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THE UNITED NATIONS AND SOUTH WEST AFRICA -
was printed in 1970.

Since then, on 21st June 1971, the International Court has delivered, by 13 votes to 2, an Advisory Opinion to the effect that South Africa's continued presence in South West Africa is illegal: and Britain, in view of the inadequacy of the reasoning on which it rested, has rejected that Opinion.

See Hansard, 19th October 1971, column 681 :

> The Under-Secretary for Foreign and Commonwealth Affairs (Mr. Anthony Kershaw): "...we attach the greatest importance to the rule of law... And we have given the most careful consideration to this advisory opinion. As an advisory opinion only, it is not... binding, but it is of course entitled to the very closest consideration and respect. After giving it that consideration, we have concluded that, on the basis of the law as we understand it in this country, we must reject the Court's opinion."

THE UNITED NATIONS AND SOUTH WEST AFRICA

Though cast in the form of an imaginary conversation, what this Paper in substance consists of are the reactions of an individual South African to the latest development in the long confrontation between the United Nations and South Africa over the one-time German colonial territory of South West Africa. The interpretations it offers, and the responsibility for them, are the author's alone. But, as apparently focussing attention on some at least of the essential issues, they have seemed to the South Africa Society worth putting into print.

Q. *Is there any truth in what we are hearing about the South West Africa question going back again to the World Court?*

A. Yes, it is true. The Security Council of the United Nations has referred the matter once more to the International Court of Justice at the Hague, for what is known as an 'Advisory Opinion'. It is in fact the fourth time that the Court has been consulted on this subject in this manner.

Q. *Is that what happened that time when Ethiopia and Liberia were the plaintiffs?*

A. No, no. That was quite a different matter. In that instance those two countries — not indeed technically as 'plaintiffs' but as 'applicants' — instituted proceedings at the Court against South Africa, as 'respondent', charging her with violations of her obligations under the Mandate given to her by the League of Nations in 1920. What was asked for in that case was not an 'opinion', but a 'judgment'. Members of the old League of Nations were empowered by the Mandate to hale South Africa before the Court, in certain sorts of situation, even against her will. And, having been members of the League, these two countries were allowed by the Court to press on with their case even though, the League being, in 1960, no longer in existence, they were now no longer strictly members of the League.

Q. *The decision in that case went, did it not, in South Africa's favour?*

A. Yes, it did: but only in the sense that at a certain, very late, stage in the proceedings the Court decided, by the narrowest possible majority, that the matter was not after all one in which those two countries had the kind of interest needed to entitle them to proceed as they had done. The Court was indeed competent to entertain such a case, and that was why it had done so. But those two countries were after all held not to be competent to press such a charge against the Mandatory Power. For the case concerned, not the special interests of those countries, but the manner in which South Africa was exercising her responsibilities as Mandatory. And this, according to the Mandate, was in the Court's opinion a matter not for individual countries members of the League but for the organs of the League as such — in particular, the Permanent Mandates Commission and the League of Nations Council. The Court, as such, arrived at no decisions on what could be described as the 'merits' of the case. Some of the judges individually made known their individual opinions on those merits, but the Court as such refrained, quite correctly in the circumstances, from voicing, or even formulating, a view.

Q. *Will the Court be giving a decision on those merits now?*

A. Oh dear me no. In the first place this is not a 'contentious' case, with 'parties' as in ordinary litigation. It is for an 'opinion', not a 'judgment', that the Court is being approached. And the point here is that, whereas the 'parties' in a contentious case are bound in law to accept and comply with a judgment, no-one is technically speaking under any obligation to accept the correctness of an 'advisory' opinion. And its importance in these other senses is not a yes-or-no matter but a matter of degree.

Q. *What exactly do you mean by that?*

A. If, say, the Archbishop of Canterbury voices an opinion on some matter of general concern, the weight this carries with members of the public will vary along a spectrum of possibilities, with the utterly scornful and irreligious at the

one end, and the deferential at the other. It will vary with the subject dealt with, depending on whether it is one on which the Archbishop may appear specially qualified to form a judgment. With some, the mere prestige of his exalted office will enhance the authority of his opinion: with others it may not. And in most if not in all instances something will depend on the inherent persuasiveness of what His Very Reverend Lordship has had to say.

Q. *Do you mean that the moral authority, the persuasive weight, of an advisory opinion rendered by the Court is, like that of a pronouncement by the Archbishop, a matter of more or less and not of yes or no?*

A. That is very much what I do mean. The prestige of the Court as such, like that of the Archbishop, is itself a variable, standing higher with some than with others, and higher at some periods than at others, and higher or lower according to who precisely at a given time are the members of the Court. And, just as the intrinsic persuasiveness of the Archbishop's pronouncements will be critically appreciated by the thoughtful, so, among the members of the legal fraternity, the Court's opinions will be studied with vigilant interest and commented upon in learned articles in many laguages. And, as the Court's opinion will be studied, so also will the separate opinions that individual judges may exercise their right to place on record, whether in support, or in disparagement, of the Court's opinion. And the articles will be studied which academic lawyers will have written in comment on these opinions. In short, the Court's opinion, the views of individual judges, and those of commentators will all become parts of the corpus of learned discussion on the points in issue. Prestige is an element in determining the moral authority of any particular opinion, but intrinsic persuasiveness is a major element as well.

Q. *So an advisory opinion adverse to South Africa would make no difference to her position?*

A. I will not by any means say that. Her moral, political and diplomatic position could indeed be affected. And this presumably is the reason, or a principal reason, why the new advisory opinion is being sought. Supporters of this initiative

might conceivably include disinterested seekers after truth, or even sympathisers with South Africa confident that the outcome must be in her favour: but the likelihood, in my view, is that the move is aimed at the weakening of South Africa's diplomatic position. The likelihood is that the architects of this latest manoeuvre are reckoning, rightly or wrongly, that the Court, as now composed, may be counted upon to pronounce, by some sort of majority, against the stance that South Africa is maintaining in the face of so many pressures from abroad.

Q. *You said 'the Court, as now composed': what are you intending to imply?*

A. The judges who compose the Court are elected by the General Assembly and the Security Council of the United Nations. A number of the present judges were quite recently elected. Given the climate of opinion in the General Assembly today it is hardly likely that a candidate suspected of having sympathy with South Africa would attract many votes. So the chances are that, in so far as the bias of particular judges enters at all — and who can doubt that it probably does, to some extent — into the shaping of the Court's opinion, the scales in the Court as now constituted will be weighted, however slightly, against the South African view.

Q. *What precisely is it that the Court is now being consulted about?*

A. Essentially what the Security Council seems to be saying to the Court is this: 'In spite of all that has happened in recent years, South Africa shows, as you can see, no sign of relinquishing her position in South West Africa. What, in these circumstances, is it legally incumbent upon other states to be doing in the matter? In answering this question, please do not get involved in an examination of the possible unconstitutionality of the General Assembly's October 1966 resolution'.

Q. *A curious stipulation, that last one, is it not?*

A. It is of course remarkable that the framers of the recent resolution should be so seemingly averse to having the legal merits of the 1966 resolution judicially appraised. One might

infer that applying to the operations of the General Assembly the touchstone of legal propriety and effectiveness would in their eyes be equivalent to furnishing South Africa with weaponry needed for her defence. One sees the point!

Q. *Does it mean that the Court will comply in this matter with the Security Council's desires?*

A. Whether the Court will in practice feel inhibited from making the relevant appraisal remains to be seen. The Nepalese representative believed, and hoped, that it would indeed feel so inhibited. The British spokesman feared that it might. The French delegate believed, and I think hoped, that it needn't. And it was explicitly upon these respective understandings that the Nepalese supported the resolution, while the British and French representatives abstained.

Q. *And supposing that the Nepalese proves to have been right?*

A. The Court could, I imagine — and maybe it might — content itself with an attempted appreciation of the position independently of the effects, if any, of the General Assembly resolution of 1966. In that case it might even avoid discussing the grounds of its own 1950 opinion. In so doing it would however scarcely enhance the prestige either of that 1950 opinion or of the General Assembly's action, founded upon it, in 1966. For, if the Court considered the 1966 resolution to have had any effective bearing on South Africa's rights in respect of South West Africa, it would be strange if it were not to say so.

Q. *What was it that the General Assembly then purported to do?*

A. The now famous resolution of 27th October 1966 was curiously worded: but it has commonly been understood, or at least described, and has in the present context been referred to, as having 'terminated' South Africa's Mandate over South West Africa. On the theory that South Africa, by the policies she had pursued in the Territory, had forfeited her right to continue in control of the Territory, the General Assembly purported to declare her entitlement to do so at an end.

Q. *And what was South Africa's reaction to that?*

A. South Africa does not concede that the General Assembly had the necessary competence to deal in that, or indeed in any other, manner with the Territory in question. It was rather as though the General Assembly had purported to terminate Britain's entitlement to administer the territory known as Gibraltar. On one occasion a British spokesman declared in New York that they could adopt resolutions on the subject of Gibraltar as often as they liked, and with majorities no matter how big: Britain would take no notice. For in Britain's view the General Assembly had not the necessary competence to deal with the territory known as Gibraltar.

Q. *But Gibraltar never was, never had been, a mandated territory, had it?*

A. That is so. But in the South African view the United Nations has no better claim to concern itself with a mandated territory than with a territory under British colonial rule. Indeed, it has if anything less of a claim: for the Charter requires Britain to furnish the United Nations with certain information about conditions in her colonies, whereas it gives the United Nations no status in respect of mandated territories — no status whatsoever.

Q. *Is that the generally accepted view?*

A. There was a time when some people used to argue that the United Nations had automatically succeeded to the role of the League of Nations in respect of mandates: but the Court itself, when consulted, found no basis for this contention. Any entitlement the United Nations might be considered as having in this matter would need therefore some different theoretical root, such as an assent freely accorded by South Africa to the assumption by the United Nations of that role in respect of mandates which formerly had been fulfilled by the League.

Q. *South Africa would hardly be likely to assent to that?*

A. I agree. But the fact is that in 1950, by a majority vote, the International Court of Justice held, in an advisory opinion, that South Africa had indeed, if only by implication, assented

precisely to that. Two steps taken by South Africa, in the brief period during which her conduct as a member of the United Nations was being decided by the government of General Smuts, were construed by the Court as indicative of a willingness that the United Nations should act, in respect of South West Africa, as successor to the former League of Nations and inheritor of its role. This interpretation, of the conduct of their predecessors, South Africa's present rulers have categorically rejected. Independent legal opinion was divided about it at the time. It was subjected by South Africa to formidable criticism during the 1960-66 proceedings. And, of the 14 judges involved in the 1966 decision, one only, to wit the Chinese judge, Dr. Wellington Koo, explicitly declared himself as still placing, upon the developments in those early years, that interpretation which South Africa had now so elaborately denied.

Q. *What is your own view about this?*

A. I agree on this specific point with Judge Tanaka, the Japanese, who considered that if a Court wanted to ascribe to the United Nations a role in respect of mandated territories, it, the Court, would for this purpose require to endow itself with the functions of a legislature and confer upon the United Nations a competence which, as things stood, it lacked. Very few lawyers would, I believe, see this as something that a Court could properly do. But that for the moment is neither here nor there. For the fact is that no Court, as yet, has purported to do any such thing: and that, as matters stand, even Judge Tanaka must accordingly be numbered with those who see no present legal basis for the kind of action that the General Assembly, despite what he so had written, proceeded purportedly to take.

Q. *It is on the cards then, is it, that the Court may now have occasion to reconsider its opinion of 1950?*

A. It is certainly not inconceivable. It is perhaps too much to expect that the Court as now composed will unanimously repudiate that 1950 opinion. But it will be most interesting to see by what reasoning it, or any individual judges on it, will support an endorsement of that opinion. If their reasoning is as the reasoning of Dr. Wellington Koo, it will, for South Africa, be to that extent, in my view, an important moral victory.

Q. *But why was it that the United Nations did not, in fact, assume in the first place those responsibilities in respect of mandated territories which had formerly been exercised by the League?*

A. The full answer to that question might have to be a long one. But the point is that it did not do so. For my own part I am inclined to think the short answer is that the men of 1945-46 were loth to create the impression that the survival, on however limited a scale, of the mandates system was to be regarded as a contingency for which it was necessary, or appropriate, to provide. You don't require a nursery if there are not expected to be any children. A 'trusteeship' system was being established, and it was hoped, and incautiously assumed, that the mandatory powers would all of them, and not just some of them, place 'their' territories, voluntarily—for there was no way of compelling them — under the aegis of the trusteeship system. And though much was said about South West Africa in those early years, it was a long time before anybody at the United Nations thought of suggesting that the mandated territories, as such, were in themselves any business of the United Nations. What *was* in those days suggested was that South Africa was indeed under some sort of obligation to place South West Africa under the trusteeship system. But this, in its 1950 opinion, the Court held to have been a mistaken view. The territory is not and never was under the trusteeship system, even if here and there one may still encounter individuals who appear, or profess, to suppose that it is.

Q. *And what if the Court were now, so to speak, to identify itself with the position of Dr. Wellington Koo?*

A. By holding that South Africa herself must be understood as having invited the United Nations to endow itself, in respect of South West Africa, with the powers and responsibilities formerly those of the League? Even that wouldn't quite conclude the matter. For there would remain the question whether even the League would ever have claimed for itself the power, that is, the legal competence, to 'terminate' a mandate. And the further question whether, even had it made for itself such a claim, that claim would have been valid in point of law.

Q. *Do you mean that the Court is unlikely, in its advisory opinion, to pronounce against the South African position?*

A. It is not for me to say that. I am not in the secrets of the delegates at the United Nations or the governments that instruct them. So I cannot know what they for their part will have been expecting, and on what technical or political grounds. I merely reiterate that it will be interesting to see on what reasoning the judges, if they make what I may term koo-ing noises, will rely. In essence what Dr. Koo would have liked the Court to do would have been to resort to a palpable fiction, construing the things done in 1946-47 by the then South African government in a sense contrary to that in which they had at the time been understood, not merely by South Africa but by as many of her fellow-members of the United Nations as had then made any relevant comment — and doing this simply as a matter of convenience so as to arrive at a desired result unobtainable by any more matter-of-fact interpretation of the evidence. It was not, he said, for South Africa to say what the significance of her actions in those early days should be considered to have been. True enough: it was not for South Africa — but it *was* or could have been for the Court. And if Dr. Koo had had his way the Court would have exercised a discretion so to re-write history as to suit its present book. Whether the judges now on the Court are in the least likely to indulge in so artificial a ploy I must not venture to guess. I say merely that it will be interesting to see if they do. And, were they indeed to do this, it would be interesting to see what effect it would have upon the standing, among lawyers and the discerning public, of the Court. The moral authority of the Court is its most important asset: and of this there is no-one who should be more conscious than the judges themselves. Remember that what we are discussing is whether the competence claimed by the General Assembly to 'terminate' the Mandate is in effect to be understood as having been accepted by the United Nations at the instance of the government of General Smuts. An advisory opinion founded upon Dr. Wellington Koo's proposed kind of a lets-pretend would hardly be worth obtaining: for it would carry so little conviction. Indeed it would merely serve to highlight the impregnability of South Africa's legal position.

Q. *You mean, then, that the decision of the Security Council to seek this new advisory opinion was unwise?*

A. That I must not say. This is presumably the work not of innocent babes but of experienced and resolute men. All I must say is that the wisdom of their action is not, to me, apparent on its face.

Q. *So you think the Court might come up again, as it did in 1950, with the opinion that the Mandate still exists? Do you yourself think it still exists?*

A. I think most lawyers would have to admit that this was one of those questions that can be argued either way. At the winding up of the League in 1946 it was the Egyptian delegation that took the view that the mandates system would expire along with the League. Others did not then say so. South Africa in particular did not. Even though some of its provisions, such as that requiring reports to be rendered periodically to the League Council, would now no longer be fulfillable, the Mandate, in General Smut's view, remained. In 1948, however, the Nationalists, succeeding him in office, identified themselves with the view that the Mandate had died with the League. Even so, they would, they said, continue to administer the Territory in the spirit of the Mandate. And this, I think, they would claim to have done.

Q. *What, specifically, does that, or would it, involve?*

A. Broadly, I would say that it meant continuing to do only what they would have done had the League Council and Mandates Commission still existed to scrutinise and criticise what they were doing. The Mandate provided that South Africa should administer the Territory as (sic) — meaning 'as if' — an integral part of her own, and authorised her to do this under her own laws. It required her to promote to the utmost the moral and material well-being and social progress of the inhabitants of the Territory. And so on.

Q. *What about giving the people their independence?*

A. I am glad you asked me that. What needs to be appreciated is that the mandates system was devised because in one of his famous 14 points President Wilson had laid it down that

there were to be no annexations of territory as the result of an allied victory in the War. Germany and Turkey were required to renounce all their rights and titles in respect of certain colonial and other territories — and this in favour of the Principal Allied and Associated Powers. And it was on the very morrow of the War that these Powers in agreement had decided which territories were to be ruled, under mandate, by which victorious powers. Three classes of mandates were envisaged: the A class — for those territories (e.g. Palestine) which were due for independence in the short run; the B class — for those (e.g. Tanganyika) which were to receive it in the long run; and the C class, the effect of which was to be 'annexation in all but name', or 'veiled annexation' (to cite phrases used by General Smuts, who, if anybody, was in a position to know what was being done). The reason for creating the C class was precisely because, unlike the B class, it was to involve no obligation upon the mandatory to promote the political independence as distinct from the social progress of the inhabitants. And South West Africa in particular was to be a C class mandated territory. All this was in due time sufficiently spelt out in the wording of the Mandate drawn up in agreement between South Africa on the one hand and the League of Nations Council on the other. And in all the years from 1921 to 1939 during which the Permanent Mandates Commission supervised her conduct as Mandatory, never was it asked of South Africa that she go so far beyond the letter of her commitments as to plan for her own eventual withdrawal from the Territory.

Q. *Would you say it was consistent with the spirit of the Mandate for the administering power to discriminate on the basis of skin pigmentation between the several categories of the population?*

A. That is of course a fashionably loaded way of phrasing the question; but I do very well understand what you mean. My answer is that, in 1920, when South Africa was authorised, by the Mandate, to administer the Territory 'under' her 'own laws', those, her own, laws were well known to differentiate between categories of the South African population on the basis of the colour of their skin.

Q. *And that, so far as the Mandate was concerned, could have gone on for ever?*

A. Strictly, I suppose, yes. But the point is a shade academic, seeing that South Africa has judged it compatible with, even if not required by, the Mandate that she should offer to the peoples of South West Africa the same sort of separate development, leading to possible eventual independence, as she is in process of ensuring for the various Bantu (that is, African) peoples living, as yet, under the domination of the white man in South Africa itself. The self-determination of 'peoples', though not referred to in the Mandate, is mentioned explicitly in the United Nations Charter, and if only for that reason can claim, I suppose, a measure of international respectability. This does not mean that their self-determination must in all cases necessarily imply, for the peoples of the Territory, or those of the Republic either, complete sovereign independence — such as has, for instance, been assumed by the people of one-time Basutoland, now, as the Kingdom of Lesotho, a member of the United Nations. Freedom of choice, if genuine, will include the freedom of a people to opt for something short of complete independence. But the essence of the matter is that the peoples of South West Africa are now, despite, if not thanks to, the Mandate, on the road towards such degree of independence as they may, when ready for it, severally demand.

Q. *You remind me that 'the self-determination of peoples' is referred to in the Charter. So I suppose the United Nations can find no fault with that?*

A. What the vocal majority of United Nations delegations seem concerned about is not, I am afraid, the self-fulfilment of South Africa's, or South West Africa's, several peoples, but simply the ending, as early as possible, in Southern Africa, of white minority rule. And this, as we saw, is not something contemplated in the Mandate.

Q. *How, at the United Nations, is this aspiration expressed?*

A. The crusade at the United Nations for the extrusion of South Africa from South West Africa is in essence no more than a sort of side-show in the wider 'war' for promoting the

transfer in South Africa itself of power 'to the African population'. This, it has been frankly avowed, 'excludes any idea of partitioning the country'. Self-determination, in the shape of separate freedoms, for the several peoples of South Africa, true though it may patently be to the spirit of the Charter, is by no means a way of conceding to the massed African delegations in New York what they are pressing for. At the moment what is being demanded is that South Africa, her Mandate having, as it is claimed, been terminated, do make way in South West Africa for personnel appointed, to administer the Territory in her stead, by one or other of the bodies in New York. And it is on the consequences of her evident disinclination to comply with this demand that the Court is in particular being asked to pronounce.

Q. *And what, on this last point, do you foresee that the Court will find to say?*

A. I do not see how the Hague judges can very well avoid considering whether the powers of the old League of Nations in respect of mandates — those powers which it is suggested that General Smuts so to say invited the United Nations to assume — would ever, in the days of the League, have been interpreted to cover the appointing of an alternative administration for the Territory, or, for that matter, the serving upon the mandatory power of notice to quit.

Q. *But would it not be enough to say simply that, the Mandate no longer existing, South Africa's entitlement even to maintain a presence in the Territory was now extinct. Her 'work permit', on the basis of which she has been doing a job, in a country which is not her own, having expired, is she not, in the relevant sense, a sort of trespasser in South West Africa today?*

A. In 1914, when His Britannic Majesty went to war, and all the Empire with him (since that was the theory obtaining in those distant days) South Africa, under the leadership of Generals Botha and Smuts, opted to play an active, and not merely a passive, part at Britain's side. Even so, it was with some reluctance that, at the urgent instance of London, she presently gave herself the task of putting an end in South West Africa to what happened to be an extremely harsh system of German colonial rule. By mid-1915 this task had

been duly accomplished. According to a misconception which appears nowadays to be carefully cultivated and widely shared, it was the League of Nations that entrusted to South Africa the Territory so delivered from the German yoke. In truth, of course, it was by the Principal Allied and Associated Powers — and this nearly a year before the birth of the League and nearly two years before the final formulation of the Mandate — that South Africa was designated to become the Mandatory. And the Mandate, when eventually formulated, was to define the conditions affecting her administration of the Territory. It was not therefore going to constitute her sole title-deed for remaining where she was. Had the Mandate, as a solemn instrument, never after all materialised, or had the League itself lasted for no more than, say, a year — it is hard to see on what theory the authority for South Africa's continued presence in the Territory could be held *eo ipso* to have come to an end. I am not suggesting that there could thereafter have been no conceivable circumstances in which South Africa's continuance there could have lost its legal basis. All that I am asserting is that what the United Nations seems now to be claiming are powers in respect of South West Africa to which I doubt if the League would ever have dreamt of laying claim. It certainly never did.

Furthermore — and this is equally to the point — they are powers to which the United Nations itself had never until now laid claim. Why, it may well be asked, if termination of the Mandate and displacement of the Mandatory were among options plainly open to the General Assembly — why, in that case, was use not made by it of this convenient possibility — why was it not even proposed to be made — five, ten, fifteen, or even twenty years sooner?

Recollect that the most that anyone has suggested General Smuts's having assented to the United Nations' undertaking have been those responsibilities in regard to the Mandated Territory which formerly were borne by the League.

Q. *Who, then, pretends to suppose that the legality of South Africa's position has been in any degree affected by what the United Nations in recent years has affected to do?*

A. Officially at least, a great many people. Presumably most, if not all, of those Afro-Asian governments to whose collective campaigning the manifestations to which you are referring have been chiefly attributable. Presumably also the generality of those, throughout the world, and not least in the civilised West, who, ignorant of the technicalities and the gamesmanships of the matter, assume that if things didn't promise to make sense the United Nations wouldn't make as if to do them. Importantly too, the correctly behaving bulk of U Thant's bureaucracy, occupationally inhibited from overt questioning of the premises upon which the organisation in whose service they are is at any time proceeding. I say nothing of the Communist states, whose line in matters affecting capitalistic, western-orientated, strategically situated South Africa is much what it would be logical to predict.

Q. *And how about Britain, and the United States?*

A. Britain's voice, albeit a small one, in this matter, has been the voice of principle, propriety and honest dealing. 'Are you sure', she has in effect asked, 'that the General Assembly has in fact the requisite competence to do what is now being proposed? Do you suppose it will assist the authority of the United Nations if you make demands on whose satisfaction you will be in no position to insist? If you are indeed resolved to seek an opinion from the International Court, will it not be more sensible to aim at clarifying the legal situation in its entirety?'

Q. *A 'small' voice? Why do you say that?*

A. My feeling is that Britain could have put her arguments even more tellingly and embarrassingly than she appears to me to have done. No doubt there is national dignity, as well as diplomatic wisdom, in the moderation with which, in an atmosphere of so much systematic ill-will, Britain chooses to state her view. And in this particular instance she may well have been loth to set herself too vehemently at variance with the United States, which has lost no opportunity of associating itself with the more fashionable position. At threats of force against South Africa Washington has hitherto firmly drawn the line: but, as though to atone for this lack of a true fighting spirit, in the eyes of those African governments whose goodwill America would wish to retain, she is unequivocal in her anathematisings of South Africa's uncompromising stance.

Q. *The United Nations is holding a kind of opinion poll on this matter, is it not?*

A. I would not call it exactly that: but I know what you are referring to. On this same recent occasion the Security Council adopted a resolution calling upon all member states having diplomatic or consular relations with South Africa to declare formally to South Africa their opinion that her non-compliance with the demand that she relinquish the Territory was unlawful.

Q. *Why not see this as being in effect an opinion poll?*

A. My main reason is that the opinion poll is a device for investigating the views, feelings and/or wishes of individual men and women. The state is not an individual, it is an organisation. States don't have opinions. What they have are postures. And these are a matter not of opinion but of policy. Statesmen deliberate, weighing pros and cons: and the line they resultingly adopt is not necessarily a direct reflection of anyone's opinion in particular. International politics are not a conversation. They are more in the nature of a game — in which the participants make subtle moves in calculated pursuance of more or less consistent strategies. And strategy is considered in relation to the objectives that the state, as an organisation, has in mind. As bearing on its prospects in the pursuit of its objectives the state is concerned with its standing, its friendships, its influence, its diplomatic weight. It is in this respect not unlike the individual politician in his preoccupation with his image. What politician, canvassing for support, replies candidly to the constituent who wants to know whether hers isn't the sweetest little infant he ever saw? How he is to respond to such a question is a relatively simple matter of policy. And no-one would be more surprised than the inquiring mother if he asked for time in which to consider his verdict.

The communication now being addressed to governments is not really a search for light upon a difficult subject. It is a demand that they take position, that they stand up and be counted. 'Are you for South Africa, or are you not? Do you condone apartheid, or do you not?' For it is assumed, not that governments will first ask themselves whether South Africa is in the

right, in which case they must not condemn her, but whether they are willing to face the odium of appearing to be her friend. If they don't want to be accused of befriending South Africa they had better decide that her attitude is presumably wrong, and call on their legal backroom boys to make out an argument for this conclusion.

We live in an age in which one successful hijacking leads to others, one remunerative kidnapping is followed by further kidnappings, and the stopping of one cricket tour serves merely as a dress rehearsal for more ambitious enterprises in the unceasing political war. In effect others are saying to, for example, Britain: 'Join with us in calumniating South Africa, or else you may find tomorrow that we are calumniating you. You wouldn't like that, would you? Listen, and we'll tell you why you had better not opt for that.' Unfair? 'We know, and you know that we know, that by all traditional standards of decent civilised living this is quite unfair. But you also know that, as the saying goes, all's fair in love and war. And war is what this is'.

Q. *You don't think, do you, that Britain would capitulate to that kind of pressure?*

A. Naturally my hope is that she wouldn't — that she would be too jealous of her reputation as an example of integrity, and loyalty to truth, in her conduct as a member of international society. And indeed she has already in fact referred, in the present context, to her earlier expressed uncertainty as to the true constitutional position. France, too, indeed perhaps even more so, would I think be loth to go on public record as professedly holding a patently phoney interpretation of international law, even to strengthen the most lucrative of her alliances. The United States on the other hand had from the outset lost no time in asserting that South Africa had no longer any right to be in the Territory, and may be expected to say this again — though it is difficult to imagine what plausibility she will succeed in lending to her development of this idea. As for Soviet Russia. . . .

Q. *Yes, I was wondering about Soviet Russia.*

A. I need hardly tell you that I doubt if Russia will take a strictly academic view of the legalities of the situation. There

are, I dare say, individual lawyers in Russia, as elsewhere, whose professional self-esteem would preclude their coming up with an ideologically slanted answer. But we are thinking here of what is likely to be Russia's official posture, or stance. It is relevant to notice what the Russian delegate said when abstaining — as, along with Britain, he did — on the question of consulting the Court. Britain's complaint was that the Court was not being asked the appropriate question — not being invited to appreciate the legal situation as a whole. Russia, with a different shade of emphasis, deemed the procedure inadvisable, as liable to lend colour to the impression that the problem was one that could be settled by referring it to a Court. It required, on the contrary, a political solution.

Q. *What, in your opinion, was his point in saying that?*

A. There is of course a sense in which no question can be settled by lawyers, if no-one is going to be affected by what they may say about it. And it is charitable to assume that this was what the Russian was having the candour to point out, with particular reference to the South West African problem. Of course he may however have meant a little more than that. For he knew, and others knew, that, were the Court to give an opinion unfavourable to South Africa, great importance would certainly be attached to it in many quarters. But, since South Africa might be expected to stick by her legal artillery, and America for all her verbal indignation would probably repeat her recent statement that force was not the appropriate means for bringing about change in Southern Africa, nothing effective would be done.

But he could also have been meaning that a Court opinion disappointing to those who had sought it would do nothing to restrain them. The steam behind the moral drive for the ousting of the white man from the seats of responsibility in Southern Africa was such that any legal obstacle presenting itself would as it were be bulldozed out of serious existence. What is law, except in a milieu where concern is felt, and respect is rendered, to the ideal of the rule of law? It may be that what the Russian delegate was alluding to was the precariousness in the world today of the international rule of law.

Q. *I would like you to develop that.*

A. Well, the melancholy truth seems to me to be that the status of international law, as a conditioning element in international politics, is nowadays no longer what it used to be. People talk of our living in a 'post-Christian' era, and we know what is meant by that. Sometimes it strikes me that we may be moving into what might be called a post-law-venerating age. And, as the long-term consequences for mankind of the loss in the West of Christain standards are disturbing to predict, so one wonders how international society would fare if the lipservice that states pay to international law came to be generally recognised as merely lipservice and nothing more. There is more than a tendency to mutter, in the present instance, 'If South Africa's position turns out once again to be legally unassailable, then all we can say is — So much the worse for international law.' Already the status, the standing, the prestige, of the Hague Court appear to have suffered somewhat through its decision of 1966. 'What is the use of a law, if it comes out on the side of the unloved?' Russia may have sensed this mood. And it may be that not the least of the values at stake in these current exercises at the United Nations is the future, not just of South West Africa, but of international law as an item in the social heritage of civilisation, and so, in a certain measure, of civilisation itself.