

consideration in the selection of the Mandatory.

(5) Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

(6) There are territories, such as South West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilisation, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory subject to the safeguards above-mentioned in the interests of the indigenous population.

(7) In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

(8) The degree of authority, control, or administration to be exercised by the Mandatory, shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

(9) A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates."

(II)

MANDATE AGREEMENT REGARDING GERMAN SOUTH WEST AFRICA OF 17 DECEMBER 1920

The Council of the League of Nations:

Whereas by Article 119 of the Treaty of Peace with Germany signed at Versailles on June 28th, 1919, Germany renounced in favour of the Principal Allied and Associated Powers all her rights over her overseas possessions, including therein German South West Africa; and

Whereas the Principal Allied and Associated Powers agreed that, in accordance with Article 22 Part I (Covenant of the League of Nations) of the said Treaty, a Mandate should be conferred upon His Britannic Majesty to be exercised on his behalf by the Government of the Union of South Africa to administer the territory afore-mentioned, and have proposed that the Mandate should be formulated in the following terms; and

Whereas His Britannic Majesty, for and on behalf of the Government of the Union of South Africa, has agreed to accept the Mandate in respect of the said territory and has undertaken to exercise it on behalf of the League of Nations in accordance with the following provisions; and

Whereas, by the afore-mentioned Article 22, paragraph 8, it is provided that the degree of authority, control or administration to be exercised by the Mandatory not having been previously agreed upon by the Members of the League, shall be explicitly defined by the Council of the League of Nations;

Confirming the said Mandate, defines its terms as follows:

Article 1

The territory over which a Mandate is conferred upon His Britannic Majesty for and on behalf of the Government of the Union of South Africa (hereinafter called the Mandatory) comprises the territory which formerly constituted the German Protectorate of South West Africa.

Article 2

The Mandatory shall have full power of administration and legislation over the territory subject to the present Mandate as an integral portion of the Union of South Africa, and may apply the laws of the Union of South Africa, to the territory, subject to such local modifications as circumstances may require.

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.

Article 3

The Mandatory shall see that the slave trade is prohibited, and that no forced labour is permitted, except for essential public works and services, and then only for adequate remuneration.

The Mandatory shall also see that the traffic in arms and ammunition is controlled in accordance with principles analogous to those laid down in the Convention relating to the Control of the Arms Traffic, signed on September 10th, 1919, or in any convention amending the same.

The supply of intoxicating spirits and beverages to the natives shall be prohibited.

Article 4

The military training of the natives, otherwise than for purposes of internal police and the local defence of the territory, shall be prohibited. Furthermore, no military or naval bases shall be established or fortifications erected in the territory.

Article 5

Subject to the provisions of any local law for the maintenance of public order and public morals, the Mandatory shall ensure in the territory freedom of conscience and the free exercise of all forms of worship, and shall allow all 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.

Article 6

The Mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council, containing full information with regard to the territory, and indicating the measures taken to carry out the obligations assumed under Articles 2, 3, 4 and 5.

Article 7

The consent of the Council of the League of Nations is required for any modification of the terms of the present Mandate.

The Mandatory agrees that, if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the Mandate, such

dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations.

The present Declaration shall be deposited in the Archives of the League of Nations. Certified copies shall be forwarded by the Secretary-General of the League of Nations to all Powers signatories of the Treaty of Peace with Germany.

Made at Geneva on the 17th day of December, 1920.

(III)

U. N. GENERAL ASSEMBLY RESOLUTION OF 9 FEBRUARY 1946

On 9 February 1946 the General Assembly passed a Resolution which stated, *inter alia* :

“With respect to Chapters XII and XIII of the Charter, the General Assembly :

Welcomes the declarations, made by certain States administering territories now held under mandate, of an intention to negotiate trusteeship agreements in respect of Transjordan, to establish its independence ;

Invites the States administering territories now held under mandate to undertake practical steps, in concert with the other States directly concerned, for the implementation of Article 79 of the Charter (which provides for the conclusion of agreements on the terms of trusteeship for each territory to be placed under the trusteeship system), in order to submit these agreements for approval, preferably not later than during the second part of the first session of the General Assembly.”

(IV)

U.N. GENERAL ASSEMBLY RESOLUTION OF
12 FEBRUARY 1946

Transfer of Certain Functions, Activities and Assets
of the League of Nations.

I

*Functions and powers belonging to the League of
Nations under international agreements.*

Under various treaties and international conventions, agreements and other instruments, the League of Nations and its organs exercise, or may be requested to exercise, numerous functions or powers for the continuance of which, after the dissolution of the League, it is, or may be, desirable that the United Nations should provide—

Certain Members of the United Nations, which are parties to some of these instruments and are Members of the League of Nations, have informed the General Assembly that, at the forthcoming session of the Assembly of the League, they intend to move a resolution whereby the Members of the League would, so far as this is necessary, assent and give effect to the steps contemplated below :

Therefore :

1. The General Assembly reserves the right to decide, after due examination, not to assume any particular function or power, and to determine which organ of the United Nations or which specialised agency brought into relationship with the United Nations should exercise each particular function or power assumed.

2. The General Assembly records that those Members of the United Nations which are parties to the instruments referred to above assent by this resolution to the steps contemplated below and express their resolve to use their good offices to secure the co-operation of the other parties to the instruments so far as this may be necessary.

3. The General Assembly declares that the United Nations is willing in principle, and subject to the provisions of this resolution and of the Charter of the United Nations, to assume the exercise of certain functions and powers previously entrusted to the League of Nations, and adopts the following decisions, set forth in A, B, and C below :

A. *Functions pertaining to a Secretariat*

...

B. *Functions and Powers of a Technical and Non-Political Character*

Among the instruments referred to at the beginning of this resolution are some of a technical and non-political character which contain provisions, relating to the substance of the instruments, whose due execution is dependent on the exercise, by the League of Nations or particular organs of the League, of functions or powers conferred by the instruments. Certain of these instruments are intimately connected with activities which the United Nations will or may continue.

It is necessary, however, to examine carefully which of the organs of the United Nations or which of the specialised agencies brought into relationship with the United Nations should, in the future, exercise the functions and powers in question, insofar as they are maintained.

Therefore :

The General Assembly is willing, subject to these reservations, to take the necessary measures to ensure the continued exercise of these functions and powers, and refers the matter

to the Economic and Social Council.

C. Functions and Powers under Treaties, International Conventions, Agreements and other Instruments having a Political Character

The General Assembly will itself examine, or will submit to the appropriate organ of the United Nations, any request from the parties that United Nations should assume the exercise of functions or powers entrusted to the League of Nations by treaties, international conventions, agreements and other instruments having a political character . . .”

(V)

DECLARATIONS OF REPRESENTATIVES OF
MANDATORIES AT THE FINAL MEETING
OF THE LEAGUE OF NATIONS

(1) By the representative of the United Kingdom (on the 9th April, 1946):

The Mandates administered by the United Kingdom were originally those of Iraq, Palestine, Transjordan, Tanganyika, part of the Cameroons and part of Togoland. Two of these territories have already become independent sovereign States, Iraq in 1923, and Transjordan just the other day in 1946. As for Tanganyika and Togoland under their mandates, and the Cameroons under their mandate, His Majesty's Government in the United Kingdom have already announced their intention of placing them under the trusteeship system of the United Nations, subject to negotiations on satisfactory terms of trusteeship.

The future of Palestine cannot be decided until the Anglo-American Committee of Enquiry have rendered their report, but until the three African territories have actually been placed under trusteeship and until fresh arrangements have been reached in regard to Palestine—whatever those arrangements may be—it is the intention of His Majesty's Government in the United Kingdom to continue to administer these territories in accordance with the general principles of the existing mandates.”

(2) By the representative of South Africa (on the 9th April, 1946):

Since the last League meeting, new circumstances have arisen obliging the mandatory Powers to take into review the

existing arrangements for the administration of their mandates. As was fully explained at the recent United Nations General Assembly in London, the Union Government have deemed it incumbent upon them to consult the peoples of South West Africa, European and non-European alike, regarding the form which their own future Government should take. On the basis of those consultations, and having regard to the unique circumstances which so signally differentiate South West Africa—a territory contiguous with the Union—from all other mandates, it is the intention of the Union Government, at the forthcoming session of the United Nations General Assembly in New York, to formulate its case for according South West Africa a status under which it would be internationally recognised as an integral part of the Union. As the Assembly will know, it is already administered under the terms of the Mandate as an integral part of the Union. In the meantime the Union will continue to administer the territory scrupulously in accordance with the obligations of the mandate, for the advancement and promotion of the interests of the inhabitants, as she has done during the past six years when meetings of the Mandates Commission could not be held.

The disappearance of these organs of the League concerned with the supervision of mandates, primarily the Mandates Commission and the League Council, will necessarily preclude complete compliance with the letter of the mandate. The Union Government will nevertheless regard the dissolution of the League as in no way diminishing its obligations under the mandate, which it will continue to discharge with the full and proper appreciation of its responsibilities until such time as other arrangements are agreed upon concerning the future status of the territory."

(3) By the representative of France (on the 10th April, 1946):

The French Government intends to pursue the execution of the mission entrusted to it by the League of Nations. It

considers that it is in accordance with the spirit of the Charter that this mission should henceforth be carried out under the regime of trusteeship and it is ready to examine the terms of an agreement to define this regime in the case of Togoland and the Cameroons."

(4) By the representative of New Zealand (on the 10th April, 1946) :

"New Zealand has always strongly supported the establishment of the International Trusteeship System, and has already declared its willingness to place the mandated territory of Western Samoa under trusteeship...New Zealand does not consider that the dissolution of the League of Nations and, as a consequence, of the Permanent Mandates Commission will have the effect of diminishing her obligations to the inhabitants of Western Samoa, or of increasing her rights in the territory. Until the conclusion of our Trusteeship Agreement for Western Samoa, therefore, the territory will continue to be administered by New Zealand, in accordance with the terms of the Mandate, for the promotion of the well-being and advancement of the inhabitants."

(5) By the representative of Belgium (on the 11th April, 1946) :

"At the meeting of the General Assembly of the United Nations in London on January 20th last, she declared her intention of entering into negotiations with a view to placing the territory of Ruanda-Urundi under the new regime. In pursuance of this intention, the Belgian Government has prepared a draft agreement setting out the conditions under which it will administer the territory in question.

In the course of the same declaration of January 20th, we expressed our confidence that the Trusteeship Council would soon come to occupy in the United Nations Organisation the important place which it deserves. We can only repeat that hope here and give an assurance that, pending its

realisation, Belgium will remain fully alive to all the obligations devolving on members of the United Nations under Article 80 of the Charter."

(6) By the representative of Australia (on the 11th April 1946) :

"The trusteeship system, strictly so called, will apply only to such territories as are voluntarily brought within its scope by individual trusteeship agreements...After the dissolution of the League of Nations and the consequent liquidation of the Permanent Mandates Commission, it will be impossible to continue the mandates system in its entirety.

Notwithstanding this, the Government of Australia does not regard the dissolution of the League as lessening the obligations imposed upon it for the protection and advancement of the inhabitants of the mandated territories, which it regards as having still full force and effect. Accordingly, until the coming into force of appropriate trusteeship agreements under Chapter XII of the Charter, the Government of Australia will continue to administer the present mandated territories, in accordance with the provisions of the Mandates, for the protection and advancement of the inhabitants. In making plans for the dissolution of the League, the Assembly will very properly wish to be assured as to the future of the mandated territories, for the welfare of the peoples of which this League has been responsible. So far as the Australian territories are concerned, there is full assurance. In due course these territories will be brought under the trusteeship system of the United Nations; until then the ground is covered not only by the pledge which the Government of Australia has given to this Assembly today but also by the explicit international obligations laid down in Chapter XI of the Charter, to which I have referred. There will be no gap, no interregnum, to be provided for."

(VI)

RESOLUTION OF THE ASSEMBLY OF
THE LEAGUE OF NATIONS OF APRIL 18, 1946

The Assembly :

Recalling that Article 22 of the Covenant applies to certain territories placed under mandate, the principle that the well-being and development of peoples not yet able to stand alone in the strenuous conditions of the modern world form a sacred trust of civilisation :

1. *Expresses* its satisfaction with the manner in which the organs of the League have performed the functions entrusted to them with respect to the mandates system and in particular pays tribute to the work accomplished by the Mandates Commission;

2. *Recalls* the role of the League in assisting Iraq to progress from its status under an 'A' Mandate to a condition of complete independence, welcomes the termination of the mandated status of Syria, the Lebanon and Transjordan, which have, since the last session of the Assembly, become independent members of the world community;

3. *Recognises* that, on the termination of the League's existence, its functions with respect to the mandated territories will come to an end, but notes that Chapters XI, XII and XIII of the Charter of the United Nations embody principles corresponding to those declared in Article 22 of the Covenant of the League;

4. *Takes note of* the expressed intentions of the members of the League now administering territories under mandate to continue to administer them for the well-being and development of the peoples concerned in accordance with the obligations contained in the respective mandates until other arrangements have been agreed between the United Nations and the respective mandatory powers.

*The original Chinese draft read as follows:

The Assembly,

Considering that the Trusteeship Council has not yet been constituted and that all mandated territories under the League have not been transferred into trusteeship territories;

Considering that the League's function of supervising mandated territories should be transferred to the United Nations, in order to avoid a period of interregnum in the supervision of the mandatory regime in these territories;

Recommends that the mandatory powers as well as those administering ex-enemy mandated territories shall continue to submit annual reports to the United Nations and to submit to inspection by the same until the Trusteeship Council shall have been constituted.

(VII)

JUDGMENTS, ADVISORY OPINIONS AND ORDERS OF
INTERNATIONAL COURT OF JUSTICE

- I. International Status of South West Africa.
Advisory Opinion, 11 July 1950:
I.C.J. Reports 1950, pp. 128 to 219.
- II. Voting Procedure on Questions Relating to Reports and Petitions concerning the Territory of South West Africa.
 - (i) (Request for Advisory Opinion). Order of 14 December 1954:
I.C.J. Reports 1954, pp. 113 to 114.
 - (ii) Advisory Opinion of 7th June 1955:
I.C.J. Reports 1955, pp. 67 to 123.
- III. Admissibility of Hearing by the Committee on South West Africa.
 - (i) Order of 22nd December 1955:
I.C.J. Reports 1955, pp. 131 to 132.
 - (ii) Advisory Opinion of 1st June 1956:
I.C.J. Reports 1956, pp. 23 to 71.
- IV. South West Africa Cases.
 - (i) (Ethiopia v. Union of South Africa). Order of 13 January 1961:
I.C.J. Reports 1961, pp. 3 to 4.
 - (ii) (Liberia v. Union of South Africa): Order of 13 January 1961:
I.C.J. Reports 1961, pp. 6 to 7.