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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 administered. In other words the emphasis was on the legality and the propriety of U.E. concern with South West Africa. It is true that none of the organs of the U.E. ever accepted that there was any basis for S.A.'s allegations. They continued to pass resolutions deploring and condemning South Africa's conduct in, and in relation to, South West Africa. Yet nothing happened which in any way lessened, or looked like lessening, South Africa's grip on a territory which it came increasingly to regard as its possession. The reasons for this state of inaction are complex, but they can be reduced to two principal (and related) factors. In the first place, most of the U.N. resolutions were passed by the General Assembly - and that body has no power, in law or in fact, to do anything but make recommendations. Effective power in the U.N. lies with the Security Council: it alone is given the right by the Charter 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 would be prepared to act. And that, in effect, turned on the willingness of the major powers to consent to any action. Since several of those powers - 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 alternative but to support action against South Africa. The means chosen was a resort to the International Court of Justice - an organ of the U.N. - for a judgement which would have to be enforced by the Security Council.

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

In all, South Africa was brought before the International Court on no less than four occasions, in an effort to decide various aspects of the way in which it could be made to account for its administration of South West Africa. Fundamentally, all of the cases were concerned with the legal basis on which the territory came to be administered by S.A. in the first place, namely? through the granting of a Mandate to her by the League of Nations in 1920. Until 1914 S.W.A. had been a German colony; it was conquered by S. A. during the 1914-18 war. From 1920 onwards until the demise of the League in 1945 South Africa acted as the mandatory power under the supervision of the League Council. From 1946, South Africa contested the validity and the continued existence of the Mandate, on the grounds that it had lapsed when the League ceased to exist. It was in the light of the S.A. Government's persistent contention that this was the case (and that, as a result, in policies and practices could not be questioned by the U.N.) that the South West Africa issue was first brought to the International Court in 1950.

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As a result of a General Assembly resolution, the International Court was asked for an Advisory Opinion on four 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;-
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and Whether S.A. could modify the international stature of the territory unilaterally. Briefly, the Court held as follows: '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 place 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 again called on to provide Advisory Opinions on questions of procedure relating to S. A. accountability for its conduct; and on both occasions, the court held against S.A.

But these were only "adviser" opinions. South Africa was not obliged to accept the Court's rulings on any of these matters - and she did not in fact observe the obligations which were held to exist under the Mandate. The S. A. Government still contended that the mandate had ceased to exist. The result was, therefore, a stalemate - with the U. N. possessing some legal backing for its moral authority, but without any means of compelling South Africa's adherence to its resolutions, or to the decisions of the Court.

In 1959, however, a decision was taken to bring South Africa before the Court on an entirely different basis. This time, at the instance of the independent African States, it was 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 had been members "of the League - effectively alleged a variety of news in which the application of apartheid, and other measures against South Africa, were in breach of the Mandate. They relied, in particular, on the assertion in the Covenant of the League that

There should be applied the principle

that the well-being and development of

(the) peoples of the Mandated Territories)

form a sacred trust of civilisation"

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

The Mandatory shall promote to the utmost

the material and moral well-being and the

social progress of the inhabitants of

the territory "

The action was brought in 1960: but it was six years before the International Court of Justice gave its decision. On all the merits of the case. In July, 1966, it decided - by the casting vote of the President of the Court (Sir Percy Spender of Australia) - that it was not necessary to go into the allegations concerning apartheid. It did so, because it ruled that it had first to decide on the question of Liberia's jurisdiction against South Africa

- i.e. their right to advance any arguments. In effect

decided that they had no such standing, and hence

never dealt with the substantive accusations made against

South Africa.

It is not possible to explain in detail the considerations

which led the court to this final order of conclusion - on

caused a bitter reaction at the time by the African -

and many others which had awaited a definitive statement of

S. A. and the U.N.'s legal position. There is, however, a

number of matters which are worth elaborating, for they bear

some relation to the general disillusionment with the Court

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and with the UN. is the appropriate forum for future action against South Africa over South West Africa. In the first place, there is the fact that the court was acutely divided; and the fact that one of the Judges - Sir Zafrullah Khan of Pakistan - had been disqualified by the President, and another - Judge Badawi of Egypt - had died while the case was being heard, and was thus unable to participate in the decision.

seen not only as definite evasion of the principal issue before the court, but also as an extraordinary one in the light of the court's decision at an earlier stage of the case. At the very beginning of the case, South Africa had raised a number of preliminary objections to the arguments presented by Ethiopia and Liberia. These were principally concerned with the jurisdiction of the court - i.e. whether it was entitled to consider the case at all. And, among South Africa's contentions was the argument that neither of the two African Governments was qualified to bring the action, since they had no material or other legal interest which entitled them to do this. The Court had first to decide on these objections, before it could go on to the substantive allegations that had been made. It gave its decisions on these "preliminary objections" in 1962 - finding Secondly there was the judgement itself. This must be

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by a majority of 8-7 that it did have jurisdiction, that Ethiopia and Liberia were entitled to bring the case and had a legal interest.

it could therefore proceed to examine the merits of the issue. This it then did. From 1965 until nearly the end of 1965, the Court was presented with a vast quantity of documentary and oral evidence and argument on the merits - amounting in all to 15 printed volumes of argument, evidence and rebuttal, and some 10,000 pages of recorded testimony and argument. At no stage during the period 1963-65 was the question of the applicability of the "standing" raised again and either party addressed itself to the matter - of their own accord, or at the request of the court - during their final sittings in October 1965. However

in October 1965

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her words, was concerned only with issues of substance. - In July 1966, the judgement reverted to the question of the applicants' standing. It did so because a majority of the Judges held that this involved an "important question" that had to be decided.

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0 he settled before the arguments on the merits. The decision was notable on two counts; firstly for the fine - almost ingenious - distinction it maintained between the "preliminary question" it decided one way in 1962, and the "precedent" one it now judged in the opposite direction. And, secondly, because it was made by only seven of the court's judges. The Judges were Spender (Australia), Pictance (UK), Utiarski (Poland), Eros (France), van der Grinten (South Africa), Morelli (Italy) and Driopoulos (Greece); against them were the other seven: Jessup (US), Koretsky (USSR), Tinaka (Japan), Wellington Koo (Taiwan), Mbembe (Nigeria), Forster (Benegal) and Padilla Servo (Mexico). - - - I V

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a widespread disillusionment which was itself as a result of the non-decision was made more poignant by the fact that there is no way in which to appeal from it. In theory, it is possible to attempt another action against South Africa - but in practice it will not be considered and it would be virtually impossible to get South Africa to appear before the Court again. In any event, the African states in general (and the applicants in particular) have made it clear

they would not consider litigation again despite the fact
' composition of the Court has been altered.

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