In case of union between States, the capacity of Member States as well as the capacity of the units of a Federal State to conclude treaties will be subject to the respective constitutional provisions of that union or the Federation.

Article 7

The majority in the Committee is of the opinion that this article should be amended so as to include a provision to the effect that confirmation of the act performed without authority should be made within a reasonable time. This is suggested with a view to reducing any possibility of abuse. The minority has, however, no objection to retention of the present text of Article 7 of the International Law Commission's Draft.

Articles 10 and 11

The majority in the Committee considers that there is a lacuna in these provisions as no provision has been made to cover cases which do not fall either within Article 10 or within Article 11. It is felt that such cases are considerable and that a provision should be made, if possible, by linking up the two articles to cover cases which are not covered by the present text of these articles.

The majority is also in favour of the deletion of the words "or was expressed during the negotiation" in Article 10. 1 (c).

The minority in the Committee is in favour of retention of the present text of the Draft Articles.

Article 15

The Committee considers this article to contain a new norm of International Law which could be supported as progressive development of International Law.

The majority in the Committee is, however, in favour of deletion of clause (a) of this article as in its view the object of a proposed treaty might not be clear during the progress

of negotiations. Some of the delegations are of the view that a provision like clause (a) of this article may hamper negotiations for a treaty.

Some members, however, are in favour of the retention of the present text.

Articles 27 and 28

The Committee discussed the provisions of these two articles in great detail. There was some difference of opinion in the Committee in regard to how the question of interpretation of treaties should be approached. There was on the one hand those who considered the task of interpretation to be the elucidation of the text of a treaty and on the other those who held the view that the discovery of the true intention of the parties to be the paramount function of interpretation. One view expressed was that the provisions of these articles do not sufficiently take into account that the main aim of interpretation is to look for the real intention of the parties and that these articles should be suitably modified to bring out that position. Another view that "preparatory work" as a source of determination of real intention of the parties should be included in Article 27 so as to make it a primary means of interpretation and that this source should not be assigned a secondary place in Article 28. A suggestion was, therefore, made for assimilation of Article 28 to Article 27 as a new sub-clause (d) to clause 3 of Article 27.

The majority whilst appreciating that it is basic to the whole process of interpretation that the goal should be the ascertainment of the true intention of the parties concludes that the primary emphasis should be placed on the intention as evidenced by the text, that is to say, the actual terms of the treaty, and that it would not be either necessary or desirable to state specifically in Article 27 that the object of interpretation is the discovery of the intention of the parties. According to the majority view, this is manifest from the formulation of

the general rule in clause (1) which is a succinct statement of the essential rule. They feel that by the further elaboration of what is meant by the expression "the text" in clause (2) and by the indication of additional sources of interpretation in clauses (3) and (4), the International Law Commission's draft has taken full account of the paramountcy of the element of intention. The majority, therefore, is of the opinion that the draft rules of interpretation as formulated by the International Law Commission are quite adequate to the ascertainment of intention and are an inherent body of rules emphasising the unitary character of the interpretative process. The majority is also of the view that the distinction contemplated in Articles 27 and 28 should be maintained. They feel that a formulation of the rule which does not stress sufficiently the primacy of the text in relation to the extrinsic sources of interpretation would tend to considerable uncertainty and that there should be no room for recourse to preparatory material if the textual reading establishes a clear meaning in accordance with the rules specified in Article 27. The majority is further of the view that though no rigid distinction is possible and that a nexus exists between the several sources, it is unable to accord preparatory material a parity of status with the primary criteria mentioned in Article 27 and is of the opinion that the two articles should be separate and distinct.

Articles 30, 31, 32 and 33

The Committee considered the provisions of this group of articles which deal with the rights and obligations of third States. The majority in the Committee is of the view that Article 32 be amended by deletion of the words "and the State assents thereto. Its assent shall be presumed so long as the contrary is not indicated" and substitution therefor of the words "and the State has expressly consented thereto". The majority is also of the opinion that Article 30 be amended by interpolation of the word "express" before the word "consent". The majority is of the opinion that as in the case of obligations the express consent

of such third State should be a condition precedent to the creation of a right also. Whatever may be the true position in regard to stipulations for the benefit of a third party in systems of municipal law, in international relations the express consent of such third State should be required even in the case of the conferment of rights consistently with the principle of sovereign equality of States. The majority feels that such a requirement would also reduce any uncertainty in regard to the question whether a third State has assented to the conferment of the right and insistence of such consent by the third State or States would in the case of multilateral treaties tend to the effective participation of all States in treaties of a law-making character. The majority is also of the view that if express consent of the third State is stipulated as a requirement, it would help to reduce the danger of the creation of rights which carry with them contingent obligations to which such third State may well be deemed to have assented by its silence.

The minority, however, is of the view that the Draft Articles as drawn up by the International Law Commission are adequate.

Article 37

A view was expressed in the Committee that the modifications contemplated in Article 37 should be in writing so as to obviate any uncertainty. The majority, however, was in favour of the provision as in the Draft Articles.

Article 38

A view was expressed in the Committee that this article should be deleted as subsequent practice was too vague and uncertain a criterion for modification of a treaty. Another view is that there could be no objection to accepting this article as in the present draft with the clarification that the "parties" in this article meant all the parties to a treaty. A third view was that there was no objection to the present text as in the International Law Commission's draft.

Article 39

The principle contained in this article was generally found to be acceptable to the majority. A delegation was, however, of the view that the word "only" in paragraphs 1 and 2 of this article should be deleted.

Article 43

The Committee considered the provisions of this article in some detail. The majority was in favour of retaining thc article as it is. A view was, however, expressed that the provision of Article 43 as drafted might lead to practical difficulties, and therefore should be brought in consonance with the principle embodied in Article 110 of the United Nations Charter. Moreover, it was suggested that if the Committee retains the principle adopted in Article 43, the expression "constitutional law" be substituted in place of the words "internal law".

Articles 46 and 47

One delegation was in favour of deletion of these articles as in its view the provisions of these articles bring in an element of doubt in the legal security and order. In the view of the delegation the provisions of Article 47 in regard to the concept of corruption were too vague.

Article 49

The majority in the Committee is in favour of the addition of the words "or by economic or political pressure" at the end of the article. The minority is, however, in favour of the retention of the article as in the draft.

Article 50

Whilst the majority had no objection to the present draft being retained, one delegation expressed the view that this is one of the concepts which may cause dispute in its application. In the view of the delegation it was desirable to designate or

establish a body which is invested with standing competence to pass objective and purely legal judgments upon such disputes when they have not been solved through diplomatic negotiations or some other peaceful means.

Articles 58 and 59

One delegation was of the view that these articles should be so formulated as to provide a safeguard against situations in which the destruction of the object or a change in the fundamental circumstances is brought about by the voluntary act of the party itself.

Article 60

The majority in the Committee is in favour of the addition of the words "suspension or" before the word "severance". A minority of one is of the opinion that the addition of these words is superfluous.

NOTE :

A general comment on the Draft Articles made by one delegation is that there are quite a few provisions in the Draft Articles which contain as is admitted by the commentary of the International Law Commission certain concepts which may cause disputes in their application. The delegation considered it desirable to designate or establish appropriate bodies or authorities invested with standing competence to resolve such disputes in a purely objective and legal manner.

Sd/- C. K. Daphtary.

29-12-1967.

V. LAW OF INTERNATIONAL RIVERS

PRELIMINARY STATEMENTS MADE BY DELEGATES AT THE NINTH SESSION

IRAQ :

Mr. President, distinguished delegates. There are in theory, as in practice, general rules accepted by nations, governing the uses of international rivers. These rules have been derived from international custom practised among nations, international jurists' opinions, decisions of national (federal) courts and provisions of treaties and agreements.

The question of international rivers contains two points which should be clarified. Firstly, what is an international river and what it means? Secondly, what we mean by the utilisation of waters by the States concerned? Our main interest is the utilisation for agriculture, industries and for other purposes apart from navigation.

The rivers with which we are concerned run through the territories of two or several States from each other. Such rivers are owned and shared by more than one State, and therefore, called international rivers.

The utilisation of the flow of rivers is of vital importance for the States concerned because it raises many different problems, social, economic and political, for the fact that these rivers are not within the arbitrary power of one of the riparian States; they are governed by certain rules approved by nations since territorial supremacy does not give an unlimited liberty of action. So, a State is not allowed to alter the national conditions of its own territory to the disadvantage of the natural conditions of the territory of neighbouring State, for instance, to stop or to divert the flow of a river which runs from its own territory into the territory of another State. A State is bound to prevent any act which is injurious to the inhabitte otfhsan

ueighbouring State. For this reason, a State is not only forbidden to stop or divert the flow of a river which runs from its own territory to a neighbouring State, but likewise to make such use of the waters of the river as either causes danger to the neighbouring State or prevents it from making proper use of the flow of the river on its part.

These are some of the questions that arise in this matter. So, we request the Secretariat to study and prepare the necessary documents and reports in order to be discussed and treated by the Committee.

PAKISTAN :

The subject of International Law of Rivers has been placed on the agenda of the Asian-African Legal Consultative Committee's Ninth Session at the initiative of Pakistan. This initiative has been prompted by consideration of Pakistan's national interests as well as by larger considerations involving the development of International Law in the new historical context of the emergence of independent countries in Asia and Africa.

In the national aspect, Pakistan's interest in the subject arises from the fact that both East and West Pakistan are geographic areas through which major international rivers flow and whose economies and ecologies are indissolubly linked to these rivers. West Pakistan is heir to the world's largest system of canal irrigation served by the Indus River System. East Pakistan is a densely-populated deltaic region marked by the confluence of two major international rivers viz., the Ganges and Brahmaputra together with their intricate system of tributaries, distributaries and off-take channels. Throughout history both these areas - East and West Pakistan- have been vitally influenced in a narrow economic as well as in a larger cultural sense by the uninterrupted flow of the waters of these rivers.

The rapid strides made in modern technologies, the world

wide shortage of fresh water as a natural resource and the unprecedented population explosion have all contributed to a situation where the natural regime of Pakistan's rivers is exposed to a menace from the occurrence of far-reaching interference and fundamental change, through extra-territorial action.

In West Pakistan, the problem arising from the competing claims of the upper riparian (India) and the lower riparian (Pakistan) for fresh waters has been partially solved through the Indus Basin Treaty of 1960 and its ensuing programme of work premised on a geographic division of waters. Nevertheless, the Indus Water Treaty does not remove the long term threat posed by India's territorial control of the sources of nearly all the rivers of the Indus system.

In East Pakistan, however, in the absence of a similar arrangement or treaty, the threat of a massive and permanent interruption of the natural regime of its rivers looms large as a result of India's project pertaining to construction of the Farakka Barrage with its claimed potential for the diversion (from a third to more than a half) of the flow of the river Ganges. This issue with India, with its inevitable incidents, for the economy and ecology of an area with the highest population density in the world, is of vital concern and importance to Pakistan as a sovereign independent country. Nor has there so far been even a partial mitigation of the problem through treaty solution with India. In the absence of any agreement with India on some possible solution, the Farakka Barrage continues as an unresolved problem of great magnitude pertaining to international river law.

It will thus be observed that placed as it is in this remarkable historical situation as a lower riparian heir to three great international river systems, Pakistan's interest in the larger development of international river law as a source of rules governing intractable problems of the allocation of scarce waters is by no means academic. For it is to these rules that Pakistan must look for the safeguarding of its vital national interest, even

assuming that the search for a solution with India continues to provide the framework of juridical reference within which the parties will negotiate. It may be added that the subject gains in urgency and importance from the consideration that potentially, the applicable rules of international law will also influence the entire matrix of political and psychological relations between the two countries.

So far the subject has been treated in a national aspect. Passing now to general international considerations, it may be observed at the very outset that Pakistan's situation is merely an extreme example of a problem that is rapidly coming to the forefront in Asia and Africa. By and large, the major international rivers of the world are situated in these two continents. The principal water disputes of the world are increasingly to be found in Asian and African countries, situated as they are in arid areas of chronic water shortage. The perspective of survival in these countries involves rapid agricultural development based upon a more intensive and scientific use of their available water resources. The range of modern techniques available for such use is constantly expanding. The technological scope for changes in the natural regime of major rivers through massive diversions continues to grow and its growth presents not only perspectives for constructive development but also a deepening menace of far-reaching disputes cropping up over the disposal of waters between competing riparians. It is, therefore, no coincidence that Asia and Africa are confronted with some remarkable and unprecedented water disputes—on the Nile, the Mekong, the Shattal Arab, the Helmand, the Jordan, to mention just a few.

There is no denying the fact that the development of modern international law rests essentially upon the State practice and treaty law of European and North American countries. It is also becoming increasingly evident that this very factor presents a major problem to the emerging nations of Asia and Africa who have, by and large, emerged from colonial subjugation and exploitation by these very countries mainly in Europe. Many of the emerging countries have experienced the frustration and the tensions engendered by their peculiar circumstances and historical situation as heirs to a system of law drawn up and developed largely by European States to serve their own national interests and to the detriment of the emerging nations.

The European international legal practice in the matter of rivers was largely based upon the needs of navigation and latterly of the exploitation of water for the generation of power and other industrial uses. Agricultural use—especially use for food production through irrigation—does not figure large in the European experience. In other words, the consumptive use of water involving the massive depletions of international rivers has not exercised major juristic thinking in Europe.

The aforementioned historical factor and the said lacunae in the European practice combined with the remarkable strides in technology, make it essential for the Afro-Asian countries to pool their resources and experience of water problems and to bring to bear the same upon the task of shaping and forging of the developing rules of International Law. Haunted by the spectre of famine and abysmal poverty and conscious of the decisive influence of rivers in meeting these threats, the Afro-Asian countries can ill-afford to sit as passive spectators and to let European publicists dominate a field of law in which the latter's interest is marginal and conditioned by unique regional history. It is thus that there is a growing dissatisfaction in Afro-Asian countries with the efforts of various learned institutions to reach a consensus on rules of International Law governing rivers.

It can be safely predicted that modern technology and the changed conditions existing in Asia and Africa have rendered international rules regarding rivers mostly otiose, inapplicable and infructuous. Hence the urgent need for the development of such law so as to reflect Afro-Asian viewpoint. Notable exam-

ples where these efforts fail meeting the *in extremis* situations faced in certain Afro-Asian countries are the draft principles of the International Law Association and the Institute de Droit International. Moreover, in the field of International Law regarding rivers, the major effort so far has been to reconcile conflicting interests through consensual procedures rather than normative ones. The absence of *defeasance* solutions when negotiations fail—is an element of remarkable weakness for which a remedy has to be found.

Enough has been said to indicate the legal problems calling for attention of this Committee. I accordingly commend the same for consideration and appropriate action under Article 3(b) of the Statutes.

CEYLON:

Mr. President. Nature has been so kind to us that it has, at least for the forseeable future, prevented us from being embroiled in any dispute concerning an international river, unless some Professor in some University would enlarge the definition of river to include the ocean. I may say that we are quite willing to agree to any reasonable recommendation.

GHANA:

Mr. President. At this stage my delegation would not make any comment. We would like to make a formal statement on the subject at the appropriate time.

INDONESIA:

Mr. President. At this stage our delegation would like to have more time to consider the ideas that have been expressed by the delegates of Iraq and Pakistan.

JAPAN:

Mr. President. I would like to make a very short statement. Like Ceylon, my country also has no great or keen interest on the question of international rivers. We know about the customary International Law. There is the Convention of Barcelona of 1921 to which there are 23 Member States, among which Member States I find India and Thailand. But this Convention treats only the question of navigation liaison. Quite recently, there has been a big programme for the construction of dams, the construction of power stations and the utilisation of waters of international rivers and irrigation works, which is causing some trouble among riparian nations. We know that well. As clearly explained by the distinguished delegates from Iraq and Pakistan, we see quite well the keen necessity of formulating some general rules to coordinate these conflicting interests of riparian States. So I think our Committee should take up the matter as proposed by the two distinguished Delegates and my delegation is quite ready to collaborate.

U.A.R. :

The question of formulation of draft articles for the regulation of rights and duties of riparian States in matters of international rivers is of very great importance to the African States in general and to the U.A.R. in particular. As hon'ble delegates may already know, we, in November 1959, made with the Government of the Republic of Sudan an agreement for regulating the rights and duties of the U.A.R. and Sudan. It is a model agreement and we should be very happy indeed to discuss the matter which has already been considered in the International Law Association.

INDIA :

The Indian delegation has listened with interest the statements made by the distinguished delegates of Iraq and Pakistan yesterday regarding the subject of International Law of Rivers. My delegation takes this opportunity to state that this subject is of great importance and complexity. It is not merely concerned with the legal aspects but also with a variety of technological details. This subject has received increasing attention in recent

years and a number of learned bodies have taken it up for detailed study. The efforts of the International Law Association culminating in the Helsinki Rules are particularly noteworthy and would be of interest to us.

In the course of his statement certain remarks were made by the distinguished delegate of Pakistan concerning India and Pakistan. The House knows that according to the tradition of this Committee and the wholesome practice followed by it, bilateral issues concerning Members of this Committee are not to be referred to before it. There was, we feel, no necessity to make these remarks in order to underline the importance of the subject. The work of the Committee would be purposeful and constructive if a subject is studied by it in an objective manner. The delegation of India is concerned since some remarks have been made by the distinguished delegate of Pakistan and wishes to put the records straight.

One of the observations made by the distinguished delegate of Pakistan relates to the allocation of the waters of River Indus under the Indus Basin Treaty of 1960. This treaty is the outcome of years of labours and negotiations between the legal and technical experts of the two countries and also the experts of the World Bank. The treaty deals with the entire river system of the Indus including its tributaries, sub-tributaries and even streams in a most comprehensive manner. Under the treaty, a permanent Indus Commission composed of representatives of the two countries has been set up which periodically goes into the day-to-day administrative questions concerning the implementation of the Treaty. In the circumstances, the Treaty completely solves the problem and not only partially as stated by the distinguished delegate of Pakistan.

Next point raised by the distinguished delegate of Pakistan relates to the construction of the Farakka Barrage by India. Regarding the implications of this project he alluded to the threat of massive and permanent interruption of natural regime of East Pakistan rivers looming large as a result of this project.

My delegation feels that this also is an unfortunate remark. We do not wish to dilate on this bilateral matter before this Committee, but I might state that this project is not designed to affect and will not affect the legitimate interest of East Pakistan. My delegation would like to add further that experts of India and Pakistan have been meeting to discuss the various questions of mutual interest relating to eastern rivers, and nothing should be done to discourage this process.

May I conclude, Mr. President, by stating that we are in accord with the proposal that the Secretariat of this Committee should treat the subject of Law of International Rivers and prepare the necessary background material for the consideration of this Committee? In doing so, I have no doubt, the Secretariat will take into account the useful work done by the International Law Association.

SOUTH WEST AFRICA CASES

REPORT OF THE COMMITTEE AND BACKGROUND MATERIALS

(1) INTRODUCTORY NOTE

The Committee on the motion of the Delegation of Ghana present at its Eighth Session decided to take up for discussion the Judgment of the International Court of Justice dated the 18th of July 1966 on the South West Africa Cases under Article 3 (c) of the Committee's Statutes and to consider certain questions arising therefrom. The matter was generally discussed at that Session and the Delegations of Ceylon, Ghana, India, Indonesia, Iraq, Japan, Pakistan and Thailand made statements on this topic. The Committee decided to give priority to the topic at its next Session and directed the Secretariat to study the questions raised in the course of discussions at that Session and to prepare a detailed brief for consideration of the Committee at its Ninth Session.

At the Ninth Session held in New Delhi in December 1967, the subject was further discussed on the basis of a Study prepared by the Secretariat of the Committee, and the Delegations of Ceylon, Ghana, India, Indonesia, Iraq, Japan, Pakistan and the United Arab Republic expressed their views on the subject. The Committee also had the benefit of listening to the views of Mr. Justice M. Hidayatullah (now Chief Justice of the Supreme Court of India) who was invited to address the Committee on this topic as a Special Invitee under the provisions of Rule 7 (5) of the Statutory Rules of the Committee. After taking note of the views of the Delegations present at the Session and that of Mr. Justice Hidayatullah, the Committee felt that as suitable action had already been initiated by the United Nations in respect of this question, it was not necessary to make any recommendations for the present. However, considering the views of the Delegation of Ghana, the Committee decided to keep the subject on its agenda and directed the Secretariat to collect any further material that may be relevant for consideration of this question and to place the same before the Committee at its next Session.

(II) STATEMENTS MADE BY THE DELEGATES AT THE EIGHTH SESSION

GHANA

Mr. President, distinguished Delegates. I am quite sure that members here today are all aware of the reaction of my Government and indeed of the entire African Group of the United Nations, expressed in a short and concise press release on the 19th of July 1966, towards the rather interesting but startling decision of the International Court of Justice in the proceedings instituted by Ethiopia and Liberia, the African member states, parties to the Covenant of the League of Nations, against the Union of South Africa on the issue of South West Africa.

In this statement, it was pointed out, "Laws do not develop in a vaccum and must be interpreted within the prevailing attitudes of the International Community".

In the General Assembly of the United Nations and in other international forums, the voice of the twentieth century has always proclaimed with articulation and clarity, the principles of sovereign equality, of world peace and security, of the right to self-determination, and of freedom and justice for all irrespective of their different political, economic and social systems or forms of government.

Here in Bangkok, we members of Asian-African Legal Consultative Committee, enthused by the common desire to achieve these very ends have once more met to canvass and formulate legal principles which we firmly believe will guide mankind towards peace and security through the observance of the rule of law. In a way, therefore, we must all feel disappointed that the general march of events has tended again and again

to demonstrate the ever widening gap between these lofty principles and actual practice.

All too often great measures hatched in the United Nations or in its Specialised Agencies or other international organisations have been wrecked by the dead hand of the veto or by the sterility of outmoded legal technicalities.

This decision of the International Court of Justice, which in effect has given legal sanctity and blessing to the claims of South Africa, a government that has been persistently condemned by all peace loving nations of the world for her *apartheid* and other inhuman excesses, must constitute a serious affront to the legal conscience of the world community and shake the very basis of decency in international life. It is the unspeakable irony of our time that an institution of the order of the International Court of Justice, forged out of contemporary norms and principles, should be used to frustrate and stultify the implementation and furtherance of these ideals. It is the consideration of these matters that has prompted my Delegation to raise the question of South West Africa at this stage of our deliberations.

We, in Africa, have joined hands of friendship, greater cooperation and understanding with you in Asia. We have together nearly always spoken with one voice in the deliberations at many international gatherings. What therefore affects Africa immediately will at least have immediate repercussion on Asia.

Accordingly, it is the ardent hope of my Delegation that the Committee will do its utmost in concert with other international legal organisations to conduct a thorough search for the legal wisdom that will bring principles and practice as close together as possible.

To this end, my Delegation would suggest that the Committee consider this matter and request the Secretariat to make available detailed material on the subject to facilitate a discussion at the next Session of the Committee.

It may be useful in this exercise for the Secretariat to give due consideration, *inter alia* to :—

(a) Equitable geographical distribution of seats on the International Court of Justice,

(b) Termination of the Mandate creating the international status of South West Africa and assumption of direct responsibility by the United Nations.

It is the strong conviction of my Delegation that by taking these steps the Committee would be contributing immensely and in a positive manner towards the achievement of the high legal ideals on which we all so much set our hearts. Thank you.

CEYLON

Mr. President—Anything I say on the matter of the recent judgment of the International Court of Justice must be prefaced by a statement that I suffer from the disadvantage that at the time of leaving my country and up to this moment I have not had access to the full text of the judgment which is said to be voluminous. Nor must anything I can now say be taken as in any way critical of the good faith of the judges who participated in the decision which has come as a disappointment to the vast mass of the human race, if one is to judge by comments which have found expression in the newspapers of so many widely dispersed parts of the world.

You will recall, Mr. President, that on the opening day of this Session, I myself made some reference to this very judgment as having shrouded the role of International Law in the settlement of international disputes. At a time when the world, particularly the developing and newly independent countries thereof, is hopefully looking forward to the dawn of an era of an acceptable legal order, this judgment has introduced a disturbing element of uncertainty into international adjudication. If what I may call, without meaning offence to any one

the newer nations have hitherto shown a disinclination to use the Court on the ground that its composition is heavily weighted against them, this judgment certainly contributes nothing to remove this fear. That a Court is essential in the interests of peace among the nations cannot be gainsaid, but it appears to us to be vital that there should be a more determined wish among the nations not only to abide by the rule of law, but also to free themselves from the apron strings of technicality and move forward with the purpose of fashioning that rule dynamically in the direction of legitimation of a just and moral order. Only then can the rule of law have positive basis in the will and acquiescence of man.

Mr. President, that the Government of South Africa accepted a mandate is not doubted, and I apprehend it is not doubted by South Africa itself. If Ethiopia and Liberia who were members of the League of Nations have not a sufficient legal right in seeing that the conditions of the mandate are observed by the mandatory, is it not doubtful whether all former members of the League have likewise no such legal right ? If that be so, then do we not reach a result that the Court can in no circumstances now give a binding judgment on a mandatory's obligations ? Changes in procedure and amplification of the powers of the Court in certain directions appear to be called for in the light of the present predicament. To some of us who have been brought up in the tradition whereby a stage is reached when certain issues once adjudicated upon are considered binding upon the parties to a suit, the doctrine of *res judicata* has meaning. Much of the work of Courts, and the International Court of Justice is no exception, will be interminable if that doctrine is not respected and maintained. Yet the recent decision appears to me to be in breach of this doctrine. Did not the applicant-nations have a right to believe that by the 1962 decision the question of jurisdiction had come to be settled as between them and South Africa ? The "antecedent" point that found favour with the majority (and that too by the invocation of a casting vote) appears to

amount to nothing less than a reversal of the 1962 judgment. Then, is not the reversal an accident of the composition of the Bench, and does not that emphasise the element of uncertainty and impermanence in the decisions of the Court ? Does it not help somewhat to erode the confidence of men in the validity of even the incipient international order which we are hopefully trying to foster and promote in the face of and despite the deep cleavages of our period ?

Although the African nations are immediately concerned by this decision, is it seriously to be suggested that the other nations of the World are any less concerned ? Certainly the nations in Asia have an abiding interest in the peoples of Africa taking their rightful place in the world community. Can technicality be over-refined in disputes affecting the right of human beings to live in the way human beings have a right to live ? Must law in the last result be governed inevitably by technicality ? Will not this judgment come to be considered by posterity as the enthronement of technicality ? Can International Law today hope to grow unless it seeks to found its very basis in the emerging world community of nations, and in the process consciously and deliberately repudiating the past that had made possible nation states and colonies to cohere together as if they were not basic and irreconcilable contradictions ?

In this age of dynamism there can only be one answer to this question. Must not world legal opinion relegate technicality to its proper place ? The points I have just thought of mentioning here and many other questions which need not be mentioned in what is essentially a short statement deserve anxious and serious consideration by this Committee. I, therefore, propose that we request the Secretariat to make a study of the full text including the opinions of the dissenting judges in this controversial judgment and report to the Committee at its next Session.

INDIA

Mr. President, Distinguished Delegates and Observers. On behalf of my Delegation, I share the concern expressed by the Distinguished Delegate of Ghana over the recent judgment of the International Court of Justice in the case of South West Africa, as also his interest in the Committee expressing an opinion thereon after adequate study of the relevant documentation. May I say at the outset that although South West Africa is an African country, the concern and interest in the promotion of well-being of the people of that country and their right to full self-government and independence are fully shared by all Asian States.

It is not necessary to go over the entire background of the question of South West Africa. The matter has been before the General Assembly of the United Nations since 1946. The World Court has given three Advisory Opinions in this connection, the first on the 11th of July 1950, the second on the 7th of June 1955 and the third on the 1st of June 1956, and made pronouncements regarding the international status of South West Africa, the obligations of the administering power, the powers of supervision of the General Assembly, and the procedures to be followed by its Committees and in the plenary, in examining reports from the administering country and hearring petitions and petitioners. When the Union of South Africa did not cooperate with the United Nations notwithstanding these opinions, the General Assembly had no option but to encourage States which were Members of the League of Nations to agitate their rights and interest for the proper enforcement of the international obligations of South Africa in the World Court. Accordingly, Ethiopia and Liberia initiated contentious proceedings against the Union of South Africa on the 5th of November 1960. In the proceedings before the Court, South Africa raised four preliminary objections to the Court's jurisdiction, which were ruled out by the Court in its Judgment of the 21st of December 1962. The Court then proceeded to deal with the