

And

"From the nature and characteristics of the mandates system and the mandate agreement we can conclude that although the existence of contractual elements in the Mandate cannot be denied, the institutional elements predominate over the former. We cannot explain all the contents and functions of the mandates system from the contractual, namely the individualistic and subjective viewpoint, but we are required to consider them from the institutional, namely collectivistic and objective viewpoint also"²⁵

JUDGE PADILLA NERVO

"The functions were of international character and their exercise, therefore, was subjected to the supervision of the Council of the League of Nations and to the obligation to submit annual reports.

Obligations : (a) administration as a "sacred trust"; (b) machinery for implementation, supervision and control as "securities for the performance of this trust". These obligations represent the very essence of the sacred trust."²⁶

Comments

According to Judge van Wyk, the object of the Mandate, as evidenced by the provisions of Article 22 of the Covenant as well as *travaux préparatoires*, was to define the international status of South West Africa, and to create an international regime, "functioning under supervision by the Council of the League." (See Annexure I to this Study) Judge Wellington Koo expressed the view that, even though the Mandates System in many respects resembles the private law concept of guardianship or tutelage, it was much more complex in character than

²⁵ *South West Africa (second phase) Judgment*, 1966, at pp. 267-268.

²⁶ *Ibid.*, at pp. 458-459.

the latter inasmuch as it provided "a set of general and particular obligations for the mandatory to observe and carry out . . . a scheme of multiple control and supervision by the League of Nations with its Council, Assembly, member States and the Permanent Mandates Commission and . . . judicial protection in the last resort by the Permanent Court." Judge Koretsky emphasized the political supervision by the League Council and the judicial supervision by the Permanent Court; that the Mandatory was obliged to make an annual report to the satisfaction of the League Council; and that the Court was authorised "to decide whether the Mandatory's interpretation or application of the provisions of the Mandate were correct."

Judge Tanaka regarded the mandate as "an aggregate of diverse personal elements and a complex of many kinds of interests", and pointed out that, while the beneficiaries viz., the inhabitants of the territory concerned, had "a most vital interest in the performance of the Mandate", both the parties to it, viz., the League and the Mandatory, too had a common interest in its performance. Judge Bustamante, in his separate opinion to the 1962 Judgment, pointed out that the interest of the inhabitants of the territory was to have "one day . . . the capacity to decide for themselves." Judge Padilla Nervo emphasized the obligation of the Mandatory to administer the territory as a sacred trust, and the securities for performance of the trust, which consisted in the machinery for its implementation, supervision and control.

Whereas Judge Bustamante regarded the concept of mandate to be nearer to the private law concept of unilateral contracts "rather than that of synallagmatic contracts", the Court in 1962, as also Judge Wellington Koo and Judge Tanaka in their dissenting opinions to the 1966 Judgment, regarded the mandate to be an international institution. Judge Wellington Koo also expressed the view that it "is a novel international institution. Nothing of the kind had existed before. It is *sui generis*." After analysing the nature and characteristics of the

system, Judge Tanaka arrived at the conclusion "that, although the existence of contractual elements in the Mandate cannot be denied, the institutional elements predominate over the former."

As regards the rights of the Mandatory, the Court in its 1962 Judgment pointed out that they "have their foundation in the obligations of Mandatory and they are, so to speak, mere tools given to enable it to fulfil its obligations." This was emphasized by Judge Bustamante in relation to a 'C' mandate, under which the Mandatory enjoyed wide powers. According to him, the "concept of obligation predominates. Once the Mandate has been accepted, the mission of the Mandatory becomes a mission which, to a varying extent, must always surpass the Mandatory's own interests and, first and foremost, serve the interests of the population under tutelage."

3. Terms of the Trust

(i) *Different kinds of mandates*

1966 Judgment

".....there were to be three categories of mandates, designated as 'A', 'B' and 'C' mandates respectively, the Mandate for South West Africa being one of the 'C' category. The difference between these categories lay in the nature and geographical situation of the territories concerned, the state of development of their peoples, and the powers accordingly to be vested in the administering authority, or mandatory, for each territory placed under mandate

"... their substantive provisions may be regarded as falling into two main categories. On the one hand, . . . there were articles defining the mandatory's powers, and its obligations in respect of the inhabitants of the territory and towards the League and its organs

On the other hand, there were articles conferring in different degrees, according to particular mandate or category of mandates, certain rights relative to the mandated territory, directly upon the members of the League as individual States, or in favour of their nationals. As regards the 'A' and 'B' mandates (particularly the latter) these rights were numerous and figured prominently—a fact which as will be seen later, is significant for the case of the 'C' mandates also, even though, in the latter case, they were confined to provisions for freedom for missionaries ("nationals of any State Member of the League of Nations") to "enter into, travel and reside in the territory for the purpose of prosecuting their calling"—(Mandate for South West Africa, Article 5)²⁷.

And

"In addition to the classes of provisions so far noticed, every instrument of mandate contained a jurisdictional clause which, with a single exception to be noticed in due course, was in identical terms for each mandate, whether belonging to the 'A', 'B' or 'C' category. The language and effect of the clause will be considered later; but it provided for a reference of disputes to the Permanent Court of International Justice and, so the Court found in the first phase of the case, as already mentioned, this reference was now, by virtue of Article 37 of the Court's Statute, to be construed as a reference to the present Court. Another feature of the mandates generally, was a provision according to which their terms could not be modified without the consent of the Council of the League. A further element, though peculiar to the 'C' mandates, may be noted: it was provided both by Article 22 of the Covenant of the League and by a provi-

²⁷ *South West Africa (second phase) Judgment, 1966*, at pp. 20-21.

sion of the instruments of 'C' mandates that, subject to certain conditions not here material, a 'C' mandatory was to administer the mandated territory "as an integral portion of its own territory."²⁸

Dissenting opinion

JUDGE JESSUP

".... It is well known that in addition to the idealistic concern for the welfare of the indigenous peoples who were not yet able to stand for themselves, the mandates system, in rejecting the idea that colonies formerly belonging to the defeated enemy would be appropriated as part of the spoils of war and for the benefit of the conquerors, built upon the practical proposition that the mandated areas—at least those under the 'A' and 'B' categories—should offer equal economic opportunities to all Members of the League; this was the principle of the "open door". It was incorporated in the 'A' and 'B' mandates and the long delay in approving the 'C' mandates was due to unsuccessful Japanese insistence on having it applied to 'C' mandates in the Pacific area"²⁹

Comments

The Court, in its 1966 Judgment, provided that, three categories of mandates, termed 'A', 'B' and 'C' mandates, were created with differences based upon "the nature and geographical situation of the territories concerned, the state of development of their peoples and the powers" vested in the mandatory. Features which were common to all these three categories were : (1) provisions relating to mandatory's powers and obligations *vis-a-vis* the inhabitants of the territory and the League and its organs; (2) a jurisdictional clause, providing for reference of

²⁸ *South West Africa (second phase) Judgment*, 1966, at p. 21.

²⁹ *Ibid.*, at p. 383.

disputes relating to interpretation and application of the mandate, to the Court; and (3) prohibition of modification of the terms of the mandate, except with the consent of the League Council.

There were also articles relating to rights of the League Members and their nationals *vis-a-vis* a mandated territory, provided mostly in 'B' class mandates and to a lesser extent in 'A' class mandates. In case of 'C' class mandates, these rights "were confined to provisions for freedom of missionaries"..... to "enter into, travel and reside in the territory for the purpose of prosecuting their calling." Further, as pointed out by Judge Jessup, 'A' and 'B' classes of mandates embodied the principle of "open door", which in other words, guaranteed equal economic opportunities to all League Members in such territories. Another feature peculiar to 'C' class mandates was the provision authorising the mandatory to administer such territory "as an integral portion of its own territory" (See Annexure II to this study).

(ii) *Mandatory's full power and responsibility under a 'C' class mandate*

1962 Judgment

"The rights of the Mandatory in relation to the Mandated territory and the inhabitants have their foundation in the obligations of the Mandatory and they are, so to speak, mere tools given to enable it to fulfil its obligations."³⁰

1966 Judgment

Separate opinion

JUDGE VAN WYK

".... In the case of South West Africa, paragraph 6 of Article 22 provided in express terms that it

³⁰ *South West Africa Cases (Preliminary Objection) Judgment*, I.C.J. Reports, 1962, at p. 329.

"can best be administered under the laws of the Mandatory as integral portions of its territory". The only qualification of this wide statement was that such administration was to be subject to the safeguards mentioned in the interests of the indigenous population, i. e. provisions relating to freedom of conscience and religion, the slave trade, arms traffic, liquor traffic, military training of natives etc. . . ."31

And

"... Full power of legislation and administration, subject only to the provisions of the Mandate was granted to the Respondent. No such power was vested in the Council of the League. The obligation to promote well-being and progress to the best of its ability, having regard to the resources available to it, was imposed on the Mandatory; and the Mandate provided that the Mandatory would have discretionary powers required for the effective discharge of such an obligation. . . ."32

Dissenting opinions

JUDGE TANAKA

"... although the Mandatory is conferred 'full power of administration and legislation over the territory', the weight of the mandates system shall be put on the obligations of the Mandatory rather than on its rights."33

And

"... Judge Bustamante emphasised very appropriately (I.C.J. Reports, 1962, p. 357) the more important aspect of responsibility rather than of rights regarding

31 *South West Africa (second phase) Judgment*, 1966, at pp. 160-61.

32 *Ibid.*, at p. 162.

the function of the Mandatory. The Mandatory must exercise its power only for the purpose of realising the well-being and progress of the inhabitants of the territory and not for the purpose of serving its egoistic ends. As Professor Quincy Wright puts it, "it has been recognised that the conception of mandates in the Covenant requires that the Mandatory receive no direct profit from its administration of the territory." This is called the "principle of gratuitous administration." (Quincy Wright, *op. cit.*, pp. 452-453)."33

JUDGE JESSUP

"... The record shows that the Union of South Africa was intent upon controlling the territory of South West Africa which was adjacent to its borders and that when it became apparent that outright annexation was not politically possible, the Government of South Africa was ready to accept the 'C' Mandate for South West Africa with that measure of control which paragraph 6 of Article 22 of the Covenant envisaged. . . ."34

Comments

Judge Jessup pointed out that South Africa accepted the mandate for South West Africa "with that measure of control which paragraph 6 of Article 22 of the Covenant envisaged" after being convinced that an outright annexation of the territory was not possible. (See Annexure I to this Study). The said provision of the Covenant, as is also pointed out by Judge van Wyk, authorised the mandatory to administer the territory under its own laws "as integral portions of its territory subject to safeguards abovementioned in the interests of the indigenous population." According to Judge van Wyk, the League Council enjoyed no such power. The safeguards provided in

33 *South West Africa (second phase) Judgment*, 1966, at p. 267.

34 *Ibid.*, at p. 339.

the interest of the indigenous population consisted of "provisions relating to freedom of conscience and religion, the slave trade, arms traffic, liquor traffic, military training of Natives, etc." Judge van Wyk also expressed the view that in respect of discharge of its obligation to promote well-being and progress of the inhabitants "to the best of its ability, having regard to the resources available to it", the mandatory enjoyed discretionary powers.

The Court in its 1962 Judgment, and Judge Tanaka in his dissenting opinion to the 1966 Judgment, expressed the view that mandatory's rights had foundation in its obligation and were "mere tools given to enable it to fulfil its obligation," and that "the weight of the mandates system was on Mandatory's obligations, rather than on its rights." Judge Tanaka also expressed the view that the mandatory was required to exercise its power only for realising the objectives of the mandates system, viz., the well-being and progress of the inhabitants of the territory, and not for its own selfish ends. He also stressed "the principle of gratuitous administration", according to which the "mandatory was to receive no direct profit from its administration of the territory."

(iii) *Mandatory's obligations*

1950 Advisory opinion

Separate opinion

JUDGE READ

"The first, and the most important, were obligations designed to secure and protect the well-being of the inhabitants. They did not enure to the benefit of the Members of the League, although each and every Member had a right to insist upon their discharge. The most important corner-stone of the mandates system, was the principle that the well-being and development of such

peoples forms a sacred trust of civilisation, a principle which was established in paragraph 1 of Article 22 of the Covenant.

The second kind of obligation comprised those which were due to, and enured to, the benefit of the Members of the League: e. g., in respect of missionaries and nationals.

The third kind of obligation comprised the legal duties which were concerned with the supervision and enforcement of the first and second. There was the compulsory jurisdiction of the Permanent Court, established by Article 7 of the Mandate Agreement; and there was the system of Reports, accountability, supervision and modification, under paragraphs 7, 8 and 9 of Article 22 and Articles 6 and 7 of the Mandate Agreement. . . ."³⁵

1966 Judgment

Separate opinion

JUDGE VAN WYK

"In the case of the Mandate, the limitations upon the Mandatory's powers were laid down in Articles 3, 4 and 5 of the Mandate Declaration . . . and in Article 2 (2) thereof. The latter Article in effect lays down the objective to be pursued by the Mandatory. It follows, therefore, that an exercise of the Mandatory's discretion would be declared illegal in terms of Article 2 (2) only where the Mandatory did not pursue the authorised purpose. Such a failure on the part of the Mandatory could, in practice, hardly arise from a bona fide misinterpretation of the Mandate. It is consequently difficult to imagine a case where a purported exercise of discretion by the

³⁵ *International Status of South West Africa, Advisory Opinion*: I.C.J. Reports, 1950, at pp. 164-165.

Mandatory could contravene Article 2 (2) unless some element of bad faith were present . . ."³⁶

Dissenting opinions

JUDGE WELLINGTON KOO

" . . . The order in which the various obligations of the Mandatory are stipulated in the mandate instrument for South West Africa is not without significance. Thus the unquestionably most important of these obligations—those relating to the promotion to the utmost of the material and moral well-being and the social progress of the inhabitants of the territory subject to the present Mandate—are provided for in Article 2. Then follows Article 3 providing for the prohibition of slave-trade and forced labour and the control of the arms traffic and the prohibition of the supply of intoxicating spirits and beverages to the Natives. Article 4 prohibits the military training of the Natives, etc. and finally Article 5 "ensuring in the Territory freedom of conscience and the free exercise of all forms of worship and the admission of all missionaries, nationals of any State Members of the League of Nations, to enter into, travel and reside in the territory for the purpose of prosecuting their calling..."³⁷

JUDGE KORETSKY

" . . . The French Member of the (Mandates) Commission (M. Simon) expressed the view "that the idea of commercial equality preceded that of the Mandates, that it embraced the whole theory of the Mandates, that the Mandates had been devised to ensure : (1) commercial equality ; (2) the protection of the indigenous populations" and that "the Mandate could not exist without those two

³⁶ *South West Africa (second phase) Judgment*, 1966, at pp. 151-152.

³⁷ *Ibid.*, at pp. 221-222.

conditions." (*Translation*) But the President of the Commission (Lord Milner) did not agree with this.

He said :

(*Translation*)

"He maintained that 'C' Mandate differed from the 'B' Mandate precisely in respect of commercial equality. Territories which came within the category of the 'C' Mandate were attached to the State of the mandatory Power and were consequently subject only to the stipulations concerning the protection of indigenous population . . ."³⁸

JUDGE TANAKA

"The idea that it belongs to the noble obligation of conquering powers to treat indigenous peoples of conquered territories and to promote their well-being has existed for many hundred years, at least since the era of Victoria. But we had to wait for the Treaty of Peace with Germany, signed at Versailles in 1919, and the creation of the League of Nations for this idea to take the concrete form of an international institution, namely the mandates system, and to be realised by a large and complicated machinery of implementation. After the dissolution of the League the same idea and principles have been continued in the "International Trusteeship System" in the Charter of the United Nations."³⁹

JUDGE FORSTER

"However, this discretionary power is by no means synonymous with arbitrary power. It may be lawfully used only for the achievement of the purposes laid down

³⁸ *South West Africa (second phase) Judgment*, 1966, at pp. 243-44.

³⁹ *Ibid.*, at p. 265.

in the Mandate, namely "the promotion of the material and moral well-being and the social progress of the inhabitants of the territory," and must only be so used. For in the last resort, however complete the powers conferred on the Mandatory, they stop short of sovereignty over South West Africa. Therefore the discretionary power cannot cover acts performed for a purpose different from that stipulated in the Mandate. Such acts would be abuse of power (*detournement de pouvoir*).⁴⁰

Comments

According to Judge Wellington Koo the order in which the Mandatory's obligations have been specified in the Mandate instrument is important. Here too they have been treated in the same order. Judge van Wyk pointed out that these obligations are specified in Articles 2(2), 3, 4 and 5 of the Mandates Declaration. (See Annexure II to this Study).

In connection with the Mandatory's obligation to administer the territory in such a manner as to further "the material and moral well-being and social progress of the inhabitants of the territory", Judge Tanaka pointed out that such an idea had existed since the Victorian era; that it crystallised only after the Versailles Treaty and the creation of the League of Nations; and that the idea has been continued in the form of the U. N. Trusteeship System. Judge Read, in his separate opinion to the *1950 Advisory Opinion on the International Status of South West Africa*, and Judge Wellington Koo, in his dissenting opinion to the 1966 Judgment, regarded the said obligation to be the most important one and the corner-stone of the mandates system. According to Judge Read, the obligation "did not enure to the benefit of the Members of the League, although each and every Member had a right to insist upon their discharge."

Further, according to Judge van Wyk and Judge Koretsky, the said obligation was the only obligation limiting the Manda-

⁴⁰ *South West Africa (second phase) Judgment*, 1966, at p. 481.

tory's discretionary powers in relation to a 'C' Mandate. Judge van Wyk also expressed the view that "an exercise of the Mandatory's discretion would be declared illegal in terms of Article 2(2) only where the Mandatory did not pursue the authorised purpose", and that Mandatory's exercise of discretion could be said to be in contravention of Article 2(2), only in case "some element of bad faith were present." However, according to Judge Forster, Mandatory's discretionary powers are not arbitrary powers, inasmuch as they fall "short of sovereignty over South West Africa", and any exercise of such powers for any purpose other than that specified in the Mandate would amount to abuse of power.

As regards other obligations of the Mandatory, Judge Wellington Koo points out that Article 3 provides "for the prohibition of slave-trade and forced labour and the control of the arms traffic and the prohibition of the supplying of intoxicating spirits and beverages to the Natives. Article 4 prohibits the Military Training of the Natives, etc., and finally Article 5 for ensuring in the Territory freedom of conscience and the free exercise of all forms of worship."

Judge Read also pointed out another kind of obligations "which were due to, and enured to, the benefit of the Members of the League: e.g., in respect of missionaries and nationals." Article 5, in the words of Judge Wellington Koo, provided for "the admission of all missionaries, nationals of any States Members of the League of Nations, to enter into, travel and reside in the territory for the purpose of prosecuting their calling". Regarding the right of all League Members to commercial equality in the mandated territory, Judge Koretsky pointed out that such right was not available in respect of territories under 'C' Mandate.

Judge Read also pointed out a third category of Mandatory's obligations which were concerned with the machinery for supervision and enforcement of the abovementioned two cate-

gories of obligations. "There was the compulsory jurisdiction of the Permanent Court, established by Article 7 of the Mandate Agreement; and there was the system of reports, accountability, supervision and modification, under paragraphs 7, 8 and 9 of Article 22 and Articles 6 and 7 of the Mandate Agreement."

4. Securities for performance of the Trust :

(i) *Mechanism of securities for performance of the Trust*

1966 Judgment

" . . . By paragraphs 7 and 9 respectively of Article 22, every mandatory was to "render to the Council (of the League—not to any other entity) an annual report in reference to the territory committed to its charge"; and a permanent commission, which came to be known as the Permanent Mandates Commission was to be constituted "to advise the Council on all matters relating to the observance of the Mandates." The Permanent Mandates Commission alone had this advisory role, just as the Council alone had the supervisory function. The Commission consisted of independent experts in their own right, appointed in their personal capacity as such, not as representing any individual member of the League or the member States generally."⁴¹

Dissenting opinion

JUDGE WELLINGTON KOO

"The whole system was inspired by, and built upon, the conditional purpose of protecting and promoting the welfare of the peoples of the territories placed under mandate. It constituted an international joint enterprise, the success of which was predicated upon the co-operation

of all the parts and parties to it under the League—the Council, the Permanent Mandates Commission, the member States and the mandatories. In order to ensure success various securities were provided both in Article 22 of the Covenant and in the respective mandate instruments. The examination and consideration of the mandatories' annual reports on the administration of their respective territories under mandate by the Council with the assistance and advice of the Permanent Commission and the discussion and debate in the annual session of the Assembly on the chapter on mandate administration in the Council's own yearly report, in both cases with the participation of the representatives of the Mandatory Powers, constituted the normal operation of the supervisory functions of the League of Nations. The harmonious and effective working of the securities for the protection of the overriding interests of the inhabitants of the mandated territories depended upon the whole-hearted co-operation of the mandatory States . . . the authors of the mandates system could not have been unaware of human failures and therefore the unrealistic nature of any hope and faith on their part that every mandatory could always be relied upon to show an identity of view with the Council on a given matter relating to the particular mandate, or to manifest a never failing spirit of accommodation to yield to the views of the Council in the interest of the peoples of the territories under mandate. To meet such a contingency, however rare it might be, and equally conscious of the primary purpose of the mandates system, the authors of the mandates instrument appointed by the Principal Allied and Associated Powers in 1919, introduced the adjudication clause first in 'B' mandates and later in 'C' mandates, and used the same text, for both categories, in order to provide a means of judicial protection of the interests of the said inhabitants through the exercise by individual members of the League of their substantive

⁴¹ *South West Africa (second phase) Judgment, 1966, at p. 25.*

right or legal interest in the observance of the mandate obligations towards them by the respective mandatories.”⁴²

Comments

In order to ensure that the purpose of promoting the well-being and progress of the inhabitants of the territory is fulfilled, which was dependent upon the co-operation of the League Council, the Permanent Mandates Commission, the League Members and the mandatories, certain securities were provided. Foremost amongst these was the Mandatory's obligation to render an annual report to the League Council concerning the administration of the territory concerned, to the satisfaction of the Council. Such report was examined and considered by the Council with the assistance and advice of the Permanent Mandates Commission, a body consisting of the nationals of the mandatories and the League Members with a majority of the latter. The report would also be discussed by the League Members at the annual session of the Assembly.

Since the Covenant required a unanimous agreement, “the successful working of the securities depended upon the whole-hearted co-operation of the Mandatory States.” In order to provide for a contingency where a Mandatory was not co-operative, the adjudication clause was introduced in the mandate instruments. Under the said clause, each Member of the League had a right to bring before the Permanent Court any dispute regarding interpretation or application of the mandate, a form of judicial control by the Court, which together with supervision of the Mandate by the League Council, constituted the essence of securities for performance of the trust.

(ii) *Annual reports concerning administration of mandated territory*

1966 Judgment

“The obligation to furnish annual reports was reproduced in the instruments of mandate themselves, where

⁴² *South West Africa (second phase) Judgment*, 1966, at pp. 218-219.

it was stated that they were to be rendered to the satisfaction of the Council.”⁴³

JUDGE VAN WYK

“..... In terms of paragraphs 7 and 9 of Article 22 of the Covenant and Article 6 of the Mandate the Respondent accepted an obligation to render annual reports to the Council of the League.”⁴⁴

And

“..... Earlier proposals that the League itself should be vested with complete authority and control and that it should be entitled to govern the territories which eventually became mandated territories by delegating its powers to States or organised agencies”, were abandoned, and the final outcome was that the League's functions were to be limited to examining the mandatories' annual reports with a view to ascertaining whether they had performed their duties, and to assist and advise them.”⁴⁵

Dissenting opinion

JUDGE JESSUP

“..... On 10 July, at the fifth session of the Commission, there was a discussion of Article 11 of the French draft which required a report by the mandatory to the Council. The American draft had again included numerous details concerning the contents of the report. After Lord Milner suggested the mandatory would supply the information it thought appropriate and that the Council could then ask for more details if it wished them, it was agreed to substitute the expression which is now found

⁴³ *South West Africa (second phase) Judgment*, 1966, at p. 25.

⁴⁴ *Ibid.*, at p. 85.

⁴⁵ *Ibid.*, at p. 161.

in Article 6 of the South West Africa Mandate, namely, "an annual report to the satisfaction of the Council." This did not and does not mean that the Council must be satisfied with the actual measures taken to carry out the obligations of the mandatory, it means satisfied with the amount of information supplied. The whole subsequent practice of the Permanent Mandates Commission and of the Council of the League confirms this interpretation."⁴⁶

Comments

Judge van Wyk pointed out that the earlier proposals envisaging indirect government of the territories concerned by the League, were abandoned in favour of supervision by the League of their administration by the mandatories, by means of examination of the annual reports submitted by the latter and through assistance and advice of the Permanent Mandates Commission. The Covenant, in paragraphs 7 and 9 of Article 22, required the Mandatory to render to the League Council annual reports in reference to the territory concerned. Article 6 of the Mandate Agreement required that the reports should be rendered to the satisfaction of the Council. (See *Annexures I and II* to this study).

Judge Jessup pointed out that the aforesaid provision "does not mean that the Council must be satisfied with the actual measures taken to carry out the obligations of the mandatory; it means satisfied with the amount of information supplied."

(iii) *Supervision and control by the League over Mandatory*

1962 Judgment

"..... While the faithful discharge of the trust was assigned to the Mandatory Power alone, the duty and

⁴⁶ *South West Africa (Second phase) Judgment 1966*, at pp. 361-362.

the right of ensuring the performance of this trust was given to the League with its Council, the Assembly, the Permanent Mandates Commission and all its Members within the limits of their respective authority, power and functions, as constituting administrative supervision, and the Permanent Court was to adjudicate and determine any dispute within the meaning of Article 7 of the Mandate"⁴⁷

1966 Judgment

"By paragraph 8 of Article 22 of the Covenant it was provided that the "degree of authority, control or administration" which the various mandatories were to exercise, was to be "explicitly defined in each case by the Council", if these matters had not been "previously agreed upon by the Members of the League". The language of this paragraph was reproduced, in effect textually, in the fourth paragraph of the preamble, to the Mandate for South West Africa, which the League Council itself inserted, thus stating the basis on which it was acting in adopting the resolution of 17 December, 1920, in which the terms of mandate were set out. Taken by itself this necessarily implied that these terms had not been previously agreed upon by the Members of the League."

There is however some evidence in the record to indicate that in the context of the mandates, the allusion to agreement on the part of "the members of the League" was regarded at the time as referring only to the five Principal Allied and Associated Powers engaged in the drafting; but this of course could only lend emphasis to the view that the members of the League generally were not considered as having any direct concern with the setting up of the various mandates; and the record

⁴⁷ *South West Africa Case, Preliminary Objections, Judgment, I.C.J. Reports, 1962*, at p. 336.