

# South West Africa— The Phoney War Ends

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The Court finds that the Applicants cannot be considered to have established any legal right or interest appertaining to them in the subject-matter of the present claims, and that, accordingly, the Court must decline to give effect to them. For these reasons, the Court, by the President's casting vote—the votes being equally divided—decides to reject the claims of the Empire of Ethiopia and the Republic of Liberia.

WITH THESE WORDS, the International Court of Justice at The Hague ended six years of argument, evidence, submissions, pleas and counter-pleas, and finally removed the issue of South West Africa from litigation.

Unsurprisingly, every person who cherished the ideals of freedom and human decency, everyone who had respect for the idea of effective international law, was revolted and outraged by this cowardly judgment. For the African people, and the people of South West Africa in particular, the judgment brought home the realization that they had allowed themselves to be duped for six long years, hoping that legality and right would prevail and that the mandated territory would be set free from its years of slavery to the apartheid state.

The monstrous hypocrisy of the judges who voted in favour of the final judgment is difficult to comprehend. For in 1962, this same court voted exactly the opposite way when South Africa asked for a ruling that there was no case to answer, that Verwoerd was not compelled to submit his reign of terror in South West Africa to the scrutiny of the court. Then, the judges ruled that there was indeed a case to answer, that Ethiopia and Liberia had the right to put the white-supremacist regime on trial for its rape of the former German colony. But, having decided in 1962 that the court had jurisdiction over the application of the League of Nations mandate, in 1962 seven judges decided suddenly that Ethiopia and Liberia had no right to bring South Africa's treatment of the South West African people before the world body!

The International Court of Justice (ironical title!) has thoroughly and effectively exposed itself, not as an instrument of mediation among nations and arbiter of peaceful settlement of disputes, but as an agency for manipulation by imperialist powers for their own greedy ends. The imperialist appointees knew very well that it was totally impossible

for any ruling with even a semblance of legality to go in Verwoerd's favour: their solution, therefore, was for the court to sidestep the issue, to avoid considering the restrained and impressively-documented pleadings of South Africa's accusers, and to take refuge instead in empty legalisms which squirmed away from the stark fact of white barbarism in South West Africa.

It is worth analysing, briefly, just how this judgment was passed. The court split evenly (7-7) on the issue of the accusers' right to bring action against South Africa. This highlights the sinister role played by the court's President, Australian Sir Percy Spender. In the first place, Spender voted *twice*—and as President his second, casting, vote was the one which swung the court into rejecting Verwoerd's accusers. Secondly, it is now known that the Pakistani judge, Sir Zafrullah Khan, who had been a member of the court during earlier advisory cases involving South West Africa, recused himself under strong pressure from Spender. When we take into account that it was predominantly the African, Asian, Socialist and South American judges who rejected the court's final judgment, the full extent of Spender's role in the case begins to emerge.

The West European judges voted in a block against Ethiopia and Liberia—including the expatriate Pole Winiarski, who was immediately repudiated in a special statement issued by the Polish Government. One can see the anger at the shameful judgment behind the restrained legal language of the dissenting judges as, for example, in the words of Soviet judge Koretsky:

The 'door' to the Court which was opened in 1962 to decide the dispute as the function of the Court demands, the decision of which would have been of vital importance for the peoples of South West Africa and to peoples of other countries where an official policy of racial discrimination still exists, was locked by the Court with the same key which had opened it in 1962.

What is it that the Court was refusing to examine?

## **BISMARCK**

South West Africa was occupied in the nineteenth century by Bismarck's savage colonisers, despite the heroic resistance wars led by Hendrik Witbooi, chief of the Namas, and, in 1904, by the Herero leader Samuel Maharero. The Germans, characteristically, drowned the African people's resistance in blood. General von Trotha issued the infamous Extermination Order when Maharero rebelled, ordering that every Herero man, woman and child in the belligerent north should be slaughtered. Once again Witbooi rallied all the tribes of the



south and began a protracted guerilla struggle that lasted until 1907. By then, half the Nama tribe had died, and the Herero had been reduced from 80,000 prosperous cattle-owners to 15,000 starving fugitives in their own land.

The hope that the South West African people would be freed by the defeat of their barbaric conquerors after the First World War was quickly crushed. A joint expedition by South African and Portuguese colonialists obliterated the rebellion of 21-year-old Chief Mandume of the Ukuanyama of Ovamboland, murdering 5,000 Africans in the process. A few years later, the whites rained bombs on the Nama people when they refused to hand over Abraham Morris, a leader of the second Nama war against the Germans.

Once entrenched, the South African regime set about the wholesale dispossession of the African people, handing their land over to white farmers and crowding the tribal people into rural ghettos. In 1913 the territory's white population of 14,830 owned 11.5 million hectares. By 1962 the settlers numbered 72,000 and had expropriated over 40 million hectares, while the non-white population of half a million were driven into 21.8 million hectares of the most barren land. This is what, in practice, the 'sacred trust' of the League of Nations mandate meant to the people of South West Africa—wholesale robbery and wholesale exploitation.

At the same time, the pillaging of the country's mineral wealth accelerated, with American, British and South African monopolies reaping rich benefits from the toil of the South West African proletariat. Two companies owned by these imperialist concerns together control the extraction of over 90 per cent of the territory's useful minerals. Between 1958 and 1962, one-third of the entire South West African national wealth was siphoned out of the territory in profits for the foreign exploiters, while the people of the country lived in conditions of poverty and appression even exceeding the misery of the apartheid state itself.

## **DIAMONDS AND COPPER**

The court action initiated by Ethiopia and Liberia was an attempt to remedy this situation. It is a fact that the longer South Africa retains its grip on the mandated country, the more difficult will be the task of economic development in a liberated South West Africa. For a large part of the wealth now being produced comes from diamonds and copper—and it has been estimated that the diamond resources will last only another 12 years and copper deposits another 20 to 25.

The Western imperialist powers thus have an acute interest in delaying



action by the world community against Verwoerd's fascist regime, for every year of delay means more money in their coffers. The imperialist powers had taken refuge behind the 'legal' issues whenever South West Africa comes up for discussion in the United Nations. Therefore, it was thought, if the International Court clearly ruled against South Africa, the West would have no further excuse for putting off what was to them the evil hour of democratic action against apartheid.

Some voices were raised, even six years ago, against this course. Far-sighted African leaders saw clearly that litigation would give South Africa and its imperialist allies ample scope to procrastinate, obscure the issues, sabotage concrete action, and take refuge in the pretence that no action could be taken as the issue was still 'sub-judice'. Even had the court issued a clear-cut condemnation of South Africa's violation of the 'sacred trust', it is certain that Verwoerd, backed up by the Western powers, would have strung the matter out for as long as possible, with requests for clarification of the judgment, further particulars, guidance, and so on. And all the time his allies would have prevented the United Nations, through their veto in the Security Council, from bringing justice to the suffering people of South West Africa.

In one very important way, therefore, the outrageous judgment of the International Court has served the interests of mankind. For it has removed the question of South West African slavery once and for all from the ponderous processes of international law. It has completely exposed the court as ineffective, cowardly, and an instrument of imperialist manipulation, instead of a firm bastion of right and justice. It has put apartheid dictatorship back in the arena where it belongs—back into the arena of political, diplomatic and military action.

But it has done more than that. It has shown conclusively that all the years of patient work by the progressive world through the United Nations, the lobbying, the resolutions of the General Assembly, the incisive reports of the Special Committee on Colonialism, the tireless efforts on behalf of South West Africa's oppressed masses, have come to nothing, except that they have thoroughly exposed the barbarism of the gang of racialists who enslave the territory's people, and shown to the world the cynicism of those who claim to stand for the 'free world'. Any person who really values the ideals of national liberation, freedom and democracy, must come to the conclusion that the United Nations has by now been largely exhausted as a weapon against South West Africa's oppressors.

In spite of the valiant efforts of the Socialist world, of African and Asian countries, the United Nations Organisation is still wide open to

manipulation by the imperialist powers for their own inhuman ends. It is a harsh lesson that Africa and the South West African people have had to learn, that the years of hopes for democratic action through the world body have come to nothing. But perhaps it is as well that the lesson should be given, and taken to heart. The liberation of South West Africa will not take place in the urbane corridors of the United Nations building in New York, or by any number of condemnatory resolutions, however well-meaning, by the General Assembly. In the last analysis, it will come through the efforts of the people themselves, assisted by the real friends of freedom, the Socialist countries and the newly-liberated democratic states.

### **TRUE PERSPECTIVE**

*Spotlight on South Africa*, the journal of the African National Congress (South Africa) puts the matter in its true perspective:

The people of South Africa, who have for centuries been fighting in defence of their fatherland and against white domination, did not at any time entertain the illusion that the International Court of Justice alone would solve their problems and win their freedom. To them, the act of taking racist South Africa to Court was but one of the many facets in the fight for national independence.

At this crucial moment, the African National Congress is more than ever determined to continue its struggle unabatedly and to fight with all means at its disposal side by side with the courageous people of South West Africa until the seizure of power by the people and the total elimination of white domination and apartheid.

This is the way forward, the way to freedom. While any action by the United Nations (and one may be sure that the African states will be pushing hard for action during the new session of the General Assembly) will be welcome as help in the struggle, it is for the South West African people themselves to settle accounts with their oppressors. The heroic Frelimo liberation fighters of Mozambique have shown what can be done, dealing blow after blow to the Portuguese colonialists. There can be no doubt that the masses in South West Africa, with their glorious history of resolute resistance to oppression and invasion, will do the same. The racists may think now that they have won a victory: when they cower before the angry people of South West Africa they will change their minds.