Nations, in order to avoid a period of interregnum in the supervision of the Mandatory regime in these territories.

Recommends that the Mandatory powers as well as those administering ex-enemy mandated territories should continue to submit annual reports to the United Nations until the Trusteeship Council shall have been constituted." (See Annexure VI to this Study).

The second draft, which became the resolution of 18th April 1946 was submitted after the first one was withdrawn. The withdrawal of the above-mentioned draft has been interpreted by Sir Percy Spender and Sir Gerald Fitzmaurice in their joint dissent to the 1962 Judgment, and by Judge van Wyk in his separate opinion to the 1966 Judgment, to indicate that the first draft had to be withdrawn because the League Members were not agreeable to transferring the functions of the League Council in respect of Mandates to the United Nations. As such, there was no agreement casting an obligation upon the Mandatory to report and account to the United Nations. However, Judge Jessup cautioned against drawing such an inference from the mere fact of withdrawal of the original Chinese draft. He pointed out that "anyone familiar with proceedings in the United Nations would know, it is always dangerous to draw inferences from the fact that a particular resolution is not adopted or its sponsor withdraws it. Many reasons may enter into the unwillingness of delegations to vote for a particular proposition" and the withdrawal of a draft resolution by its sponsor.

6. The controversy examined in the light of provisions of the U. N. Charter

1966 Judgment

"... There were of course marked divergences, as regards for instance composition, powers and voting rules, between the organs of the United Nations and those of the League. Subject to that however, the

Trusteeship Council was to play the same sort of role as the Permanent Mandates Commission had done, and the General Assembly (or Security Council in the case of strategic trusteeships) was to play the role of the League Council; and it was to these bodies that the various authorities became answerable....."[52]

Separate opinion

JUDGE VAN WYK

".....By express provision in the Covenant, the Council of the League of Nations, had, in respect of its functions concerning Mandates, to be assisted by the Permanent Mandates Commission which was a body of independent experts; whereas there is no corresponding body in the United Nations. The Trusteeship Council of the United Nations, like all other organs of that institution, consists of Government representatives of member States. Moreover, whereas the unanimity rule prevailed in the Council of the League, the General Assembly of the United Nations can arrive at its decisions by a bare majority, or in important matters by a two-thirds majority, while in the Security Council seven votes (including those of five Permanent Members) out of 11 are sufficient." *(now 9 out of 15)*.[53]

And

".....Had it been the intention of the parties to the Charter to transfer the functions of the Council of the League with respect to mandates to an organ of the United Nations, such intention would have been expressed in positive terms. Although the Mandates were specifically referred to in the Charter of the United Nations, there is no reference in any of the provisions of the

52 *South West Africa (second phase) Judgment, 1966*, at p. 49.

53 *Ibid.*, at pp. 89-90.

Charter, or in any of the discussions at the time of drafting of the Charter, to any intended transfer."[54]

And

"It is common cause that the Mandate Declarations were international instruments, and the aforesaid provision accordingly directs in express terms that Article 80 (which Article is part of Chapter XII) should not be construed in or of itself as altering in any manner the terms of existing mandate declarations. Apart from any other considerations, this clear and unequivocal instruction bars any interpretation of Article 80 (1) which would have the effect of amending Article 6 of the Mandate Declaration for South West Africa by substituting an organ of the United Nations as the supervisory body in the place of the Council of the League..."[55]

And

"...the mandatories were not obliged to enter into trusteeship agreements, and the members of the League knew that a trusteeship agreement could only be concluded if the mandatory power concerned and the United Nations could agree on the terms thereof..."[56]

Dissenting opinions

JUDGE TANAKA

"...the difference of the method of composition as well as the voting method may affect in both a favourable and unfavourable way. The absence of precise identity between the two supervisory mechanisms cannot be considered as a reason for denying the supervision itself..."[57]

54 *South West Africa (second phase) Judgment, 1966*, at p. 92.
55 *Ibid.*, at p. 94.
56 *Ibid.*, at p. 115.
57 *Ibid.*, at p. 275.

And

"The replacement of the League as a supervisory organ by the United Nations is not normal; it is an exceptional phenomenon of the transitional period which was produced by the non-conclusion of a trusteeship agreement by the Respondent. What the Charter provided for the future of existing mandates was the conclusion of trusteeship agreements which, according to the majority opinion of 1950, the Respondent as Mandatory was not legally obliged, but expected, to make.

"The attitude of the Respondent that, on the one hand, it did not enter into trusteeship agreement which it would normally have been expected under the Charter to conclude and that, on the other hand, it refuses to submit to international supervision because of the difference of the mechanism of its implementation, is contrary to the spirit of the Mandate and the Charter and cannot be justified."[58]

JUDGE PADILLA NERVO

"The provisions of paragraph 2 of Article 80 of the Charter presuppose that the rights of States and peoples shall not lapse automatically on the dissolution of the League."[59]

And

"Article 80, paragraph 1, of the Charter, purports to safeguard the rights of the peoples of mandated territories until trusteeship agreements are concluded, but no such rights of the peoples could be effectively safeguarded without international supervision and a duty to render reports to a supervisory organ."[60]

58 *South West Africa (second phase) Judgment, 1966*, at pp. 275-276.
59 *Ibid.*, at p. 459.
60 *Ibid.*, at pp. 459-460.

Comments

Judge van Wyk pointed out the differences between the structures of the League and the U.N.—firstly, that whereas the League Council was assisted by the Permanent Mandates Commission (a body of independent experts), the U.N. Charter did not provide for a corresponding body; that the U.N. Trusteeship Council was a body consisting of government representatives of the member States; and that whereas the League Council took decisions by unanimous vote, the U.N. General Assembly took decision normally by a simple majority and in important matters by a two-thirds majority. (See Annexures I and II to this Study). He came to a conclusion that the Respodent could not be expected to agree to an international supervision by the new organization which differed in these respects from the machinery of supervision provided in the Covenant and the Mandate. The Court, in its 1966 Judgment, said that inspite of these differences "the Trusteeship Council was to play the same sort of role as the Permanent Mandates Commission had done, and the General Assembly (or Security Council in the case of strategic tursteeship) was to play the role of the League Council; and it was to these bodies that the various authorities became answerable". Judge Tanaka also expressed the view that the aforesaid differences between the two systems "cannot be considered as a reason for denying the supervision itself."

Judge van Wyk also expressed the view that the Charter did not make it obligatory for the mandatories to enter into trusteeship agreements. In this regard, Judge Tanaka said that under the Charter provisions "the Respondent as Mandatory was not legally obliged, but expected", to conclude the trusteeship agreement, as was stated' by the majority opinion of 1950. He also criticized the Respondent's attitude in not concluding the trusteeship agreement, as expected under the Charter and, at the same time, refusing to submit to the international supervision of the United Nations on the pretext

of differences in the mechanisms of the mandate and trusteeship systems.

Judge van Wyk also pointed out that the Charter merely referred to the mandates but did not provide for transfer of functions in relation to the mandates from the League to the United Nations. He also expressed the view that, since Article 80 of the Charter barred any alterations in the rights of "any States or any peoples or the terms of the existing international instruments", the supervision by the League Council as provided under Article 6 of the Mandate cannot be substituted by the supervision by the United Nations. Judge Padilla Nervo remarked, in this respect, that the said Article "purports to safeguard the rights of the peoples of the mandated territories until trusteeship agreements are concluded, but no such rights of the peoples could be safeguarded without international supervision and a duty to render reports to a supervisory organ". What is important is the international supervision and some differences in the mechanisms of the two systems are hardly material, particularly considering the fact that the purposes behind the two system are the same. Justice Hidayatullah of the Supreme Court of India has also said : "The suggestion, that Article 80 (1) did not give continuity to conventions or agreements, is only partly true. No doubt the words do not state this expressly, but they do suggest that the international instruments were to continue, unless altered by agreements under the provisions of the Charter. There is nothing to show that the principle *pacta sunt servanda* as a norm of international law and the legal basis of treaties was to be abandoned because one international body was dissolved and another was formed in its place. It is true that Article 10 had no place unless the Mandate continued to be operative against the Mandatory. But the decisive argument really was that the Mandatory had no right to be in the Territory if the Mandate itself had lapsed and this was ignored again and again by the dissenting opinions in 1962 and the Judgment of the

Court in 1966." [61] The latter argument has been considered in detail in item 9 of this Chapter.

7. The controversy examined in the light of proceedings of the United Nations

1966 Judgment

Separate opinion

JUDGE VAN WYK

"None of the statements made by the mandatories on this occasion can be interpreted as evidencing an understanding that, in case of the mandated territories in respect of which no trusteeship agreements were concluded, the United Nations, or any of its organs, would, after the dissolution of the League, have powers of supervision, or that the mandatories were prepared to submit to such supervision. Nor can it fairly be said that the Respondent's statement that it would submit the question of incorporation of South West Africa to the judgment of the General Assembly constituted a request to the United Nations to assume the supervisory functions of the Council of the League. In my opinion, it was obviously no more than an intimation of Respondent's desire of obtaining the approval of an important political act by the newly formed and important international organization. It must have been apparent to all concerned that, whatever the legal position might be, unilateral incorporation of South West Africa by the Respondent without consulting the United Nations could have led to serious criticism and harmful political results....." [62]

And

"The cumulative weight of the evidence so far examined is overwhelming, and the inescapable inference is

61 In his book on *The South West Africa Case*, at p. 67.

62 *South West Africa (second phase) Judgment, 1966* at pp. 103-104.

that not a single Member of the United Nations, nor a single State who was a Member of the League of Nations at its dissolution was under the impression in, or at any time prior to 1947, that any agreement had been concluded whereby the League Council's authority had been transferred to the United Nations, or whereby the Respondent became obliged to account to the United Nations, with regard to its administration of South West Africa. On the contrary, they either expressly or tacitly agreed that no such agreement was ever entered into." [63]

And

"It has been suggested that the Respondent is estopped from denying an obligation to report and account to the United Nations. In my opinion it is not estopped. Not only has Respondent at all material times consistently denied such an obligation, but also no State has at any material time alleged that it was induced by Respondent's word or conduct into thinking that the Respondent had acknowledged such an obligation. The Applicants cannot suggest anything of the kind because they would not be able to reconcile such a suggestion with their silence and acquiescence during 1945, 1946, 1947 and 1948."[64]

Dissenting opinions

JUDGE WELLINGTON KOO

"Although the Respondent, in submitting the reports, stated that the action was voluntary on its part and for information only such as provided for by Article 73(e) of the Charter of the United Nations regarding non-self—governing territories, the legal effect of its declaration and act acknowledging the General Assembly as the competent international organ in the matter of the Mandate for

63 *South West Africa (second phase) Judgment*, 1966, at p. 124.

64 *Ibid.*, at p. 137.

South West Africa, in view of its obligation of international accountability under Article 6 of the Mandate, obviously cannot be determined unilaterally by it alone [Article 7(1)], just as the content and scope of its obligations under that instrument cannot be governed by its own interpretation of Article 7(2) of the Mandate. Nor can the question of the validity of its subsequent declaration to discontinue further reports to the General Assembly on its administration of the mandated territory, in the actual circumstances, be resolved solely by itself without regard to the attitude and action of the General Assembly.

"The General Assembly, on its part, notwithstanding its earlier hesitation (resolution XIV—I, clause 3C, of 12 February 1946), definitely undertook to exercise its powers and functions under the Charter and to deal with the matter of the Mandate for South West Africa, as evidenced by resolution 65(I) of 14 December 1946, declaring itself "unable to accede to the incorporation of the territory of South West Africa in the Union of South Africa." By resolution 141 (II) of 1st November 1947, it took note of the Respondent's decision not to proceed with the incorporation but to maintain with the *status quo*. In fact the competence and determination of the General Assembly to exercise supervision and to receive and examine reports relating to the administration of South West Africa under the Mandate were also confirmed by resolution 227(III) of 26th November 1948 and 337(IV) of 6th December 1949."[75]

JUDGE JESSUP

"...*Inter alia*, Counsel for Respondent on 7th April 1965 (C. R. 65/13, p. 6) explained that the South African Legislative Assembly had "contemplated" the competence of the General Assembly to grant a South African

75 *South West Africa (Second phase) Judgment 1966*, at p. 236.

"request" for incorporation of the Territory. This position would be in line with the British position which recognized that United Nations' consent should be secured for any change in the Palestine Mandate. But Counsel for Respondent considered that a competency to grant a "request" for the ending of the Mandate "is totally unrelated to the subject of a supervisory Power". *Per contra*, the correct conclusion is that such a "competency" is one of the highest manifestations of supervisory power. On another occasion, the argument of the Respondent seemed to be that an agreement to change or terminate the Mandate did not need to be reached with an organ of the United Nations but an agreement expressed through a resolution of the General Assembly would be a convenient "short-cut", so to speak, to securing the agreement of various States. But Article 7(1) does not contemplate the need for consent of various States as such ; it contemplates the need for the consent of supervisory organ which originally was the Council of the League and now is the General Assembly of the United Nations."[76]

Comments

The Respondent, on several occasions made statements before the General Assembly to the effect that it would continue to administer the territory in accordance with its obligations under the Mandate and that it would, in accordance with Article 73, paragraph (e) of the Charter, transmit regularly to the Secretary-General of the United Nations for information purposes, statistical and other information of a technical nature relating to economic, social and educational conditions in South-West Africa. The Respondent, having refused to conclude a trusteeship agreement, also made a request to the General Assembly to be allowed to incorporate the territory, but the same was not acceded to. According to Judge van

76 *South West Africa (second phase) Judgment, 1966*, at p. 388-389.

Wyk, the aforesaid statements by the Respondent cannot be interpreted to conclude that it agreed to a supervision of its administration of the territory by the United Nations. On the other hand, Judge Wellington Koo expressed the view that the legal effect of its statements and acts cannot be determined unilaterally by the Respondent itself, without taking into account the attitude and action of the General Assembly, which regarded itself competent "to exercise supervision and to receive and examine reports relating to the administration of South West Africa."

Judge van Wyk pointed out that not a single Member of the U.N. thought that supervision of the Mandate by the League Council had been transferred to the United Nations or that the Respondent "had become obliged to account to the United Nations". According to him, Respondent's request to the General Assembly on the question of incorporation of the territory cannot be interpreted as submission to the supervision by the United Nations. Respondent sought United Nations' approval only because unilateral incorporation "could have led to serious criticism and harmful political results." He, further, did not agree to the plea that because of his acts and statements the Respondent was "estopped from denying an obligation to report and account to the United Nations." Judge Wellington Koo pointed out that the General Assembly "took note of the Respondent's decision not to proceed with the incorporation but to maintain the *status quo*" by its resolution 141 (II) of 1st November 1947. Judge Jessup also pointed out that the Legislative Assembly of South Africa had considered the competence of the General Assembly to grant the request for incorporation. According to him "such a competency" is one of the highest manifestations of supervisory powers", and that under Article 7 (1) of the Mandate it became necessary to obtain the consent of the General Assembly to any modification in the status of the territory.

Considering the facts that the Mandate survived the dissolution of the League ; that the Respondent refused to

place the territory under trusteeship ; and that the Respondent by its statements and acts approached the United Nations General Assembly, submitted annual reports to it, requested it for permission to incorporate the territory, it is not unreasonable to conclude that the United Nations assumed the task of supervision of the Mandate, inspite of the uncertain and changing attitudes of the Respondent.

8. Legal position of other Mandates and agreements similar to Mandates

1966 Judgment

Dissenting opinion

JUDGE JESSUP

"The United Kingdom recognized that the Mandate survived the dissolution of the League and admitted its accountability to the United Nations. In a letter of 2nd April 1947 to the Secretary-General, the United Kingdom said :

"It will submit to the Assembly an account of its administration of the League of Nations Mandate and will ask the Assembly to make recommendations under Article 10 of the Charter concerning the future government of Palestine." (*This quotation is from the Security Council Official Records, 271st meeting, 19th March 1948 at p. 165).*

"...The United Nations fully accepted its responsibility to deal with the problem and even asserted powers which some thought it did possess. There was a vigorous effort to establish a United Nations trusteeship. This effort ended with the establishment of the State of Israel on 14th May 1948 which, by Israel's admission to the United Nations, was sanctioned by the organization."[77]

And

77 *South West Africa (second phase) Judgment, 1966,* at pp. 349-350.

"One may compare the position taken by the British Government in regard to the Transjordan Mandate. The representative of Great Britain informed the United Nations General Assembly on 17th January 1946 that it was the intention of his Government 'to take steps in the near future for establishing this territory as a sovereign independent State." The General Assembly in resolution XI of 9 November 1946 welcomed this declaration, and the Assembly of the League of Nations in its resolution of 18th April 1946, quoted above, welcomed Transjordan's independence.

"However, the Polish representative subsequently denied that the Mandate had been legally terminated and asserted the "rights and obligations" of the United Nations. On 29th August 1946, when the question of the admission of Transjordan as a Member of the United Nations was being discussed, the British representative in the Security Council remarked in response :

"You expressed a doubt as to the status of Transjordan, in view of the fact that it was formerly under Maddate. You said that the United Nations inherited certain rights and responsibilities in the matter of mandates from the League of Nations. That is quite true....."[78]

And

"The memorandum also considers the argument that the lapse of the League of Nations guarantee of the minority regime had destroyed the balance of the system. To these arguments, the memorandum replies :

"The consideration is certainly important, but is not decisive. It should not be forgotten that the United Nations has taken the place of the League of Nations

78 *South West Africa (second phase) Judgment, 1966,* at p. 351.

and has assumed the general functions formerly performed by the League." (P. 17)[79].

Comments

Judge Jessup, in his dissenting opinion to the 1966 Judgment, dealt with the attitude of the United Kingdom in respect of Mandates for Palestine and Transjordan. He pointed out that the United Kingdom recognised that the Mandate for Palestine "survived the dissolution of the League and admitted its accountability to the United Nations, and that the United Nations accepted its responsibility and asserted its powers. In regard to the Transjordan Mandate, the British representative expressly admitted before the United Nations Security Council that the United Nations inherited certain rights and responsibilities in the matter of mandates from the League of Nations."

Judge Jessup also dealt with the memorandum prepared by the United Nations Secretariat in 1950 on the question of the then legal status of the regime established by the League for the protection of minorities. He pointed out that the memorandum did not regard the dissolution of the League as totally destructive of the minority regime inasmuch as "the United Nations has taken the place of the League of Nations and has assumed the general functions formerly performed by the League."

9. Respondent's contention would forfeit its right to administer the territory.

1950 Advisory opinion

"The terms of this mandate, as well as the provisions of Article 22 of the Covenant and the principles embodied therein, show that the creation of this new international

79 *South West Africa (second phase) Judgment, 1966,* at p. 420.

institution did not involve any cession of territory or transfer of sovereignty to the Union of South Africa. The Union Government was to exercise an international function of administration on behalf of the League, with the object of promoting the well-being and development of the inhabitants."[80]

And

"The authority which the Union Government exercises over the Territory is based on the Mandate. If the Mandate lapsed, as the Union Government contends the latter's authority would equally have lapsed. To retain the rights derived from the Mandate and to deny the obligations thereunder could not be justified."[81]

1966 Judgment

Separate opinion

JUDGE VAN WYK

"If the Respondent's rights and obligations under the Mandate in law lapsed on the dissolution of the League, a subsequent claim by the Respondent that it has rights under the Mandate cannot revive either the rights or the obligations that have lapsed. In any event, the Respondent does not claim any rights under the Mandate Declaration, which it contends has lapsed.

"Respondent bases its claim to administer the Territory on the events which preceded the Mandate, and on the fact that it has at all material times been in *de facto* control of the Territory....."[82]

80 *International Status of South West Africa, Advisory Opinion.* I.C.J. Reports 1950, at p. 132.

81 *Ibid.*, at p. 133.

82 *South West Africa (second phase) Judgment, 1966*, p. 127.

Dissenting opinions

JUDGE TANAKA

"The Respondent, while denying its obligations to submit to supervision, insists on prescribing its rights to administer the Territory. It seems that the Respondent recognises the severability of its rights from its obligations, an attitude which is not in conformity with the spirit of the mandates system.....

"The Respondent cannot properly defend itself against the Applicants' argument criticizing its attitude as the doctrine of partial lapse."[83]

".....Apart from the doctrinal basis of this proposition, the continual existence of the Mandate as an institution, notwithstanding the dissolution of the League, is admitted even by the Respondent. From the Respondent's standpoint the denial of the existence of the Mandate would mean denial of its rights to administer the mandated territory also."[84]

JUDGE JESSUP

"In the present phase of the case, Respondent sought to surmount this difficulty by alleging that it had a title to South West Africa based on conquest. On 27 May 1965, Counsel for Respondent stated (C. R. 65/39, p. 37): "The Respondent says, Mr. President, that the legal nature of its rights is such as is recognised in international law as flowing from military conquest." It is doubtful whether Respondent relied heavily on this argument which is in any case devoid of legal foundation.

"It is a commonplace that international law does not recognise military conquest as a source of title.....

83 *South West Africa (second phase) Judgment, 1966*, at pp. 273-274.

84 *Ibid.*, at p. 276.

"It is of course known that Germany did not cede South West Africa to South Africa and that South Africa did not conquer the whole of the territory of Germany.[85]

Comments

The Court, in its 1950 Advisory Opinion, expressed the view that the authority of the Respondent to administer the territory is based on the Mandate. If the Mandate lapsed, as the Union Government contends, the latter's authority would equally have lapsed. The Court also pointed out that the Mandatory could not retain the rights under Mandate, while, at the same time, denying its obligations thereunder. Judge van Wyk, in his separate opinion to the 1966 Judgment, and Judge Tanaka, in his dissenting opinion to the 1966 Judgment also agreed with this view. Judge Tanaka also said that the Respondent's attitude in severing its rights from its obligations under the Mandate "is not in conformity with the spirit of the mandates system," and that the applicability of the "doctrine of partial lapse" is open to criticism in the circumstances of the case. According to Justice Hidayatullah of the Supreme Court of India, "the decisive argument really was that the Mandatory had no right to be in the territory if the Mandate itself had lapsed and this was ignored again and again by the dissenting opinions in 1962 and the Judgement of the Court in 1966." [86]

However, according to Judge van Wyk, "the Respondent does not claim any rights under the Mandate Declaration, which it contends has lapsed." He said that Respondent claims to administer the territory on the events preceding the Mandate and on its continuous *de facto* control of the territory thereafter. On the other hand, Judge Jessup expressed the view that Respondent's reliance on military conquest in order to establish its title is without legal foundation, since "international law does

85 *South West Africa (second phase) Judgment, 1966*, at pp. 418-419.

86 In his book on *The South West Africa Case*, at p. 67.

not recognise military conquest as a source of title." He also pointed out that there was no cession of the territory by Germany to South Africa and the latter "did not conquer the whole of the territory of Germany." The Court, in its 1950 Advisory Opinion, pointed out that in terms of the Covenant and the Mandate, transfer of the territory "did not involve any cession of territory or transfer of sovereignty to the Respondent", and that the territory was handed over to the Respondent only for administration in a manner that the "object of promoting well-being and development of the inhabitants" could be achieved.

It may be interesting to note in this connection, that the South Africa Supreme Court also in the case "*Verein Fur Schutzgebietsanleihen E. V.* vs. *Conradie, N. O.*[87] expressed the view that the territory of South West Africa had neither been ceded to, nor annexed by, South Africa.

10. Whether there is an obligation of the Mandatory to submit annual reports to the United Nations ?

1966 Judgment

Separate opinion

JUDGE VAN WYK

"Article 6 of the Mandate Declaration, and paragraphs 7 and 9 of Article 22 of the Covenant of the League, depended for their operation on the existence of the League of Nations, in as much as without a League in existence there could not be a Council of the League. The League was dissolved in 1946 and the aforesaid provisions accordingly must as from that date have ceased to apply unless some other body, such as, for example, the General Assembly of the United Nations, was subs-

87 *South Africa Law Reports 1937*, App. Din. 113.

tituted for the Council of the League as the body to which the Respondent had to report and account." [88]

And

"During 1947 South West Africa was on several occasions the subject of discussion in the various organs of the United Nations—the Fourth Committee, the Trusteeship Council and the General Assembly. Respondent's representatives repeatedly made statements which could have left no doubt that Respondent's attitude was, that in the absence of the trusteeship agreement, the United Nations would have no supervisory jurisdiction over South West Africa, and that Respondent was under no duty to report and account to the United Nations in compliance with the obligations assumed under the Mandate." [89]

And

"Having reasoned along this line, the Court found what it regarded as confirmation of the conclusion that Article 6 had survived in an amended form, i e., with the Council of the League being replaced by the General Assembly of the United Nations as the supervisory body.

"Such an amendment could, however, have come about only with the consent of the Respondent, and the evidence establishes that not only was there no agreement that the mandatory's duty to report and account to the Council of the League would become a duty to report to an organ of the United Nations, but, that on the contrary, it was common cause at all material times that no such change had taken place." [90]

88 *South West Africa (second phase) Judgment, 1966*, at p. 83.

89 *Ibid.*, at p. 120.

90 *Ibid.*, at p. 130.

Dissenting opinion

JUDGE WELLINGTON KOO

"Although the Respondent, in submitting the reports, stated that the action was voluntary on its part and for information only such as provided for by Article 73 (e) of the Charter of the United Nations regarding non-self-governing territories, the legal effect of its declaration and act acknowledging the General Assembly as the competent international organ in the matter of the Mandate for South West Africa, in view of its obligation of international accountability under Article 6 of the Mandate, obviously cannot be determined unilaterally by it alone [Article 7 (1)], just as the content and scope of its obligations under that instrument cannot be governed by its own interpretation of Article 7 (2) of the Mandate. Nor could the question of the validity of its subsequent declaration to discontinue further reports to the General Assembly on its administration of the mandated territory, in the actual circumstances, be resolved solely by itself without regard to the attitude and action of the General Assembly." [91]

JUDGE JESSUP

".....the Court has not decided, as submitted by the Respondent in the alternative, that the Mandatory's former obligations to report, to account and to submit to supervision had lapsed upon the dissolution of the League of Nations."[92]

Comments

Judge van Wyk expressed the view that the Mandatory's obligation in respect of annual reports under the Covenant and

91 *South West Africa (second phase) Judgment, 1966*, at p. 236.

92 *Ibid.*, at p. 331.

the Mandate, was dependent upon the existence of the League; and that Article 6 of the Mandate cannot now be amended so as to substitute the League by the United Nations, without the consent of the Respondent. He further pointed out that the Respondent had never agreed to such a substitution, and instead, in its statements before the organs of the United Nations, it had expressly stated that it "was under no duty to repor t and account to the United Nations in compliance with the obligations assumed under the Mandate."

On the other hand, Judge Wellington Koo was of the view that inspite of Respondent's assertion, at the time of submitting the reports, to the effect that "the action was voluntary on its part and for information only such as provided by Article 73(e) of the Charter," the legal effect of its submitting such reports and its statements could not be determined unilaterally by the Respondent. He also said that the effect of its subsequent discontinuation of reports to the General Assembly could also not be determined by the Respondent unilaterally "without regard to the attitude and action of the General Assembly." Justice Hidayatullah of the Supreme Court of India is also of the view "that the obligation to submit reports to the United Nations instead of to the League existed in the same manner as the obligation to obtain the concurrence of the United Nations in place of the League to change the status of the Territory. If the United Nations can be read in place of the League for paragraphs 6 and 8 of Article 22 of the Covenant and Articles 1, 2, 3, 4, 5 and 7 of the Mandate Agreement, why not in every respect?"[93] (See Annexures I and II to this Study). It is also important to note in this connection that the Court in its 1966 Judgment, as is pointed out by Judge Jessup, did not take a contrary view and did not decide "as submitted by the Respondent in the alternative, that the Mandatory's former obligations to report, to account and to submit to supervision had lapsed upon the dissolution of the League of Nations."

93 In his book on *The South West Africa Case* at p. 66.

11. Respondent's obligation to transmit petitions to the United Nations

1966 Judgment

Separate opinion

JUDGE VAN WYK

".....Neither Article 6, nor any other provision of the Mandate, required the Mandatory to transmit petitions to the Council or any other organ of the League. The procedure of submitting petitions through the mandatories arose as a result of rules of procedure drafted by the Council in 1923 [League of Nations, *Official Journal*, 1923 (No. 13), p. 300]. It is clear that these rules could not impose on the mandatories an obligation not provided for in the Mandate Declaration or in Article 22 of the Covenant. And, indeed, the said rules did not purport to do so. These rules were designed for the protection of the mandatories against frivolous or one-sided petitions by ensuring that the mandatories would have an opportunity of commenting on them before they were considered by the League....."[94]

And

"However, even if the Council's rules of procedure could in some way or another have given rise to an obligation on the part of the mandatories, such an obligation could, in any event, not be described as an obligation embodied in the "provisions of the Mandate." It follows that the Court would, in any event, not have jurisdiction in terms of Article 7 (2) of the Mandate to entertain disputes regarding the alleged violations of such an obligation."[95]

94 *South West Africa (second phase) Judgment, 1966*, at p. 213.

95 *Ibid.*, at p. 214.

Dissenting opinions

JUDGE TANAKA

".....If there were no guarantee through the recognition of a right of petition, the fulfilment of the protection of human rights and fundamental freedoms in general and in the mandates might be illusory. This right is inherent in the concept of the body police and other political institutions. Even if the right of petition is not based upon any legal provision, it is "in a sense, a natural right" (Duncan Hall, *Mandates, Dependencies and Trusteeship*, 1948, p. 198). In this sense the above mentioned "League of Nations Rules" and the provisions of the Charter concerning the competence of the Trusteeship Council (Article 87 (b)) have no more than a confirmatory meaning.

"The right of petition entails the obligation of the Mandatory to transmit petitions to the supervisory organ for acceptance and examination. In this respect, what is said about the survival of international supervision, despite the dissolution of the League and the replacement of the Council of the League by the General Assembly as the supervisory organ, can be applied to the right of petition."[96]

JUDGE PADILLA NERVO

"On 31 January 1923 the Council of the League adopted certain rules by which the mandatory governments were to transmit petitions. This right which the inhabitants of South West Africa have thus acquired is maintained by Article 80, paragraph 1, of the Charter.

"The dispatch and examination of petitions form a part of the supervision, and petitions are to be transmitted to the General Assembly, which is legally qualified to deal with them."[97]

96 *South West Africa (second phase) Judgment, 1966,* at p. 320.

Comments

Judge van Wyk pointed out that the procedure of submitting petitions originated from the rules drafted by the League Council in 1923, and not out of provisions of the Mandate and the Charter, and expressed the view that the said rules could not, and did not, "impose on the mandatories an obligation not provided for in the Mandate" or the Covenant. According to him, the said procedure was devised to enable the mandatories to comment on the petitions and thereby to protect themselves "against false or one-sided petitions." He was also of the view that, inasmuch as the procedure of submitting petitions did not originate from the Mandate provisions, the Court did not have jurisdiction over disputes concerning violation thereof.

On the other hand, Judge Tanaka regarded the right of petition as fundamental to the protection of the human rights and fulfilment of the purposes of the Mandate, viz., the well-being and progress of inhabitants. According to him, the said right was a natural right, even though not based upon any legal provisions. Further, inasmuch as the said right followed from the supervision of the sacred trust, that survival of international supervision with the United Nations General Assembly as the supervisory body makes the right of petition indispensable. According to Judge Padilla Nervo, the said right has also been confirmed by Article 80 (1) of the Charter. He also expressed the view that the "dispatch and examination of petitions from a part of the supervision" and that the General Assembly was the body which was qualified to receive, and deal with, them.

97 *South West Africa (second phase) Judgment, 1966,* at p. 460.

12. Whether the jurisdictional clause survived dissolution of Permanent Court of International Justice ?

1962 Judgment

"The Court concludes that Article 7 of the Mandate is a treaty or convention still in force within the meaning of Article 37 of the Statute of the Court....."[98]

1966 Judgment

Separate opinion

JUDGE VAN WYK

".... In other words, it (the Court) found that the rights of the members of the League under the Mandate were not transferred to the members of the United Nations, but that States which were members of the League at its dissolution retained their rights to invoke the adjudication clause in Article 7 of the Mandate....."[99]

Dissenting opinions

JUDGE WELLINGTON KOO

... In short, international accountability necessarily comprises the essential obligations of submission to international supervision and control of the mandatory's administration of the mandated territory and acceptance of the compulsory jurisdiction of the Permanent Court in any dispute between it and another Member of the League of Nations relating to the interpretation or the application of the provisions of a given mandate.

"These obligations constitute a fundamental feature of the mandates system. The dissolution of the League of

98 *South West Africa Case, Preliminary Objections, Judgment.* I.C.J. Reports 1962, at p. 347.

99 *South West Africa (second phase) Judgment,1966,* at p. 137.

Nations and the disappearance of the Council and the Permanent Court did not terminate them. By virtue of Article 37 of the Statute the compulsory jurisdiction of the Parmanent Court was transferred to the present Court....."[100]

JUDGE PADILLA NERVO

"The Court was of the opinion that Article 7 of the Mandate is still in force and that having regard to Article 37 of the Statute of the International Court and Article 80 (1) of the Charter, the Union Government is under an obligation to accept the compulsory jurisdiction of the Court."[101]

JUDGE MBANEFO

"The 1962 Judgment decided ...that the articles of the Mandate, in particular Article 7(2), as part of that treaty, also survived, was still in force and was applicable to the present dispute. It was on the basis that Article 7(2) was in force and was applicable that the Court held that it had jurisdiction to hear the present case."[102].

Comments

The Court, in its 1962 Judgment, decided and Judge Tanaka, Judge Padilla Nervo and Judge Mbanefo, in their dissenting opinions to the 1966 Judgment, expressed the view, "that Article 7 of the Mandate is a treaty or convention still in force within the meaning of Article 37 of the Statute of the Court." Judge Wellington Koo also said that submission to the compulsory jurisdiction of the Permanent Court in disputes relating to interpretation or application of the provisions of the Mandate was one of the essential obligations under the man-

100 *South West Africa (second phase) Judgment, 1966,* at p. 235.

101 *Ibid.*, at p. 460.

102 *Ibid.*, at p. 498.

dates system--one which was not terminated by the disappearance of the Permanent Court; and that in view of "Article 37 of the Statute the compulsory jurisdiction was transferred to the present Court."

Further, Judge Mbanefo pointed out that the Court got jurisdiction to hear the case only because Article 7(2) was held to be in force. Judge van Wyk, in his separate opinion to the 1966 Judgment, expressed the view that the rights of League Members under Article 7(2) of the Mandate were not transferred to the members of the United Nations, but remained with "the States which were members of the League at its dissolution."

13. Conclusions

On the basis of consideration in this Chapter of various views, on the effects of dissolution of the League, we come to the following conclusions :

(i) that the Mandate survived the dissolution of the League and is still in force;

(ii) that international supervision of the administration of the territory by the mandatory in accordance with the provisions of the mandate, has passed on to the United Nations from the League Council, on dissolution of the League; and that the mandatory is under a legal obligation to submit to international supervision by the United Nations;

(iii) that the mandatory is under an obligation to submit annual reports, and to transmit petitions, to the General Assembly of the United Nations; and

(iv) that judicial control of the sacred trust, as provided in Article 7(2) of the Mandate, is still in force and has passed on to the International Court of Justice.

CHAPTER V

APPLICANTS' LEGAL RIGHT OR INTEREST, AS REQUIRED UNDER ARTICLE 7(2) OF THE MANDATE

1. *Validity of distinction between "conduct" provisions and "special-interest" provisions of the Mandate.*
2. *Scope and extent of Applicants' legal right or interest under the Mandate, as required by Article 7(2).*
3. *Legal right or interest of Applicants on dissolution of the League.*
4. *Conclusions.*

1. Validity of distinction between "conduct" provisions and "special-interest" provisions of the Mandate

1966 Judgment

"These (Mandate) instruments, whatever the difference between certain of their terms, had various features in common as regards their structure. For present purposes, their substantive provisions may be regarded as falling into two main categories. On the one hand, and of course as the principal element of each instrument, there were articles defining the mandatory's powers, and its obligations in respect of the inhabitants of the territory and towards the League and its organs. These provisions, relating to the carrying out of the mandate as mandates, will hereinafter be referred to as "conduct of the mandate", or simply "conduct" provisions. On the other hand, there were articles conferring in different degrees, according to the particular mandate or category of mandate, certain rights

relative to the mandated territory, directly upon the members of the League as individual States, or in favour of their nationals. Many of these rights were of the same kind as are to be found in certain provisions of ordinary treaties of commerce, establishment and navigation concluded between States. Rights of this kind will hereinafter be referred to as "special interests" rights, embodied in the "special interests" provisions of the mandates. As regards the 'A' 'and 'B' mandates (particularly the latter) these rights were numerous and figured prominently—a fact which, as will be seen later, is significant for the case of the 'C' mandates also, even though, in the latter case they were confined to provisions for freedom for missionaries ("nationals of any State Member of the League of Nations") to "enter into, travel and reside in the territory for the purpose of prosecuting their calling"—(*Mandate for South West Africa, Article 5*). In the present case, the dispute between the parties relates exclusively to the former of these two categories of provisions, and not to the latter.

"The broad distinction just noticed was a genuine, indeed an obvious one. Even if it may be the case that certain provisions of some of the mandates (such as for instance the "open door" provisions of the 'A' and 'B' mandates) can be regarded as having a double aspect, this does not affect the validity or relevance of the distinction. Such provisions would, in their "conduct of the mandate" aspect, fall under that head ; and in their aspect of affording commercial opportunities for members of the League and their nationals, they would come under the head of "special interest" clauses....."[1]

And

"Having regard to the situation thus outlined, and in particular to the distinction to be drawn between

1 *South West Africa (second phase) Judgment, 1966,* at pp. 20 and 21.

the "conduct" and the "special interest" provisions of the various instruments of mandate, the question which now arises for decision by the Court is whether any legal right or interest exists for the Applicants relative to the Mandate, apart from such as they may have in respect of the latter category of provisions ; —a matter on which the Court expresses no opinion, since this category is not in issue in the present case. In respect of the former category—the "conduct" provisions—the question which has to be decided is whether .....any legal right or interest.....was vested in the members of the League of Nations, including the present Applicants, individually and each in its own separate right to call for the carrying out of the mandates as regards their "conduct" clauses ;—or whether this function must, rather, be regarded as having appertained exclusively to the League itself, and not to each and every member State, separately and independently....."[2]

Dissenting opinions

JUDGE TANAKA

".....The first category of interest although related to the Mandate, is of an individual nature and each member State of the League may possess such an interest regarding the mandated territory, incidentally, that is to say, for some reason other than the Mandate itself. The second category of interest emanates from the sphere of social or corporate law concerning the function of the League in regard to the Mandate. The member States of the League are in the position of constituting a personal element of the League and its

2 *South West Africa (second phase) Judgment, 1966,* at p. 22.

organs and, consequently, are interested in the realization of the objectives of the mandates system and in the proper administration of mandated territories....."[3]

And

"The interest which the member States of the League possess regarding the proper administration of the mandated territory by the Mandatory is possessed by Members of the League individually, but it is vested with a corporate character. Each Member of the League has this kind of interest as a Member of the League, that is to say, in the capacity of an organ of the League which is destined to carry out a function of the League".[4]

And

"Although Article 5 of the Mandate is partly concerned with the national interest of the Member States of the League, the nature of this provision is not fundamentally different from the rest of the provisions of the Mandate. It possess the same nature as the "conduct" clause. It does not confer upon the member States any substantive right. They receive only a certain benefit as a "reflective" effect of the mandate instrument, but not any right as an effect of an independent juridical act which does not exist.

"Incidentally, Article 5 of the Mandate mentions "all missionaries, nationals of any State Member of the League of Nations". But this phrase does not mean that any Member State possesses a right concerning its missionaries and nationals, because it is used simply to identify the missionaries and nationals. Whether the Member States of the League possess the right of diplomatic protection is another matter.

3 *South West Africa (second phase) Judgment, 1966*, at p. 251.
4 *Ibid.*, at p. 252.

"Accordingly, the distinction between the "conduct" clause and "national" clause is not an essential one. The latter must be considered as an integral part of the Mandatory's obligations which are derived from the objectives of the mandates system, namely the promotion of material and moral well-being and social progress....."[5]

JUDGE JESSUP

"The Judgment accepts or rejects certain conclusions by the test of their acceptability as being reasonable. By this test I find it impossible to find that because the "missionary" rights under Article 5 may constitute what the Judgment calls "special interests" rights, or may have what it calls in some contexts a "double aspect", the Applicants' legal right or interest to prosecute a claim to judgment in regard to missionaries, must be admitted but that they have no such right or interest in regard to the practice of *aparthied*. This seems to me an entirely artificial distinction, and, as I have shown, not supported by the history of the drafting....."[6]

JUDGE PADILLA NERVO

"Now the Court's majority makes a contrary interpretation, and for the purpose of its argument, artificially divides the "provisions" in the Mandate into two different categories, with different effects and implications, in support of its argument.

"The Court now asserts that there are on the one hand, what it calls "conduct of the Mandate" provisions; and on the other hand "special interest" provisions. (This is also the Respondent's contention.)

5 *South West Africa (second phase) Judgment, 1966*, at p. 252.
6 *Ibid.*, at p. 424.

"I believe that such classification and the meaning and function given to it, does not follow from the letter or the spirit of the Mandate ; and that the Court's interpretation in 1962 is the correct one".[7]

JUDGE MBANEFO

"Secondly, the Court draws a distinction between what it terms "conduct" and "special interests" provisions of the mandate instrument, and imports the distinction into its interpretation of Article 7(2) of the Mandate. Article 7(2) is a compromissory clause and does not, as it stands, permit of any such distinction. To do so, as I shall show later, is to do violence to the actual words of the text and is in the circumstances impermissible".[8]

And

"The Judgment of the Court says that in the present cases the dispute between the Parties relates exclusively to the "conduct" provisions of the Mandate, and does not relate in any way at all to the "special interest" provisions. While it is true to say that the practice of *aparthied* was the chief complaint of the Applicants, it must be noted that Submission No. 9 has implications far beyond the "conduct" clauses. The Applicants in Submission No. 9 say that the Respondent has attempted to modify the terms of the Mandate and that it has no power to do so without the consent of the United Nations. If that submission should fail, and should the Court also find that the Respondent has no enforceable obligations under the Mandate, outside Article 5, it would follow that the Respondent could modify even the "special interest" clause of the Mandate. In the same way the failure or success of Submissions 1, 2 and 6 could have consequences which

7 *South West Africa (second phase) Judgment, 1966,* at p. 450.
8 *Ibid.*, at p. 491.

would materially affect the "special interests" of members of the League. The distinction which the Court tries to draw between the "conduct" and the "special interests" provisions would appear, therefore, as a matter of treaty interpretation, to be illusory in relation to those submissions".[9]

Comments

In Chapter II of this Study, one of the conclusions reached was that the question of Applicant's legal right or interest had been disposed of by the 1962 Judgment and that the Court's attempt in 1966 to reopen this issue and revise its earlier decision was not legally permissible. In the present chapter we are considering whether the Court's decision in 1966 to the effect that the Applicants lacked legal right or interest in the subject-matter of the dispute is correct, on the assumption, which is contrary to our aforesaid conclusion, that the Court was competent to deal with the said issue in the second phase of the case. However, such assumption does not mean that we are agreeing to the position taken by the Court that it was legally sound for it to deal with the issue in the second phase of the case. Consideration of the issue in this chapter is entirely without prejudice to the conclusion reached in Chapter II.

The 1966 Judgment on the issue whether the Applicants had legal right or interest in the subject-matter of the dispute, was based on a distinction made by the Court in, what it called, the "conduct" provisions of the Mandate and the "special interest" provisions thereof. The former provisions, according to the Court related to "the carrying out of the mandates" and defined "the mandatories powers, and its obligations in respect of the inhabitants of the territory and towards the League and its organs", while the latter provisions conferred

9 *South West Africa (second phase) Judgment, 1966,* at p. 497.

"certain rights relative to the mandated territory, directly upon the members of the League as individual States, or in favour of their nationals". In the latter category, viz., "special interest" category of provisions the Court included the "provisions for freedom for missionaries, as provided under Article 5 of the Mandate" (See Annexure II to this Study). Having made this distinction, the Court proceeded to say that under the provisions of Article 7(2) of the Mandate, any League Member had a right of resort to the Court only for enforcement of the "special interest" provisions of the Mandate in respect of which it had a legal interest, and had no such right for the enforcement of the "conduct" provisions of the mandate, in respect of which it had no legal right or interest. In other words, the Court held that the Applicants could resort to the Court under the provisions of Article 7(2) only in cases of disputes falling under the "missionary" clause, and not in case of a dispute concerning the Respondent's policy of *Aparthied* or the manner in which the Respondent carries on administration of the territory. The question whether this is a correct view would be discussed in item No. 2 of this Chapter. In the present item we are concerned with the question whether the distinction made by the Court is legally valid and permissible. We may also note here that the Court found that the dispute in the case related to the "conduct provisions" of the Mandate, in respect of which, according to it, the Applicants had no right of resort to, or *locus standi* before, the Court, and having come to this conclusion it declined to give effect to the Applicants' claims, which, according to it, related to "conduct" provisions of the Mandate, and in the subject-matter of which they did not have any legal right or interest.

Can it be said that the distinction upon which the Court based its Judgment is legally permissible and valid ? In respect of the "conduct" provisions of the Mandate, Judge Tanaka expressed the view that the League Members "are in the position of constituting a personal element of the

League and its organs and, consequently, are interested in the realization of the objectives of the mandates system and in the proper administration of mandated territories." According to him, the League Members were individually interested in the proper implementation of the "conduct" provisions of the Mandate as well, and not only in its "special interest" provisions alone. Judge Padilla Nervo regarded the distinction to be artificial.

According to the 1966 Judgment, the issue before the Court was whether the Applicants had any legal right or interest in "the carrying out of the Mandate as regards their "conduct" clauses, or whether the League alone was entitled to ensure their observance and not "each and every member State, separately and independently." In its view, such legal right or interest belonged only to the League and not to the League Members "separately and independently". "The Court stated that under Article 7 of the Mandate, application by individual States was not contemplated."[10] Judge Tanaka and Judge Jessup did not agree with this. According to them, the League Members were individually interested in the realization of the objectives of the Mandate. Judge Tanaka expressed the view that they are so interested as members of the League, and that even though this interest is "vested with a corporate character", the same is possessed by them individually. Judge Jessup regarded the distinction to be "entirely artificial .....not supported by the history of the drafting."

Further, according to the 1966 Judgment the "special-interest" provision in the Mandate for South West Africa was confined to the missionary clause as provided in Article 5, which, according to it, was not in dispute in the present cases.

"Thus, in the context of "C" Mandates, of which South West Africa was an example, the only special interest

10 As pointed out by Justice M. Hidayatullah of the Supreme Court of India in his book on *The South West Africa Case* at p. 39.

conferred upon League Members in their individual capacity was the right to send missionaries and have them reside and travel in the mandated territory...For the majority of the Court, in 1966, the evidence establishes beyond doubt that individual Members of the League possessed no judicial remedy to secure the general observance of the Mandate as distinct from the judicial remedy restricted to special interest."[11] On the other hand, according to Judge Tanaka, Article 5, "is not fundamentally different from the rest of the provisions of the Mandate. It possesses the same nature as the "conduct clause." He also found the distinction as "not an essential one" and expressed the view that the "special interest" provisions of the Mandate "must be considered as an integral part of the Mandatory's obligations which are derived from the objectives of the mandates system, namely the promotion of material and moral well-being and social progress."

The Court, while making the aforesaid distinction, itself found that certain provisions, like the "open door" provisions, have a double aspect. Judge Jessup remarked that the missionary clause also may have in some contexts, according to the Court, a double aspect. Further, Judge Mbanefo pointed out that the compromissory clause, as embodied in Article 7 (2) of the Mandate, does not permit a distinction between the "conduct" provisions and the "special interest" provisions of the Mandate. "To do so...is to do violence to the actual words of the text and is in the circumstances impermissible." He also termed the distinction, "as a matter of treaty interpretation, to be illusory". According to Judge Padilla Nervo the distinction "and the meaning and function given to it, does not follow from the letter or the spirit of the Mandate." This conclusion is also borne out by an examination of the language and wording of Article 7 (2), which does not make

11 As pointed out by Mr. Richard A. Falk in his article on "The South West Africa Cases" : *International Organization*, Vol. XXI, No. 1, Winter 1967, at pp. 8 and 9.

any distinction between the "conduct" provisions and the "special interest" provisions of the Mandate.

2. Scope and extent of Applicants' legal right or interest under the Mandate, as required by Article 7 (2).

1950 Advisory opinion

"The essentially international character of the functions which had been entrusted to the Union of South Africa.....appears from the fact that any Member of the League of Nations could, acc o rding to Article of the League Mandate, submit to the Permanent Court of International Justice any dispute with the Union Government relating to the interpretation or the application of the provisions of the Mandate."[12]

Separate opinion

JUDGE SIR ARNOLD Mc NAIR

"...The Mandate provides two kinds of machinery for its supervision—judicial, by means of the right of any Member of the League under Article 7 to bring the Mandatory compulsorily before the Permanent Court, and administrative, by means of annual reports and their examination by the Permanent Mandates Commission of the League."[13]

1962 Judgment

"Under the unanimity rule (Articles 4 and 5 of the Covenant), the Council could not impose its own views on the Mandatory. It could of course ask for an advisory opinion of the Permanent Court but that opinion would not have binding force, and the Mandatory could

12 *International Status of South West Africa, Advisory Opinion*, I. C. J. Reports, 1950, at p. 133.

13 *Ibid.*, at p. 158.