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SOUTH-WEST AFRICA - THE ACHILLES HEEL OF THE REPUBLIC

THE failure or inability of the South African Government to enlist sympathy and wide diplomatic support in its difficulties, is leading to the international isolation of this country. This has been made quite clear by recent events. And since South Africa is under attack at the United Nations and its policies the subject of three separate disputes, this growing isolation is likely to prove of the utmost consequence for the future of the Republic. These disputes concern the status of the former mandated territory of South-West Africa, the treatment of Indian subjects of Indian origin, and the general question of racial discrimination as practised in the Union.

In the most recent publication produced by the South African Institute of Race Relations, "South-West Africa - The Case Against the Union" written by Mr. R.B. Ballinger, Senior Lecturer in the Department of History at the University of the Witwatersrand - it is shown that the Mandate over South-West Africa was vested in the Union and not in the British Crown, and that even if South Africa ceased to be a member of the British Commonwealth of Nations she did not change her identity: "her international duties and obligations remain and the treaties to which she is a party will continue". For this has happened in the cases of India which remained within the Commonwealth and with Burma which became a republic outside the Commonwealth, Mr. Ballinger points out.

He shows that if the International Court of the United Nations now considering the South-West Africa question, follows its Advisory Opinion of 1950 and rules that all the obligations of the Mandatory Power under the League of Nations continue to be binding, that supervisory functions are to be exercised by the United Nations, and further that violations of the Mandate have occurred, then the continued disregard of the judgement by the South African Government could lead in the last resort to the legal revocation and transfer of the Mandate.

Presumably the South African Government will dispute the competence of the International Court and claim the case is non-justiciable, maintaining as it has done in the past that the Mandate lapsed with the dissolution of the League of Nations in 1946, and that being so there can be neither the international obligations alleged, nor yet compulsory international jurisdiction concerning it. The Union Government set out the legal basis of its general



position on these questions in a written statement presented to the International Court in 1950.

But the legal issues argued on that occasion have since given rise to much intricate argument in the light of which South Africa's case may have undergone detailed elaboration. The essentials however remain, and whether the representatives of the Union before the Court will succeed in changing the substance of the Advisory Opinion remains to be seen.

"One thing is clear," sums up Mr. Ballinger. "Once the competence of the Court is established, and a dispute within the meaning of the relevant terms is shown to exist, then the other charges brought by the Governments of Ethiopia and Liberia could provide a basis for examination of the administration and government of South-West Africa far wider in scope and more far-reaching in its implications than anything yet undertaken at United Nations.

It is well known that the Trusteeship Council was highly critical in its observations of the administration of the territory; nowhere was this attitude more succinctly expressed than in the paragraph of its report which stated:

"The Council is opposed as a matter of principle, to racial segregation. The Council while lacking precise information as to the reasons for the whole segregation policy of the Territory, considers that great efforts should be made to eliminate, through education and other positive measures, whatever reasons may exist that explain segregation."

Although the writer points out that the dispute over South-West is at root a political one not a legal one, nevertheless, he adds, "involving legal issues as it does their import is none the less clear". If in the course of time the United Nations initiates some form of disciplinary action against the Union - for example economic sanctions - the legal justification would undoubtedly be South Africa's disregard of her international obligations in respect of South-West Africa.

"There can be no escape now from the reality of the situation - not even by a withdrawal from the United Nations. For such a withdrawal could not prevent the United Nations from taking positive action in respect of South-West Africa if it so determined, but it would deny South Africa any protection which membership of a world organisation affords against unilateral acts of aggression. And it is in respect particularly of South-West Africa that South Africa is immediately vulnerable."

The question now before the people of South Africa is what steps the Government is prepared to take - if it is not too late already - to avoid complete isolation in the field of international relations.

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