event have had to have been by unanimous action by the League Council, including the affirmative vote of the mandatory power itself. It should be noted that neither is there any provision in the trusteeship agreements with the United Nations for revocation.

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Even if there had been such a power of revocation, the advisory opinion of the International Court in 1950, on which antagonists of South Africa base their case, provided that only South Africa and the General Assembly acting in agreement could change the mandate. For the General Assembly to revoke the mandate was tantamount to imposing unilaterally such an international change in contravention of the advisory opinion of the Court. Further, the Assembly has by its own constitution no power to pass decisions binding on members of the United Nations, but can only make recommendations.

But the Assembly was no longer interested in law. Mr. de Villiers, South Africa's counsel at the International Court, was one of the South African delegation to the Assembly. Most of the Afro-Asians left the chamber while he was speaking, so that there was not even the official quorum of 60 for parts of his speeches. The Ethiopian delegate dismissed his statements as "a series of big lies", causing Mr. de Villiers to protest at "these serious allegations affecting both my professional and my personal honour, and, even more important, the honour of my country and its delegation". The Foreign Minister of Zambia commented in the Assembly that "no law on earth" could take away from the people of South West Africa the right to self-determination, and that "the real issue is moral, humanitarian, and political". He said that if it took the Court five years to rule on a technical point, "it would take them fifty times five years to pronounce on substance". The Assembly proceeded to revoke the mandate, and by so doing precluded itself and its member states from ever again making application to the International Court as to South Africa's administration of the mandate.

Nevertheless, doubts as to the legality of the revocation caused Malawi and two of the permanent members of the Security Council, France and the United Kingdom, to abstain from voting, and Mr. Goldberg, the United States delegate, tried to persuade the Assembly that South West Africa should not come under United Nations control until a committee had reported on all the implications to the United Nations of administering the territory. He was unsuccessful, but the United States decided nevertheless to vote in favour of revoking the mandate. Sir de Villiers Graaff commented that it was deplorable that the United States should have been prepared to support the resolution after the very important amendment that it had proposed had been ignominiously rejected, and he said that he wondered to what extent in the future the United States was going to allow its actions to be governed by expediency as opposed to principle. He added that the United Nations resolution was clearly illegal and in complete disregard of the judgment of the International Court. South Africa should accordingly ignore the United Nations resolution to terminate the mandate.

On this point, the United and Nationalist Parties were in agreement. Dr. Muller, the Minister of Foreign Affairs, denounced the resolution as illegal, and declared that "an air of complete unreality" had marked the General Assembly debate. The outcome of the wave of emotionalism seemed to be that the Assembly itself was to sit in judgment on the substantive issues left undecided by the

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Court. A political organ was to decide the issue on sheer voting power. South Africa, he said, would continue "to administer South-West in the spirit of the mandate". Dr. Dinges said that South Africa would stand firmly by the warning of Dr. Muller to the United Nations to keep its hands off South West Africa. Mr. Vorster said that the government regarded the Assembly resolution as unconstitutional and contrary to international law and to the decision of the World Court. South Africa would do "nothing" about the "ridiculous decision" which it regarded as impossible to put into effect. He said that the African members of the United Nations were abusing their voting power, which was out of all proportion to their strength or importance, and that South Africa did not consider itself to be bound by a law which the Afro-Asians at the United Nations created at their own will. He concluded that South Africa would continue to administer the territory as it had always done, and it would continue to implement what it had planned for the territory. Amplification of what Mr. Vorster meant by this was provided by Mr. van der Wath, Deputy-Minister for South West African Affairs, who said that the Administration would go ahead with its work in South-West, and carry out the recommendations of the Odendaal Commission at the highest possible tempo.

This Commission had recommended, in 1964, that ten native homelands and a white and a coloured area should be created in South West Africa. Each of these homelands would have a form of self-government, and their size would be appropriate to the numbers involved. The Commission said that the numerical strengths of the various population groups varied so much that if a system of one man one vote were to be introduced in the Territory, with one central authority, the result would be that one group, the Ovambo, representing almost half the population, would completely dominate the other groups.

The South African Government decided to delay the creation of these homelands pending the decision of the Court, despite a petition from the chiefs and headmen of Ovamboland asking for the immediate establishment of the Legislative Council recommended by the Odendaal Commission for Ovamboland. The Government proceeded, however, to purchase, at a cost of R22 million, 406 of the 426 farms named by the Commission as being required for the homelands.

The next step towards the creation of these homelands was taken on March 21st this year, when the Minister for Bantu Administration and Development, Mr. Botha, delivered a message from Mr. Vorster to a gathering of chiefs, headmen, and councillors in Ovamboland, that in the opinion of the South African Government, the people of Ovamboland had reached a stage where they were able to take important steps towards self-government, which could lead to self-determination, and, with the help of the South African Government, eventually to complete independence.

Ovamboland, the home of almost half the total inhabitants of South West Africa, is a landlocked territory nearly as large as the Transkei, surrounded by Portuguese Angola to the north, the Okavango native territory to the east, the Etosha Pan Game Reserve to the south, and the mountainous Kaokoveld to the west, itself separated from the Atlantic Ocean by the desolate sand

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dunes of the Skeleton Coast. Ovamboland and the adjoining Okavango territory are the only fertile regions of South West Africa, with sufficient rainfall and seasonal flood waters from the Angola rivers to make agriculture possible. Ovamboland's water supply will now be supplemented by means of two other projects suggested by the Odendaal Commission, which are at present being implemented. These are the Ovamboland Canal Scheme, estimated to cost R6 million, and the giant hydro-electric project on the Kunene River, which forms part of the boundary between Angola and Ovamboland, estimated to cost R58 million. Much of the rest of South-West consists of desert, the Namib to the south, and the Kalahari forming its boundary with Botswana in the south-east. Sir Charles Arden-Clarke, the Chairman of the 1958 Good Offices Committee of the United Nations on South-West Africa, has commented that when he visited the territory, "the pilot of our plane was a South West African, born and bred in the territory. I remarked that parts of the Kalahari could best be described in the words of the Bible as the "abomination of desolation", to which he replied that he regarded all of South West Africa as "God's own country". Our course took us over the Kalahari and across the Bechuanaland Protectorate border. I asked him, "Can you tell me, are we yet over the 'abomination of desolation', or still in 'God's own country?' He looked through the window for a while at the featureless scrub-covered wastes below, grinned, and said - "I will have to go and ask the navigator"."

There seems to be a good chance for the Ovambos to achieve successful self-government. As Sir de Villiers Graaff has commented, Ovamboland has in fact been self-governing from time immemorial, and further development in their autonomy was therefore to be expected. The Ovambos are isolated from the rest of South-West Africa by vast uninhabited and waterless stretches. They have accordingly had little contact in the past with the population groups in the southern part of the territory, and were never under the direct administration and control of the German authorities during the German occupation. At that time their chief contact with Europeans were the Finnish, Roman Catholic, and Anglican missions, which have exerted great influence in Ovamboland since 1870, and as a result of their religious and educational instruction, over half the Ovambos are Christians, and almost 40% are literate. The Ovambos' traditional form of government was therefore still in existence when South Africa accepted the mandate over South West Africa at the end of World War I, so that not even the South African police were needed there to maintain law and order. Lord Hailey, the British expert on colonial administration in Africa, commented in 1947 that the Ovambos had been little affected by direct South African administration, being guided by a Native Commissioner acting through the traditional organisation of chiefs and councils of headmen. He described this as a model tribal administration.

Ovamboland is at present divided into seven regions governed by hereditary chiefs or by elected headmen, who rule in council, with both judicial and administrative functions. Mr. Botha suggested to the Ovambos that "as a people, you have come a long way with your system of chiefs, headmen, and tribal rule, and for this reason you might wish to continue the system. In your self-government, you may consider using your tribal authorities as a

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basis from which higher authorities can be developed."

The Ovambo leaders asked Mr. Botha to convey their thanks to Mr. Vorster. Their senior spokesman, Chief Uushona Shiimi, said that "this thought of bringing all the tribes together to have one central authority for Ovamboland will not only lead to the advantage of all the people of Ovamboland but will bind together the Ovambo people". They also made it clear that they rejected any United Nations administration. Senior headman Angula Shilongo said that the South African Government "is our government. We have known it for a long time. It has given us assistance in many ways for many years. This help has proved that the Government has our interests at heart. We trust the Government like our father and therefore we do not want any foreign government like the United Nations. We want only South Africa to help us until we are able to accept self-government."

In order that the outside world should freely discover that this did express the wish of the inhabitants of South West themselves, Dr. Muller subsequently announced that the Government was inviting the ambassadors of all countries represented in South Africa to visit any part of South West Africa that they wished. Most of these representatives have since indicated their acceptance of the invitation and their desire to visit Ovamboland. The first group left for the territory at the beginning of this week.

At the United Nations, reaction was predictably unfavourable to the Ovamboland proposals. The Secretary-General, U Thant, immediately repudiated them as "the offer of a government that has no 'locus standi' in South West Africa". Similar views were expressed in the ad hoc committee created by the Assembly to recommend to it practical means by which South West Africa should be administered. This committee only succeeded in reaching one unanimous decision, and that was to reject the Ovamboland proposals as "illegal", since they conflicted with the General Assembly's order to the South African Government, given at the same time that it revoked the mandate, to refrain from any action which would alter the international status of South West Africa.

Apart from this one item of agreement, however, the ad hoc committee failed to reach any other conclusion, and was unable to agree as to how a United Nations administration should be created in the territory. The United States, Canada, and Italy urged that this should be done peacefully, after a "dialogue" with the South African Government, while the four African members, Nigeria, Senegal, the United Arab Republic, and Ethiopia, proposed that the Security Council should take enforcement action, if necessary, to oust South Africa from the territory and to install a United Nations administration there. This difference, according to the committee's chairman, could not be "glossed over".

The General Assembly met in April of this year to consider the committee's report. South Africa took no part in the Assembly debate, Mr. Vorster having instructed Mr. Botha, South Africa's United Nations representative, that "the Government does not wish to create even an impression that it considers itself bound" by the resolution revoking the mandate, "or that it will let itself be illegally prevented from administering the territory in

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accordance with the spirit of the mandate".

The differences between the Western and the Afro-Asian states remained unresolved. Dr. Muller subsequently commented on the encouraging attitude of the Western Powers recently at the United Nations, where they had shown indications of greater realism and determination towards the irresponsible elements of the World Body.

This change in outlook occurred because it had become apparent that the United Nations could not take South West Africa from South Africa against her will without the use of force. Mr. Schoeman, the Minister of Transport, has said that "should they want to take South West Africa they will have to use force, and the Republic will resist this with all the power at its disposal". Mr. Vorster has warned that any attempt by the United Nations to end South Africa's control over South-West Africa would be a "war of aggression", and that the South West African problem, if not handled very delicately, could "lead to confrontation, with very far-reaching effects".

The African states, while they can now, together with the Asians, command a two-thirds majority of the General Assembly, and so ensure the passage of any resolutions they please, do not have the necessary force at their disposal to implement these resolutions. They have so far only succeeded in infiltrating terrorists into Ovamboland and into the Caprivi Strip, most of whom have been captured. The Ethiopian delegate had to admit in the Assembly that the African states had the will to oust South Africa from the territory, but lacked the means, and that this was accordingly a "sacred task" of the United Nations. Similarly, President Banda of Malawi has asked - "Who in Africa and even in Asia is in a position to expel South Africa from South West Africa? South Africa is militarily the strongest power in the continent".

It has become clear in United Nations practice that the United Nations will only use force if this is provided by, or supported by, one or more of the permanent members of the Security Council, who in any event have a veto power over the use of such force. Of these five permanent members, Nationalist China is kept fully occupied defending Formosa against Communist China. America made it clear in the ad hoc committee that she was against the use of force, and she reiterated this in the General Assembly debate. Mr. Goldberg said that "it would be a strange irony" if the United Nations should "add still another confrontation to a list already too long", and that what was needed now "was not confrontation but consultation". For this stand, he was immediately attacked by the Asian and African members, who alleged that the United States, having voted for the resolution revoking the mandate, now refused to support measures to make such revocation effective. The United Kingdom and France had already indicated by their abstention when the Assembly revoked the mandate last October, and by their subsequent refusal to serve on the ad hoc committee, that they were not even convinced as to the legality of the United Nations action over South West. Lord Caradon, better known as Sir Hugh Foot, frankly admitted to the United Nations that the United Kingdom was not economically prepared to enter into a sanctions war against the South African Government, and repeatedly reiterated the United Kingdom's refusal to use force even against Rhodesia, let alone

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against South Africa. He accordingly warned the Assembly that if it passed proposals which were likely to be inoperative or ineffective, these could damage the reputation and effectiveness of the United Nations, and "the archives of the Assembly will become overcrowded depositories of rotting resolutions". Help might have been expected from Russia, the last permanent member, but Russia had been adamantly opposed to the creation of any United Nations administration in South West Africa, and had said that she would make no financial contribution to the establishment or support of such an administration. Russia had already refused to pay her share of the United Nations peace-keeping operations in the Middle East and in the Congo of about R40 million, and may well have had in mind the high cost that military operations against South Africa would involve. The Carnegie Endowment for International Peace has estimated that a blockade alone of South Africa would cost at least R790 million a year.

Accordingly, the Afro-Asians have had to be satisfied with the passage of a resolution which provides for the appointment of a United Nations Commissioner for South West Africa, and of an eleven member UN Council to consult with the inhabitants of the territory to bring them to independence not later than June, 1968. Although this resolution made no provision for its own enforcement, but simply called on the South African Government to "facilitate" the transfer of the territory to the United Nations, it only obtained the support of 85 African, Asian, and Latin-American states and of Yugoslavia, while 30 states abstained, including the United States of America, the United Kingdom, France, Russia, and all the other European Communist bloc states. This lack of unanimity, the United States pointed out, meant that the resolution would not be effective, and the United Kingdom again warned the Afro-Asians against self-deception and the raising of false hopes. In South Africa, Mr. Vorster commented that South Africa did not require the services of a United Nations committee to administer South West Africa and would not even recognise it. If they "knocked on the door", he would not even bother to open it, and he would have nothing to discuss with them.

The resolution appointing the United Nations council and commissioner for South West was passed on May 19th. On that same day, Egypt once again indirectly came to the aid of South Africa over South West Africa. It will be remembered that it was the fortuitous death of Judge Badawi of the United Arab Republic that resulted in the favourable decision for South Africa of the International Court. On May 19th, Secretary-General U Thant ordered the withdrawal of the UN Emergency Force from the Middle East at the request of Egypt. At last the United Nations was faced with a real confrontation. As Dr. Muller has said, for weeks the tension in the Middle East had been so great that the United Nations should have foreseen what was going to happen. Instead, while failing in its duty to maintain peace in that area, the United Nations concerned itself with South West Africa, wasting its time struggling with the phantoms and ghosts of its own imagination. Dr. Muller argued that it was illogical to regard the situation in South West Africa as a threat to peace, and that perhaps the realisation that real crises existed in other parts of the world would contribute to restore the true perspective in

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which South West Africa should be seen. He also pointed out that for the third time in thirty years, South Africa had been called upon to help Western nations keep world traffic routes open because of the closure of the Suez Canal, and that this had accentuated the stress that the South African Government had repeatedly placed on South Africa's value to the West in times of crisis.

The Middle East war has also shown South Africa that she has nothing to fear from the threat of a possible United Nations peace-keeping force in South West Africa. The Secretary-General, U Thant, attempted to justify his order to the UN Emergency Forces to withdraw at the request of Egypt by saying that "we must remember that United Nations peacekeeping is a highly novel and sophisticated concept. It is a voluntary operation, and any suggestions that it should, for whatever reasons, cease to be so could be fatal to the whole idea". The force "relies on reason, local co-operation, skilful diplomacy, restraint and good faith. It does not, and cannot, rely on military force or on threats of power politics."

Perhaps U Thant found it a pleasant relief after the brutal realities of the Middle East to slip back once more into cloud cuckoo land and nominate Mr. Constantin Stavropoulos as Acting United Nations Commissioner for South West Africa. This nomination was approved by the General Assembly on June 13th of this year, at the same time that it elected the eleven member UN council for the territory. This now consists of representatives of Pakistan, India, Colombia, Turkey, Guinea, Zambia, Yugoslavia (a suitable reward for being the only European Communist state to vote with the Afro-Asians), Indonesia (the only state ever to withdraw from the United Nations for the express purpose of committing aggression), Chile, Nigeria (which part is not mentioned), and that model of a peace-loving state, the United Arab Republic. Mr. Vorster had said previously that South Africa was not interested in whatever decision the United Nations should take on South West Africa. But no one can fail to be interested in the fact that the United Nations has succeeded in creating a government representing no state, and now the United Nations administration of South West Africa, like the Nationalist Government of China, will twinkle on like Tinker Bell, until some day the United Nations achieves sufficient realism to announce that it does not believe in fairies. Nationalist China has even retained a permanent seat in the Security Council, so perhaps a bright future also awaits South West Africa in the United Nations.