THE SACRED TRUST OF SOUTH WEST AFRICA

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No question coming before the 1960 General Assembly could be more clear-cut in terms of right and wrong than that of South West Africa. Yet in terms of action, of procedure, of politics and international law, the answer is no more definite today after fourteen years of debate than it was in the year the United Nations was born. Failure to resolve it has become a reproach to the Western world (for it is peculiarly a Western problem) and to Western concepts of the scope of international law and trusteeship. What has been happening in this obscure corner of Africa during the fourteen years that it has been debated in the U.N., is the outward and visible sign of an inward and spiritual disgrace. The disgrace is none the less because it has grown to its present magnitude while fear of Communism has so engrossed the United States and Britain that their own vital principles of law and justice have been undermined by neglect.

It will be recalled that it was on account of the tragic consequences of Germany's first attempts to carry the doctrine of the herrenvolk to its practical conclusions in South West Africa that the Hereros were reduced from eighty thousand to fifteen thousand men, and that women and children and the Nama and Berg Damara tribes were similarly massacred. This so outraged the conscience of the civilized world at the end of World War I (*vide* the British Government's Blue Book C.D.9146) that the decision was taken by America, Britain and the other Allies to establish the principle of international accountability for the former colonial possessions of Germany and the Central Powers.

Today in many parts of Africa there is being reaped the whirlwind that was sown half a century ago. The white man, in his pride and often ruthless self-aggrandisement when removed from his own native soil, failed to understand the gigantic human problems he was creating by his own impact on Africa. For he was doing much more than bringing to Africa a gospel of deliverance; he was rolling up the blinds on a new culture that revealed new satisfactions and demands. He did not understand the effect on the Africans of liberation from something very much more than slavery by the impact of modern civilization

and new political institutions and ideas. Instead of recognizing the political corollary of his religious and educational policies as African self-government, he sought to retard politically those whom every other influence he had brought with him was galvanising into new intellectual life.

If the white man's morality and political philosophy in the early twentieth century had been able to match his progress in the physical and applied sciences, Europe would not have been brought to the brink of destruction twice in our generation by an arrogant nationalism and the power of an irrational myth which, however demonstrably nonsensical and "unscientific", was yet capable of the worst crimes against humanity ever perpetrated. We must continually remind ourselves—in viewing the problem of South and South West Africa—that the planned destruction of no one knows now how many millions of men, women and children was the act, not of a primitive and backward people, but of one of the most highly developed and technically advanced States in the world.

Thus it is that although the South West African Mandate may seem a small and obscure question on the U.N. agenda, it is big with implications for Africa and the Western world. The present generation of white people in South Africa will inherit the whirlwind sown by our forefathers in the inadequacy of their religion, morality and politics, unless there are some who can rise to the challenge of the African tomorrow. For tomorrow is born out of today. It is a tomorrow in which the white man could have a far different role to play in the construction of a new civilization with new values to match the new techniques of the coming nuclear age.

In terms of procedure, it seems as though the independent African States will seek a judgment from the International Court of Justice on South Africa's non-fulfilment of the Mandate. This is being done because all previous recommendations both of the General Assembly and the International Court of Justice have been ignored by South Africa and by those members of the Commonwealth—such as the United Kingdom—who are most intimately bound to her and to the sacred trust of the Mandate, through the British Crown to which the Mandate was originally entrusted.

It may be, therefore, that a judgment will have to be sought in two different stages. The first would be concerned with establishing the extent of United Nations jurisdiction, including if necessary its power to revoke the Mandate, as well as the

standing of individual Member States of the former League of Nations, to settle whether their rights under the Mandate treaty extend from particular questions affecting them as individual States to the whole application of the Mandate.

It seems unlikely that the Court would give an advisory opinion on whether South Africa's present administration constitutes a violation of the Mandate. This would in part be the subject of the judgment which it is then proposed to seek in the face of South Africa's rejection of all the resolutions of the General Assembly over fourteen years and of the three advisory opinions of the International Court on the status and continuing responsibilities of South Africa towards the United Nations and the Court under the Mandate.

The purpose of seeking such a judgment of the Court would be to terminate South Africa's jurisdiction over South West Africa and so enable the United Nations to assume direct administration of the Territory, with the aid of all its specialised agencies, until the people as a whole are able to govern themselves.

In this connection, the opinions of two British judges of the International Court, Sir Arnold McNair and Sir Hersch Lauterpacht, should be quoted, together with the conclusion of the United Nations Committee on South West Africa.

In a separate opinion published with the advisory opinion of 1950, Sir Arnold stated: "Although there is no longer any League to supervise the exercise of the Mandate, it would be an error to think that there is no control over the Mandatory. Every State which was a member of the League at the time of its dissolution still has a legal interest in the proper exercise of the Mandate. The Mandate provides two kinds of machinery for its supervision—judicial, by means of the right of any Member of the League under Article 7 to bring the Mandatory compulsorily before the permanent Court, and administrative, by means of annual reports and their examination by the Permanent Mandates Commission of the League . . ."

In 1955 Sir Hersch Lauterpacht said: "A State may not be acting illegally by declining to act upon a recommendation or series of recommendations on the same subject. But in doing so it acts at its peril when a point is reached when the cumulative effect of the persistent disregard of the articulate opinion of the Organization is such as to foster the conviction that the State in question has become guilty of disloyalty to the Principle and

Purposes of the Charter. (Such a) State . . . may find that it has overstepped the imperceptible line between impropriety and illegality . . . and that it has exposed itself to consequences legitimately following as a legal sanction''.

The conclusion to which the U.N. Committee on South West Africa has come after six years' exhaustive study of the problem may be summarized in the words of the Committee's Report to the General Assembly for 1959.

"The Committee has become increasingly disturbed at the trend of the administration in recent years, and at the apparent intention of the Mandatory Power to continue to administer the Territory in a manner contrary to the Mandate, the Charter of the United Nations, the Universal Declaration of Human Rights, the advisory opinions of the International Court of Justice, and the resolutions of the General Assembly . . .

"The Committee considers it essential to the welfare and security of the peoples of South West Africa that the administration of the Territory be altered without undue delay in order to ensure the political, economic, social and educational development of the whole of the population and the application of the principle of equal rights and opportunities for all of the inhabitants. Having examined conditions in the Territory for the sixth successive year, however, the Committee cannot fail to conclude that such an essential change in the administration is not likely to occur, owing to the intransigence of the Mandatory Power and its exercise of uncontrolled authority over the Territory. The Committee accordingly recommends, with a view to the protection of the fundamental rights of the inhabitants of the Territory under the Mandates System, that the General Assembly should consider means of ensuring the fulfilment by the Union Government of its obligations under the Mandate and the Charter with respect to South West Africa in the event that the Union Government persists in its rejection of the supervisory authority of the United Nations over the administration of the Territory."

While it is true perhaps that South West Africa is part of the larger problem of South Africa's whole race policy and has been referred to the Security Council for action that is still awaited, the Mandate debate offers and necessitates another procedure. Even if long drawn out it may prove as challenging to South Africa in the end as anything that the Security Council may be able or unable to do in the very near future.