

THE UNION OF SOUTH AFRICA AND SOUTH-WEST AFRICA

In order to get the present dispute regarding S.W.A. into perspective, it is necessary to go back to World War I, which was fought under two slogans: "the war to end war" and "no annexations and no indemnities".

The war over, an attempt was made to turn these slogans into fact. The League of Nations was designed to settle international disputes without recourse to war; instead of the victor annexing the enemy's colonial territories, mandates were established. The territories were not to be the spoils of the victor, they were to be held in trust. General Smuts expressed the idea behind the new system of mandates in his "League of Nations, a Practical System", published in 1918 - "the mandatory state should look upon its position as a great trust and honour, not as an office of profit or a position of private advantage for it or its nationals". Geographical, political, historical, security and economic circumstances, however, differ as between one territory and another so that no form of mandate was suitable for universal application. It was found necessary to devise three forms called respectively A, B, and C. Roughly, these provided for, in the case of A, a short term as care-taker; in the case of B, a relatively long period of administration, having in view the advancement of the native population to the point of self-government; and, C, administration under mandate in perpetuity. Palestine was a case of A with Britain in the role of unhappy care-taker; Tanganyika an example of B; while S.W.A. is a C mandate.

The reason for S.W.A. being a C rather than a B mandate is to be found in the fact that S.W.A. lies for a considerable distance along the border of the Union, is economically and administratively closely associated with the Union and had twice, within this century, been a serious threat to the Union's security. Article 2 of the S.W.A. mandate reads - "the Mandatory shall have full power of administration and legislation over the territory subject to the present mandate as an integral portion of his territory. The Mandatory shall promote to the utmost the material and moral well-being and the social progress of the inhabitants of the territory subject to the present mandate."

Other/

Other articles of the mandate require that the slave trade be prohibited, no forced labour permitted, except for essential public works, traffic in arms and ammunition be controlled, the supply of intoxicating spirits and beverages to the Natives to be prohibited, and the military training of Natives, otherwise than for purposes of internal police or local defence, prohibited. The Union undertook to make annual reports regarding the territory to the Council of the League of Nations. Any modifications of the terms of the mandate had to receive the consent of the Council of the League. Any dispute, as between the Union and another member of the League regarding the interpretation or the application of the provisions of the mandate should be submitted to the Permanent Court of International Justice.

During the life-time of the League of Nations all went more or less well. The Union administered the territory as an integral portion of its own territory, as it was required to do. It appointed an Administrator in the same way that it appoints Administrators for the four Provinces of the Union. It set up a Legislative Council with powers and responsibilities comparable with the Provincial Councils of the four Union Provinces. It submitted annually reports on the administration of the territory to the Mandates Commission of the League. Sometimes the reports gave rise to criticisms on the part of the Mandates Commission concerning more particularly the Union's obligation to promote "to the utmost the material and moral well-being and the social progress of the inhabitants". But at no time was there any dispute regarding the administration of the territory serious enough for the Permanent Court of International Justice to be invoked. Had the League of Nations continued to exist, had there been no World War II with the United Nations established there-after, things no doubt would have jogged along reasonably well.

There were, of course, certain legal difficulties. When it comes to it, just what is the difference between administering and legislating over a territory as an integral portion of your own country and annexing it out-right? Questions of sovereignty and nationality arise. General Smuts, who was one of the architects of the mandate system addressed an audience of German inhabitants/

inhabitants of the territory in September, 1920, and said "in effect the relations between the South-West Protectorate and the Union amount to annexation in all but name", and went on to urge the members of his German audience to become Union nationals. The question of sovereignty came before the Union Appellate Division of the Supreme Court in the case of Rex vs. Christian in 1924 when the five judges were divided. Three, Chief Justice Rose Innes and Judges Solomon and Kotze held that sovereignty lay in the League of Nations, while Judges de Villiers and Wessels held that the League was not a state capable of possessing sovereignty, while the Union possessing full powers of administration and legislation had to be regarded as sovereign. These legal questions might have continued to concern the minds of jurists and eventually have found their way to the Court of International Justice, but in 1946 the League of Nations died and in dying left no legal heir.

When in 1945 the United Nations was established as a spiritual but not a legal successor of the League, a system comparable with the mandate system was set up. Member nations that had held mandates under the League of Nations were asked to transfer them voluntarily to the care of the Trusteeship Council of U.N.; that Council to function along lines similar to those of the former Mandates Commission.

The Dispute.

At the Assembly of U.N. in 1946 General Smuts asked the approval of United Nations to South-West Africa being formally annexed by the Union. The territory had been administered and legislated for by the Union as an integral part of its own territory since 1919. In General Smuts' view, as expressed in 1920, it had been annexed "in all but name". As the League of Nations, to which the Union had obligations under the mandate was dead, it seemed natural to General Smuts that the relations between S.W.A. and the Union should now be formally regularized by annexation.

But the Assembly of the United Nations said "no". World War II had set great forces in motion throughout the world. As General Smuts said - "mankind is on the march". At the United Nations Assembly every member/

member nation is equally represented, the smallest with the greatest, the coloured with the white. The majority of those present are not white, and in the minds of the non-white people the position of the Non-European had become a matter of uppermost concern. Not the personal prestige of General Smuts, not the long years of administration of the territory, not economic nor security matters were uppermost in the minds of those at the Assembly. Their thoughts rested on the 300,000 non-white inhabitants of S.W.A. There were, of course, other thoughts in the minds of those assembled. The U.N. is a focal place of power politics. It can be used for propaganda. It is a centre of intrigue. For whatever reasons, there are bound to have been many, the assembly said "no" to General Smuts' request for approval of the annexation of S.W.A. by the Union of South Africa.

The Union was forced to consider its legal position. The Assembly asked that the Union submit the terms of a trusteeship under the Trusteeship Council of United Nations. To this the Union, at the 1947 meeting of the Assembly when it was represented by Mr. Harry Lawrence, then Minister of the Interior, said "no". The Charter of United Nations laid no obligation upon member nations to transfer territories previously mandated to them by the League to the Trusteeship Council. South-West Africa had been entrusted to the Union by the League. The League was dead. The Union would continue to administer the territory in the spirit of the old mandate and, as a voluntary concession to the position of U.N. as the spiritual heir of the League, would submit annual reports similar to those that it had previously submitted to the Mandates Commission. That is to say, the Union was prepared to go on exactly as before. It would not surrender the territory, it would not press for annexation.

But in May 1948 a minority of the Union's electors secured a small majority of representatives in the Union Parliament. Dr. Malan replaced General Smuts as Prime Minister. The new government had, among its members, no world statesmen. Its members and its supporters are more isolationist than the most incorrigible of America's Middle Westerners. They had been deeply angered by the criticisms of South Africa voiced at U.N. in the course of the debates/

debates on S.W.A. and on the complaint made by the Government of India regarding the status of Indians in South Africa. So, in 1949 the Union of South Africa was represented at U.N. by Mr. Eric Louw, Minister for Economic Affairs who took an uncompromising, even a truculent line: the Union Government did not recognise the authority of U.N., it would continue to administer S.W.A., it would submit no reports. That lead U.N. to refer the dispute to the International Court of Justice for an advisory opinion on the status of the territory and the obligations of the Union. The South African Government argued its case before the International Court but Dr. Malan, the Union's Prime Minister announced publicly before the Court gave its opinion that he would not be bound by it whatever it might be. The advisory opinion of the International Court of Justice, when given, showed that the Court had reached four main conclusions:-

(1) that the Charter of the United Nations imposed no obligation on the Union Government to place the territory under trusteeship,

(2) the territory is still under Mandate,

(3) that the Union is still bound by the obligations imposed by the Mandate, in particular to submit reports on its administration of the territory,

(4) that the Union cannot modify the status of S.W.A. without the consent of United Nations.

In effect, had there been no change in the Government of S.A. in May, 1948, the Court's opinion would have been largely in line with the policy of the Union Government.

The conflict which now exists as between the Union Government and the advisory opinion of the International Court centres almost entirely around the submission of reports. In 1947 General Smuts had promised to submit reports. In 1949 Dr. Malan refused to submit further reports. To report or not to report to U.N. on the administration of the territory was made a major issue in the S.W.A. elections held on August 30th and resulted/

this year

resulted in a complete victory for Dr. Malan.

The Territory.

The territory which is the subject of this dispute stretches from the Western boundaries of the Union and the Bechuanaland Protectorate to the Atlantic Ocean, to the North it joins the Portuguese territory of Angola. It is large, about the size of France. Much of the territory is sheer desert; large areas are that kind of desert which will blossom like the rose on the rare occasions when it rains. The long Atlantic coastline provides no natural harbours: ports have been laboriously created at Luderitz, Walvis Bay, and Swakopmund. Alluvial diamonds have been found in the desert and coastal sands around Luderitz; they are now carefully guarded, lest they break a precarious market. Surprisingly, sheep roam the less arid desert areas, finding sustenance in the few plants that survive and yielding Karakul (Persian lambskin), the territory's principal product. In the North are wide fertile uplands that permit of dairy farming. Roads are few and sometimes unuseable for motor transport because of sand drifts; the South African railways connects up the few small towns. The traveller looking out from the window of a meandering train over a country seen dimly through the whirling sand that penetrates the carriage and invades eyes, ears, hair, food and bed-clothing, wonders why anyone should be interested in the country one way or another; it is so evidently a good country to get out of and to stay away from.

The People.

This large, and, as to much of it, uninviting country has a population of about 340,000; 38,000 whites (in 1937 report to the Mandates Commission of the League of Nations, the European population was divided - 18,128 Afrikaans-speaking, 2,395 English-speaking, 9,632 German-speaking), and 303,000 non-whites.

In the northern fertile highlands live the Ovambos, probably the country's oldest inhabitants. In the arid, and partly sheer desert, coastal and southern areas roam the Hereros, the Hottentots, and the Berg Damaras. Some time during the last century the Hereros, a virile and war-like people, came into this territory from the north-east bringing with them large herds of cattle. They made war upon and subjugated the Berg Damaras./

Berg Damaras. Inter-tribal fighting and cattle raiding continued more particularly between Hereros and Hottentots until 1893 when assaults on the Native tribes by German troops united them in the face of the new common enemy. The Herero War of 1903/1907 cost the German Treasury £30,000,000 and the German army 2,000 lives. Before it was over the tribes were scattered, their lands and cattle confiscated, their numbers greatly reduced. The estimated population in 1904, compared with the 1911 census tells its own story:

	<u>1904</u> (Est.)	<u>1911</u> (Census)
Herero	80,000	15,130
Hottentot	20,000	9,781
Berg Damaras	<u>30,000</u>	<u>12,831</u>
	130,000	37,742

When the Union of South Africa assumed the Mandate in 1919 it assumed the responsibility for a people who had suffered much at the hands of white rulers. The Mandates Commission in its comment on the Union's report on the Bondelswart Rising of 1922 expressed appreciation of the fact that the Union "had succeeded to the inheritance of hatred and fear caused by the German suppression of native tribes".

Administration Under Mandate.

It is not the purpose of this article to assess the merits or demerits of the Union's administration during the 31 years that it has been responsible for S.W.A. Before any reasonable judgment can be made many factors have to be considered: the legacy left by the Germans of hostility in the minds of the African inhabitants; the considerable number of German inhabitants remaining in the territory who, in the years between the wars, became deeply affected by subversive Nazi propaganda and activity; the traditional paternalism of the Afrikaner, many of whom migrated into the mandated territory from the Union; the pre-occupation of the Union with its own immense problems in governing a complex multi-racial society; the limited resources of the Union from which to supply the new territory with police, civil servants, native administrators, and other governmental personnel; human cussedness and frailty; /

frailty; and, cost. The mandated territory brought no profit to the Union. In recent years the boom in karakuls has made the territory self-supporting. Sir Charles Dundas writing in 1946 stated that at that time the territory was in debt to the Union Government £2,570,000 and to the South African Railways and Harbours £63,758 for capital works and that the railway system had to that date shown a loss of £6,000,000.

It can at least be said that the country has settled down. There have been incidents such as the Bondelswart Rising in 1922 which was followed by public enquiry. Population has risen markedly. In the first eighteen years of the Union's administration, between 1919 and 1938, the Native and Coloured population increased by 36%. The Hereros, who numbered 15,000 in 1911, were 33,000 in 1944. The total police force for a country the size of France is 254 white and 169 non-white. Ovambos still living according to traditional tribal custom are administered by indirect rule such as obtains in the British colonies and protectorates. Negley Farson in his book "Behind God's Back" said - "The Ovambos were the happiest people I found anywhere in Africa".

The Union instituted the system of Native reserves in the territory, following the pattern within the Union itself. The Union's report to the Mandates Commission in 1937 shews 17½ million hectares* Native reserves and areas set aside for the extension of reserves. The case for and against this system can be hotly debated. It sets aside, for the exclusive use of tribal natives, areas of land, of which they cannot be deprived by purchase on the part of Europeans. It gives Native people the security of land and saves them from becoming a landless and propertyless proletariat. On the other hand, even if the lands provided are fully adequate when the areas are set aside, peaceful life within the boundaries, free from tribal wars and cattle raids, results over the years in the area becoming overpopulated in respect of both people and cattle. Unless vigorous (and expensive) action is taken to educate the Natives in the use and conservation of soil, the conservation of rainfall and the selection of cattle, reserves (as has happened extensively in the Union) cease/

* Hectare = 2½ acres approx.

cease to be able to maintain their population. The reserve system is also associated with a segregation policy and, therefore, invites criticism based on objection in principle to racial separation.

Very much has still to be done before South Africa could rightly claim that in accordance with the terms of its mandate it had "promoted to the utmost the material and moral well-being and the social progress of the inhabitants of the territory." An advance has been made in education; the number of non-European pupils in school in the area outside Ovambo-land rising from 5,821 in 1940, to 6,431 in 1944; expenditure on education in the same area rising from £22,000 in 1940 to £36,467 in 1944, to £55,760 in 1946. Education, however, still has far to go. The economic position, particularly of those tribes, that a century ago roamed with their herds and fought and raided over virtually limitless lands, is poor. They are dependant on farmers for employment or upon such manual labour as the country needs. Not until nomadic people have learned new agricultural habits, until parched lands can be irrigated, until industries have been developed, which can use rising gradations of skilled labour, is the economic position of the major part of the population likely to improve very much.

The Future.

In the discussion which will arise at the United Nations on the advisory opinion of the International Court of Justice, it is to be hoped that some practical constructive proposals may be made. It is reasonably certain that the future of South-West Africa lies in association with the Union. There is no legal process that could take from the Union the responsibilities placed upon it by the Mandate. Except by war the territory could not be taken away. The general wish of the people within South-West Africa is that administration should continue to be in the hands of the Union. The white electors have twice stated this by resolution of the legislative assembly and re-emphasized their declaration at the Polls on August 30th. The figures given to the United Nations Assembly in 1947 regarding the African inhabitants were:

In favour of incorporation with the					
Union ...	...	...	...	...	193,400
Against incorporation ...	...	...	...	...	31,800
Notasked ...	...	...	...	...	67,000

These figures/

These figures are necessarily open to some question; the consultation of primitive and tribal peoples is a difficult process; but, that a substantial majority would favour remaining with the Union if for no better reason than "the devil you know is better than than the devil you don't know" is reasonably sure.

Apart from complaints and expostulations, the practical possibilities open to the United Nations are very few.

It is contended in some quarters that United Nations should take steps to enforce the finding of the International Court. In effect this means trying to force the Union of South Africa to submit to United Nations reports on its administration of South-West Africa.

be felt to/ However deplorable the Union's present refusal of reports may be, what practical steps could be taken to ensure their submission if the Union continues to refuse? Recourse to war or to trade sanctions are unlikely even if considered desirable. And what would be gained by forcing the submission of reports if no practical steps could be taken to remedy any matters in the reports to which objection might be taken?

Clearly, persuasion is the only available means. The Union might be persuaded, when its present mood became modified, to take the wiser course adopted by General Smuts in 1947 and agree voluntarily to submit reports.

The creation of an atmosphere in which such a course could be taken would itself be desirable. The way would then be open for friendly interchange of views and experiences between different countries of Southern Africa confronted with comparable inter-racial situations. No harm could come and much good might result from increasing consultation on such matters as education, health, and social services, leading up to exchange of experiences regarding policies.

Some of South Africa's critics appear to consider that it would be possible, assuming that the Union of South Africa were divested of South-West Africa, presumably by means of war, to govern the country by some/

by some kind of International Commission set up by the United Nations. A glance at the map and a consideration of the economics of the position would show that no such idea is practicable. Apart from the integration of such services as railways, once the present boom in karakul is over, the territory will be dependant upon outside funds if it is to develop at all. Apart from these considerations there are the practical difficulties of an international body setting up an administrative staff; and, above all at the present time, there is the danger that any International Commission would be regarded by certain powers as an exceptional opportunity to create troubled water in which to fish.

There may be some represented at United Nations who, having no knowledge of multi-racial societies composed of groups at widely differing stages of development, think that the white man should withdraw altogether from South-West Africa leaving the territory to the various African tribes. No-one with any knowledge of this territory or of any other comparable territory would regard such a course as possible even if the means were found to persuade the white inhabitants to abandon their properties and interests.

In the years between the wars a number of British residents in South-West Africa felt themselves to be seriously threatened by the growing number of Afrikaners in the territory and the marching and drilling of the German inhabitants responding to the stimulation of the rising power of nazi-ism in Germany. The feeling of these British inhabitants can be appreciated by reference to the comparative figures of Afrikaans-speaking, English-speaking, and German-speaking residents in 1937 already given in this article. In their anxiety to find an answer to the German-Afrikaner challenge they dreamed of a new Dominion comprising South-West Africa, British Bechuanaland and Southern Rhodesia.

The South African Act of 1910 envisaged the possibility of the then created Union of South Africa including in time the three British protectorates - Bechuanaland, Basutoland, Swaziland, and Southern Rhodesia. By referendum Southern Rhodesia refused to be incorporated in the Union, the main reason being fear of the Afrikaans-speaking section of the Union which, notwithstanding the statesmanship and idealism of Sir Henry Campbell-Bannerman and Generals Botha and Smuts, /

Smuts, had not, as to the majority, become completely reconciled with those of British origin in the Union and integrated with them in the new nation. Britain has so far declined to transfer the Protectorates to the Union mainly because of its disapproval of the Union's racial policies in respect of Non-European sections of the population, policies for which English-speaking and Afrikaans-speaking are alike responsible.

Yet, the idea of closer association between the various territories of Southern Africa where English is spoken still lingers. Whatever differences of outlook and policy there may be in the several countries they have many interests in common. Problems in connection with the education of large numbers of backward peoples; health services in areas affected by tropical diseases; communications; problems arising from the disintegration of tribal society; the problem of housing large numbers of unskilled industrial workers migrating from rural areas to the new towns; the maintenance of tribal society as an instrument of government; all these and many others are matters of common interest and concern. Intercommunication increases. Officials trained in one territory secure employment in another. The thought of some kind of federation grows.

It is possible that, given happier times, the Union of South Africa, South-West Africa, the British protectorates, Bechuanaland, Basutoland, Swaziland, Nyasaland, Southern and Northern Rhodesia, Uganda, Kenya, Tanganyika might be linked in such matters as foreign policy, defence, communications, customs. Each territory would naturally wish to retain its own identity, try out its own policies in the vexing field of race relations. Given time and freedom from wars, a federation might be brought about and there arise a United States of Southern Africa within the membership of the British commonwealth.

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