

(The writer of this letter was one of Counsel for the Applicants during the jurisdictional phase. Accordingly, I have to say that this letter presents my own viewpoint and not necessarily the viewpoint of anyone else.)

LEONARD S. SANDWEISS

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*Rejoinder to Mr. Sandweiss*

Mr. Sandweiss, it would appear, has not closely examined the material which Dugard uncovered and to which I refer in my review. This is to be regretted since the significance of the new evidentiary material becomes apparent only when it is compared to what was actually laid before the 1950 and 1960 Courts on the point in issue—namely the transference of supervisory authority over mandates from the League to the United Nations.

Contrary to Mr. Sandweiss's assertion, the 1950 Advisory Opinion on the International Status of South West Africa in no way found that South Africa had ever conceded an obligation to submit reports on the mandate to the United Nations in lieu of the League. The 1950 Court only found that South Africa's actions confirmed the continued existence of the mandate as an institution; there was no evidence of South African recognition of a transfer of supervisory authority over the mandate from the League to the United Nations.<sup>1</sup>

Only in 1962, in the jurisdictional phase of the *South West Africa* cases did the Court go beyond the 1950 pronouncement and declare that South Africa's statement (delivered to the final session of the League Assembly) constituted "recognition . . . of the continuance of its obligations under the Mandate." The strength of the evidentiary material relied upon by the majority was vigorously challenged by Judges Spender and Fitzmaurice in their joint dissent. It is in this context that the material uncovered by Dugard is so pertinent since he quotes Prime Minister Smuts in 1946 acknowledging before the South African Parliament that reports on the mandate formerly due to the League are henceforth to be submitted to the United Nations (Dugard 102, 114-16). (Indeed he even acknowledges that "the people of the territory can send petitions to UNO.")

This material would have belied the oft-repeated claim of counsel for South Africa that at no time had any South African government acknowledged the right of the United Nations to supervise the South West Africa mandate. At least on this one occasion the Smuts government did acknowledge such supervisory authority. As I stated in my review, this crucial piece of evidence could have strengthened the Applicants' case (on this one point) considerably. Certainly they should not have failed to bring it to the attention of the Court.

SOLOMON SLONIM

<sup>1</sup> See in this regard, SLONIM, *SOUTH WEST AFRICA AND THE UNITED NATIONS* 115-16, n. 22 and 198, n. 45 (1973).