J.
L:
oion (DJAPC) in
3:ms CI
ELCt
CSITDDEETW
:ICIT
C- ()13"
r-TL
LJCILLV U1
C’35.:
I Of 57 memb
r’1’lC
mu
7 IpeeiCliv_Cau j
niH"
.. TI 3. F’dj’l’xi F
U4
’H’Vx ,
pIIIB
bound
in
and
UhaC
and _
Includ
gueri 37M
exiled SOEIJ
0:? 7053313101 5’
Lh994 ir m era
in dieir
South WI
for the’
F ’ n
viic,
:x C;
L y.)
CLHJ
1r counfi
TD
.IJ
TiniCil
Cd w
1 T
..IJ w
est
I Iqjaak) a
in
da
:0 e
AIric:
it
abCII
demC
W
SOLth
in HCiCC
Cei:
(11!-
MA. L!
:p
must
WIUUQQQEC’
-CII11:. J-b
F the ewg
4IOL1L’.
X :l
LI.
WjU’Vinq Cw
C: .i’J’; I13; I; L
dHClm

OCS
(T!
15.)
a not re aId iCQelI
3 Che UtitC’i Ratio
1.7110 in U e I"-
Fl
Cic CeCOCJCram
incerna ional
TO
OJSLLCI:
ll’i
:GJQCG
I new
doubt
3L1 .v u--.On3
erribo
V S
..
T1-T
J:
O_L
Iideed,
than their
ems elves and
Io..u uion
01 over
degendenee
In Che
i ierlorl-
:CnCITI1
2
I
e"u
.
Che
:1.
F1
LL
the way
landled to
ICC. Of, the
which 800 CC
1966.
act.
have been
._._x.L(..L/ir"’ ibS
Ina reare ssj.ve
Terrorist $03 Cnd
I -apJe
Am (I)
p.
rmocr&
111C-
.L J_’ OLE
:0
m
L
C)
And
T. ,5.) H’ l-" I
,C
ICQLC’E.
(D C"
(0
1’1 S 1" 4.; k; ’61
’IlaHCC
.1IW
ion
L,__I’
(, .JFISO

a
’ "i_ CI
F w
U...L.
the
Do
I1w
S C111 3 L13) t 0
Africa
eriod inxvhich
U-NJ to r3b solve
then hlw been
Jack on ,
CC; countryT
I 11 if 37 (/7
L; L111
9
- 0
(1J. i.)
ITr.)
I
thU
’3’ Irx ,.1-
’4 .murv I/.’J_
cumeCt
’the Change
0: to
In any deuail
AIrica problem
the plans and
F exceeds my
at some
which provide
be viewed.
07:3
N
1-31 7iF. ’ 130
-w0L :h.JF
795.8 1101’:
C(37-
,LLC
S
_L XELIL
rCIT"?
I._x..

entitled to exercise any jurisdiction over the territory. All . along, South Africa's objections were contested and disputed - and, indeed, rejected in countless resolutions of the General Assembly and of the Security Council. Yet, in the 20 years involved, South Africa succeeded in raising doubts as to the validity of the U.N's. assertions; and the point is that these were sufficient to prevent that body from acting in any serious . manner to inhibit the way in which the territory was :dninstsre , In other :ordsrthe enph sis was on the_legality .nd the propriety of U.E. cgncern with SQch Test Africa.It is true th.t none of the organs of the U.E.ever aecepted that there was.-ny esis for S.A.s allegations. They continued to pass resolutions deploring and condeming South Africais conduct in, ang_in relatihn, to South West Africa. Yet nothing happened which in any zag'leise nod, or looked like lessening, South Africafs grip on a terrin tory which it came increasingly to regard as its possession. The reasons for this state of inaction are complex, but t can be reduced to two principal (and related) factors. In the first place, most of the U,N. resolutions were passed by the General gssembly _ and that body has no power, in law or in fact, to do anything but make recommendations, Effective power in the U93. lies with the Security Council: it alone is given the right by the Chlrter to take decisive action. From the point of view of the opposition to the South African Government - in South Africa, in South West Africa, and abroad - the focus thus became that of achieving a situation Where the Security Council'ionld be prepared to act. And that, in effect, turned on the willing- ness of the major powers to consent to any action, VSinee several of those Qowers - principally Britain and the U.S,A. - were notably reluctant to assent to resolutions within the General Assembly, let alone by the Security Council, a means was sought of placing them in a position where they would have no alterlae tive but to support action against South Africao The means chosen was a resert to the International Court of Justice - an organ of the U.Ne - for a judgement wbieh'mould have to be enforced by the Security Council.

hey

Thus the emphasis Jhich had always been placed by South Africa on legality and propriety was also turned by its opponents into a means of attacking itI And, as a result, for a considera- ble time, the energy of those nations which sought to detach South West Africa from South Africa's control was directed at the International Courtn

In all, South Africa was brought before the International Court on no less than four occasions, in an effort to decide various asgects of the way in which it could be made to account for its administration of South West Africa. Fundamentally, all 0; the cases were concerned with the legal basis on which the territory came to be administered by S.Aa in the first place, namely? through the granting of a Mandate to her by the League of $.310ns in 1920" Until 1914 S.W;A. had been a German colony; it W03 inquered by S. A. during the 1914-18 war. From 1920 onwards until the demise of the League in 1945 South Africa acted as 1:lv-lldatory power under the supervision of the League Council, From 1946, South Africa contested the validity and the continued existence of the Mandate, on the arounds that it had lapse when the League ce - to GXlStq It was in the light of the S.Ac Governmentgs reps contention that this was the case (and that, as a result, in policies and greetices could not be questioned by the U.N.) 'hst the South nest Africa issue was first brought to the Intern tienal Court in 1950.

(
b
.J
O
9.1 F!
F
Cl C)
Q)
ct
_) Cr b) 0

As a result of a General Assembly resolution, the International Court was asked for an Advisory Oginion on iour questions the status of South West Africa; whether South Africa continued to have obligations in terms of the 1920 Mandate; whether S.W,A. could be brought under the terms of the U.N. Trusteeship system;-
"2.

and Whether S.A. could modiiy the international stature of the territory unilaterally. Brieily, the Court held as 101101. e: ’that S;W,A. was still a Mandated Territory-in terms of the 1920 Mandate, and that South Africa s obligations as a Mandatory still existed; that the Trusteeship system could be applied to S.M.A., but that S.A. was not obliged to pltce it under that system; and that the status of the territory could only be modified by S.A. with the consent of the U.N. Later - in 1955 and 1956 - the Court was ejeLn called on to provide Advisory Oginions on questions of grocedu1re relatin; to S. A. account bility for its conduct; and on both occasions, the court held against S.A.

But these’;iere only "adviser; opinions.T South Africa was not obliged to accept the Court’s rulings on any of these matters - and she didnnot in fact observe the obligations Thich were held to eX’st under the Mandate. The S. A. Government still contended that the mandate had ceased to eX st. The res It was, therefore, a .stalemate -w1th the U. N. possessing some legal backing ior its moral authority, but V1t out any me ns of com elling South Afr103’sa dherence to its rew5olut11ns, or to the deci sions of the Court.

In 1959, however, a decision was taken to bring South A1rica before the Court on an entirely dM 1 rent basis. This time, at the instance of the independent A1rican States, it VJDS decided to bring South Africa before the Court for a compulsory judgement - one Which could be enforced by the Security Council. And the basis of the action was far less technical. Ethiopia and Liberia - which were selected to bring the action because they were the only two African States which heel been members "of the League - efiectively alleged a variet; of news in which the application of apartheid, and other measureswa South Africa, were in breach of the Mandate. The; relied, in particular, on the eLssertien 1n the Cove nant 01 the League thats

HThere Fshould be agglied the inCiolc
that the nell-being and deve loyment 01
(the) ;Meosl?, s 01 (the Mandat ed Lerritories)
form a sacred trust of Civilisation"

and the article of the mandate Agreement with South Africa which required that

nThe Mend tory shall promote to the utmo ost
he nae erial and moral well -be i ng And the
social 5rogress of the 1nhcb1""qts of
he te1 ritorJ . . . . "

The action was orou th in 1960: but it was six years before the Internation.31 Court of Justice gave its’de cision’ 011 the merits of the case. In July, 1966, it decide d - by the casting Jote of the President of the Court (Sir Percy See nder of Aus tralia) - that it was not necessary to go into the 111e31tions concer- ning 1parthe1d. It did so, because it ruled thjt it had first to decide on the question of Liberia s :JnG bthiopi T A - 1.e. their right to &dV:T nce any arguments. In e: decided that they had no such standing, and hence never dealt with the substantive accusations made :5;in South Africa.

It is not possible to eX1m1ne in detail the consideratiois w:Lich led the court to this e11n10rd1nan’ concllsicn - on caused a bitter reaction at the J.M; b7 the A1ric.- and many others which had awaited 3 eefinitive stltencnt o S.Agsa and the U.N’s. egal position. There ?ie, nolev 1, a number of matters WMLCh are worth elaboratin;,10r they bear some relation to the general disillusionment :3 ith the Court

27
9
f
_5_

O
and with the UhN. is the ajpropriate forums_jor future aeticz
arainst South Africa over South Best Africa. In the iirst place,
there is the fact that the court was acutely divided; and the
fact that one of the Judges ? Sir Zafrullah Khan of Pakistgn -
had been disqualified by the Eresident, and another - Judge
Badawi of Egypt - had died while the case was being hear&,,ane
was thus unable to participate in the decision.
seen not only as definite evasion o: the principal issue fore
the court, but also as an extraordinary one in the light of the
courtvs decision at an earlier stage of the ase. At the very
be9inning oi the case, South .frica had raised a number of
jreliminary objections to the arguments presentee by tthiopia
and Liberia. Phese were .rincipally concerned with the
jurisdiction of the court _ i.e. whether it was entitle to
consider the tase at all. And, among South Africa’s contentions
was the argument that neither of the two African Governments was
qualified to bring the actign, since they had no naterial or
other legal interest which entitled then to_do this. The Court
lad first to decide nn these objections, before it cOali go on
to the substantive allegations.that had been made. It gave its
decisions on these "preliminary objections" in 1962 - findinv
Secondly there was the judgement i self. fhis must be
13 O
.IJ V
b?
by a majority of 8-7 that it did have jurisdiction, t_at
Ethiopia and Liberia were entitled to bring the case and ha
L; .L’
it could therefore proceed to eX nine the merits of the issue.
This it then did. From 1965 until nearly the end of 965,
the Court mas gresented with a vast quantity of locumehtery
and oral evidence and argument on the merits - dmountin; in all
’to 15 printed volumes of argument, evidence and rebuttal, and
some 10,000 pubes of recorded testimony and argument. Lt no
stage during the period 1963-65 has the question of the applica-
htsg "stadingf2 raised again and either party addressed itself
to the matter - of their own accord, or at the request C the
court - $uring their fina sge ones in October 1965. rhw
in otl 1
I
e
her words, was concerhel only with issues oi suhetw
. _ t, in July 1966, the judgement reverted to the question
of the aptlicantsv nstanding". It did so eecause a majority
of the Judges held that this involved an 27cntecedeht" question
that had t " its could
(1,. r:
0 he settled before the arguments on the mer’
gel. Ah: decision was notable on two counts; iirstlv
Lor the fine - :lmost ingenious - distinction it maintained
between t1. xpreliminary question" it decided one Jay in 1962,
and the l: ecedent" one it new judged in the opposite direction.
And, secon , hecazse it mas made by only seven of the court’s
judges. e Juges were Spender (Australia), Pittmaurice (UK),
Uiniarsk’ (Poland), Eros (France), van Jyk S.Afriea), Morelli
(Italy) and dpiropolous (Greece); against them were the othur
seven: Jessup (US’), Koretsky (USSR), Tinaka (Jagen)
Wellington Koo (Tm 7am), Mbanefo (Eigeria), Forster (Benegzl)
and Padilla Servo (Mexico). ’ - ’ i V
1-4 ct
1
K1
a desgread disillusionment which was iclt as a result
u tis hon-decision was made more ,oighant by the fact
e is no way in which to appeal from it. In theory,
11 possible to attempt anoth r action a ainst South
Africa - but in practice it will not be considered9 and it
would be virtually imgossible to get South Africa to aggeer
before the Court again. In any event, the Afritgn states in
general (and the agplicants in particular) hare made it clear

they would not consider litig;tion again dusoite the facc
’ comgosition of the Court has hecn’a tered.
CI
:3"
C3
Ci
Cl:
5
O C
_4_

2 of Aisvutation 3L Lhc
L 1 1 Lhe case for acLion 1
0 ho stronger CU Lie end 01 the grocegs thx
L ginning. A certain amount of UeLailed 1nve1:’
resulted 130m the hearing of Lhe case, 3nd $1e3e 13 no doubL
LhaL - until Lhe resulL ras handed d01n - it caused considerlble
an3zieLj ?mong those sLaLes which had noL e x; 1
erL uuous acLion againsL S. A. BUL l;he poliw’ 1 31 ’ "ens of
the U. N. h1d, over Lhe years , L1ovide A bO’ . ’ 11" "
publiciLy; vhaL was 3L111mb ehL vac 1; .
rec.alc1L13nL (or indec111vL)uL11LTs 01 the ’ 7 ;?A A moulu
c-wuse them Lo t3ke acLion.
groduce far reaching L311L3,
The Aec ’Eiion of Lhe court L 1
31311 of L113 (1:311e1T31 sseab15,
nevethcless. AL the 1956: 1
1L was 1orm311y resolved Lhw jou.Lh A1r101 Should he sgr1gped
01 her Aaa11Lc oer ’he LsrriL -orm) ,aqd h3L We:,o131L1 1’L Ly for
adminisLerinL Lhe Le1T r11Lory NkOUlU resL niLh a Council L0 be
aggointed by Lhe U.N., :13h Lhe 111L113 o1 Lhe Le1riLory L0
be run by 01110L:L UL915111,U U71Lh13 auLhoriLy. oubLLernL
action has eon1i1mcd Lheee AL0131UUS, and the relevahb resolu-
tions hove been passed.
BuL Lhere s 3L111 doubt :3 L
a
, 1he 19531 1W 11U1Ly o:E Lhe
U.N’e. decision - Lhough Lhe W31 0
3
O ’ J
1Le UHUU L1e oLhTrs mhich
1 -3L10n L UaJ 13 1hLLhL
this resolution 13 of -Tnyo sacs: 1a A _
preceded 1L. IL U111 1Lm31n 1s a Loken of LhL 3:11Lude Lhe
U.1L aAogLs - on b51311 o1 Lhe overwhelminng ijor1Ly 01 1L3
nemM 3:1 _ 1n condemnihw Lhe 13nALr 1h Uhich SouLh A1r103
L
L. . ’ .L. 1
adM1a1eLL11 South Nest A1r1T3. 33L Aoes 1L - mnc 1L 03 made
Lo - mean anych1n; wore?
lea H1 Mr. VorsterAs 10v;rh13
Q,N. his given no more indica Lion 31 e 1966 than it AiU 0:10re
Lha: A;Ue of any serious 1nLenL10n to P in 3 manner " 0h
U111 p AveuL Uoubh Erica 733 110m 3AA1h3Lerih3 F.ki.A. accor-
ding LUviLs Uh Ue 311h (A’;h iQClUdGS Lhe creabion 01 13
seoarT’L - RT eLhU.1c uole hd , e. DAlUUSUanS :nd the VirLu 1
131011013L1oa o1 S.W.A.11 ’in ’L3 Own 300201310; poliLieily
m111L:ry 1hA gLogoliLiL e ork). L 3311;, it 15 Clear
LhAL 101 311 Lheir hoge A VUULLLinT mighL yeL 0030 of
1nLerhaL10h31 QeLion on L A. Latourn Lhe U.I., Lhe 11b313L10n
movements of S.U.A. hav: QeciAeA Lh3L Wh 11:1me he 3 crrived
for them Lo rely :L leeSL :3 1UCh on interha 1L3orL Lo 3133
(With internabional 3Up_o1L as on re3013L10n3 LhaL r3151- no
more Lhah 3L3Lenents Of 1hLenL.
11L Llies Lhe V11: Lh:.L the
10
u ’v
The resulL 13 LhJL, :3 elsewhere in 1031he01 1
future JELLLfn of violent conflieL has hes; 0UL11-
eXLehL Lo ghich it 0.3 or Should 5e rethLed 110
course, or Jre-AmULLd 63 some ne1:1LLrh111JL UUSU T
lecsb in p.: rL, on LhL chenL Lo vuiich 1acTr3bt10331 113
c n be made US 13Leh Lhc 3 oaLan 01 U. 1. re oolutians.
?i’