## PREFATORY NOTE

The South West Africa case—the longest and probably the most important ever to have received the attention of the International Court of Justice at The Hague—had its beginning when in 1960 the two African former member States of the League of Nations, Liberia and Ethiopia, filed their "Applications" with the Court, alleging, amongst other things, against South Africa, the "Respondent", that, by applying in the Mandated Territory her policy of apartheid, she had violated that provision, Article 2, paragraph 2, of the Mandate which required her to "promote to the utmost the material and moral well-being and the social progress of the inhabitants of the Territory".

For the purpose of their "Submissions", the Applicants defined apartheid as the fact of distinguishing "as to race, colour, or national or tribal origin in establishing the rights and duties of the inhabitants of the Territory".

It is not proposed to notice here in detail the stages through which the proceedings thereafter went—with first of all the filing, by Applicants, of their one-volume Memorials; next, the Court's rejection in December 1962, by eight votes to seven, of Respondent's preliminary objections to its jurisdiction; then the filing, by Respondent, of its ten-volume Counter-Memorial; and then again, by Applicants, of their one-volume Reply, answered, by Respondent, with its two-volume Rejoinder; followed then by the opening, in March 1965, of a series of ninety-nine sittings of oral proceedings, culminating in November 1965 in the Court's adjournment to deliberate and make ready its decision.

Towards the close of the oral proceedings, witnesses, fourteen of them in all, were called by Respondent to give evidence in support of its case. Last but one of these to appear was Professor C. A. W. Manning, who figured as a specialist in the subject of international relations, described by him to the Court as "a species of political sociology". Professor Manning is Chairman of the South Africa Society, whose first object it is "to study South African affairs"; and it is primarily for its possible interest to the members of this Society that the present publication is issued.

In perusing the series of questions and answers in the pages that follow, the reader is advised to bear in mind:

(a) that the *questions* are quoted, with minor improvements in punctuation, from the *uncorrected* and therefore strictly provisional Verbatim Record of the proceedings. They do *not* include any such corrections as may subsequently have been submitted by the speakers concerned, and must *not* therefore be taken for the definitive version of what those speakers should be understood to have said. They are reproduced here even so, because without them the point of the answers they elicited would not be apparent.

(b) that the witness's answers as here recorded are, by contrast, his corrected version of what he may be taken to have said.

(c) that the witness's "evidence-in-chief" was directed solely to a single theme—the question, namely, of what the effect would be were the Mandatory to comply, in its administration, with the "standard" of "non-discrimination and non-separation" on which in a main part of their argument Applicants had come to depend.

(d) that in their cross-examining of the witness, Applicants were not obliged to confine themselves to matters on which he had claimed to speak as an expert. In so far as they left unchallenged particular answers given by him "in chief" those answers may be considered as having remained unshaken; but the witness might well have preferred to have the opportunity to defend, and so perhaps to reinforce, those answers, in the face of possible efforts to expose them as specious or off the point.

(e) that, while in their introduction of other, independent, issues Applicants' object may simply have been to draw from the witness responses helpful to their cause, their object could equally have been to shed doubt upon his reliability, whether from the standpoint of his veracity or of his freedom from bias.

(f) that it would seem in particular as though Applicants would have liked to have the witness claim for his evidence that it had a bearing on the question —whether legalistic or scientific—of the existence or non-existence of either a norm or a standard, proscribing " discrimination or separation "—in the light of which norm or standard the Mandate must, in their contention, be interpreted for the purposes of the case. They would further have liked him to claim for his views that they had the endorsement of other experts in his field, or at least to agree that, for want of such endorsement, they could be discounted as merely subjective and so of little weight. The continued existence—and its implications—of the Mandate being themselves questions awaiting determination by the Court, Applicants might further have liked the witness to disclose in respect of those possible implications a personal position favourable to their view. They would, that is, have liked him to endorse their proposed reading into the Mandate of a requirement that the Mandatory submit reports, on its administration, to the United Nations. And they would apparently have liked him to lend support to their suggestion that individual Africans employed in for instance mining, and the Coloureds as a group, had been affected, by the Mandatory's legislation, in a manner incompatible with its obligations under Article 2, paragraph 2.

The International Court of Justice is housed in the now historic Peace Palace, an elaborate edifice set on an eminence at a seemly distance from the highway and flanked by formal gardens with a background of noble trees. The Courtroom is more capacious, ornate and grandiose than most others of its kind. In black attire with decorative white-lace ceremonial bibs, the judges, fourteen in number, look down from their dais at where, solitary in the centre of the room, there stands at the podium the witness of the moment. With Respondent's Counsel at a table set away at right-angles to his left, and Applicants' Counsel placed correspondingly to his right, the witness is confronted face to face, at no great distance, by the President of the Court, who in these days is Sir Percy Spender, of Australia.

All that is said in the Court becomes simultaneously available everywhere, through earphones providing adjustable amplification and a choice of official languages (French or English). Ordinarily the Court holds five half-day sittings each week.

In the pages that follow the letter " G " will serve to signify the Honourable Ernest A. Gross, member of the New York Bar, Counsel for the Governments of Liberia and Ethiopia. " R " stands for Dr. P. J. Rabie, S.C., member of the South African Bar and third in seniority of the six advocates included in Respondent's legal team. " M " refers to the witness.

Professor Manning's tenure of the podium, from immediately after noon on 14 October until 12.30 the following day, was short by comparison with some. Time was incidentally taken up, more than once, with interchanges between Counsel and the Bench on points concerning the admissibility or relevance of the Professor's evidence. Such passages are not included here. Neither is the early part, covering the opening formalities, with Dr. Rabie foreshadowing the points on which the witness will be touching, and eliciting the essential facts about his status as an English-speaking South African, his academic training, his authorship of *The Nature of International Society*, and his professional career. These preliminaries duly completed, the examination-in-chief then went on as follows: