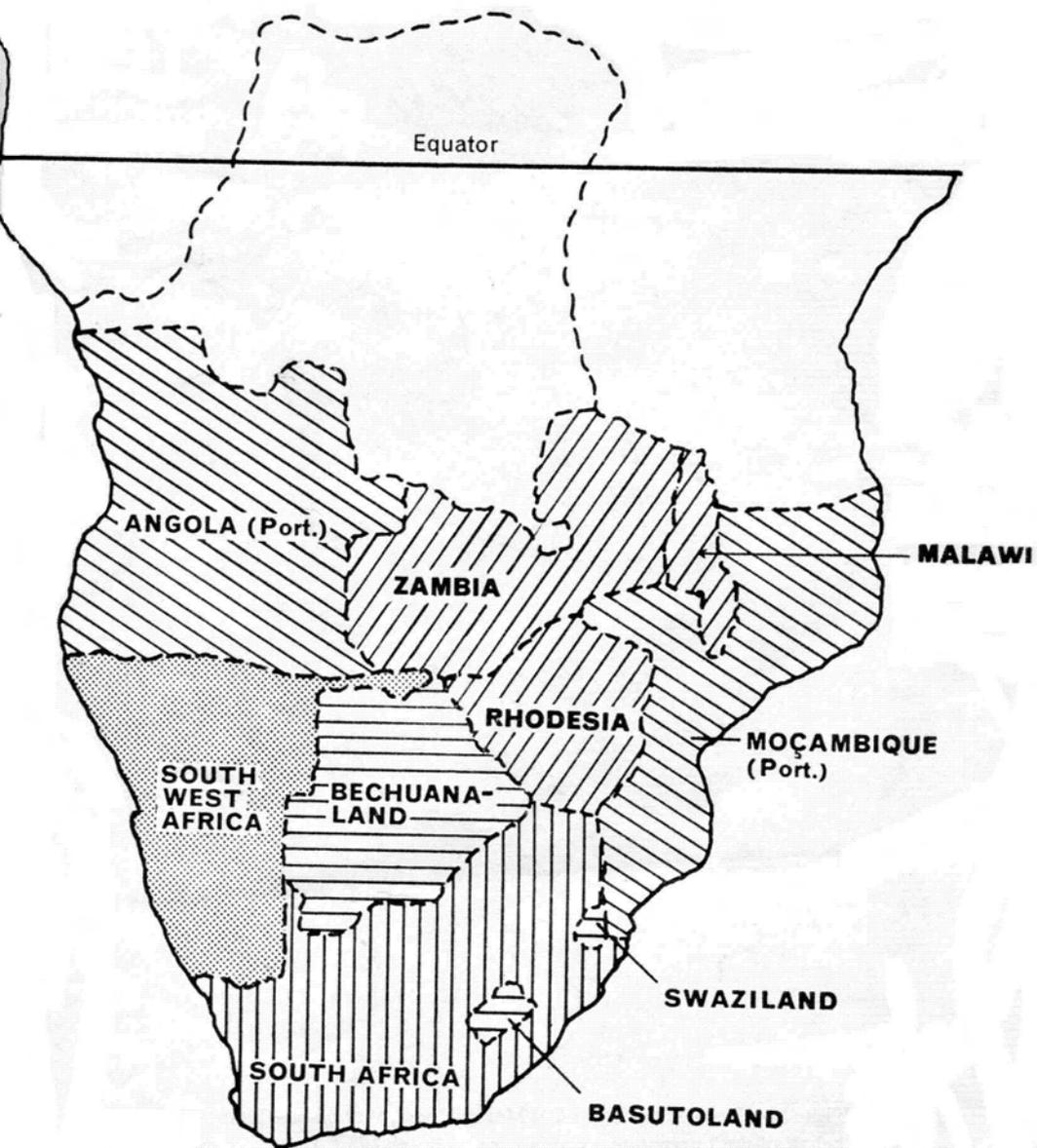


South West Africa

AN INTERNATIONAL RESPONSIBILITY



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INTRODUCTION

SOUTH WEST AFRICA is the only one of the former Mandated Territories established under the League of Nations in 1918, which is neither independent nor on the road to independence. It is the only one in which the indigenous people have no voice whatever in government. It is the only one in which racial discrimination forms the basis of all political, social and economic policy.

The Government of South Africa is at the present defending its administrative record in the Mandated Territory of South West Africa before the International Court of Justice at The Hague, in a case brought by Ethiopia and Liberia. The case is the latest of a series of attempts by, or on behalf of, the people of South West Africa to end the system of racial discrimination and repression under which they are governed. In 1950, the Court gave an advisory opinion, that the Mandate remained in force and that the supervisory powers previously exercised by the League passed to the U.N. Nevertheless, South Africa has refused to accept the opinion of the International Court and has continued to defy the resolutions of the U.N.

The people of the territory have consistently and strenuously opposed the enforcement of Apartheid laws and have continually demanded national independence for their country. They have looked to the international community, first through the League and then through the United Nations, to assist them in their struggle for freedom.

The International Conference on South West Africa has therefore been called to examine the means by which the international community can fulfill its responsibility to the people of South West Africa; failure to meet this direct responsibility can only bring nearer the threat of race war in Africa, and perhaps the whole world.

THE GERMAN PERIOD

SOUTH WEST AFRICA was first colonised by Germany in the 1880's. Large-scale white settlement began in the 1890's, and settler encroachment upon the traditional tribal lands, followed by a series of military operations against the tribes, notably the Nama people, led to resistance. At first, these operations were excused in terms of the German "undertaking" to support the Herero people against the other tribes. But by 1904 the Herero, too, were in revolt, having at last realised what was happening to their lands, and for a time this war of independence seriously threatened the German position. At the end of the Herero war, in 1905, only 15,000 survived of the original 80,000-strong tribe, and several thousands, including the old Chief, Samuel Maharero, took refuge in Bechuanaland. The fighting was continued by other tribes, in particular by the Namas, under their Chief, Witbooi, whose resistance lasted until 1907.

The German army ultimately prevailed, but it was not content

with victory and pursued a policy of persecution which amounted to genocide. By 1914 the tribes were reduced to shattered remnants, their land and cattle confiscated, and the survivors forced to accept employment with white farmers on their former property.

The breaking of the tribes was conscious German policy. When Germany was defeated in the First World War and South West Africa conquered by South Africa for the Allies, the German atrocities were revealed. (The British Government, for example, published a Blue Book (C.D. 9145) giving details of the conditions which had prevailed.) These exposures were largely responsible for the spirit in which the Mandate System was established; such suffering and injustice, it was implied, should not be allowed to occur again. The intention behind the Mandate System was clearly the protection of the people of South West Africa from further abuse.

THE MANDATE SYSTEM

“To those colonies which . . . are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation, and that securities for the performance of this Trust should be embodied in this Covenant.”

THESE WORDS established the Mandates System under the Covenant of the League of Nations. The German colonies were not to be regarded as the spoils of war. They were to become possessions of the League, to be administered on its behalf by appointed nations, under the supervision of the League. The aim of ultimate independence was implied by the use of the word “yet” in the quotation from the Covenant above.

South West Africa became a “C” class Mandate with South Africa as the appointed Mandatory. Its “C” class status, granted because of its contiguity to South Africa, allowed that it could be administered as an integral part of South Africa, but subject to the safeguards laid down in the Mandate agreement. Of these safeguards the most important are :

Article 2: The Mandatory shall promote to the utmost the moral well-being and social progress of the inhabitants of the territory.

Article 3: The Mandatory shall see that the slave trade is prohibited and no forced labour is permitted, except for essential public works and then only for adequate remuneration.

Article 4: No military or naval bases shall be established or fortifications erected in the territory.

Article 6: The Mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council, containing full information with regard to the territory and indicating the measures taken to carry out the obligations assumed under article 2, 3, 4 and 5.

Article 7: The Mandatory agrees that if any dispute whatever shall arise between the Mandatory and another member of the League of Nations relating to the interpretation or the application of the terms of the Mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice.

Supervision of the Mandates was given to the Permanent Mandates Commission, an "expert" (i.e. non-political) body, which could take substantive decisions only unanimously. Its main task was to receive and discuss reports sent to it by the Mandatories. But although it came into conflict frequently with the South African government, it was unable to enforce its strictures. It strongly criticised the segregation policies of South Africa; the inadequate expenditure to raise the living standards of the indigenous people; the attempts in effect to annex the territory; and, in the long-run perhaps most important, the fact that, far from reversing German policies, the South African government was consolidating and extending them. The white population was increased and settled upon land previously confiscated from the tribes by the Germans, as well as on other land subsequently bought for white settlement. By 1929, indeed, the South African government had increased the amount of land made available for white settlement by one third of the total settled during the German period. And by 1955, land under exclusively white settlement was double what it had been in 1914.

In the period of the Mandates Commission, the basis was laid for the present—now entrenched—system of apartheid. The "Native Reserves" were established, and discrimination between the races in public expenditure promoted; a Legislative Assembly was set up, elected by the white population only; and government of the African areas was vested in the Governor General, using co-operative chiefs as salaried officials, and having the power to depose those who refused to co-operate.

THE UNITED NATIONS

UNDER the Charter of the United Nations, the Trusteeship System replaced the League's Mandates System. All the former Mandatory Powers, except South Africa, negotiated trusteeship agreements with the U.N. relating to their mandated territories. South Africa attempted first to obtain agreement for the outright incorporation of South West Africa. When this was rejected, it refused to submit a trusteeship agreement, but agreed to submit annual reports in accordance with the Mandate. Its 1947 report was severely criticised—and it is worth noting that at that time the U.N. contained very few African and Asian member states. As a result, the newly elected Nationalist government of South Africa declared a policy of total non-co-operation with the U.N. over South West Africa. It maintained that the Mandate had expired with the League, and that since there was no second party to the Mandate treaty, South

Africa's sovereignty over the territory was unrestricted.

These contentions were tested in 1949, when the General Assembly asked the International Court of Justice for an advisory opinion on the status of South West Africa in international law. The Court gave its opinion in 1950; and, upon subsequent request, two subsidiary opinions in 1955 and 1956. These may be summarised as follows :

South Africa is obliged to accept international supervision of her administration of South West Africa, and the General Assembly is qualified to exercise such supervision as would accord most closely to that formerly exercised by the Mandates Commission. This includes the examination of petitions and annual reports, which the South African government is obliged to submit, as well as the hearing of oral evidence.

Nevertheless, South Africa is not legally obliged to place the Territory under the U.N. trusteeship system.

South Africa, acting unilaterally, is not competent to alter the legal status of its mandated territory.

South Africa is obliged to accept the compulsory jurisdiction of the International Court of Justice relating to the territory in terms of Article 7 of the Mandate.

South Africa did not accept the Court's advice. The situation has remained in deadlock; although in 1958 and again in 1961, the South African government agreed to receive U.N. negotiating missions, these failed to achieve any purpose. Meanwhile the General Assembly has received annual reports on the administration of the territory—first from its special Committee on South West Africa, and, since 1961, from the Committee of 24. These have provoked increasingly critical resolutions both in the General Assembly and in the Security Council. The sixth report of the Committee on South West Africa concluded bluntly : "The existing conditions in the Territory represent a situation contrary to the Mandates Commission, the Charter of the United Nations and the Universal Declaration of Human Rights".

Failure to negotiate any change in the administration or status of the territory with the South African government led the governments of Ethiopia and Liberia in 1960 to invoke the compulsory jurisdiction of the International Court of Justice against South Africa under Article 7 of the Mandate. They have asked the Court to declare, in effect, that the system of apartheid, under which the territory is governed, is inconsistent with South Africa's obligations in terms of the Mandate and the Covenant of the League. South Africa argues that the Mandate has lapsed; that even if it has not, she is fulfilling her obligations under it, because racial segregation is in the interests of all the races; and that it was the intention of the League to leave the interpretation of its obligations to the Mandatory Power.

The Court is expected to give judgement in the early part of 1966. If it decides in favour of the applicants, Ethiopia and Liberia,

the political organs of the U.N. will have to take the next step. The International Court is not in a position to enforce its decisions. But if the party against whom judgement has been given refuses to act in accordance with it, the aggrieved party may have recourse to the Security Council for enforcement. A political decision may, therefore, have to be taken by the Security Council to enforce the judgement of the Court.

SOUTH AFRICAN ADMINISTRATION

ALTHOUGH the U.N. has explicitly refused to allow South Africa to annex South West Africa, several important steps have been taken to effect a *de facto* annexation. The European community of the territory is directly represented in the South African Parliament; all "Bantu" affairs have been removed from the authority of the South West African Assembly to the Bantu Affairs Department in South Africa; and trade and other statistics relating to the Territory have been incorporated into those of South Africa, so that it is extremely difficult to discover the economic relations between the two countries.

South African government policy applies in almost all respects to South West Africa. The following extract from the conclusions of the 1959 report of the U.N. Committee on South West Africa sums up the political and economic conditions under which the people of the territory are obliged to live. The African people of South West Africa, as in South Africa itself, have none of the economic and political rights assumed to be basic to free men today.

"After almost four decades of administration of South West Africa under the international Mandate system, whose guiding principle is that the well-being and development of the territory's inhabitants 'form a sacred trust of civilisation', the Union of South Africa has failed and continues to fail to carry out the obligation it undertook, to promote to the utmost the material and moral well-being and the social progress of the inhabitants of the Territory.

"The Mandatory Power bases its administration of the Territory on a policy of apartheid and 'white supremacy' contrary to the Mandate System and to the Charter of the United Nations. Its goal is the annexation of the Territory. The Union Government has reserved political authority in the Territory, by law, to a 'European' minority, has transferred a major proportion of the Mandated Territory and its resources to 'European' citizens of the Union, has allocated the bulk of the public funds of the Territory to 'Europeans', and has reserved to them the larger share of the economic, social and educational opportunities available in the Territory. It has at the same time denied to 'non-European' inhabitants of the Territory, not only a recognition of their paramount interests, but also the rights to participate on the basis of equality and merit in the political, economic, social and educational life of the Territory. The indigenous

'Native' majority of the population in particular have been subjected to unnatural restrictions of their freedom of movement and regulation of their daily life, and have suffered damaging removals and threats of removals from their lands to places even beyond the boundaries of the international Mandated Territory."

THE FUTURE

THE international community, represented first in the League of Nations and later in the United Nations, has thus far failed to carry out the "sacred trust of civilisation", established by the Mandates System, in relation to South West Africa. The reason is that "securities for the performance of this trust", as laid down in the League's Covenant, were not in fact there embodied. No machinery was established to right wrongs inflicted by the Mandatory powers upon territories placed in their trust. If, therefore, the people of South West Africa are not to look in vain to the international community for the establishment of their rights as free men, then the United Nations must take political decisions to act on their behalf. Thus, whatever the Court's judgment, the political issue remains; even if the Court takes a *legal* decision favouring their cause, the Security Council of the United Nations must act *politically* to see that the decision is implemented.

Previous attempts to institute action against South Africa through the United Nations on behalf of South West Africa have failed because they have not been supported by the three Western nations with a veto on the Security Council. Britain went so far as to send its Attorney-General, Mr. Manningham-Buller, to argue the South African case when the International Court was preparing its 1955 advisory opinion. Lately, the Western powers have given their votes to resolutions condemning South Africa's administration; but they have not been prepared to accept proposals to enforce these resolutions. They argued first, that the problem should be solved by negotiations, and subsequently, that since there is a case before the Court, the matter is *sub judice*. Neither of these arguments can be sustained if the Court gives judgement against South Africa next year. These powers must therefore be prepared for political action if, as seems likely, it should prove necessary.

If action is taken, the results will be far-reaching. To be compelled either to change its policies in South West Africa, or to give up South West Africa, would be a defeat most damaging to the prestige and morale of the South African government. If South West Africa can be successfully administered on principles opposite to those of apartheid, the whole of the case for apartheid will be undermined. It is difficult to imagine that apartheid can long survive the establishment of a democratic system in a country with which it shares a long frontier. Thus the South West African case has become not only a matter of rendering justice to a tragically ill-used people, but also an issue of crucial importance for the future of the whole sub-continent.