taken.

Now we come to the aspect of political action, and is where this Committee will be required to think, and tl quite deeply, what can be done. I have slurred over many the aspects so as to save time and not to bore you with details as transpired about which you must all be equally awa Now we have a Resolution by which the Mandate has been te minated. The Resolution of the General Assembly is tha South West Africa should be taken over directly under the United Nations and a Committee first of 14, and now a Council of 11, has been appointed. The problem that is facing us today is how are these Resolutions to be implemented? We know that the United Nations has no Police Force of its own. It has no means of compelling obedience on the part of South Africa. In other words, South Africa can snap its fingers at the Resolutions of the United Nations as it is actually doing, and the question that arises is how are these committees which have been formed can take action. Now several alternatives occur to one's mind. The first is that there can be a parallel Government set up. Now if a parallel Government is set up, it will obviously have to be on a foreign soil, in the sense, it will not be in South West Africa because that Government will have no entry into South West Africa so long as South Africa keeps those people out. That is one aspect of the matter.

The next is whether there could be a kind of guerilla warfare between those of the South West Africans, who are expelled and who could be trained in arms, and the South African Government. That I would not think would be the function of this Committee to advise because any action which requires belligerency is something which the United Nations will not tolerate. Therefore, we may leave that out of account, although several of the South West African bodies are at the moment sending out guerillas into South West Africa for the purpose of terrorising the place, and there is also the Terrorism

Act passed by South Africa, applicable to South West Africa, under which I believe 37 persons are being tried, who had attempted to establish a parallel Government in a part of South West Africa. That probably will not be very useful because the power which these guerillas will have will certainly be unequal to the military might of South Africa, and you know the case of Stanleyville town and many other incidents in which South Africa has shown itself to be capable of ruthlessness which only a racial policy can generate.

The next is an approach to the Court again. Now here, the problem is very difficult one because if an approach to the International Court of Justice has to be made, a party has to be found, a party who has legal standing, who can bring an action, and here the old decision of the International Court of Justice will come in the way because no country has any right to enforce the Mandate Agreement according to the latest decision. That is to say, no one has any standing except to enforce Article 7 of the Agreement by which the right of missionaries is maintained. That is said to be the personal interest which a country can bring before the Court, but the conduct provisions cannot be brought before the Court at all. Equally, as I said before, the United Nations General Assembly has no legal standing either because in the Statute of the International Court of Justice, the United Nations General Assembly or the Security Council can ask for advisory opinion but cannot bring a contested action. So there again the door is shut to the Court.

The third method is to overhaul the entire machinery of the League of Nations and the Statute of the International Court of Justice. If it could be arranged that the decision of the International Court of Justice, even though an advisory opinion, must be binding upon the State against which it goes and if there be a compulsion that the Security Council can take action on the basis of the advisory opinion, then it is possible

that the Security Council can be made to move in the matter which cannot be done today even though you may obtain any number of advisory opinions of the International Court of Justice. This seems to be the only practical way in which the comity of nations can be made to move. That is to say, the entire Assembly and the Security Council can be made to move in the matter after a decision of the Court. But this will require an overhaul, as I said, of the entire Charter and the Statute of the Court.

The fourth method, as was suggested by one very eminent Professor of Politics, is to send the missionaries themselves in large bodies to South West Africa and though they may have a dual character, that is to say, there may be something else in them which may not be liked by South Africa, and then when they are expelled or ill-treated, to have an action. That, I think, will only result in trying to solve the implications of Article 7 of the Mandate Agreement. It would not have any impact upon the taking over of South West Africa from South Africa and making it independent.

Now today we are in a very curious position. We had a Committee of 14, which was the *Ad Hoc* Committee; and now there is a Council of 11, and they are supposed to find ways and means of making South West Africa independent. The Committee, when it met, had before it a suggestion from four of the Countries which underlines the real difficulty of the situation. Before the Committee the problem was raised as to how to find first the personnel for running the Government. Next, the difficulty was to find the finances, and there were 4 matters: how to establish a Constituent Assembly; how to make laws applicable to this territory; how to maintain law and order on behalf of the new Government; and how ultimately to effect a transfer of the territory to an independent Government after everything is over. You see, we, therefore, are at the very start, faced with a problem, namely, that we have to work from outside; that everybody who takes an interest in South West

Africa has to work from outside; there is no means of entering into South West Africa with a power to establish a Government there. There is also the problem of finances; there is the problem of personnel, there is the problem of laws and a problem of setting up a Constituent Assembly for the South West Africa. In other words, there is the problem of establishing a parallel Government and making South West Africa look to that Government as the real Government. Now these are problems which are very difficult. We have fortunately members from the Committee of 11 who will be able to tell us how they will be able to effectuate all these ideas. To me it seems that they are very difficult indeed. Therefore, I do not pretend to offer any advice to such legal experts. But to my mind the only solution lies in the overhaul of the machinery of the United Nations. That is to say, the nations must make advisory opinions binding.

After all what did the first advisory opinion say? That the mandate continues, that the countries have got a personal interest, that is to say, a legal interest to bring their own grievances before the Court. Both these have been given a go-by by South Africa. It thinks that the mandate died with the League of Nations; that the authors of the mandate have ceased, the mandate itself has come to an end. For a time it subscribed to the view that the mandate existed, but now it does not. And now the difficulty arises, and mark you, you will be faced with that difficulty and it is this, that the mandate itself has been terminated by the United Nations.

Now if one goes back to the agreement, one finds that the status of South West Africa can be altered only by South Africa in conjunction with the United Nations. There is no clause in it by which the United Nations can do it *suo moto* or unilaterally. But assuming that the mandate was created by the United Nations and has been rightly terminated by the United Nations, the question then arises is this : South Africa says, there is no mandate; and the United Nations says there is

no mandate. Therefore, either the territory falls into the lap of South Africa or the United Nations has to retrieve it and make it independent. The United Nations by its own action has reduced the mandate to nothing and South Africa is not legally there, and so the problem is how to get South Africa out of South West Africa. It is a question now really of war, one way or the other. But if action could be compelled from the Security Council, then sanctions could be imposed. Of course, sanctions have not been very successful in Rhodesia or elsewhere because of vested interests and even less so in South West Africa. At any rate, they could give a start. There could be an embargo, as has already been imposed by Britain and other countries could follow suit. One could isolate South Africa and South West Africa and that would be one way of making South Africa to toe the line of the United Nations. This can only be if an advisory opinion could be made the basis of action in the Security Council. At the present moment it cannot be so done. Therefore, an action being out of the question now because of the decision of the International Court of Justice and mere political approaches being very unfruitful, and the desire on the part of South Africa to overlook anything that the United Nations decides either by way of Resolution or in its Committees. the crux of the problem is that we have now to find a way out of this *impasse* which, to my mind very much exists and therefore requires all the ingenuity of man to undo. As your President said, that it is a half-dead issue, but if we allow it to go any further, it might really die out in the sense that after a time the big powers will acquiesce in South Africa's action, and South West Africa may really become an integral part of the territory of South Africa. To keep the matter alive, we have to think on these lines. What are we to do in getting South West Africa out of the clutches of South Africa? I suggest for a start that you might consider whether it would be practicable and possible to amend the Statute of the International Court of Justice, making the advisory opinions binding upon the nations against which they go.

Next, it may be possible to create a body of men and set

up a parallel government. That would be a very good start, because with parallel government it may be possible to bring the matter before the International Court of Justice in some or the other form—not on behalf of a party which has been held to have no legal standing, but on behalf of a party about which decision has not been given so far, because with a change in the composition of the International Court of Justice just as last time the previous decision was undone, the second decision might be undone by a fresh approach. So this is the second line of thought which occurs to me.

The third, of course, is the direct method, namely, getting some country interested or a number of countries interested in seeing that South West Africa goes free. That would be really by force of arms and that would mean war, which I would not like to suggest. Legal methods, I see none at the moment. I can tell you quite frankly that the International Court of Justice cannot possibly now intercede in the matter in view of the past decision, unless you can say that the International Court of Justice does not consider itself bound by any of its previous decisions, which would be a very wrong thing for any Court to have as an ideal. It is true that the International Court of Justice has in many ways undone the earlier decisions and it is possible that it may put a gloss upon the decision of 1966 and carve out a new line of future action, but the party will have to be chosen which has legal standing. As I have said, the United Nations has no standing. Countries have no standing. The new Government, a *de facto* Government, recognised by the United Nations may have a standing. Then that would become a dispute of a type which may go before the International Court of Justice. What the result would be, is on the knees of God, because being a Judge myself, I can say that no litigant can ever hope what the result would be because it depends upon the whims and the decision of the Judge.

So these are the problems which face us on this issue, and I do not wish to detain you much further. I have already taken

half an hour of your time and I thank you once again for the honour you have done me in inviting me to this Conference. If there is any thing that I can do during the discussions, I shall certainly be able to give forthwith my views on the particular point which is being debated. Thank you very much.

GHANA

Mr. President, the Solicitor-General of Ghana had wanted to participate in this discussion. Unfortunately, he is indisposed and he has asked me to hold the brief for him.

The Delegation of Ghana agrees with the sentiments expressed by the learned Judge in his talk to us on this particular subject. We consider that the judicial aspect of this matter has been disposed of. What remains now is the political action to be taken. As political action is being considered and taken by the proper organs of the United Nations, the Delegation of Ghana feels that the matter should always be got on the agenda of this Committee, so that the Committee can consider any legal aspects of any political action considered or taken. By this way, we feel, the matter will always remain fresh in our minds. The Delegation of Ghana is of the opinion that this Legal Consultative Committee will serve as the legal watch-dog of any political action contemplated by the United Nations. Thank you.

CEYLON

Mr. President, at the last session of the Committee held in Bangkok, when the distinguished Delegate of Ghana proposed the consideration of the Judgment of the International Court of Justice on South West Africa which had just then been delivered, our delegation supported this proposal because this decision had occasioned deep sense of disquiet and dismay among Asian and African States. This feeling was shared, if I may say so, by a significant body of liberal opinion even in the western world. We are pleased to observe that the whole subject

has received careful consideration by the Secretariat of the Committee and that some of the issues suggested by our Government too, have received due consideration. From the meagre information we had at the time of the recent decision of the majority, made available in August 1966, through a United Nations Press Release, our Delegation deplored the strong reliance placed by the Court on technicalities, when what was at stake were issues relating to the alleged violation of a sacred trust of civilisation. We also deplored the fact that a purely fortuitous circumstance, a change in the composition of the Bench, had led to a reversal of the majority decision previously given in 1962. We have now had the opportunity of a close study of the reasons for this decision, and we are now in a position to state unhesitantly that it is completely unfounded in law. Indeed, if I may say so, the degree of technicality which characterises the Judgment is only matched by the tenuous nature of the reasons behind the decision of the Court.

Mr. President, in the first place, we would like to assert emphatically that the Court having decided in 1962 about the African States, Ethiopia and Liberia, as having *locus standi* as required by Article 7 of the Mandate Agreement and having rejected the Respondent's third preliminary objection, namely that there was no dispute in the sense of Article 7 because no material interests of the Applicants were involved, it lay outside the competence of the Court to dismiss the Applicants' claim four years later in 1966 on the self-same ground that they lacked legal interest or right in the subject-matter of the claim. Article 60 of the Statute of the Court is clear on the point. The Judgment is final and without appeal. And under Article 59 of the Statute, it is binding between the parties in respect of the particular case. The Court has no power to revise its judgment except in terms of Article 61, and it is not pretended that the Court acted under this provision. The decision is, therefore, as we understand it, *res judicata* and that doctrine is well recognised in international law. We are unable to accept the alleged distinction between the questions of the Court's jurisdiction

in the case and the applicants' interest in the claim. Assuming that there is such a distinction, it is manifest that in 1962 the Court determined the whole question of the admissibility of the claim, ruling adversely to the Respondent and not that of jurisdiction alone. By overruling itself in the same case, the Court has undermined one of the most secure foundations of international adjudication, or indeed of the whole international order. The Court having in 1962 rejected all of South Africa's objections to its jurisdiction, the path was clear for the Court to proceed to examine the substantive merits of the case. And this it did between 1962 and 1966 in written and oral pleadings of unprecedented volume and complexity. The judgment which the Court eventually handed down in July 1966 came as a great surprise to the waiting world, because it did not in fact provide any answers to the substantive issues raised by the parties. Instead, the Court declared by the President's casting vote that it had first decided to deal with an antecedent question namely, that of the legal interest of the African States. The Court found that neither of these States had the special interests. The Court thus declined to adjudicate, one way or the other, on the merits of the case.

There are several closely related points here, Mr. President. The first is to ask whether in a case on the merits of a dispute the Court can base its judgment on the applicants' legal standing rather than on the rights and wrongs of their legal arguments. In the present stage of international law, the competence of the International Court is only a limited one and a reluctant litigant, that is to say, the Respondent to a legal claim which the Applicant wishes to place before the Court for adjudication, may seek to show that the Court's competence is inadequate in this particular regard. This is, of course, what happened and in the 1962 Judgment it was held that the Court had jurisdiction to proceed to adjudication of the merits. Ethiopia and Liberia, therefore, had every reason to hope or believe that all questions relating to the right to sustain a judgment had already been settled in 1962. Having regard to the 1966 Judgment disturbing questions

arise as to why the parties were given no warning in 1962 that an antecedent question remained to be answered, and why the Court proceeded to assume without full argument the propriety of its action in raising the point at this juncture. There is nothing in the Judgment which provides a satisfactory answer to either question. If the Court is really saying, Mr. President, that Ethiopia and Liberia can be adjudicated in 1962 to have legal standing to bring up a case, but not to be entitled to get an answer in 1966 because of lack of legal interest in the subject matter, then one is entitled to ask the Court: What claim could Ethiopia and Liberia have presented after they had been deemed entitled to proceed in 1962 in order to get an answer from the Court? To reply that the Court has now done by implication that a claim which rested on a special interest would have got an answer, is hardly satisfactory, for the Court knew, in 1962, that the applicant States were claiming no special or national interest in the mandate but only that legal interest inherent in all former members of the League. Moreover, in 1962, the Court had heard much argument on the point of whether a dispute sufficient to institute proceedings existed between the Applicants and the Respondent, and the Court expressly stated as follows:

> "The members of the League were understood to have a legal right or interest in the observance by the mandatory of its obligations both towards the inhabitants of the mandated territory and towards the League of Nations and its members".

It does remain baffling for the Court to assert that it was now dealing with a new point which had not been covered in 1962. It seems impossible to disagree with the view expressed by the distinguished United States member of the Court, Justice Jessup, that the Court had in effect reversed its Judgment of 1962.

Mr. President, quite apart from the question of the finality of the Court's previous pronouncements on this matter, we

think the Court was in serious error when it held that Applicants lacked the legal right or interest required under paragraph 2 of Article 7 of the Mandate. We are of the view that the alleged distinction between the so-called conduct provisions and the special interest provisions is an artificial one. The essential and fundamental obligation of the Mandate is indivisible and each individual member of the League has in our view a legal right or interest in the due execution of the mandate. The sole purpose of this distinction appears to be to provide an escape for the mandatory from the controlling and supervisory jurisdiction of the Court, provided for in Article 7 of the Mandate. It is beyond our comprehension how the unambiguous language of paragraph 2 of Article 7 of the Mandate, which refers to the interpretation and application of the provisions of the Mandate, can be confined to disputes between member States and mandatory, arising out of the compromisory clause, Article 5 of the Mandate alone. It is unthinkable that judicial supervision of the so-called conduct provisions was excluded by the terms of the Mandate.

There is another question that requires mention. The ground upon which the Court gave its judgment, namely, lack of a legal interest by the applicants in the subject-matter of the claim, was not even advanced in the final submissions of the Respondent. The Court while conceding that South Africa's final submission asked simply for a rejection of those of the applicants' both general and in detail, points out that the final submission did at least ask the Court to base its findings on statements of fact and law as set forth in its pleadings, and that South Africa had in the course of its pleadings denied that the Applicants had any legal standing in the subject matter of their claim. The Court then suggests that given the 1962 Judgment: "It clearly cannot have been intended merely as an argument against the applicability of the jurisdictional clause of the Mandate".

Thus, the Court, pointing to a legal argument made by South Africa at one stage, supposes that it relates to the merits

and not to the jurisdiction though several of South Africa's arguments on the merits were in effect a mere repetition of its previous objections to the Court's jurisdiction, presumably entered for the record and then relying on that argument rather than addressing itself with a clear and unambiguous argument on the substance of the dispute. Mr. President, we are also of the view that the whole approach of the Court to the nature of the interest to be established by the Applicant States was misconceived. The individualistic concept of interest appropriate for the termination of personal and proprietory rights, is wholly inappropriate when the Court is concerned with problems stemming from a novel international institution of a *sui generis* character, conceived not in terms of partisan interests but as a sacred trust of civilisation, the common interest of mankind. Accordingly, we cannot accept the requisite legal right or interest in the subject-matter of the dispute.

There is one other point to which I may usefully make a reference here. The Court has indicated in the 1966 Judgment, undoubtedly correctly, that it is entitled to select *proprio motu* the basis of its decision. That is to say, under Article 53 of the Statute of the International Court it is by implication not required to rely on arguments advanced by the litigants but can rely on what it finds the most telling and relevant legal grounds. This is, of course, a well-established legal principle. But with all due deference, its invocation does not really seem to answer all the points that arose upon the litigation. With any other legal principle, its nature and scope are subject to certain limitations. It seems relevant to ask whether when there has already been a judicial decision on preliminary questions, and when the Court has failed to avail itself of its right to declare that certain outstanding preliminary points shall be attached to the subsequent case on the merits, it is really open to the Court to rely after four years of litigation upon *proprio motu* principle to discover an outstanding antecedent question pertaining to the merits. Reliance on the *proprio motu* argument in the particular circumstances of the South West Africa Mandate seems to

run counter to another well established principle of International Law : *interest rei publicae res judicatur non resendi.* The *proprio motu* principle is not a licence to ignore established legal concepts, nor to avoid issues upon which one has legal justification to pronounce. It is a principle designed to affirm the Court's superior understanding of the law to the other parties before it.

Mr. President, on the substantive matters in dispute, we agree respectfully with the conclusions reached by the Secretariat on the policy of *apartheid* in South West Africa; the conferment of South African citizenship upon the inhabitants of the mandated territory and the refusal by the Respondent to submit annual reports and transmit petitions to the United Nations are violations of the mandate.

In our view, the supervision of the administration of the mandated territory in accordance with the terms of the Mandate has devolved on the General Assembly of the United Nations after the dissolution of the League of Nations. Article 7 of the Mandate Agreement contemplates the modification of the terms of the Mandate by the supervisory body and 'modification' in the words of Judge Jessup: "Of course includes determination. We cannot agree with the contention that the power of the General Assembly is always confined to mere recommendation. In our submission the power of the General Assembly to make decisions on questions in respect of which the Assembly has jurisdiction is not only contemplated by the express provisions of the Charter itself but must necessarily flow from the fact of such jurisdiction." We affirm the legality of the termination of the Mandate by the United Nations General Assembly by its Resolution 2145 of the 27 October 1966. We refrain from expressing any opinion on the other alternatives proposed for the solution of this problem as we do not wish in any way to embarrass the work of the United Nations Council for South West Africa.

And in conclusion, Mr. President, our delegation wishes to state that the reconstitution of the Court, with due regard to the interest of the South and South-East Asian civilizations and African civilizations, is a matter of urgent necessity and will no doubt contribute to the restoration of the confidence of the Asian and African peoples in the International Court of Justice. I thank you, Mr. President.

INDONESIA

Mr. President. The issue of South West Africa is continuously receiving great attention in our country, and especially the decision of the International Court of Justice of 18 July 1966 has left us with dismay. Having freed ourselves from colonialism not so long ago, we strongly support the right of all peoples to emancipation within the shortest possible time. The struggle against any form of colonialism is in line with the principles laid down in our State philosophy of the *Panch Shila*' the ten Bandung principles agreed upon by Asian-African countries in 1955, and the de-colonisation Resolution of the United Nations General Assembly. Our delegation is of the opinion that South West Africa's case is not purely a juridical one but in it the political aspects are predominant. Therefore, it is proper that the case be discussed in the United Nations General Assembly and not in the International Court of Justice. The juridical arguments must only serve to strengthen the political issues. The juridical findings of the case are the following:

1. The Mandate Agreement of 1920 has been violated by South Africa ;

2. The request of South Africa to annex South West Africa was refused by the League of Nations and then again by the General Assembly of the United Nations in 1946;

3. Lastly, the International Court has likewise done the same in its Advisory Opinions in 1950, 1955 and 1956.

Sir, therefore, we support the course of action of the Draft Resolution No. A-1483 i.e., (a) that South Africa has failed in the exercise of its mandate; (b) to withdraw the mandate and place South West Africa under the authority of United Nations; and (c) the formation of an United Nations Administrative Authority.

For the moment, this is what I wish to say and we reserve any further comments, if necessary, later on.

INDIA

Mr. President, the question of South West Africa is fairly familiar to all other Governments, and last year at Bangkok at the Eighth Session of this Committee the distinguished delegate of Ghana had invited the attention of this Committee to the situation that had emerged as a result of the Judgment of the International Court of Justice on the two cases initiated by Liberia and Ethiopia. This Judgment was expected for a long time; it had taken the Court over six years in its deliberations, and when you have this element of expectation and you don't get what you expect, obviously there is disappointment, and that disappointment was very widespread and there was instantaneous reflection and comments on the justness or correctness of the conclusions arrived at by the International Court of Justice, so much so that it was considered to be not a legal judgment based on law but a political opinion as if based on considerations other than law. Now this reflection was not based so much only on the composition of the Court and their predilections but also on the views expressed in the Judgment itself by those who had held a different view than the one that was held by the majority.

In this particular case, Sir, the Judgment was actually seven

by seven, and therefore it had to become a Judgment of the Court not only by majority but by the casting vote of the Chairman who therefore exercised two votes, and since the basic issues were understood and examined by the two sides in the Court itself and there was a substantive difference between the two sides, the learned Chief Justice went to the extent of including a long sort of oration within the Judgment as to what the rights of a dissenting part of a Court were in differing from the opinion expressed by the majority, majority being the result of the casting vote of the Chairman.

The issue of South West Africa, Sir, has been before the League of Nations and the United Nations ever since their inception. South West Africa's history was very nicely elaborated and indicated by the distinguished visitor and special invitee, Mr. Justice Hidayatullah of our Supreme Court. We need not go into history. But the fact is that South Africa which was mandatory power for South West Africa for which the mandate had been given had never accepted the obligations in good faith, and had tried and made attempts to integrate South West Africa in 1933 or 1934 without success and later on repudiated all the obligations that had come to it as a result of the extinction of the League of Nations and the establishment of the United Nations on the specious plea that the mandate being an agreement and one other part being extinct, there was no obligation that flowed or that devolved on South Africa. There was politically even an attempt in view of the fact that a part of this is populated by persons of racial similarity, by those who constitute the minority gevernment in the Republic of South Africa, that South West Africa should even be divided, so that one part should be integrated with South Africa and the other could be continued as a trust territory or mandated territory. To all this there was an insistent opposition from the increasing area of the world community which was now becoming independent, and therefore right from 1946 or 1947 onwards there was emphasis throughout that why should the Union of South Africa be alone in not accepting the inter-

national obligations that had devolved on others as a result of the Mandates. And since South Africa continued with their obdurate behaviour and did not accept these obligations, references were made by the General Assembly to the International Court of Justice to invite their legal opinion as to the obligations which devolved on the Union of South Africa and also the corresponding obligations which United Nations would have in the matter. The opinion was very categorical in 1950 and indicated that South West Africa was a territory with reference to which the Union of South Africa had international legal obligations. It could not get out of it by its unilateral action. It was not, it is true, to enter into a trust agreement with the United Nations and nevertheless, it was not true that in the absence of such an agreement it was free to do what it liked with regard to its treatment of the people of South West Africa. On that basis again resolutions were adopted but the Union of South Africa never co-operated. Again two more references were made in 1955 and 1956 to find out as to whether the United Nations would be competent to receive reports and whether the Committee that they had established on South West Africa could hear petitions and the petitioners. In both cases again the International Court of Justice supported the viewpoint of the United Nations as against South Africa, with the result that it was clearly established that the international obligations continued. Notwithstanding this, the attitude of South Africa continued to be inconsistent, obdurate, cantankerous or whatever you may like to call it, so much so that the Special Committee even encouraged some of the members, who were originally members of the League of Nations at which time this concept of mandate and the competence of the Mandate's Commission were established, to litigate the issue before the International Court of Justice in a contentious case so that if the International Court of Justice would uphold the legal right in a contentious case, then the Security Council would have competence through Article 94 of the United Nations Charter, and that would be the legal basis for the United Nations' active action in the matter. It was in this context that in 1960 this reference was

made to the International Court of Justice and it was with a great sense of satisfaction that inspite of all the 8 or 9 preliminary objections raised by the Union of South Africa, the International Court ruled by a majority of 8 to 7 that the International Court of Justice had jurisdiction to hear the case. Then they proceeded to the merits, and after detailed consideration of the issue for more than 3-4 years, in 1966 they came to this conclusion on their own basis which they justified with reference to Article 57 of the Statute of the International Court of Justice, to which the distinguished delegate from Ceylon invited our attention, and said that the Court might have had jurisdiction in 1962—but actually the parties had no legal interest to be protected by the International Court of Justice. This is the view expressed by seven learned Judges of the International Court of Justice. The seven learned Judges on the other side expressed just the opposite view and the best judgment in this matter, I would say, was given by Mr. Justice Jessup to which attention was again invited by the distinguished delegate from Ceylon. Justice Jessup of U.S.A., Justice Padilla Nervo of Mexico and Justice Tanaka of Japan—these are the three Judges—hats off to them—who said : No, there was a contradiction between what we are doing. We have no competence to reverse our own decision that the Court had taken 3 or 4 years ago. It is an exercise in futility that after determining the jurisdiction of the Court you had seen whether or not the parties who had approached the Court had legal interest and that legal interest could not be qualitatively different from the interest that the Court has been asked to protect. Therefore there is a contradiction in terms. You have overruled a thing on which you have no competence to overrule. On that basis the seven Judges expressed an opinion that the Court would have been fully competent to proceed directly on the merits and examine the question on the allegations made on the evidence produced and then come to a finding of the facts, that it was no use after four years of elaborate proceedings, written and oral, to come to the conclusion that the parties had approached the Court, although the Court had jurisdiction, there is no interest

that the Court has to protect. In view of this, this decision shocked the conscience particularly of the States in Asia and Africa. And now the question is, if this is so, South Africa was obviously extremely very happy, that it would have washed out not only the judgment of 1962 but also three opinions of 1950, 1955 and 1956. If this is the position, this is exactly what they wanted. In other words, the U. N. will not have competence now to proceed on that basis and then take action through the Security Council or otherwise. This was the situation that they wanted but this is a situation which obviously no one else could accept neither in law nor, of course, in the desirable moral and political aspects of the case. The United Nations, therefore, had to react and it reacted rather suddenly than had been visualised by this Committee, because at that time when this subject was introduced by the distinguished delegate of Ghana, the question that was examined was what to do next? At that time the question posed for the deliberation of this Committee was as to how the Committee would suggest further action by the U.N. Many things have happened since then. The United Nations acted much more quickly than was visualised. It terminated the Mandate by its Resolution No. 2145 adopted in 1966. Having terminated the Mandate the question arose as to what will be the status of South West Africa and what will be the obligations of the Union of South Africa with reference to it and the obligations the U. N. would have in respect of this. Again certain logical steps had to be taken and were taken. The Union of South Africa throughout history, to be consistent with its stand, did not cooperate and considered this to be an illegal resolution, without any legal force at all, and therefore refused to recognise the consequences of this, except to the extent to say that having terminated this, we are now free of any obligation that we might have had earlier, so that the further problem was as to how to proceed further. A mere declaration of status is not enough. It has to be further recognised and implemented so that South West Africa could be admitted among the other free countries of Asia and Africa in the same manner as other former colonies and trust territories have already been admitted.

To facilitate the matter it was referred to the Special Session of the General Assembly held earlier this year. In that special session was adopted the Resolution 2248 by which was established a Council—a eleven-member Council—which will facilitate the attainment of independence by the territory of South West Africa in June 1968. Now since then the United Nations has attempted to strengthen that Council so that it will perform functions of a governmental nature. This body again has not been cooperated with, as was very much expected' by the Republic of South Africa. If this is the position, how is this body to exercise functions which are to be functions of a governmental nature, such as the issue of passports, the disbursement of economic assistance and so forth. So step by step the United Nations has authorised the Council to function as if it is the embryo of the future Government of South West Africa. It is in this manner in which the present position stands, and the latest decision being that the United Nations General Assembly has called upon South Africa to cooperate with the resolution, and to see that the territory is granted independence by the date which was referred to in the earlier two resolutions adopted by the General Assembly, and at the same time it has strengthened the hands of the Council to take step by step governmental functions so that the deadline stipulated in the earlier resolutions by which the territory should attain independence is maintained. Now within this background we had thought that it would be up to this Committee to examine what has happened and then suggest what could be done within the legal framework to facilitate the attainment of independence by South West Africa by June 1968, in pursuance of the resolutions adopted by the General Assembly. Any measures that are suggested by this Committee, in particular, would have definitely the support of our delegation and of the Government of India. It is in that direction, we thought, we will certainly have further discussion, and we look forward to any formal proposals or any views that may be expressed in this regard by the distinguished delegates of other Member States. Thank you, Sir.

IRAQ

Mr. President: The question of South West Africa has not only been the concern of Asian and African nations but of all peace loving nations in the world. Since 1946 the United Nations has been dealing with this subject. Today we are more than ever concerned to see the people of South West Africa take their rightful place in the world community. Our concern and anxiety have even been increased in later years since the Government of South Africa persists in pursuing the policy of *apartheid* and forcing discriminatory measures incompatible with the dignity and livelihood of man. It is perhaps even more disappointing that a well respected international organ, such as the International Court of Justice, should pronounce a Judgment on this issue which is neither in harmony with our times nor does it coincide with the mandatory rules. It is therefore not strange if such a Judgment should not appeal to world conscience, particularly bearing in mind that this Judgment was influenced by political considerations. Upon the declaration of the Judgment of the International Court of Justice, my Government issued a declaration, expressing its deep dissatisfaction and condemning the Judgment, since it, in our view, does not establish the rule of law and does not give confidence for any State. If we are to refer to Article 22 of the Covenant of the League of Nations and the decision of the United Nations, as embodied in General Assembly Resolution of 12 February 1946, we see clearly the wrong committed against the people of South West Africa by the Judgment of the International Court of Justice. To us, Sir, authority in South West Africa belongs to the people. The Community of Nations has ruled through the resolutions of the General Assembly of the United Nations 2145 of 27 October 1966 and 2248 (S-V) of 19 May 1967 and have called for the maximum participation of the people of the said territory in the administration, and also to lay the ground for the transfer of administration to the United Nations Council for South West Africa. The findings of the International Court of Justice as embodied in its Judgment of 1966

do not coincide with the United Nations resolutions and the Covenant of the League of Nations. The said Judgment has paved the way for the Government of South Africa to continue with its discriminatory policies which are contrary to the basic principles of human rights and the Charter of the United Nations. Such an attitude has hindered the application of the rule of the majority of nations. The General Assembly of the United Nations has called for the independence of the territory on a date fixed in accordance with the wishes of the people and to attain independence by June 1968. The Government of South Africa has dismissed this resolution by simply calling it illegal. The International Court of Justice when taking up the case has in our view engaged itself with matters of formal nature and forgot the real issue which is of vital importance to the international community. The issue has raised inside the Court the question as to whether the nations which presented the case have the right to do so; the finding of the Court should have rested on the principle of *causa judicata*, since the case was accepted for examination. Instead, the Court went into formalities far away from the real issue. In our view, the matter rests within the jurisdiction of the Court. Mr. President, the Iraqi delegation strongly urges the Committee to follow up the case within the international sphere and the United Nations. Thank you.

JAPAN

Mr. President and fellow delegates. My delegation appreciates highly the study prepared by the Secretariat which they think can constitute a solid basis for the Committee's deliberation. The *conclusions* in Chapters II, III, IV, V and VI are generally acceptable to my delegation; in regard to Chapter VII and VIII, almost totally so. I would like to elaborate. The International Court of Justice in 1962 had decided that the Applicants had legal right or interest in their claims as a ground for instituting proceedings against the Respondent as mandatory for South West Africa. The question of the Applicants' interest in their claims was decided, as it should have been decided by the Court in 1962.