

**MANDATES AND TRUSTEESHIP:**

**A COMPARISON AND ANALYSIS**

by

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## INTRODUCTION:

The purpose of this study is to compare the mandate system of the League of Nations with the trusteeship system of the United Nations. An analysis is made of the two systems in the first two chapters of the thesis, while chapter three is devoted entirely to comparisons, and chapter four to summary and conclusions.

Just as the United Nations is a successor to and benefits from the work of the League of Nations, the trusteeship system succeeds to the main task of the League mandate system. That the trusteeship system is the beneficiary of the experience of the mandate system is readily apparent in this study. For instance, under the mandate system, the Permanent Mandates Commission started with little or no instructions as to its method of work. But in a few years, it had formulated an impressive list of administrative practices such as formulating questionnaires, receiving petitions and the drawing up of rules to govern their handling, and arranging for the representatives of the mandatory powers to be present at the examination of reports and petitions. Since most of this work was effective, a large part of these practices were incorporated in the trusteeship provisions of the United Nations Charter.

Trusteeship is not a new concept. Both John Locke and Edmund Burke plainly held to this idea in their discussion of the relationships

between the mother country, Great Britain, and her colonies.<sup>1</sup> The principles were applied, to some extent, during the latter part of the nineteenth century, and were employed extensively in the League of Nations mandate system. As a matter of fact, mandates and trusteeships are, with some exceptions, the same. This new system was termed a system of trusteeship partly to differentiate between the two, but the trusteeship system was also intended to be an improvement over the former. Nevertheless, they have in common the fact that they are both attempts at solving the problem of the administration, under international supervision, of backward areas in the interests of the inhabitants and the world at large rather than in the interest of the imperial power.

There are today approximately two hundred million dependent peoples which are not under the trusteeship system, while the trusteeship provisions of the Charter apply to some fifteen million peoples in ten trust territories.<sup>2</sup> Thus the trusteeship system is not applied to all non-self-governing territories, but to only a segment of them, as was the case under the mandate system. Although the present study is limited in its scope to that of mandates and trusteeships, because the problems are related, it is desirable to discuss briefly the colonial administration of all non-self-governing territories.

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1 See infra, Chap. I, n. 1, p. 1.

2 See Vernon McKay, "Empires in Transition-British, French, and Dutch Colonial Plans," Foreign Policy Reports, XII (May 1, 1947), pp. 34-47. For the figures on the population of the trust territories, see Appendix E.



In contrast to the League's lack of provision for the consideration of these peoples, the United Nations Charter provides for their interests in Chapter XI of the Charter. The states which have signed the Charter are bound to the provisions of Chapter XI, which states that all non-self-governing territories administered by member states are ensured due respect for their cultural, political, economic, social, and educational advancement. Self government is to be encouraged and the home governments are to transmit information to the Secretary-General of the United Nations concerning the economic, social, and educational conditions in the territories. This is the first time in history that the powerful nations of the world have publically declared that they have a responsibility toward all their non-self-governing peoples. Thus the provisions found in Chapter XI are far reaching in affect, for they open new vistas for the peoples of non-self-governing territories which are similar in many ways to the general or basic principles of the trusteeship system. Nevertheless there is a sharp distinction between Chapter XI, the declaration regarding non-self-governing territories, and Chapters XII and XIII which pertain to the international trusteeship system; for the underlying principles of the trusteeship system were not intended to be extended to all non-self-governing territories.<sup>1</sup>

While trusteeship and mandate status are sometimes regarded as the road to independence, it is certainly not the only road, for other areas

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<sup>1</sup>See Chapters XI, XII, & XIII of the United Nations Charter, Appendix C.

not under either system such as Burma, Pakistan, and India have gained their independence since the Charter has been signed and Indonesia and French Indo China are in the process of receiving greater autonomy. As a matter of fact the number of non-self-governing territories has been steadily decreasing since the turn of the century when the great colonial empires were at their apex.

Although it cannot be hoped that all problems of the trusteeship system will be successfully solved, this study will make for a clearer understanding of progress or the lack of progress toward their solution. Throughout the following analysis and comparisons, due consideration must be paid to the fact that the trusteeship system is only a part of the United Nations, just as the mandate system was a part of the League, and therefore is governed to a large extent by the overall policy, failure and successes of the larger organization.

The time element is especially important in a study which is based primarily on a comparison of a system which was in existence for approximately twenty years with one which has been in operation for less than three years. Therefore it should be pointed out that in a few instances primary source materials such as United States government documents and United Nations documents were not yet available for a complete analysis of certain trusteeship happenings. Thus the resort to the use of secondary source material was made necessary.

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Trans-Jordan and Israel also have received their independence since the Charter was signed but, since they were former League of Nations mandates they must be considered as attaining their independence, at least in part, from the good offices of the mandate system.

## CHAPTER I

### THE MANDATE SYSTEM

#### A. Its Origin

##### 1. Background

Underlying the mandate system are ideas which for a long time have been taking shape in the minds of idealistic statesmen and experts in colonial matters, and have become embodied in international law. The immediate reason for the creation of the system, however, was the need for the solution of a pressing political problem.

The growth of liberal ideals respecting dependant peoples during the nineteenth century was based partly on the theories of John Locke and Edmund Burke. Locke spoke of all government as a trust while Burke applied the idea of trusteeship to British relations with her American colonies and Indian Empire. The notion that colonial government should be conducted for the benefit of the governed, with their ultimate participation in self-government as the final goal, has remained implicit in western liberal political theory. But what existed in theory did not necessarily exist in fact.

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<sup>1</sup> David Thomson, "How International is Colonial Trusteeship," The Political Quarterly XVIII (October - December, 1947), p. 341.

The latter part of the nineteenth century saw the European powers staking out claims in central Africa. Largely due to King Leopold II of the Belgians, the Congo Free State was created in 1885 out of the International Association of the Congo. The sovereignty of the Association had been recognized by treaties concluded in 1864 and 1885 with the United States and with many of the European countries.

Two international conferences were held in the latter part of the century to deal with colonial matters: the Conference of Berlin of 1884 and the Conference of Brussels of 1890. In the conventions which grew out of these conferences principles were established similar to those enunciated in the mandate system a generation later. The Congo Free State adhered to the following aims stated in the preamble of the General Act of the Berlin Conference which called for

(1) . . . a spirit of good and mutual accord to regulate the conditions most favorable to the development of trade and civilization in certain regions of Africa, and to assure to all nations the advantage of free navigation on the two chief rivers of Africa flowing into the Atlantic Ocean; (2) . . . desirous, on the other hand, to obviate the misunderstanding and disputes which might in future arise from new acts of occupation on the coast of Africa; and (3) concerned, at the same time, as to the means of furthering the moral and material well-being of the native populations.

Five years later the powers undertook in the General Act of the Conference of Brussels, signed on July 2, 1890, "to put an end to the

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<sup>1</sup> Henry Wellington Wook, The Story of the Congo Free State (New York: G. P. Putnam's Sons, 1905), p. 92.

<sup>2</sup> Ibid., p. 92.

<sup>3</sup> Ibid., p. 531.

negro slave trade by land as well as by sea, and to improve the moral and material conditions of existence of the native races."

While the provisions of the Act of Brussels with regard to the slave trade and the traffic in spirituous liquors and fire-arms established definite legal obligations, the undertakings formulated in general terms in this act, and in that of Berlin with respect to the treatment of the natives, were more or less declarations or acknowledgements of moral obligations, aspirations, or generous statements of intentions.

Meanwhile, colonial doctrine became imbued with the mandatory idea. The British Government in special cases allowed certain Dominions to administer various territories inhabited by backward races. The South Africa Act of September 20, 1909, for example, provided for the transfer to the Union of South Africa of certain adjoining territories. A schedule annexed to this Act contains clauses regarding the land system, traffic in intoxicating liquor, native customs, and the employment of the revenue of the territory.

It will thus be seen that some of the elements of the mandate system existed, to a limited extent, it is true, in the above cited instances and were, therefore, not entirely unknown prior to 1919.

2. Evolution

The question of the fate of the German colonies and of the territories of the Ottoman Empire inhabited by non-Turkish population confronted

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1 Ibid., p. 552.

2 R. H. Brand, The Union of South Africa (Oxford: the Clarendon Press, 1909), pp. 186 & 188 - 192.

the peace conference of 1919 with peculiarly complex problems. A number of factors such as the claims of allied countries and the agreements reached between them had to be taken into account. During the course of World War I, the allies signed a number of treaties bargaining away the German and Turkish colonies. Great Britain, France, and Italy were to obtain areas in Palestine, Syria, and Cilicia, a province of Turkey proper, while Japan was to acquire German colonies in the Pacific north of the equator.<sup>1</sup> Thus, by a series of secret treaties and secret agreements the governments of the allied powers, in anticipation of victory, arranged for the division of colonial spoils.

President Wilson expounded a policy which was in sharp contrast to this policy of annexationist imperialism. In his message of January, 1918, concerning the conditions of peace, the fifth of the famous Fourteen Points called for:

a free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined.<sup>2</sup>

In December of the same year, a plan of trusteeship was set forth by General Smuts whereby certain national governments were to be nominated as trustees on behalf of the League. He did not, however, favor a direct

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<sup>1</sup> Linden A. Mander, Foundation of Modern World Society (2nd ed., Stanford, California; Stanford University Press, 1947), p. 720.

<sup>2</sup> Carl L. Becker, America's War Aims and Peace Program, The Committee on Public Information, War Information Series No. 21, (1918), p. 21.

international administration for experience had demonstrated the failure  
of such a method.<sup>1</sup>

Therefore, on the eve of the Conference of Peace, for the first time  
the broad outlines of an international mandate system could be seen.

The system was in reality a compromise between the policies provided  
by the secret treaties and the liberal anti-imperialist ideas of Wilson.  
Wilson's idea of a compromise was influenced by General Smuts's views on  
trusteeship.

General Smuts provided only for the territories of Eastern Europe  
and of the Near East. Professor Thomas Parker Moon credits exclusion of  
the former German colonies from the mandate system by Smuts to that omni-  
present intention of all Boer imperialists that German Southwest Africa  
and German East Africa should be annexed by their Boer and British  
conquerors.<sup>2</sup>

While adopting most of Smuts's provisions, Wilson still made signi-  
ficant changes. He omitted the territorial appendages of Russia, and in-  
cluded the former German colonies, along with Austro-Hungary and the  
former Turkish possessions. He strengthened the provisions for the  
League's authority over mandates by giving the League complete power of  
supervision and extensive control.<sup>3</sup> Had this conception prevailed, many

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<sup>1</sup> Mander, op. cit., p. 720.

<sup>2</sup> Thomas Parker Moon, Imperialism and World Politics (New York: The  
Macmillan Company, 1928), p. 479.

<sup>3</sup> Ray Stannard Baker, Woodrow Wilson and World Settlement, Vol. 3  
(Garden City, New York: Doubleday, Page & Company, 1922), pp. 108-110 &  
94-95.

of the ambiguities and uncertainties which confronted the mandate system would have been avoided. President Wilson's victory in principle was in part undone by the allies when it came to the details. The most important change in the Wilson plan was the division of the mandates into three classes. If this feature had not been included, the British Dominions could not have been won over to the acceptance of the mandate plan. This provided under the Class "C" mandates for administrative integration with the mandatory power which was to the interest of the Dominions.<sup>1</sup> Probably Wilson could have purchased acceptance of his idea at no smaller price.

3. Establishment

The final draft of the League Covenant, adopted by the Peace Conference at its Plenary Session on April 28, 1919, forms Part I of the Treaty of Versailles. The provisions for the mandate system were contained in Article 22 of the Covenant.<sup>2</sup>

Article 22, however, did not allocate the mandates. These matters were dealt with in the peace treaties and by the Allied and Associated Powers.<sup>3</sup> According to the Treaty of Versailles, "Germany renounces in

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<sup>1</sup> Moon, op. cit., p. 482.

<sup>2</sup> See infra, Chap. I, n. 1, p. 9.

<sup>3</sup> Quincy Wright, Mandates under the League of Nations (Chicago: University of Chicago Press, 1930), p. 3, 43, & 45; See also infra, pp. 7 & 8.



favor of the principal Allied and Associated Powers all her rights and titles over her overseas possessions.<sup>1</sup>

Likewise, the Treaty of Lausanne of July 24, 1923, required Turkey to renounce,

all rights and title whatsoever over or respecting the territories situated outside the frontiers laid down in the present Treaty and the islands other than those over which her sovereignty is recognized by the said treaty, the future of these territories and islands being settled by the parties concerned.<sup>2</sup>

The League's role in allocating the former colonies was left ambiguous. This made it possible for the allies themselves to determine the mandatory powers. It should be noted that the arrangement was contrary to both Wilson's and Smuts's draft of the Covenant.

The following table indicates the decisions made by the Supreme Council as to the allocation of the mandates.

Table I\*

On May 7, 1919, the Supreme Council made the following allocations:

<u>"C" Mandates</u>	<u>Mandatory</u>
Southwest Africa	Union of South Africa
Western Samoa	New Zealand
Nauru	British Empire Mandate
New Guinea	Australian Mandate
North Pacific Islands	Japanese Mandate

<sup>1</sup> See Article 119 of the Treaty of Versailles, Department of State Publication No. 2724, The Treaty of Versailles and After-Annotations of the Text of the Treaty, Conference Series No. 92, 1947, pp. 276-279.

<sup>2</sup> See Article 16 of the Treaty of Lausanne, Treaties of Peace 1919-1923, Vol. II (New York: Carnegie Endowment for International Peace, 1924), p. 966.

<u>"B" Mandates</u>	<u>Mandatories</u>
Cameroon (Br.)	Admin. by Govt. of Nigeria
Togoland (Br.)	Admin. by Govt. of the Gold Coast
Cameroon (Fr.)	A French Mandate
Togoland (Fr.)	French Mandate
Tanganyika	British Mandate
Ruanda Urundi**	Belgian Mandate

The former Turkish colonies were allocated by the Supreme Council at San Remo on April 25, 1920.

<u>"A" Mandates</u>	<u>Mandatories</u>
Syria	French Mandate
Palestine	British Mandate
Iraq	British Mandate

\* Source: - "Information Regarding the Mandate System" International Conciliation CCXIII (October, 1925), pp. 291-292; See also Appendix A, No. IV.

\*\* Ruanda Urundi was allocated by a decision of the Supreme Council at San Remo on April 25, 1920.

Because of the rather general provisions of the Covenant respecting mandates it was not at all clear just what the mandate system did mean, or what the powers of the League were in respect to the mandate territories. The responsibilities imposed upon the League by Article 22 of the Covenant were indefinite. This uncertainty contributed to the postponement, by the League Council, of action on the approval of the "B" and "C" mandate charters until its meeting at San Sebastian, Spain, on August 5,

1920. Then it approved a report presented by M. Hymans of Belgium regarding the procedure to be followed in drafting and approving the mandate charters.<sup>1</sup> In adopting the report the Council accepted the resolutions drawn up by M. Hymans.<sup>2</sup>

These resolutions, making it possible for the mandatory powers to submit mandate charters to the League Council, marked the report as a very important step toward the institution of the mandate system.

## B. The Principles of the Mandatory Regime

### 1. The Covenant

Article 22 of the Covenant contained nine paragraphs getting forth in general terms the fundamental principles of the mandate system, together with the methods and safeguards designed to insure their application.<sup>3</sup>

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<sup>1</sup> Moon, op.cit., p. 484.

2 1. The Council decides to request the Principal Powers to be so good as to (a) name the Powers to whom they decide to allocate the Mandates provided for in Article 22; (This had previously been done as evidenced by table number one) (b) to inform it as to the frontiers of the territories to come under these mandates; (c) to communicate to it the terms and the conditions of the mandates that they propose should be adapted by the Council from following the prescriptions of Article 22.

2. The council will take cognizance of the mandatory powers appointed and will examine the draft mandate communicated to it, in order to ascertain that they conform to the prescriptions of Article 22.

3. The Council will notify to each power appointed that it is invested with the mandate and will, at the same time, communicate to it the terms and conditions.

4. The Council instructs the Secretary-General, following the recommendations set forth in this report to prepare a draft scheme for the organization of the Commission of Control provided for by Article 22, paragraph 9. See Responsibilities of the League Arising out of Article 22, Assembly Doc. No. 161, Annex 4, p. 18. See also infra, Chap. I, n. 1, p. 11.

<sup>3</sup> See Appendix A for Article 22 of the Covenant (Hereafter referred to as Article 22).

The guiding concepts and the framework of the new institution were to be found in the first two and last three paragraphs of the article. All the territories under mandate were subject to these provisions.

The object of the system was to ensure the "well-being and development" of the inhabitants of these territories as a "sacred trust of civilization." The method of attaining this aim consisted in entrusting the "tutelage" of these peoples to certain advanced nations. This notion of "tutelage," a novelty in international law, was borrowed from private law.<sup>1</sup> Its legal status gave rise to much controversy. The phrase "people not yet able to stand by themselves" was not intended to be applied indefinitely, but only until the peoples under tutelage were capable of managing their own affairs.

These principles covered all mandates, but their application varied in many ways. The definition "peoples not yet able to stand by themselves" covered many peoples and situations and had a direct bearing on geographic, economic, and demographic conditions. Accordingly, paragraphs 5 to 6 of Article 22 distinguished between three categories of mandates, "A," "B," and "C" depending on the stage of the civilization of their people.

## 2. The Mandate Charters

It was necessary, under the Council resolution adopting the Hymans

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<sup>1</sup> James C. Hales, "The Reform and Extension of the Mandates System," The Grotius Society, XXVI (January-December, 1940), pp. 174-177.

Report, for the Council of the League of approving the mandate charters. On December 17, 1920, the Council approved the "C" mandates, but it was not until July 20, 1922, that the "B" mandates were ratified. Not until September 29, 1923, were the "A" mandates for Palestine and Syria accepted.<sup>1</sup> No mandate was issued for Iraq.<sup>2</sup>

The delays were caused in part by the United States. Vital questions concerning Mesopotamian oil as well as American cable interests on the Island of Yap were the main issues. The oil controversy led the United States to claim, on November 20, 1920, as one of the Allied and Associated Powers, the right to a voice in the formulation of the mandates. This contention over oil interests led to controversies, but nevertheless the United States persisted in its claims and surprisingly enough received essentially the same rights in all the mandates as members of the League.<sup>3</sup>

The various draft charters which were adopted by the Council comprised a collection of provisions defining the manner in which the principles laid down by the Covenant were to be applied.

Although the degree of authority or control to be exercised by the mandatory varied according to the charter for the specific territory, there were certain clauses common to all mandates. The mandatory was

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<sup>1</sup> Wright, *op. cit.*, pp. 48, 56, & 57.

<sup>2</sup> See *infra*, chap. I, n. 1, p. 4.

<sup>3</sup> Moon, *op. cit.*, pp. 486-487.

under an obligation to make an annual report satisfactory to the Council. Full information was required on the measures taken to carry out the provisions of the mandate. The mandatory agreed that if any dispute should arise between themselves and another member of the League with regard to the interpretation or application of the mandate, such dispute, if not settled by negotiation, should be submitted to the Permanent Court of International Justice. The consent of the Council was required for any modification of the mandate.

The remaining clauses varied according to the categories, "A," "B," and "C" to which the mandates belonged.

The "C" mandate charters were similar in nature. They contained only seven articles and added little to the provisions of Article 22 of the Covenant. The mandatory was authorized to apply its own legislation to the territory, subject to such local modifications as circumstances required. The material and moral well-being and the social progress of the inhabitants were to be promoted. The mandatory was to see that the slave trade was prohibited and that no forced labor was permitted except for essential public works and services and then only for adequate remuneration.

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<sup>1</sup> See mandate charters for Samoa, British Togoland, and Syria and Lebanon, Appendix B. (Space prohibits the inclusion of the other mandate charters so one representative charter from each of the three categories is included. The text for all Mandate Charters may be found in the Official Journal of the League of Nations for January - February, 1921, for the "C" mandates and August, 1922, for the "A" and "B" mandates.) See Articles 6 & 7 of the Mandate for Samoa; Articles 10 - 12 of the Mandate for British Togoland, and Articles 17, 18, & 20 of the Mandate for Syria and Lebanon.

The traffic in arms and ammunition was to be strictly controlled and the use, by the natives, of intoxicating beverages prohibited. The natives were to be given no military training save for the purpose of internal security and the defense of the territory. No military or naval bases were to be established or fortifications erected. Freedom of conscience and the free exercise of all forms of worship were to be guaranteed. Missionaries, who were nationals of any state which was a member of the League, were to be free to follow their calling in the territory.<sup>1</sup>

Most of the provisions of the "C" mandates were repeated in those of the "B" and a number of new and more elaborate provisions were added which went into extensive detail. Besides promoting the material and moral well-being and the social progress of the inhabitants, "B" mandates were responsible for the peace, order, and good government of the territory. All forms of slave trade were to be suppressed and provision was to be made for the emancipation of slaves as quickly as social conditions would allow. Forced labor was authorized only under the same conditions as in the case of the "C" mandates. The provisions of the "B" mandates were less rigid in respect to intoxicants, but a strict control<sup>2</sup> was to be exercised over the traffic in arms and ammunition.

With regard to the holding or transfer of land, the "B" mandatory, in framing the laws, took into consideration native laws and customs and safeguarded native rights and interests. Strict regulations against

<sup>1</sup> See Articles 2 - 7 of the Mandate for Samoa, Appendix B.

<sup>2</sup> See Articles 2 & 4 of the Mandate for British Togoland and Article 5 of the Mandate for Samoa, Appendix B.

usury were enacted. The provisions relating to freedom of conscience and the free exercise of all forms of worship did not differ from those in the "C" mandates.<sup>1</sup>

The military clauses of the "B" and "C" mandates were almost identical. But an exception to this existed in the case of the French Mandates for the Cameroons and Togoland which provided that native troops raised in the territories could be utilized to repel attack in the event of a general war.<sup>2</sup> This caused much discussion for it violated paragraph 5, Article 22, of the Covenant.

The mandatory was authorized, in the case of British and French Togoland, British and French Cameroons, and Ruanda-Urundi, to include the territory under its mandate in a customs or administrative union with the adjacent territories. However, the measures adopted were not to infringe on economic equality. In these cases the reason that the "B" territories were administered as integral parts of the mandatory colonies was that the mandate formed small areas contiguous to such larger colonies of the mandatory. The other "B" class territories were governed as separate entities.<sup>4</sup>

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<sup>1</sup> See Articles 5 & 7 of the Mandate for British Togoland and Article 5 of the Mandate for Samoa, Appendix B.

<sup>2</sup> See Article 3 of the League of Nations French Mandate for the Cameroons, League Dec. No. C.449(1) e n. 345(e), 1922.

<sup>3</sup> See paragraph 5 of Article 22, Appendix A.

<sup>4</sup> Margalith, op.cit., p. 99. Margalith failed to include the French mandates which included the same provision.



The most important difference between the "B" and "C" mandates was the absence in the latter of the provisions for the "open door" and "equal opportunity" clauses. In the "B" mandates the mandatory was required to secure to all nationals of states which were members of the League of Nations the same rights as were enjoyed in the territory by his own <sup>1</sup> nationals.

Concessions for the development of the national resources of the territory were granted without distinctions of nationality, and concessions having the character of a general monopoly were not to be granted. <sup>2</sup>

The "A" mandates differed appreciably from those of the other two categories. In these areas the inhabitants had reached a more advanced stage of development. Therefore, the mandatory was expected to promote the capacity of the peoples for self-government.

The "A" mandates differed from one another in some rather important respects. Their terms were drafted so as to be taken into account the special conditions of the different areas in question. Of particular interest was the mandate for Iraq which was terminated in 1952. <sup>3</sup>

The external relations of the "A" mandates were controlled by the mandatory power. The privileges and immunities of foreigners, including

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<sup>1</sup> See paragraphs 5 & 6 of Article 22, Appendix A; See also Article 2 of the Mandate for Samoa and Article 6 of the British Mandate for Togoland, Appendix B.

<sup>2</sup> See Article 6 of the British Mandate for Togoland, Appendix B.

<sup>3</sup> Permanent Mandates Commission, Minutes of the Twenty-second Session, 1932, pp. 13-15. (Hereafter referred to as P.M.C.)

the benefits of consular jurisdiction and protection as formerly enjoyed by capitulation, were not applicable in the mandated territories. The judicial system to be established under the terms of the mandate, however, assured to foreigners as well as to the natives a complete guarantee of their rights.<sup>1</sup>

The mandatory powers adhered on behalf of the territory to any general international conventions already existing or which might be concluded subsequently with the approval of the League of Nations. They also were under obligation to see that complete freedom of conscience and the free exercise of all forms of worship, subject only to the maintenance of public order and morals, were ensured to all.<sup>2</sup>

The mandatory was entitled to use the roads, railways, and ports of the territory for the movement of its armed forces and the carriage of fuel and supplies. Other military provisions were similar in nature. Freedom of transit was to be guaranteed under equitable conditions. Special customs agreements could be concluded between the territory and neighboring countries and the mandatory was to see that no discrimination existed against the national of any state member of the League of Nations.<sup>3</sup>

The mandate for Syria and Lebanon contained a special provision to the effect that the mandatory was to frame an organic law taking into

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<sup>1</sup> See Articles 5 & 6 of the Mandate for Syria and Lebanon, Appendix B.

<sup>2</sup> See Articles 8, 10, & 12 of the Mandate for Syria and Lebanon, Appendix B.

<sup>3</sup> See Articles 2 & 11 of the Mandate for Syria and Lebanon, Appendix B.

account the rights, interests, and wishes of all their populations and was to facilitate the progressive development of the two countries as independent states.<sup>1</sup>

Many of the provisions were carried over from the "B" and "C" mandates. The various provisions were for liberty of conscience, rights of missions, and the open-door policy which is provided in the "B" mandates.<sup>2</sup>

The mandate charter for Palestine follows the main lines laid down by the Covenant for "A" mandates, but it also contained a number of provisions designed to apply the policy defined by the "Balfour Declaration" of November 2, 1917. The Declaration was in favor of a national home for the Jews in Palestine. These peculiarities of the Palestine Mandate were in the nature of a payment by the nations of Europe of a debt of conscience to the Jewish people. The provisions favoring the establishment of a national home for the Jews in Palestine were often asserted to be contrary to the provisions of Article 22, because the incorporation of the "Balfour Declaration" in the Palestine Mandate did not take into consideration the wishes of the Arabs who comprised the majority of the populations.<sup>3</sup>

The special recognition thus given to the rights of a people not at the time forming a majority of the population necessitated important

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<sup>1</sup> See Article 1 of the Mandate for Syria and Lebanon, Appendix B.

<sup>2</sup> See Articles 6, 7, 8, 10, & 11 of the Mandate for Syria and Lebanon, Appendix B.

<sup>3</sup> League of Nations Official Journal, 1921, Part 1, pp. 331-340.

changes in the provisions of the Palestine Mandate. In this case the powers of legislation and administration given to the mandatory were much wider than those enjoyed by the other "A" mandates. The first article of the mandate charter for Palestine gave powers of legislation and administration to the mandatory similar to those possessed by the "B" mandates.<sup>1</sup>

There were peculiarities in both the Syrian and Palestine Mandates with respect to territorial subdivisions within the mandates. Syria was divided into a number of territories each with a different legal relation to the mandatory power. The mandate charter itself was not very clear as to the territories into which Syria was to be divided. As a result, the French pursued a course which was strongly influenced by the frequent revolts within the country.<sup>2</sup> But in accordance with Article 1 of the mandate charter, the mandatory was to facilitate the progressive development of Syria and the Lebanon as independent states. In fulfillment of this goal the Lebanese Republic was constituted as a single and independent state on May 23, 1926. However, Lebanon was still considered as French mandate, but Article 91 of the Lebanese constitution provided that as soon as circumstances permitted Lebanon could apply for admission to

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<sup>1</sup> See Article 1 of the League of Nations Mandate for Palestine and Trans-Jordan, League Doc. No. C.P.M. 269, 1922.

<sup>2</sup> P.M.C., Minutes of the Eighth Extra Session, 1926, pp. 137-146.

the League of Nations.<sup>1</sup> Thus for all intents and purposes the French mandate can be treated as two distinct entities comprising of Syria and the Lebanon.

Similarly Palestine was divided into two units. The Eastern part of Palestine was separated from the remainder and called Trans-Jordan. Trans-Jordan is dealt with separately under Article 25 of the mandate for Palestine. Therefore, on September 16, 1922, the Council, in accordance with Article 25, approved a proposal by the mandatory power to the effect that the provisions of the mandate respecting the Jewish national home and the Holy Places should not be applied to Transjordan.<sup>2</sup> On February 20, 1928, the British recognized the existence of an independent government in Trans-Jordan.<sup>3</sup>

It can be argued that Iraq was not a mandated territory because the mandate for Iraq was not ratified. The radical change from mandatory to treaty relations between Great Britain and Iraq was agreed to by the Council of the League upon the request of the British member of the Council.<sup>4</sup> Great Britain entered into a Treaty of Alliance with Iraq on October

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<sup>1</sup> Hellen Miller Davis, Constitutions, Electoral Laws, Treaties of the States in the Near and Middle East (Durham, North Carolina: Duke University Press, 1947), pp. 170-186; See also Article 1 of the Mandate for Syria and Lebanon, Appendix B.

<sup>2</sup> League of Nations Official Journal, 1922, Part 2, pp. 1188-1189.

<sup>3</sup> League of Nations Official Journal, 1928, Part 2, p. 1453.

<sup>4</sup> League of Nations Official Journal, 1921, part 3, pp. 1215-1217.

<sup>1</sup>  
10, 1922, the provisions of which were similar to the unratified mandate charter.

The subsequent treaties undertaken between Great Britain and Iraq included several pertinent articles. No government official of other than Iraq nationality was to be appointed without the concurrence of Great Britain. The King of Iraq framed an organic law to be put into force upon acceptance by the constituent assembly of Iraq. He was to consult with the British High Commissioner on sound financial and fiscal policy. Iraq also had the right of representation in London and all other places agreed upon by Iraq and the British government. The clauses on judicial matters in the treaties resembled closely those in the "A" mandates for Syria and Palestine. Clauses on the activities of missionaries and on non-discrimination in economic matters were similar.

In reality, the British were using their good offices to secure the admission of Iraq to membership of the League of Nations as soon as possible.<sup>3</sup> It was after exhaustive consideration by the League of Nations and after Iraq had signed a declaration set forth by the Council, dealing with her obligations as a sovereign power, that she was admitted to membership in the League on October 3, 1932.<sup>4</sup> The mandatory regime was then

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<sup>1</sup> See Treaty of Alliance between Great Britain and Iraq with protocol, signed respectively at Baghdad on October 22, and April 30, 1922, League of Nations Treaty Series, Vol. XXXV, 1925, pp. 14-18.

<sup>2</sup> Ibid., Articles 2, 3, 4, 5, 9, 11, & 12, pp. 14-17.

<sup>3</sup> P.M.C., Minutes of the Twenty-first Session, 1931, pp. 56-62.

<sup>4</sup> P.M.C., Minutes of the Twenty-second Session, 1932, pp. 12-15.

terminated, thus marking the first fulfillment of the ultimate goal of the mandatory principle.

The "A" mandates were not a compact unified class; yet they, more than any of the other mandates, furnish a valuable example of the diverse problems and complications which have arisen since the establishment of the mandate system. The reason for this was the "A" mandates, although advancing toward independence, had irreconcilable factions within their territories which created discord.

#### C. The Supervision of the Mandatory Administration by the League of Nations.

##### 1. Nature and Extent of the Supervision.

The cornerstone of the whole mandate system was the international supervision provided for in paragraphs 7 and 9 of Article 22 of the Covenant.

The Covenant instituted a system of tutelage to be exercised on behalf of the League of Nations and the guardians or mandatories were responsible to the League and accordingly accepted its supervision. From the provisions of the Covenant and from the decisions of the Council it emerged clearly that what was intended was an effective and genuine, not a purely theoretical, supervision.

The question of the extent of the right of control to be exercised by the League of Nations was dealt with by the Council's adoption of the

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 Belgian representative's report of August 5, 1920. By the acceptance of this report the Council approved the wider interpretation which it advocated.

The mandatories were required to attach to their annual reports the complete text of all general legislative or administrative decisions adopted in the mandated territories.<sup>2</sup> Likewise the Constitution of the Mandate Commission adopted by the Council provided that the accredited representatives of the mandatory powers were to furnish any supplementary information which the Commission might request.<sup>3</sup> The mandatory powers were supposed to render an account of all details of their administration, and it was the intention of the Council to exercise its rights of supervision with respect to their administration as a whole.

## 2. Powers, Duties, and Procedure of the Organs of the League

The League's activity in relation to mandates was carried on through:

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1 In what direction was the League's right of control over the mandatory powers to be exercised? Was the Council to content itself with ascertaining that the mandatory power had remained within the limits of the powers which were conferred upon it, or was the council to ascertain also whether the mandatory power had made a good use of those powers and whether its administration had conformed to the interests of the native population? Mr. Rymans, the Belgian representative to the Council, believed the wider interpretation should be adopted. He based his arguments on Articles 1 and 2 which indicated the spirit of the mandatories supervision and on Article 7 which requires an annual report from the mandatory on its administration. See Responsibilities of the League Arising out of Article 22, Assembly Doc. No. 161, Annex 4, p. 18.

<sup>2</sup> League of Nations Official Journal, 1921, Part 2, p. 1287.

<sup>3</sup> See Constitution of the P.M.C., Appendix A.



(1) the Council, (2) the Assembly, (3) the Permanent Mandates Commission, (4) the Secretariat, and (5) the Permanent Court of International Justice. The advice of other agencies was often utilized, particularly the Standing Committee on the White Slave Traffic and the Temporary Slavery Commission. The International Labor Office was regularly represented on the Mandate Commission and many of its investigations applied to labor in mandated areas.<sup>1</sup>

Under the Covenant the supervision of the mandatory administration devolved upon the Council. The Council as the authoritative organ of the League in supervising the administration of the mandates utilized the same methods which it employed in other fields.<sup>2</sup> Annual reports were rendered by the mandatory powers upon the territory committed to their charge. The Permanent Mandates Commission also gave advice to the Council on matters relating to the mandates, and in the absence of any previous agreement between the members of the League, the Council was empowered to describe the necessary terms.

The Assembly was free to discuss any questions relating to mandates because they were governed in the name of the League as a body and League members had to share the burden of moral responsibility.<sup>3</sup> Discussion in the Assembly usually led to the adoption of resolutions laying

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<sup>1</sup> P.M.C., Minutes of the Eighth Session, 1926, p. 26.

<sup>2</sup> See Article 4, paragraph 4, of the Covenant, Appendix A.

<sup>3</sup> See Article 3 of the Covenant, Appendix A.

stress on some particular aspect of the way in which mandatories were discharging their duties. This resulted in the formulation of some wish addressed to the Council, to the Permanent Mandates Commission, or to the mandatory powers.<sup>1</sup> Thus, the role of the Assembly was to maintain touch between public opinion and the Council. This in turn brought action by the Council concerning the Mandate Commission or the mandatory power.

The rules of procedure for the Permanent Mandates Commission were approved by the Council on January 10, 1922.<sup>2</sup> This made the Commission a working organization, as the Council had previously approved the Commission's constitution which dealt primarily with the annual reports submitted by the mandatories and with the composition of the Commission.<sup>3</sup>

The provisions pertaining to the composition of the Commission were the product of a long and arduous debate. Originally the Commission consisted of nine members which were all appointed by the Council. In December, 1924, the Council decided to add an extraordinary member and in September, 1927, a member of German nationality was appointed, Germany having just been admitted in the League. In addition, an expert was chosen by the International Labour Organization to represent it when questions relating to labor were discussed. However, this expert attended the Commission meetings in an advisory capacity only; therefore,

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1 Wright, op. cit., p. 174.

2 See Rules of Procedure of the P.M.C., Appendix A.

3 See Constitution of the P.M.C., Appendix A.

the Commission legally consisted of only eleven members.<sup>1</sup>

The majority of the Commission were nationals of non-mandatory powers. As a result, only four of the mandatories, Great Britain, France, Japan, and Belgium, had a national on the Commission. This meant that in practice Australia, New Zealand, and South Africa did not have a national on the Commission, but by paragraph C of the Commission's Constitution each mandatory power was allowed to send a representative when its mandates were being considered. With the exception of Germany and Sweden, and its successor Norway, the non-mandatory members were chosen from colonial states among which were Italy, the Netherlands, Portugal, and Spain.<sup>2</sup>

The expert qualifications of the members<sup>3</sup> were stressed to such an extent that the Council's selections were based entirely on personal merits and competence. In no sense of the word were the members of the Commission to be construed as representatives of the countries from which they came, and thus the emphasis had been placed on the expert as distinguished from the representative qualifications of the members. While members they were not allowed to hold any office which would put them in a position of direct dependence on their own governments. This gave the

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<sup>1</sup> Ibid., See also P.M.C., Minutes of the Twelfth Session, 1927, pp. 10-11. By the Constitution as amended, the Commission was to consist of only ten members; therefore the appointment of H. Rappard, the extraordinary member, did not prejudice the composition of the Commission. Thus H. Rappard was a supplementary member whose position would not necessarily have been filled if he had died or had decided to resign.

<sup>2</sup> See Constitution of the P.M.C., Appendix A. For the composition of the Permanent Mandates Commission see Appendix D.

<sup>3</sup> See Constitution of the P.M.C., Appendix A.

Commission the characteristic of having complete impartiality and the ability to harmonize conflicting points of view.

The Commission was, in a sense, the mainspring of the whole mandates system. The Covenant provided that the Commission was to receive and examine the annual reports of the mandatories and to advise the Council on all matters regarding the observance of the mandates.<sup>1</sup> It was, therefore, essentially an advisory body whose duty it was to examine, to report, and to assist the Council in carrying out its task. Its work was preliminary in character and constitutionally it had no power to make binding decisions on the mandatory powers or to address direct recommendations to them. Its conclusions were not final until they had been approved by the Council. Although the Commission exercised only preliminary supervision, the proceedings of the Commission provided an indispensable foundation<sup>2</sup> for the Council's actions in this domain.

The annual reports of the mandatory powers, the report of the Commission to the Council, the minutes of the discussions, and the comments of the accredited representatives were all published. The observations on each report were, however, communicated to the representative of the mandatory power concerned, who was entitled to attach any comments of his own.<sup>3</sup> The Council in examining these documents made such decisions as

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<sup>1</sup> See Article 22, paragraph 9 of the Covenant.

<sup>2</sup> Ten Years of World Cooperation (Geneva: Secretariat of the League of Nations, 1930), p. 340.

<sup>3</sup> See Constitution of the P.M.C., Appendix A.

were expedient. As a rule, the conclusions of the Council coincided with those of the Mandate Commission and the observations were forwarded to the mandatory powers.

The Secretariat, which prepared the agenda of the Commission and collected the necessary material to keep the members informed on matters concerning mandates, had a very important function to perform. Even before the Covenant went into effect, the Secretariat had organized a<sup>1</sup> Mandates Section.

The Permanent Court of International Justice was recognized by the mandatories themselves as the final interpreter of their terms. The mandatory agreed that if any dispute should arise between the mandatory and another member of the League of Nations with regard to the interpretation or the application of the provisions of the mandate, such dispute, if not settled by negotiation, was to be submitted to the Permanent<sup>2</sup> Court of International Justice.

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1 P.M.C., Minutes of the Fifth Session, 1924, pp. 127-128.

2 See Article 14 of the Covenant, Appendix A. The meaning of these terms was discussed by the Court in the Mavromatis Palestine Case. Greece brought action against Great Britain on the basis of this Article (26) in the Palestine Mandate alleging that the latter had infringed Article 11 of the mandate by granting the various Rutenburg concessions. Mavromatis, a Greek national, had a concession given by the Turkish government which was encroached upon by the Rutenburg grant. The Court held that, since Great Britain had agreed by protocol XII of Lausanne Treaty to maintain concessionary contracts concluded before October 29, 1914, it appeared to apply to Article 11 of the mandate charter. Therefore Mavromatis was upheld but no mention was made in regard to compensation. See The Permanent Court of International Justice, (Geneva: Information Section, League of Nations Secretariat, 1930), pp. 35-36, 39-40, & 48-49; See also Wright, op. cit., pp. 155-156.

### 3. Role and Work of the Permanent Mandates Commission

#### a. Sources of Information and Means of Supervision

In accordance with the Council's decision on August 5, 1920,<sup>1</sup> the Mandate Commission examined the whole of the administration of the various territories in the light of the principles laid down in the Covenant and the provisions of the mandates charters.

The "Bondelzwart Rebellion" of Southwest Africa is of special interest in illustrating the sources of information available to the Mandate Commission and the means of supervision at its disposal.

A small tribe of Hottentots, the Bondelzwarts, rebelled in 1922 against the white encroachment upon their flocks and land. The Union of South Africa quelled the uprising by military force. Such a situation in a mandated territory could not go unnoticed for long, so at the insistence of a colored delegate from Haiti the Assembly of the League in 1922 adopted a resolution calling for the Permanent Mandates Commission's consideration of the incident and expressed the hope that favorable conditions would be established.<sup>2</sup>

The annual report submitted by the mandatory power was the chief source of information at the disposal of the Commission. But in addition to the annual report, the Commission asked for special reports on urgent

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<sup>1</sup> See Supra, Chap. I, no. 1, p. 22.

<sup>2</sup> Moon, op. cit., p. 505.

situations; two examples were the Bondelzwart Rebellion and the Druse-  
Arab revolt of 1925-26.<sup>1</sup>

When asked for a statement, the Union replied that a full and complete report of the uprising would be forthcoming. After the report was submitted, the Commission examined it and made statements concerning its biased nature. The Commission was concerned over the Union of South Africa's failure to express its attitude toward the reports prepared by the commissioners who were sent to the field and by the administrator for the territory.<sup>2</sup>

The right of petition by the natives was rather important. This procedure constituted not only a means whereby those concerned would state their grievances but was also an additional source of information for the Commission. Any petition from the inhabitants had to be transmitted to the League of Nations through the mandatory power which was entitled to attach such comments as it might desire. Petitions from other sources were communicated to the chairman of the Commission. Those considered worthy of attention were communicated to the government of the mandatory power with a request for comments, while the others were reported upon by the chairman.<sup>3</sup> Since the natives were uneducated and unfamiliar with the ways of petitioning their grievances, they were unable in many instances

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1 Wright, op.cit., p. 164.

2 P.M.C., Minutes of the Third Session, Annex B, 1925, pp. 290-296.

3 Ten Years of World Cooperation, op.cit., pp. 341-342.

to make them known to the Mandate Commission.

When the annual report was examined, the mandatory power had a duly appointed representative sit in on the Commission discussion. The examination afforded an opportunity for the discussion of questions arising out of the annual reports as well as other questions which might arise. The oral questioning, which supplemented the Commission's information, gave the mandatory governments an opportunity to sell their policy to the Commission. As a result, the position of South Africa was placed in a much more favorable position in its relation to the Bondelzwart Affair.<sup>1</sup>

Another source of information for the Commission was that obtained by the Mandate Section of the Secretariat. It consisted of laws which were enacted by the mandatories, official statements and views expressed during legislative debate, public lectures and articles in prominent journals and newspaper comments.<sup>2</sup> However, this information was not adequate as indicated by the Mandate Commission in the case of the Bondelzwart rebellion in 1923 and the Druse and Arab revolt in 1925.<sup>3</sup>

To overcome this problem the Mandate Commission discussed sending a commission of inquiry to the field for a report so that it could adequately determine what recommendations were to be made. Of the same nature was the Commission's decision in 1925 on a petition presented by

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<sup>1</sup> P.M.C., Minutes of the Fourth Session, 1924, pp. 46-58.

<sup>2</sup> P.M.C., Minutes of the Sixth Session, Annex 2, 1925, p. 149.

<sup>3</sup> P.M.C., Minutes of the Third Session, Annex 8b, 1923, pp. 290-91; See also P.M.C., Minutes of the Eighth Session, Annex 4, 1926, p. 201.



the Executive Committee of the Palestine Arab Congress. Since the information given was inadequate, a debate ensued, as in the Bondelzwart affair, over the possibility of sending an investigatory commission to the scene. Being unable to reach a decision in either instance, the Commission decided that the sending of an investigatory body to Southwest Africa, besides being constitutionally objectionable, was also inexpedient.<sup>2</sup>

Consideration was given to the hearing of petitioners, but this possibility also failed to materialize because the powers consulted stated it would weaken the authority of the mandatories.<sup>3</sup> As a result certain petitioners from Syria and a Mr. Nelson from Samoa who had attempted to gain a hearing in Geneva on their particular grievances were turned down.<sup>4</sup>

The Council had in several exceptional cases decided to send special commissions to mandated territories. On September 30, 1924, it decided to appoint a commission to collect the data required to enable it to reach a decision on the question of the frontier between Iraq and Turkey.<sup>5</sup> Only in part did this concern the Mandate Commission because it was a dispute concerning the mandatory and a neighboring power. The Council

<sup>1</sup> P.M.C., Minutes of the Seventh Session, 1925, pp. 123-129.

<sup>2</sup> P.M.C., Minutes of the Third Session, Annex 8b, 1923, p. 291.

<sup>3</sup> League of Nations Official Journal, 1926, part 1, pp. 437-438.

<sup>4</sup> Mander, op.cit., p. 725.

<sup>5</sup> P.M.C., Minutes of the Fifth Session, 1924, p. 6; See also P.M.C., Minutes of the Sixth Session, 1925, pp. 60-61.

in this instance arrived at its decision without referring the matter to the Mandate Commission.

The comments of the Permanent Mandates Commission, as a rule, threw new light on the information obtained from the various sources previously discussed. The Commission prepared its report and the Council in turn considered the report and made observations which it in turn presented to the mandatory power. The conclusions of the Commission were oftentimes softened by the Council, as was the case in the Bondelzwart report.<sup>1</sup>

The Council and the Mandate Commission had at their disposal, as indicated by this discussion, a variety of means of obtaining information which assisted them in their work of supervision over the mandates and the mandatory power.

#### b. Methods and Achievements

The Mandate Commission was, in the final analysis, the key to the mandate system. Fact finding was the major activity of the Commission and it displayed the characteristics of a technical body. Its task was a complex and delicate one because it had to undertake a careful and exhaustive examination of the whole of the mandatory administration to consider the measures taken, and if necessary, criticize them.<sup>2</sup>

Care had to be taken to avoid undermining the authority of the

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<sup>1</sup> Wright, op.cit., p. 200.

<sup>2</sup> See supra, Chap. I, n. 1, p. 22; See also supra, Chap. I, n. 2, p. 28.

mandatory powers and thus increasing the difficulty of their task. If this policy had not been followed, there would have been more accusations that the Commission was setting itself up as a tribunal. The Commission, therefore, attempted to refrain from doing anything which might be construed as a tendency to substitute itself for the mandatory powers.

This question did come up on a rather important issue. The Mandate Commission formed its opinion regarding the application of the various mandates mainly from a study of official documents, with the assistance of the accredited representatives of the mandatory powers. The annual reports of the mandatory powers were the most important documents submitted to the Commission, so the Commission in 1921 asked the Council to send questionnaires to the mandatory powers and requested their use, as far as possible, in the preparation of their first annual reports.<sup>1</sup>

The questionnaires which were prepared for "B" and "C" mandates were soon found to be inadequate as guides to the contents of reports because they were drafted primarily on the mandate texts which as a result failed to bring out the general policy of mandatories on questions concerning the entire political, administrative, economic, and social situation in the territory.<sup>2</sup>

In 1926, therefore, the Commission drew up a new list of questions which it desired to be dealt with in the annual reports.<sup>3</sup> The Commission,

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<sup>1</sup> League of Nations Official Journal, 1921, Part 3, pp. 1125-1132.

<sup>2</sup> Wright, op.cit., pp. 186-189.

<sup>3</sup> P.M.C., Minutes of the Ninth Session, 1926, pp. 231-237.

after considering the objection of Great Britain and her Dominions, stated that the mandatory powers could use their discretion in adopting the list of questions. In many cases the mandatory<sup>1</sup> actually did comply. This was an attempt by the Commission to establish a standard, and is only one example of its striving for cooperation and administrative efficiency.

The Commission did not lose sight of the fact that the mandatory powers were engaged in a common task of welfare and progress for the mandated territories and their inhabitants and felt a corresponding duty of supporting the efforts of the mandatory<sup>1</sup> in this direction. The Mandate Commission in these ways went more than half-way in efforts at cooperation but was often thwarted by the mandatory<sup>1</sup>.

The Commission at each of its sessions undertook the examination of the annual reports.<sup>2</sup> Since this examination was taken up particularly from the point of view of the application of the clauses of the mandate charters, the Commission covered all the fields of administration and all aspects of the life of the mandated territories.<sup>3</sup>

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1 P.M.C., Minutes of the Fourteenth Session, 1928, pp. 198-205.

2 See paragraph b & c of the Constitution of the P.M.C., Appendix A.

3 The examination included the following fields: administrative organization and political systems; public finances; justice; economic conditions such as agriculture, trade, and communications; social, moral, and material conditions of the natives; the labor regime; public health vital statistics; education; the land tenure; manufacture of, and traffic in, spirituous liquors and narcotics; freedom of conscience and worship; the activity of missions; the application of the principle of economic equality; the open door; the military clauses of the mandate; the delimitation of frontiers; the international relations of the territory; and many other innumerable and searching questions. See P.M.C., Minutes of the Ninth Session, Annex 10, 1926, pp. 231-237.

Observations were, in turn, submitted to the Council which were designed to obtain, in many cases, fuller information with regard to points insufficiently clear in the eyes of the Commission. In some instances a request for information constituted a discreet and indirect criticism.<sup>1</sup> Aware of its responsibilities, the Commission expressed direct criticism only in cases when it plainly appeared to have been justifiable. Other observations contained recommendations or suggestions concerning the adoption of new measures in the territories.<sup>2</sup> For instance, in 1934 the Commission drew attention to a decree which had been promulgated in Togoland and the Cameroons<sup>3</sup> areas under French Mandate, and which appeared to the Commission to infringe on the principle of economic equality in those areas.<sup>5</sup> In the following year, the Commission was able to record that the decree in question had been abrogated. The Commission frequently expressed its satisfaction at measures taken or congratulated a mandatory power on successes achieved. An example was its expression of satisfaction with the measures taken by the administration of Nauru which gave effect to its suggestions regarding the treatment of Chinese laborers.<sup>4</sup> The observations of the Commission often led to the adoption of useful and important measures.

<sup>1</sup> See supra, Chap. I, no. 2, p. 28.

<sup>2</sup> P.M.C., Minutes of the Twenty-sixth Session, 1934, pp. 68-70, 132-134, & 166-167.

<sup>3</sup> P.M.C., Minutes of the Twenty-second Session, 1932, pp. 359-362.

<sup>4</sup> P.M.C., Minutes of the Fifteenth Session, 19, p. 43; Annex 20, p. 293.

The Mandate Commission also made special studies out of the interpretation of the clauses of the Covenant and of the mandate charters which were not always very clear or complete.

The most fundamental of these problems was that of sovereignty or of ultimate authority, which Article 22 discreetly evaded. The question of the legal title over mandates was rather lightly looked upon in the <sup>1</sup>Hymens Report of 1920.

But the problem arose in the delimitation of the frontier between Southwest Africa and the Portuguese colony of Angola. In reaching agreement on this question the Union of South Africa alarmed the Commission by using the term sovereignty in a manner which intimated that the Union possessed actual sovereignty over the territory. The legal relationship between mandatory powers and the territory under them raised a new issue in international law; therefore, the Council wanted a decision on the matter. The South African Government, in 1929, accepted the view of the Council which stated that the word sovereignty so used did not mean the <sup>2</sup>actual possession of sovereignty over the territory.

Another perplexing question was the status of inhabitants of mandated territories. What nationality could be claimed by inhabitants of a mandated territory when applying for passports? The mandate system

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<sup>1</sup> Responsibilities of the League Arising out of Article 22, Assembly Doc. No. 161, op.cit., Annex 4, pp. 12-18. See also supra, Chap. I, n. 1, p. 22.

<sup>2</sup> P.M.C., Minutes of the Tenth Session, 1926, p. 22 and Annex 9, p. 182; See also P.M.C., Minutes of the Thirteenth Session, 1928, p. 11.

would have been similar to annexation if the mandatory power conferred or imposed its own nationality on the inhabitants. The conclusion drawn by the Council, on the recommendations of the Commission, was that the inhabitants of a mandate should enjoy a separate nationality, but that individuals so desiring could obtain naturalization from the mandatory power, in accordance with the laws of the mandatory.<sup>1</sup>

Some general questions which also came up for study by the Commission were the application of the principle of economic equality,<sup>2</sup> the extension to mandated territories of general and particular international conventions,<sup>3</sup> the treatment accorded by members of the League to nationals of mandated territories, and the conformation of title to public or domain lands in case of transfer or termination of the mandates.<sup>4</sup>

When they established the general conditions which must be fulfilled before the mandate regime could be brought to an end in any mandated area, the Commission accomplished a piece of constructive work in international law.<sup>5</sup> In this way Iraq was able to enter the League in 1932.<sup>6</sup>

The question of termination of the mandate, its revocation, or its

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1 P.M.C., Minutes of the Second Session, Annex 4, 1922, pp. 85-87; See also League of Nations Official Journal, 1923, Part 1, p. 604.

2 See supra, Chap. I, n. 2, p. 33.

3 P.M.C., Minutes of the Twentieth Session, Annex 16, 1931, pp. 229-230.

4 P.M.C., Minutes of the Thirteenth Session, Annex 7, 1928, pp. 224-225.

5 P.M.C., Minutes of the Twentieth Session, Annex 16, 1931, pp. 228-229.

6 See supra, Chap. I, n. 3 & 4, p. 20.

transfer, also portrayed the actions of the Commission.

These questions greatly influenced the floating of loans and the general economic development of the territories. The mandatory powers and individuals alike were unwilling to take any undue risks; therefore, the Commission recommended that loans be protected and guaranteed in case of transfer or termination of the mandate.<sup>1</sup>

The complications resulting from Japan's withdrawal from the League of Nations in 1933 brought the mandate question into the realm of practical politics. She apparently had no intention of losing her advantageous position in the Pacific.

for the government of Japan did not relinquish its mandate and took the view that the Japanese withdrawal from the League did not disqualify it from continuing to act as a mandatory; but neither did it, as many Japanese nationalists claimed, absolve it from the obligation of continuing to administer the islands in accordance with the terms of the mandate.<sup>2</sup>

Actually, there were no decisions as to the dismissal of a mandatory power in case it ceased to meet the qualifications stated in the Covenant, nor were there any decisions concerning whether a mandatory had to be a member of the League.<sup>3</sup> As a result Japan was allowed to administer the mandated islands north of the equator as she wished and did not send her annual report for 1938 until sometime early in 1940.<sup>4</sup> She was also building

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<sup>1</sup> P.M.C., Minutes of the Sixth Session, Annex 11, 1925, pp. 171-172.

<sup>2</sup> Mander, op.cit., p. 725.

<sup>3</sup> Wright, op.cit., pp. 439-440.

<sup>4</sup> P.M.C., Minutes of the Thirty-seventh Session, 1939, pp. 118-119.



a part of dubious character at Saipan, in the Ladrones, and restricting foreign travel in the Islands.<sup>1</sup>

The true aims of Article 22 have been abused in the above-cited instances. The minutes and observations of the Commission show a more comprehensive view of the main objectives and correspond to the aims as set forth in Article 22. These objectives are:

1. The political and moral education, the improvement of the living conditions and, in general, the protection of the interests of the native population.

2. The application of the economic "open door" and commercial equality for all powers so that the mandated territories shall not be a source of profit either politically or economically to the mandatory.

3. To make the mandate system a reality and not an excuse for outright annexation by preserving the legal status, integrity, and individuality of the territory as a distinct international entity.<sup>2</sup>

However, the Commission with its idealistic approach based primarily on international criticism was working against forces much larger than it

1 P.M.C., Minutes of the Twenty-sixth Session, 1934, pp. 89-90 & 93.

2 Mander, op.cit., p. 724. The use of an indirect quotation is employed but is set off as a long direct quotation for clarity and continuity of thought. However, the "open door" and "equal opportunity" clauses were not included in the "C" mandate charters, and therefore do not apply in the "C" mandates. See supra, Chap. I, n. 1, p. 15.

could cope with.<sup>1</sup> As a result, the basic objectives of the mandate system were being sacrificed for the benefits to be derived from playing the game of international power politics. This upholds the contention of J. Stoyanovsky and other eminent jurists who had previously claimed Article 22 to be political rather than legal.<sup>2</sup> This evidence will become more prominent in the ensuing discussion which will deal with problems arising out of the second World War, which in turn caused the final breakdown of the international harmony that once existed in respect to the mandate system.

#### D. League Inactivity

One of the topics for discussion at the last session of the Permanent Mandates Commission in 1939 was the status of the territories under

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<sup>1</sup> This was particularly true in the case of the Sanjak of Alexandretta which was a part of the Syrian mandate. On May 29, 1937, the Council of the League of Nations, which was dominated by France and Great Britain, modified the Syrian Mandate, insofar as it applied to the Sanjak of Alexandretta, by adopting a statute and a Fundamental Law which were to come into operation in that territory on the 29th of November, 1937. Turkey had been agitating for the change because of the large Turkish population in the Sanjak. The southwestward expansion of the German Reich and the Italian occupation of Albania caused a rise in the value of Turkish friendship to the western democracies. Although France, under Article 4 of the Syrian Mandate, was responsible for seeing that no part of the territory of Syria and the Lebanon was to be ceded or leased or in any way placed under the control of a foreign power, she violated this pledge and turned over the Sanjak to Turkey on June 23, 1939. Thus, Franco-Turkish and Anglo-Turkish relations were brought into harmony, and the way prepared for the Tripartite Treaty which was concluded at Angora in October, 1939. See Arnold J. Toynbee, Survey of International Affairs, 1938, Vol. 1, (London: Oxford University Press, 1941), pp. 479-492; See also Herald Stephen, Documents on International Affairs 1937 (London: Oxford University Press, 1939), pp. 465-517.

<sup>2</sup> Wright, op.cit., pp. 498-499.

mandate in relation to the Second World War which was rapidly developing. Because the annual reports did not cover the period since the beginning of the conflict, the Commission indicated the procedure to be followed by the mandatories in reporting the activities of the mandates in respect to the war. <sup>1</sup> By outlining such a procedure, it was hoped that the mandates would be kept out of the war. The Commission exercised every means within its power but was unable to prevent their being drawn into the conflict.

No date was fixed for the next meeting of the Commission. Nevertheless the Secretariat continued to classify materials and documents which would be of benefit when its meetings were to be resumed. <sup>2</sup> This was to never come about, for in actuality the international supervision of the mandates administration almost ceased after 1940 because of the suspension of the political activities of the League of Nations. <sup>3</sup> Thus the mandated territories were left adrift and were subject to the expediencies of war. However, with the exception of the Japanese mandated islands, the Australian mandate for New Guinea, and the French mandate for Syria and Lebanon, the conflict left the territories under mandate relatively untouched physically.

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1 P.M.C., Minutes of the Thirty-seventh Session, 1939, pp. 119-25.

2 Brief Statement on the Activities of the League of Nations and its Organs in 1940-41, League Doc. No. C. 41.M. 38, 1941, p. 25.

3 \_\_\_\_\_, "First Trusteeship Agreements," United Nations Weekly Bulletin, I (October 21, 1946), p. 26.

There was no reason for the allies to believe, were they successful in the war, that the international control over mandates would not take up where it had left off in the late fall of 1939, but the forces of war, however, brought new aspirations to the peoples, not only under mandates but also to all dependent peoples. It is apparent that conditions had changed to such an extent that the mandate system of the League would have to be replaced by new machinery which was capable of shouldering greater responsibility. These areas had now taken on new strategic and economic importance, paving the way for important changes and adjustments.

At the first session of the United Nations General Assembly a plan was devised whereby certain functions of the League were to be transferred to the United Nations.<sup>1</sup> Although there were no recommendations relating to mandates in the agreement that was concluded,<sup>2</sup> many features of the mandate system that were of value appeared within the scope of the new trusteeship system which took the place of the outmoded mandate system.

The League of Nations was brought to a close in April, 1946. On April 18, 1946, the General Assembly of the League, in relation to its obligations under the mandate system, adopted unanimously the following resolution:

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<sup>1</sup> Prior to this time the United Nations Conference at San Francisco considered the desirability of taking over certain functions, activities, and assets of the League of Nations upon its termination. Department of State Publication No. 2542, Transition from League of Nations to United Nations, United States - United Nations Information Series No. 5, 1946, p. 1.

<sup>2</sup> Ibid., pp. 1-2.

1. Expresses satisfaction in the way in which the organs of the League performed their functions with respect to the mandate system and in particular pays tribute to the Mandate Commission.

2. Recalls the role of the League in assisting Iraq to independence and welcomes the termination of the mandated status of Syria, Lebanon, and Trans-Jordan which have since the last session of the Assembly become independent.

3. Recognizes that, on the termination of the League's existence, its functions with respect to the mandated territories will come to an end but notes Chapters 11, 12, and 13 of the Charter which embody the principles of Article 22 of the Covenant.

4. Takes note of the intentions of the mandatory powers to continue to administer the mandates under the spirit of the League until the new organization [the Trusteeship Council] has been created.<sup>1</sup>

The Assembly's resolution placed emphasis on the progress previously achieved by the mandate system and brought out clearly the promising future in store for the trusteeship system.

The mandate system was a beginning toward an international order of trusteeship and its twenty years of operation were not without value for the present effort at world and colonial settlement.

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<sup>1</sup> Yearbook of the United Nations 1946-47, (Lake Success, New York: Department of Public Information, 1947), p. 575.

CHAPTER II

THE TRUSTEESHIP SYSTEM

A. Wartime Conferences

The first step in the development of a new policy towards non-self-governing territories was the Atlantic Charter. Two points in the Charter are of special concern in connection with the development of proposed plans for a new system of tutelage. In stating their aims for a better future world it was proclaimed that "no territorial or other aggrandizement for either power" and "no territorial changes contrary to the wishes of the people concerned" were to take place. The main issue at stake at the signing of the Atlantic Charter became clearer when the Declaration of the United Nations was signed on January 1, 1942, by the representatives of twenty-six countries at war with the Axis. The defeat of the axis was their main concern, and the solemn pronouncement which bound the signatories to the Atlantic Charter was to be tested at a later date.

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<sup>1</sup> Department of State Publication No. 1732; Cooperative War Effort, Executive Agreement Series No. 236, 1942, p. 4. The two phrases represent points 1 and 2 of the Atlantic Charter and were taken from Wilson's fourteen points. They were heartening to those liberals who hoped for a better world order and encouraging to the conquered and underprivileged peoples everywhere.

<sup>2</sup> Ibid., pp. 1-3.

In the meantime, considerable attention had been devoted to the re-organization of the League of Nations mandate system. Certain proposals were submitted by Secretary of State Hull to President Roosevelt in March, 1943, which called for establishing an international trusteeship system by the United Nations for those dependant territories separated from their former political ties by the present war.<sup>1</sup> Other governments were making proposals along similar lines. Such was the Wellington resolution made by Australia and New Zealand in November, 1944.<sup>2</sup>

The problem of replacing the mandate system was to be placed on the agenda of the Dumbarton Oaks Conference, but the subject was not considered at this time because of the many complex factors involved. However, it was understood that the question would be taken up at the prospective United Nations Conference.<sup>3</sup>

Further discussion on trusteeship took place at Yalta, the scene of the Crimea Conference. Agreement was reached that territorial trusteeship would apply to:

- a. existing mandates of the League of Nations;
- b. territories to be detached from enemy states after the war; and

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<sup>1</sup> Department of State Publication No. 2812, The United States and Non-Self-Governing Territories, United States-United Nations Information Series No. 18, 1947, p. 9.

<sup>2</sup> E. H. Bailey, "Dependant Areas of the Pacific: An Australian View," Foreign Affairs, XXIV (April, 1946), p. 498.

<sup>3</sup> Department of State Publication No. 2812, op.cit., p. 9.

c. any other territory that might voluntarily be placed under trusteeship.<sup>1</sup>

This was an essential step forward in the development of a new international mechanism which was to replace the mandate system. It was also understood that the discussion of actual territories to be included under trusteeship would not be undertaken at either the United Nations Conference or the consultations prior to the conference, and that it would be a matter for future agreement as to which territories within the three categories would be placed under trusteeship.<sup>2</sup>

President Roosevelt, Prime Minister Churchill, and Marshall Stalin agreed that the five states which were to have permanent seats on the Security Council should consult each other prior to the United Nations Conference, but these consultations were never held. The main reason for this was the controversy in the United States over whether to annex the former Japanese Mandated Islands or to place them under trusteeship.<sup>3</sup> Therefore, upon the opening of the Conference, steps had to be taken to initiate the Five Power consultations among representatives from the United States, Great Britain, China, France, and the Soviet Union.

### B. The San Francisco Conference

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<sup>1</sup> Hearings before the Committee on Foreign Relations United States Senate, The Charter of the United Nations, 79th Congress, First Session, 1945, p. 115.

<sup>2</sup> Ibid., p. 115.

<sup>3</sup> The New York Times, May 2, 1945, p. 17.



1. Five Power Meetings and Conference Technical Committee Meetings

The Five Power meetings ran concurrently with those of the Conference Technical Committee on Trusteeship. During the Five Power meetings various proposals were submitted for a trusteeship system. Between the United States and British proposals, there were substantial divergencies, but the Soviet, Chinese, and French papers paralleled quite closely those of the United States.

In the meantime, the Conference assigned the discussion of a trusteeship system to Commission II. Since Commission II had other important work, such as drawing up drafts on political and security functions and economic and social cooperation, a special committee, Committee 4, was created for the purpose of assisting it in the formulation of the provisions on trusteeship. This Conference Technical Committee on Trusteeship, Committee II/4, asked the chairman of the Five Power group, Commander Harold E. Stassen, to present a working paper to the Committee. On May 15, 1945, the working paper was presented to the Committee and was made available as a basis for discussion only.

After weeks of negotiation and discussion in the Conference Committee, the final draft of the chapter on trusteeship was completed and

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1 Department of State Publication, No. 2573, Organizing the United Nations, United States-United Nations Information Series No. 6, 1946, p. 21.

2 Department of State Publication, No. 2490, The United Nations Conference on International Organization--Selected Documents, Conference Series No. 83, 1946, pp. 647-650 & 678-702. Committee 4, the Conference Technical Committee on Trusteeship, is designated as Committee II/4 to show its relationship to Commission II.

<sup>1</sup> accepted on June 18, 1945. Serious consideration was given to the views of the smaller powers, and although the Five Power consultations caused delay, they did not prevent the fullest and freest discussion in the Conference Committee. The five powers were actually an effective directing group although final decision remained in the hands of the Conference Committee.

## 2. Major Trusteeship Issues Debated

Several vital issues came up for discussion in the Conference Committee and the Five Power consultations. The working paper had been divided into two parts. Part A covered what eventually became Chapter XI of the Charter, the Declaration Regarding Non-Self-Governing Territories, which is beyond the scope of this thesis while part B was devoted to the principles of trusteeship. The final result is to be found in Chapters XII and XIII of the United Nations Charter.

The issue receiving the most attention was that of political objectives. The Chinese and Soviet delegates took the position that a strong statement on independence as a goal for all dependent peoples should be included, while the United States and others proposed self-government

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<sup>1</sup> Documents of the United Nations Conference on International Organization, San Francisco, 1945. Commission II General Assembly, Vol. X (New York: United Nations Information Organizations, 1945), p. 564. For the entire proceedings of Committee II/4 see reference above pp. 421-716. This includes both the English and French texts.

<sup>2</sup> See Introduction to the Thesis, pp. 1 - 11.

<sup>3</sup> See Appendix C for Articles 75 through 91, inclusive, of the United Nations Charter. In addition several miscellaneous articles will be included. (Hereafter referred to as See Article \_\_, Appendix C.)

with independence for those capable of shouldering the responsibilities. This issue was settled by providing alternative goals of self-government or independence whichever might be appropriate in the particular territory concerned.<sup>1</sup>

The United States proposal for equal treatment in social, economic, and commercial matters for all members of the United Nations and their nationals in trust territories gave rise to considerable discussion.<sup>2</sup> Because this provision would alter the status of the "C" mandates under the League of Nations mandate system,<sup>3</sup> the principle of equal treatment, which later became a part of Article 76 of the Charter, was made subject to Article 80 of the Charter. What this actually meant was that until trusteeship agreements could be drawn up, no provision of the Charter could be regarded as affecting the rights of "any states or any peoples or the terms of existing international instruments to which members of the United Nations may respectively be parties."<sup>4</sup> Thus the position of the "C" mandates would be protected except as this position might be altered in respect to bringing the "C" mandates under the trusteeship system.

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<sup>1</sup> Documents of the United Nations Conference on International Organization San Francisco, 1945, Vol. X, *op.cit.*, pp. 440-41, 453-54, 643-644, & 671.

<sup>2</sup> *Ibid.*, pp. 440 & 644.

<sup>3</sup> See *Supra*, Chap. I, n. 4., p. 14.

<sup>4</sup> See Article 80, Appendix C.

Security considerations were brought up by both the United States and Great Britain. The United States proposed that certain areas be designated as strategic under the terms of trusteeship, while the British proposals asked for the removal of restrictions in "B" and "C" mandates on the establishing of military bases and the recruiting of natives for military forces.<sup>1</sup> With the acceptance of these two proposals, it became the duty of the administering power to see that the trust territories contribute to the maintenance of international peace and security and that they are entitled, in doing so, to make use of volunteer forces, facilities, and assistance from the trust territory in carrying out their obligations to the Security Council.<sup>2</sup>

The status and composition of the Trusteeship Council brought forth a divergence of opinion. The final agreement was that the Council should be one of the principal organs; that its membership should be selected on an equal balance between administering and non-administering states; and that the permanent members of the Security Council should also be permanent members of the Trusteeship Council.<sup>3</sup> The permanent members of the Security Council were included because of their world-wide interests and responsibility.

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<sup>1</sup> Documents of the United Nations Conference on International Organization San Francisco, 1945, Vol. I, op.cit., pp. 440 & 653; See also Department of State Publication No. 2573, op.cit., p. 22.

<sup>2</sup> See Article 84, Appendix C.

<sup>3</sup> Yearbook of the United Nations 1946-47, op.cit., p. 31. See also Articles 7 & 26, Appendix C.

During the discussion of petitions and visits to trust territories, there was little opposition to the principle. However, some delegates felt that the power of the General Assembly and Trusteeship Council to receive petitions, written or oral, from whatever source, and to visit and inspect trust territories would jeopardize the responsibility and authority of the administering power.<sup>1</sup>

The ironing out of the differences on the trusteeship proposals was a long and arduous task. This subject was one of the most difficult of those before the Conference and was among the last to be agreed upon. The successful completion of the work of the Conference Committee and Five Power consultations marked the establishment of an essential part of the framework for the new world organization.

### G. Provisions in the United Nations Charter

In order to understand the trusteeship system, it is necessary to survey the provisions found in Chapter XII and XIII of the Charter. In doing so, the issues presented at San Francisco must be kept continually in mind. The task of summarizing is very difficult because every phrase has importance to the power or powers which insisted on its insertion.

#### 1. Chapter XII

Chapter XII establishes the international trusteeship system under

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<sup>1</sup> Department of State Publication No. 2573, op.cit., p. 23.

the United Nations. The general principle that such a system shall be established is to be found in Article 75, which indicates the area of its application by providing for the "administration and supervision of such territories as may be placed thereunder by subsequent individual agreements."<sup>1</sup>

The basic objectives of the trusteeship system are as follows:

- a. the furtherance of international peace and security;
- b. the promotion of the political, economic, social and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence;
- c. the encouragement of respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
- d. the ensuring of equal treatment in social, economic, and commercial matters for all members of the United Nations, and also equal treatment for the latter in the administration of justice.<sup>2</sup>

The extent to which these objectives are to be pursued at any one time will be determined by the circumstances in each particular territory. The wishes of the inhabitants and the articles in each trusteeship agreement must be considered in such instances.<sup>3</sup>

Article 77 provides that the following categories of territories may be placed under the trusteeship system by means of trusteeship agreements:

<sup>1</sup> See Article 75, Appendix C.

<sup>2</sup> See Article 76, Appendix C.

<sup>3</sup> (Eivard Hambro) and Leland M. Goodrich, Charter of the United Nations: Commentary and Documents, (Boston: World Peace Foundation, 1946), p. 235.

a. territories now held under mandate;

b. territories which may be detached from enemy states as a result of the Second World War; and

c. territories voluntarily placed under the system by states responsible for their administration.

In addition, the second paragraph of Article 77 emphasizes the fact that the trusteeship system shall apply only to those territories which have been previously placed under trusteeship by means of subsequent agreement. Thus Article 77 is in its agreement phase purely voluntary.<sup>2</sup>

Further clarification of the territories to be placed under trusteeship was needed, as several participants at the Conference were not, technically speaking, independent states. Such was the case of Syria and Lebanon, who were regarded by France as still under French mandate.<sup>3</sup> As a result, Article 78 was drawn up in order to exclude members of the United Nations from being placed under the trusteeship system.<sup>4</sup>

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<sup>1</sup> See Article 77, Appendix C.

<sup>2</sup> See Article 79, Appendix C; See also Leland M. Goodrich and Edward Hambro, *op. cit.*, pp. 257-59.

<sup>3</sup> In the fall of 1941 General Catroux, acting on behalf of the Head of the Free French, proclaimed the independence and sovereignty of Syria and Lebanon. This however had no real effect on the juridical situation created by the mandate instrument because it could only be modified after agreement had been obtained from the Council of the League and then only after duly ratified treaties had been negotiated between France and Syria and Lebanon. However, this procedure was never carried out. Report on the Work of the League 1942-43, League Document No. C.25.M.25, 1944, pp. 76-78. By the terms of the Anglo-French agreement of December 13, 1945, the complete independence of Syria and the Lebanon was confirmed by France, and both British and French troops were to be evacuated from these countries. New York Times, December 14, 1945, p. 1. However, British and French troops were not withdrawn until mid-April 1947, and then only after Syria and Lebanon had brought up the issue in the Security Council. Yearbook of the United Nations 1946-47, *op. cit.*, pp. 341-45.

<sup>4</sup> See Article 78, Appendix C.

In the realm of implementation Article 79 has failed in many ways. The statement that the terms of trusteeship for each territory coming under the trusteeship system are to be agreed upon by the states directly concerned has caused considerable controversy.<sup>1</sup>

Article 81 provides that the trusteeship agreement designate the administering power, which can be one or more states or the organization itself, and includes the terms under which the trust territory is to be administered.<sup>2</sup>

In the minds of those administering the League of Nations mandates there was still some doubt whether or not they would lose any of their rights in the mandated territories prior to the conclusion of trusteeship agreements. Therefore, a conservatory clause was inserted in the Charter. Under Article 80 the existing rights held by the mandatory powers were safeguarded as well as those of other states and their nationals.<sup>3</sup>

Under Article 84 of the Charter, "the administering authority may make use of volunteer forces, facilities, and assistance from the trust territory in carrying out obligations to the Security Council."<sup>4</sup> This insures that the trust territory will play its part in the "maintenance of international peace and security." These forces also are to serve the purpose of maintaining law, order, and local defense within the trust territory.<sup>5</sup>

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1 See infra, Chap. II, n. 2 & 3, p. 62 & n. 3, p. 59.

2 See Article 81, Appendix C.

3 Edvard Hambro & Leland M. Goodrich, op.cit., pp. 242-244.

4 See Article 84, Appendix C.

5 Ibid., Appendix C.



In relation to the "maintenance of international peace and security" all or part of a trust territory may be designated as strategic. These agreements concerning strategic areas are approved by the Security Council while those relating to non-strategic territories are handled by the General Assembly. The same terms are to apply to their alteration and amendment.<sup>1</sup>

## 2. Chapter XIII

In the discussion of Chapter XII the main concern was for the principles of international trusteeship, whereas Chapter XIII is concerned with providing the machinery for such a system. Thus the membership of the Trusteeship Council and its powers and procedures are prescribed in Chapter XIII of the Charter.

The Trusteeship Council is established to assist in carrying out the functions of the United Nations with regard to trusteeship agreements concerning non-strategic territories and operates under the authority of the General Assembly.<sup>2</sup> The Trusteeship Council is to consist of:

- a. United Nations members administering trust territories;
- b. permanent members of the Security Council not administering trust territories; and
- c. as many other members elected for three year-terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council should be equally divided between those which administer trust territories and those which do not.<sup>3</sup>

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1 See Articles 82, 83, & 85, Appendix C.

2 See Articles 85 & 87, Appendix C.

3 See Article 86, Appendix C.

Each member of the Council is to be represented by one specially qualified person. From the above, it is seen that the number of members on the Trusteeship Council will vary according to the number of administering authorities which have had agreements approved.<sup>1</sup>

Article 87 gives the Trusteeship Council, under the authority of the General Assembly, the power to:

- a. consider reports submitted by the administering authority;
- b. accept and examine petitions;
- c. provide for periodic visits to the respective trust territories; and
- d. take these and other actions in conformity with the terms of the trusteeship agreements.<sup>2</sup>

By Article 88 the Trusteeship Council is charged with formulating a "questionnaire on the political, economic, social, and educational advancement of the inhabitants of each trust territory."<sup>3</sup> This procedure is handled entirely by the Council and therefore differs from those powers mentioned in Article 87 which placed the Trusteeship Council under the authority of the General Assembly in carrying out those functions mentioned.<sup>4</sup> The administering authority is required to make an annual report to the General Assembly on the basis of this questionnaire.<sup>5</sup>

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1 Edvard Hambro & Leland M. Goodrich, op.cit., pp. 251-53.

2 See Article 87, Appendix C.

3 See Article 88, Appendix C.

4 See supra, Chap. II, n. 2, p. 56.

5 See Article 88, Appendix C.

The voting procedure of the Council gives each member one vote and provides that decisions are to be made by a majority of the members present and voting. The Council is given the right to adopt its own rules of procedure and to make use of the assistance of the Economic and Social Council as well as the specialized agencies.<sup>1</sup>

The provisions of Chapter XII and XIII represent an agreement among the members of the United Nations to set up an international trusteeship system which makes it possible to administer these territories which are brought under the system in a manner which prevents their exploitation or their being bartered among the victorious nations. These articles were considered as a broad statement of intention until the actual trusteeship agreements were concluded as envisaged in Article 79 of the Charter.

#### D. Drafting of the Trusteeship Agreements

It was decided at the San Francisco Conference to establish a Preparatory Commission of the United Nations for the purpose of making provisional arrangements for the first session of the General Assembly to be held at London in January, 1946. The proposal for a temporary trusteeship committee was defeated during the interim period, and very little was accomplished concerning trusteeship with the exception of the revision of the provisional rules of procedure for the Trusteeship Council.<sup>2</sup>

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<sup>1</sup> See Articles 89, 90, & 91, Appendix C.

<sup>2</sup> Department of State Publication No. 2795, The Inauguration of the Trusteeship System of the United Nations, United States-United Nations Information Series No. 16, 1947, p. 3.

1. Committee 4 (Trusteeship)

The General Assembly on January 19, 1946, referred the work done by the Preparatory Commission to the Fourth Committee (Trusteeship) for consideration and report. The General Assembly had expressed a unanimous desire to set up the Trusteeship Council as soon as possible. <sup>1</sup> Previously, the Preparatory Commission had recommended that the General Assembly ask those members of the United Nations which were administering mandates to undertake steps for the implementation of Article 79 of the Charter. The resolution of the General Assembly on February 9, 1946, pertaining to non-self-governing territories, was in general headed by the mandatory powers who expressed their intention of bringing territories under the trusteeship system. <sup>2</sup>

Between the London and New York meetings of the General Assembly several draft trusteeship agreements were presented to the United States and other interested powers. The United States made significant recommendations which were designed to guarantee the fundamental freedoms of the inhabitants and to promote their educational advancement. These pre-assembly consultations <sup>3</sup> proved to be constructive.

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<sup>1</sup> Yearbook of the United Nations 1946-47, op.cit., p. 78.

<sup>2</sup> Department of State Publication No. 2484, Report of the United States Delegation to the First Session of the General Assembly of the United Nations, London, England, Conference Series No. 82, 1946, pp. 42-43.

<sup>3</sup> Department of State Publication, No. 2795, op.cit., p. 5.

The second part of the first session of the General Assembly was convened in New York on October 23, 1946. Committee 4 took up the discussion on trusteeship soon after the opening of the Assembly session. General discussion on trusteeship had progressed to the point where the Fourth Committee felt it necessary to create a Sub-Committee to consider the draft<sup>1</sup> trusteeship agreements.

The main procedural issue throughout the discussion was over the interpretation of Article 79 of the Charter which provided, in part, that "the terms of trusteeship for each territory to be placed under the trusteeship system . . . shall be agreed upon by the states directly concerned, including the mandatory power in the case of territories held under mandate by a member of the United Nations . . ."<sup>2</sup> To speed up the discussion the United States advocated a procedure by which all powers, without prejudicing any rights they might have, would waive the classification of a "state directly concerned" in order to place the trusteeship agreements before the General Assembly so that a vote could be taken.<sup>3</sup>

Further difficulty arose in Sub-Committee One over the preambles of the draft agreements which stated that the provisions of Article 79 had been complied with. The United States and Russia entered into consultation at

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1-"Fourth Committee Concludes General Debate," United Nations Weekly Bulletin, I (November 25, 1946), p. 3-6.

2 See Article 79, Appendix C.

3 Department of State Publication No. 2735, Report by the President to the Congress for the Year 1946, United States-United Nations Report Series No. 7, 1946, pp. 68-70.

the request of the Chairman of the Sub-Committee. A solution was not reached so the Committee adopted the United States delegates' proposal by which no state actually waived its rights even though it was not consulted as a "state directly concerned." Thus the question was still left open for discussion for any areas which might in the future come under trusteeship.<sup>1</sup>

The United States objected to the articles dealing with the establishment of private monopolies in the African "B" mandates. The United States proposal was defeated, but the detailed discussion resulted in significant alterations in the original monopoly clauses.<sup>2</sup>

The issue concerning the preservation of the political individuality of the territories that were to come under the trusteeship system was particularly significant. In the eyes of the Soviet Union and India the phrase "as an integral part," which was found in most of the draft trusteeship agreements, implies a veiled attempt at annexation. The General Assembly and Committee discussions seemed to clarify the meaning of the phrase by indicating that sovereignty over these areas did not lie in the administering authority and that it was inserted merely for administrative convenience. Nevertheless the administering authority could govern the area as if it were a component part of the home territories. The Soviet suggestion that the term "integral part" be deleted was accepted by New Zealand, but in the eight agreements, with the exception of Western Samoa and the territory of

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1 Ibid., pp. 69-70.

2 Ibid., p. 70.

Tanganyika, the latter of which originally had no mention of it, the term remains.<sup>1</sup>

Security considerations emerged as one of the more serious issues in the consideration of the eight draft trusteeship agreements. Clauses dealing with the establishing of bases and the stationing of armed forces in the territories are to be found in all eight trusteeship agreements. China, India, and the Soviet Union asserted that the use of volunteer forces, facilities, and assistance from the inhabitants or the establishment of bases must have approval of the Security Council. The United States supported the mandatory powers in their contention that Article 84 made it the duty of the administering authority to see that the trust territory plays its part in maintaining international peace and security. The original language of the military clauses of the draft trusteeship agreements were upheld after lengthy debate by both Sub-Committee One and Committee Four.<sup>2</sup>

## 2. General Assembly Approval

The Sub-Committee examined 229 suggested modifications and after weeks of discussion approved the eight draft agreements. The Fourth Committee referred them to the General Assembly where they were approved on

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1 Department of State Publication No. 2795, op. cit., p. 7.

2 Ibid., p. 7-8.

December 13, 1946.<sup>1</sup>

Prior to their approval, the Soviet delegation moved a resolution calling on the Assembly to reject the draft trusteeship agreements because they were contrary to the Articles of the Charter. The three major reasons given were:

a. that the states directly concerned had never been specified;

b. that the agreements made the trust territories an integral part of the administering power; and

c. that the agreements did not provide for approval by the Security Council of military arrangements in the trust territories.<sup>2</sup>

These issues had been previously discussed by Committee 4 and its Sub-Committee. Russia had continually brought up these and other questions throughout the discussion of the draft trusteeship agreements. She was, however, defeated on these issues as a majority of the other powers supported the views of the former League of Nations mandatories.<sup>3</sup>

By allowing these provisions of the trusteeship agreements to remain unchanged, Russia felt that the progressive development of the population of the trust territories towards self-government or independence would be seriously jeopardized. Also to allow the administering authority to erect bases and fortifications in the trust territories without the express

<sup>1</sup> "Trusteeship Council Formed," United Nations Weekly Bulletin, I (December, 24, 1946), p. 12.

<sup>2</sup> Ibid., p. 15.

<sup>3</sup> Ibid., pp. 12-15; See also supra Chap. II, n. 1 & 2, p. 59, n. 1, p. 61, & n. 2, p. 61.



sanction of the Security Council would not tend to serve international peace, but would only serve the interests of the administering power. Likewise the draft agreements could not be considered as trusteeship agreements in the true sense of the word because Article 79 of the Charter stated that the states directly concerned must approve the agreements. This had not been done for the states directly concerned were never determined. In addition she brought out the fact that the trust territories were not the property of the administering authority; therefore the provision whereby the trust territory was to be administered as an "integral part" of the territory of the administering power was illegal because it was a form of annexation. Throughout these accusations, Russia justified herself by stating that she was merely seeking to bring the agreements into conformity with the Charter.

Behind this Russian idealism, lies other and more far reaching motives. If Russia had been successful in his attempts at modifying the trusteeship agreements along the lines of the resolution that she had presented, it would have given her a greater amount of control in the trusteeship system. Because the military provisions of the agreements were not approved by the Security Council, Russia did not have the privilege of exercising the veto. Likewise she failed in her attempt to allow the permanent members of the Security Council and the members of the Trusteeship Council the privilege of declaring themselves as "states

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1. "Trusteeship Council Formed," United Nations Weekly Bulletin, I (December 24, 1946), p. 12-15.

directly concerned" in matters affecting trust territories. The failure of Russia to achieve these objectives was a major factor in the securing of an early approval of the trusteeship agreement.

After Russia realized that her cause was lost, she went even further than the presentation of the resolution to the General Assembly. When the election of the additional members of the Trusteeship Council was held, she refused to participate. Similar action was taken when the Trusteeship Council held its first session in March, 1947. The absence of the Russian representative on the Council was very conspicuous, and specific mention was made of it by Francis B. Sayre, the President of the Trusteeship Council, when the annual report of the Council was examined by the General Assembly in September, 1947. Mr. Sayre at this time urged the Soviet Union to send its representative to the meetings of the Council. He also pointed out that the Trusteeship Council would benefit by having the Soviet Union's participation in the decisions of the Council.

The Soviet Union did not, however, break her boycott of the Council until April, 1948.<sup>2</sup> The most obvious reason for the Russian move was the possibility that the United States proposal for a temporary United Nations Trusteeship for Palestine might have been accepted.<sup>3</sup> Russia definitely

<sup>1</sup> Ibid., p. 12. See also "Trusteeship Council Convenes," United Nations Weekly Bulletin, II (April 1, 1947) p. 309. See also "Trusteeship in Operation," United Nations Weekly Bulletin, III (October 7, 1947) p. 462.

<sup>2</sup> "Safeguarding Jerusalem City," United Nations Bulletin, IV (May 15, 1948) p. 402-403. (Publication was changed from a weekly to a semi-monthly publication beginning with January, 1948)

<sup>3</sup> See infra, Chap. II, n. 1 & 2 p. 123 & n. 1 p. 124 and n. 1 p. 125.

wanted to make sure that she would be included in any future Palestine discussions.

The Russian representative, S. K. Tsarphin, occupied the twelfth seat of the Council on April 27, 1948, thus marking the end of over a years continual absence of the Russians from the Council meetings. Even though Russia is now represented at the Council meetings, there is no indication that she will see fit to remain permanently, for the Soviet Union has not at any time explicitly withdrawn the charge of illegality for either the Trusteeship agreements or the Trusteeship Council.

As a direct result of the General Assembly's approval of the agreements on December 13, 1946, the following territories were thus placed under the trusteeship system;

Table 2a

<u>Trust Territory</u>	<u>Administering Authority</u>
Cameroons (British)	United Kingdom
Cameroons (French)	France
New Guinea	Australia
Ruanda-Urundi	Belgium
Tanganyika	United Kingdom
Togoland (British)	United Kingdom
Togoland (French)	France
Western Samoa	New Zealand

\*Source: Yearbook of the United Nations 1946-47, op.cit., p. 187;  
See also Appendix E for the complete number of territories under trusteeship and their administering authorities.

1. "Safeguarding Jerusalem City," United Nations Bulletin, IV (May 15, 1948), p. 402.

In September, 1947, Australia submitted to the General Assembly a draft trusteeship agreement for the island of Nauru which was formerly under mandate. With the approval of the agreement in November, 1947 there were nine non-strategic trusteeships. During the debate in the Assembly, the Soviet representative, Professor Stein, maintained that the draft agreement violated Article 79, as had the other agreements, and that it did not specify provisions for improvement of conditions for self-government. However, the debate in the General Assembly was not as lively as those conducted previously in respect to the draft trusteeship agreements.

#### E. The Provisions of the Trusteeship Agreements

The trusteeship agreements are in the final analysis a definition of the manner in which the principles laid down in Chapters XII and XIII of the Charter are to be applied. This is perhaps one of the reasons that standardization has crept in.

##### 1. General Considerations

The terms of trusteeship are approved by the General Assembly for those territories which are declared non-strategic while those which are strategic are approved by the Security Council.

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<sup>1</sup> \_\_\_\_\_, "Nauru Trusteeship Approved," United Nations Weekly Bulletin, III (November 11, 1947), p. 647; See also \_\_\_\_\_, "Committee Approves Trusteeship for Nauru," United Nations Weekly Bulletin, III (November 4, 1947), pp. 589-90.

<sup>2</sup> See Articles 78, 83, & 85, Appendix C.

Each trusteeship agreement consists of a detailed and effective application of the terms of the Charter as found in Chapters XII and XIII. In general, these agreements include a preamble, a statement concerning the territory to which the agreement is to apply, and a clause designating the administering authority of the trust territory. Provisions covering the obligations of the administering authority and its responsibilities in the maintenance of peace and security are set forth in each individual agreement. The agreements provide for annual reports and periodic visits and other procedures which are designed to keep the United Nations informed. The provisions for the settlement of disputes with regard to the agreements and their revision or termination are also included.

The administering authority is concerned with certain questions regarding its rights in the trust territories. These rights are set forth in each agreement. One of the fundamental questions is whether the trust territory is to be constituted into a customs, fiscal, or administrative union with adjacent territories which are under the administering authority. In addition, the powers of legislation, administration, and jurisdiction over the territory are important. These and other provisions such as the establishment of naval, military, and air bases are to be decided upon by the General Assembly or the Security Council depending on whether the trusteeship is strategic or non-strategic.

For every right there is a corresponding duty. Therefore, the administering authorities have been required to outline in detail those

measures which in their estimation are necessary in providing for the paramount interests of the inhabitants of the trust territories. Among the measures in the agreements are the progressive development of native participation in the administration and other services of the territory. Native interests pertaining to the transfer of land and natural resources are safeguarded. Freedom of speech, of the press, of religion, of assembly and of petition are guaranteed. Slavery and the slave trade are prohibited and forced labor is to be allowed only under extreme emergencies. The traffic in arms and ammunition and the importation, production, and distribution of intoxicants and narcotic drugs are to be controlled.

The Charter itself contains many of the essentials found in the various trusteeship agreements and in a few instances the articles of the agreements are merely glossed over versions of the actual Charter. But one must not lose sight of the fact that each territory coming under the trusteeship system is different from the others; therefore, the means of achieving self-government or independence varies accordingly. No two areas are similar; deep contrasts and dissimilarities mark them all. Because of this, no single, uniform remedy for the problems of these territories has been discovered.

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<sup>1</sup> See Yearbook of the United Nations, 1946-47, op. cit., pp. 188-205 for the Non-Strategic Trusteeship Agreements with the exception of Nauru and for the Strategic Trusteeship of the Pacific Islands, pp. 398-400; For the Nauru Agreement see the Trusteeship Agreement for the Territory of Nauru, United Nations Doc. No. T/Agreement/9, 1947. (The Trusteeship Agreements are not included in the Appendix as they would take up too much space and are rather readily obtainable.)

## 2. Non-Strategic Trusteeship Agreements

The non-strategic agreements contain essentially the same general provisions. Among other things the territory is to be administered in the spirit of the Charter provisions. In doing so the administering authority is required to cooperate with the General Assembly and Trusteeship Council and is responsible for the maintenance of peace, order, and good government in the territory. Members of the United Nations and their nationals are to receive equal treatment in social, economic, industrial and commercial matters, but the interests of the territories must come first. The agreements can be amended only in accordance with the terms of the Charter and any dispute concerning their interpretation must be referred to the International Court of Justice. The provisions of international conventions are to apply to the trust territory, and the recommendations of the specialized agencies are to be thoroughly considered. In all cases the administering authority has full powers of administration, legislation, and jurisdiction in the territory.

All the draft agreements, with the exception of those for Tanganyika, Samoa, and Nauru, give the administering authority the power to administer the trust territory as an "integral part" of its territory. Article 4 of the trusteeship agreement for New Guinea differs somewhat from the others

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<sup>1</sup> Trusteeship Council to Hold First Session, United Nations Weekly Bulletin, II (February 11, 1947), pp. 105-106.

<sup>2</sup> See Article 5 of the Agreements for British Togoland and the Cameroons, Article 4 of the Agreements for French Togoland and the Cameroons, and Article 5 of the Agreement for Ruanda-Urundi.

by stating "as if it were an integral part of Australia . . ." which means essentially the same thing. These territories can best be governed as an "integral part" of the administering authorities' territory because they are remote from civilization or are adjacent to other territories of the administrator.

With the exception of Samoa and Nauru the agreements provide for a customs, fiscal, or administrative union with adjacent territories which are under the administering authority. The French agreements for Togoland and the Cameroons give an additional protection to the inhabitants by providing that any such federation or union must be approved by the territorial representative assembly. The agreements for Samoa and Nauru do not include these terms because they are islands with no adjoining territories.

Equal treatment in social, economic, and commercial matters are provided in all the agreements for members of the United Nations and their nationals on condition that they do not interfere with the basic objectives of the trusteeship system, which is subject to the obligations of the administering authority. Separate articles provide for equal treatment in all the agreements with the exception of New Guinea, Samoa, and

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<sup>1</sup> See Article 4 of the New Guinea Agreement.

<sup>2</sup> See Article 4 of the Agreements for French Togoland and the Cameroons and Article 5 of the Agreements for Tanganyika, British Togoland and the Cameroons, and New Guinea.

<sup>3</sup> See Article 76, Appendix C.



Nauru which merely redefine their obligations under Article 76 of the Charter. The French agreements for Togoland and the Cameroons are more specific than either the British or Belgian agreements for the former African "B" mandates as attested to in Article 8 of both the Togoland and Cameroons agreements.<sup>1</sup>

Monopoly clauses are to be found in all the African trusteeship agreements which provide for monopolies purely fiscal in character in order to more fully serve the interests of the inhabitants. Essential public works and any other undertakings having monopolistic tendencies are to be carried out with the provision that they do not discriminate against members of the United Nations or their nationals.<sup>2</sup> The meaning of the word monopoly is apparently restricted for it refers only to monopolies in the interest of the economic advancement of the inhabitants of the territories.

The obligation of the promotion of political institutions so as to bring about the advancement of the inhabitants is undertaken in all the agreements. However, there is little mention of it made in the New Guinea or Nauru agreements while the Samoan trusteeship agreement goes into specific detail. There are special conditions in western Samoa; hence New Zealand, the administering authority, is giving the inhabitants a greater

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<sup>1</sup> See Article 8 of the Agreements for Tanganyika, Ruanda Urundi, British Togoland and the Cameroons, /French Togoland and the Cameroons.  
and

<sup>2</sup> See Article 10 of the Agreements for Tanganyika, British Togoland and the Cameroons and Ruanda Urundi; See also Article 9 of the Agreements for French Togoland and the Cameroons.

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share in the administration of the territory. Although there is frequent reference to the promotion of political institutions in the African trusteeship agreements, they do not place as much emphasis on the development of self-government as does the Samoan agreement.

In the furtherance of international peace and security the New Guinea and Nauru agreements failed to clarify what measures the administering authority is to take in providing for the defense of the territory.<sup>2</sup> Because both agreements merely state that the administering authority is to take all measures which it considers desirable, the question immediately arises as to whether Article 7 of these agreements are in violation of the Charter. As the result of such vague military provisions in both the agreements, they may at some future date be open for discussion in the Security Council. In addition to the general statements on the furtherance of peace and security the British agreements for Tanganyika, the Cameroons, and Togoland provide for the erection of fortifications, as does the New Zealand agreement while the French and Belgian agreements in Africa state that the defense of the territory should be within the framework of special agreements.<sup>4</sup>

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<sup>1</sup> See Article 5 of the Samoan Agreement; See also *infra*, Chap. II, pp. 102-105.

<sup>2</sup> See Article 7 of the Nauru and New Guinea Agreements.

<sup>3</sup> See Article 5 of the Agreements for Tanganyika, British Togoland and the Cameroons and Article 10 of the Samoan Agreement.

<sup>4</sup> See Article 4 of the Agreements for French Togoland and the Cameroons.

Provision is made in the agreements, with the exception of those for New Guinea, Samoa, and Nauru, for the designation of a part or the whole of the trust territory as a strategic area at any future date.<sup>1</sup>

The administering authorities are to apply the provisions of any recommendations which already exist or are herein after drawn up by the United Nations, as well as the provisions of international conventions, and those measures adopted by the specialized agencies referred to in Article 57 of the Charter, if they are in harmony with the basic objectives of the trusteeship system. The agreements for Nauru and New Guinea include these provisions but fail to mention that there may be cooperation with a regional advisory commission, regional technical organization or with any other international group if such action is not inconsistent with the United Nations Charter.<sup>2</sup>

With the exception of the agreements for Nauru and New Guinea, a special article is devoted to the submission of annual reports to the General Assembly on the basis of a questionnaire drawn up by the Trusteeship Council.<sup>3</sup> The New Guinea and Nauru agreements infer the same principles by undertaking to administer the territory in accordance with the provisions of the Charter.<sup>4</sup>

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<sup>1</sup> See Articles 82 & 83 of the Charter.

<sup>2</sup> See Article 7 & 15 of the Agreements for Tanganyika, British Togoland and the Cameroons, and Ruanda-Urundi; See also Articles 6 & 4 of the Agreements for French Togoland and the Cameroons; See also Articles 7 & 13 of the Samoan Agreement and Article 6 for the New Guinea and Samoan Agreements. See also Article 57, Appendix C.

<sup>3</sup> See Article 14 of the Samoan Agreement, Article 2 of the French Agreements for Togoland and the Cameroons, and Article 16 of the Agreements for Tanganyika and British Togoland and the Cameroons.

<sup>4</sup> See Article 3 of the Nauru and New Guinea Agreements.

Likewise, reference is made to educational development and freedom of religion. The British and Belgian agreements link their elementary educational system in with the abolition and reduction of illiteracy. The Belgian agreement also provides for training in manual skill, while the French agreements plan to develop secondary and technical education. The British agreements are to facilitate the vocational and cultural advancement of the people.<sup>1</sup> The trusteeship agreements for Nauru and New Guinea, while very brief, do give cognizance to both the religions and the educational advancement of the inhabitants.

No mention is made in either the Nauru or New Guinea agreements for the alteration or amending of the trusteeship agreements. Likewise, they do not mention the settlement or negotiation of disputes arising between the administering authority or another member of the United Nations. Such disputes are to be settled by the International Court of Justice if prior agreement is not reached. These provisions are present in the other agreements.<sup>2</sup>

The French agreements for the Cameroons and Togoland specify that they are to enter into force as soon as the approval of the General Assembly was obtained.<sup>3</sup> The other non-strategic trusteeship agreements fail to

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<sup>1</sup> See Articles 10 & 12 of the Agreements for Tanganyika, Ruanda-Urundi and British Togoland and the Cameroons, and Article 10 of the Agreements for French Togoland and the Cameroons.

<sup>2</sup> See Articles 18 & 19 of the Agreements for Tanganyika, Ruanda-Urundi and British Togoland and the Cameroons; See also articles 12 & 13 of the Agreements for French Togoland and the Cameroons, and Articles 15 & 16 of the Samoan Agreement.

<sup>3</sup> See Article 15 of the French Agreements for Togoland and the Cameroons.

include such a provision, but it was generally understood that they were to come into force upon the approval of the General Assembly.

The trusteeship agreement for the Island of Nauru differs from the others in one important respect. It is the only agreement submitted to date which provides for more than one state as the administering authority. The agreement provides that Nauru shall be administered by Australia on behalf of the governments of Australia, New Zealand, and the United Kingdom which are designated as the administering authority. The chief reason for such an administering authority is that the island has valuable phosphate deposits which are in constant demand as fertilizers. This procedure will give equal opportunities to the three powers when using these deposits, thus preventing animosity from developing. In addition, the agreement is very brief in nature, consisting of only seven articles. In contrast, the other agreements consist of fifteen to eighteen articles, with the exception of that for New Guinea which has only eight.<sup>1</sup>

### 3. Strategic Trusteeship

During World War II, the United States had occupied the Marshall, Caroline, and Marianas Islands and was administering them by right of conquest. In the meantime, there was considerable agitation for outright annexation of the former Japanese mandated islands. Also the State, War, and Navy departments had been working out detailed plans with respect to

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<sup>1</sup> See Articles 2, 3, & 4 of the Agreement for Nauru; See also "Committee Approves Trusteeship for Nauru," United Nations Weekly Bulletin, III (November 4, 1947), pp. 589-90.

their future place in our security system.<sup>1</sup> It thus became apparent that the United States was not going to relinquish her hold on this vast network of strategic islands.

On November 6, 1946, President Truman stated that the United States was prepared to place the former Japanese mandated islands under strategic trusteeship.<sup>2</sup> After the various interested states had received information on the proposal, Warren R. Austin, the United States representative on the Security Council, presented the draft trusteeship agreement to that body on February 17, 1947.<sup>3</sup>

An issue that caused considerable concern was an Australian amendment which would have prevented the trusteeship agreement from coming into effect until the peace treaty with Japan had been signed.<sup>4</sup> The United States defended its position by stating that the trusteeship agreement did not have to await the signing of the Japanese Peace Treaty because the termination of Japan's status as mandatory had been frequently affirmed.

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<sup>1</sup> See supra, Chap. II, n. 4, p. 56; See also Department of State Publication No. 2735, op.cit., p. 74.

<sup>2</sup> Department of State Publication No. 2784, Draft Trusteeship for the Japanese Mandated Islands, Far Eastern Series No. 20, 1947, p. 14. The former referred to as the Territory of the Pacific Islands. Japanese mandated islands are hereinafter

<sup>3</sup> "Japanese Mandated Islands," United Nations Weekly Bulletin, II (March 11, 1947), p. 224.

<sup>4</sup> "Security Council Continues Trusteeship Debate," United Nations Weekly Bulletin, II (March 25, 1947), p. 283.

as was the case in the Cairo <sup>1</sup> and Potsdam <sup>2</sup> declarations.

The Security Council, which exercises such functions as the United Nations possesses in regard to strategic trusteeship, including the authority to approve the terms of trusteeship, unanimously approved the draft trusteeship agreement on April 2, 1947. Before the agreement could come into operation, it had to be approved by due constitutional process in the United States. Approval was obtained on July 8, 1947 and it represents the only strategic trusteeship agreement thus far concluded.<sup>3</sup>

The agreement is comparable in many ways to the non-strategic agreements previously discussed. The preamble runs along similar lines, but of special interest is the article by article explanatory comments which were included in the draft agreement.<sup>4</sup> The administering authority is given full powers of administration, legislation, and jurisdiction and is also entitled to constitute the trust territory into a customs, fiscal, or administrative union with other territories under jurisdiction of the United States, provided such measures are not inconsistent with the basic

<sup>1</sup> Department of State Publication No. 2665, Participation of the United States Government in International Conferences, July 1, 1941-June 30, 1945, Conference Series No. 89, 1947, p. 90.

<sup>2</sup> Department of State Publication No. 2425, The Axis in Defeat--A Collection of Documents on American Policy toward Germany and Japan, 1945, p. 28.

<sup>3</sup> "Philippines, Costa Rica Elected to the Trusteeship Council," United Nations Weekly Bulletin, III (November 25), p. 688; See also Article 83, Appendix C.

<sup>4</sup> Department of State Publication No. 2784, Op.cit., pp. 5-13.

objectives of the trusteeship system. The United States is not, however, allowed to administer the territory of the Pacific Islands as an "integral part" of its domains as is the case in the majority of the other agreements.<sup>1</sup> The reason for its exclusion from the agreement is because the Soviet Union objected to the term.<sup>2</sup> However, this point has rather small significance when viewing the over-all picture of strategic trusteeship.

Articles 5 - 8 outline in greater detail the administering authorities' obligations in the trust territory and the application of the objectives set forth in Article 76 of the Charter.<sup>3</sup> Because of the overwhelming necessity for peace and security, the objectives which are designed to protect the inhabitants could easily be gunned. As a result, these articles of the agreement take on an added significance. This is more than likely the reason why the Soviet Union insisted upon the inclusion of the word "independence" as well as self-government in Article 6 of the agreement. Originally Article 6 made no mention of "independence" as one of the objectives to be attained, but neither did the other agreements, with the exception of the Samoan.<sup>4</sup> All the agreements, however,

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<sup>1</sup> See Articles 3 & 9 of the Agreement for the Territory of the Pacific Islands.

<sup>2</sup> See supra, Chap. II, n. 1, p. 61.

<sup>3</sup> See Articles 5, 6, 7, & 8 of the Agreement for the Territory of the Pacific Islands.

<sup>4</sup> Security Council Approves Trusteeship Agreement, United Nations Weekly Bulletin, II (April 15, 1947), p. 391; See also Article 6 of the Agreement for the Territory of the Pacific Islands and Article 4 of the Samoan Agreement.



did imply the recognition of "independence" by stating that the provisions found in Article 76 of the Charter were to be furthered.

Significant in nature is the United States provision for most-favored-nation treatment for all the other members of the United Nations but yet providing itself with national treatment when dealing with rights accorded to companies, associations, and nationals. In addition, the United States can enter into agreements which will secure most-favored-nation treatment for the inhabitants of the trust territory. The reason for such a policy is evident because the basic role of the strategic territory is security and any other type of economic participation could possibly interfere. Thus as a precautionary measure rights given to aircraft of other nations can be obtained only by bilateral agreement. This is not a violation of the principles found in the Charter, for the Charter makes an exception when the territory concerned is strategic.<sup>1</sup>

The administering authority is to apply the provisions of international conventions and recommendations which are appropriate to the basic objectives of the trusteeship system and likewise may join any regional advisory commission, technical organization, or other forms of international cooperation.<sup>2</sup> Similar obligations are performed in the non-strategic agreements.

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<sup>1</sup> Department of State Publication No. 2784, op.cit., pp. 7-9; See also Article 83, Appendix C.

<sup>2</sup> See Articles 10 & 14 of the Agreement for the Pacific Islands.

The status of citizenship and the diplomatic and consular protection given to the inhabitants of trust territories when outside the territorial limits is mentioned only in the strategic trusteeship for the Islands of the Pacific. International law has an important bearing on the provisions of citizenship and diplomatic and consular protection. With the exception of Article 4 in the trusteeship agreements for French Togoland and the Cameroons,<sup>1</sup> there is no mention of international law. Thus the status of the inhabitants and other principles pertaining to international law are definitely lacking in the agreements thus far concluded.

There has been no mention in the other agreements providing for the legislation which will bring the provisions of the agreement into effect in the trust territory.<sup>2</sup> The reason for the inclusion of Article 16 is that the agreement was not to come into force until approved by the President and Senate of the United States. This takes into consideration the constitutional processes peculiar to the United States.<sup>3</sup> The other agreements which dealt with the problem, and then only in a limited manner, are the agreements for French Togoland and the Cameroons. The agreement for the Pacific Islands also states specifically that its terms may not be altered, amended or terminated without the consent of the administering

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<sup>1</sup> See Article 11 of the Agreement for the Pacific Islands and Article 4 of the Agreements for French Togoland and the Cameroons.

<sup>2</sup> See Article 12 of the Agreement for the Pacific Islands.

<sup>3</sup> Ibid., Article 16.

authority as is the case in most of the non-strategic agreements.<sup>1</sup>

The trusteeship agreement for the Pacific Islands differs from the other agreements in respect to the application of the provisions of Articles 87 and 88 of the Charter.<sup>2</sup> These two articles provide for the consideration of the annual report which is based on the questionnaire formulated by the Trusteeship Council, periodic visits to trust territories, the receiving of petitions, and other actions taken by the General Assembly and under its authority the Trusteeship Council.<sup>3</sup> The provisions of Articles 87 and 88 are applicable, but only in so far as they do not interfere in areas closed for security reasons. In applying these provisions the Security Council is to obtain the assistance of the Trusteeship Council in those functions dealing with political, economic, social, and educational matters. The proper supervision over strategic areas, as far as non-security measures are concerned, is rather incomplete because the Charter provides for only the most general terms.<sup>4</sup> As a result, much leeway is allowed for the administering authority in applying the provisions of Articles 87 and 88 of The Charter. However, such measures as

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1 Ibid., Article 15. See also supra, Chap. II, n. 2, p. 74.

2 Ibid., Article 13.

3 See Articles 87 & 88, Appendix C.

4 See Article 85, Appendix C.

the international control of atomic energy will not be prejudiced.<sup>1</sup>

Throughout the articles of the trusteeship agreement for the Pacific Islands the paramount interest is security. There is hardly a one of the sixteen articles which fails to state or at least imply the avowed intention of the United States to further international peace and security through the trusteeship agreement.

Of the trusteeship agreements thus far concluded it seems more than likely that their terms will not be fulfilled in their entirety for some time to come. The New Zealand agreement for Samoa is perhaps the only one which will achieve the most basic objective of the trusteeship system, that of independence for the inhabitants, in the near future. The partial goal that of self-government is now in the process of being attained.<sup>2</sup>

## F. Functions and Powers of the Trusteeship Council

### 1. General Considerations

The General Assembly, on December 14, 1946, adopted a resolution by which the Trusteeship Council was established as a principal organ of the United Nations.<sup>3</sup> The establishment of the last major organ of the United Nations would not have occurred at this time if it had not been for the

<sup>1</sup> \_\_\_\_\_, "Japanese Mandated Islands," United Nations Weekly Bulletin, II (March 11, 1947), p. 225.

<sup>2</sup> See infra, pp. 102-104.

<sup>3</sup> \_\_\_\_\_, "Trusteeship Council Formed," United Nations Weekly Bulletin, I (December 24, 1946), p. 12; See also Article 7, Appendix C.

approval of the eight trusteeship agreements which were presented to the General Assembly during the latter part of October.<sup>1</sup> In the meantime, the General Assembly directed the Secretary General to convene the Trusteeship Council not later than March 15, 1947.<sup>2</sup> The meeting, which was held in March at Lake Success, signaled a new and weighty responsibility for the United Nations. The duty of fulfilling the Articles of the Charter pertaining to non-self-governing peoples of the trust territories has been a difficult task as attested to by the following section of this chapter:

The Trusteeship Council's composition is determined by Article 86 of the Charter. By this procedure the Council contains the administering states, the permanent members of the Security Council which are non-administering powers, and a number of independent states elected by the General Assembly for a three-year period.<sup>3</sup> This is a very satisfactory solution as the great powers ensure that the trust territories will play their part in the maintenance of peace and security while the non-administering powers not members of the Security Council will protect the interests of the inhabitants of the territories from being sacrificed to the special interests of either the administering authorities or the great powers.

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<sup>1</sup> See infra., Chap. III, n. 2, p. 158.

<sup>2</sup> Trusteeship Council to Hold First Session, United Nations Weekly Bulletin, II (February 11, 1947), p. 106.

<sup>3</sup> See Article 86, Appendix C.

On December 14, 1946, The General Assembly, in accordance with Article 86 of the Charter, elected Mexico and Iraq as non-administering members to the Trusteeship Council,<sup>1</sup> for it was necessary to keep the equilibrium between the administering and non-administering powers. The organization then included ten members, with one specially qualified person from each member state to represent it, but the approval of the strategic trusteeship agreement for the Pacific Islands necessitated a change in the composition of the Council since the total number of members must be equally divided between administering and non-administering powers.<sup>2</sup> As a result, the General Assembly was required to elect two more members because the non-administering powers were reduced to four by the United States' becoming an administering power. The results of the election held on November 13, 1947, brought the Philippines and Costa Rica into the Trusteeship Council thus bringing the organization to full strength.<sup>3</sup>

Under the authority of the General Assembly, the Trusteeship Council assists in carrying out the functions of the United Nations in regard to non-strategic trust territories and upon request aids the Security Council in the political, economic, social, and educational matters in strategic

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<sup>1</sup> \_\_\_\_\_. "Trusteeship Council Formed," United Nations Weekly Bulletin, I (December 24, 1946), p. 12.

<sup>2</sup> See Appendix D for composition of the Trusteeship Council.

<sup>3</sup> \_\_\_\_\_. "Philippines, Costa Rica Elected to Trusteeship Council," United Nations Weekly Bulletin, III (November 25, 1947), p. 688.

1 areas. Thus the Council is responsible for seeing that the trust areas are administered according to the principles laid down in the Charter and that they are made more specific in the trust agreements covering each particular territory.

Each member of the Trusteeship Council has one qualified person representing its interests who is entitled to one vote. Questions are to be decided upon by a majority of the members present and voting and at any meeting two-thirds of the members shall constitute a quorum. 2 The Council decided to hold two regular sessions each year, one in June and the other in November, any session being permitted to adjourn temporarily and resume its meetings at a later date. Sessions are held at the seat of the United Nations or elsewhere if the Council so desires, and special sessions may be called by a decision of the Trusteeship Council or by request of the General Assembly or the Security Council. 3

Following the approval of the eight trusteeship agreements in December, 1946, the acting Secretary-General transmitted the provisional agenda of the first session of the Trusteeship Council to each of the member nations and the specialized agencies. 4 The two major items on the agenda

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1. See Articles 83 & 85, Appendix G; See also infra, Chap. II, n. 2, p. 110, n. 3, p. 111 and n. 1 p. 112.

2 See Articles 86 & 89, Appendix G; See also Rule 50 of the Rules of Procedure for the Trusteeship Council, United Nations Doc. No. T/1/Revised 1, 1947. (Hereafter referred to as Rules of Procedure.)

3 See Rules 1, 3, 6 & 7 of the Trusteeship Council's Rules of Procedure.

4 Yearbook of the United Nations 1946-47, op.cit., p. 577; See also Rule 8 of the Trusteeship Council's Rules of Procedure.

were the adoption of the Council's rules of procedure and the formulation of questionnaires to aid the administering authority in submitting its annual reports to the General Assembly.

## 2. Rules of Procedure

Article 90 of the Charter gave the Trusteeship Council the power to adopt its own rules of procedure. In adopting their rules the Council was aided by the work previously formulated by the Preparatory Commission of the United Nations. The provisional rules of procedure were forwarded to the Council at its opening session and in addition the Secretariat had prepared several revisions.

1 Other items on the agenda were: the opening of the Session by the Secretary-General; adoption of the agenda; report by the Secretary-General on credentials; election of the President and Vice President; formulation of Questionnaires on the political, economic, social and educational advancement of the inhabitants of each trust territory in accordance with Article 88 of the Charter; consideration of such petitions concerning trust territories as may have been presented; consideration of any reports which may be transmitted by administering authorities, including the reports concerning the years 1941 to 1946 inclusive, on the mandated territory of Western Samoa transmitted by the government of New Zealand; consideration of relations between the Trusteeship Council on the one hand, and the Economic and Social Council and the specialized agencies on the other, as envisaged in Article 91 of the Charter; consideration, within the competence of the Trusteeship Council, of any items proposed by any member of the United Nations; scheduled of future sessions of the Council and programs of future work, including arrangements for visits to trust territories. See "Agenda of Trusteeship Council," United Nations Weekly Bulletin, III (April 1, 1947), pp. 309-310; See also Rule 9 of the Trusteeship Council's Rules of Procedure which provides for the Council's agenda.

2 Transmission of Provisional Rules of Procedure of the Trusteeship Council as Formulated by the Preparatory Commission, United Nations Doc. No. T/1, 1947, p. 2; See also Department of State Publication No. 2850, Two Aspects of Trusteeship--The First Session of the Trusteeship Council, United States-United Nations Information Series No. 21, 1947, p. 11.



The first week of the Trusteeship Council's first session was devoted almost entirely to the review of the provisional rules of procedure. The Council decided to set up a drafting committee so as to expedite adoption of permanent rules. It was necessary to have the rules in working order as soon as possible because other items which were such as petitions from Samoa and the other trust territories on the provisional agenda could not otherwise be handled. The Council did not complete its examination until nearly the end of the first session on April 28, 1947.<sup>1</sup> At the end of this time 107 rules of procedure were approved and adopted as compared to only 62 in the provisional rules of procedure.

The rules of procedure are very important because they implement some of the main purposes of the trusteeship system. Thus they are not simply rules to govern the organization and conduct of the business of the Council, but are used in the formulation of questionnaires for the administering authority's annual report, the presentation of annual reports and their examination by the General Assembly, the handling of petitions, and in the conduct of periodic visits to the trust territories.<sup>2</sup>

### 3. Formulation of the Questionnaire

Although the Council's most important task during the first session was in the formulation and adoption of its rules of procedure, other problems of importance were considered. The other main consideration was

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<sup>1</sup> \_\_\_\_\_, "Trusteeship Council Concludes First Session," United Nations Weekly Bulletin, II (May 6, 1947), p. 483.

<sup>2</sup> Ibid., p. 483.

the formulation of a provisional questionnaire dealing with the political, economic, social and educational advancement of the inhabitants of each trust territory.<sup>1</sup>

Other than that of drawing up its own rules of procedure, the Trusteeship Council is given directly only one specific power in the Charter, and that is to draw up a questionnaire upon the basis of which each administering authority will make an annual report to the General Assembly. The questionnaire is to be modified by the Council at its own discretion and any such modifications must be presented to the administering authority<sup>2</sup> at least six months before the presentation of the annual report. These questionnaires are of fundamental importance for the functioning of the trusteeship system, and are a necessary prelude to the other functions and powers which the Trusteeship Council carries out under the guidance of the General Assembly.

The Trusteeship Council set up a draft questionnaire committee to consider the various proposals submitted by Council members and the Secretariat.<sup>3</sup> A model questionnaire, drawn up by the committee, consisted of 242 questions. The Council considered the model presented by the committee, and in the ensuing discussions approved the questionnaire, with several revisions. It was then transmitted to the administering authorities

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<sup>1</sup> See Article 88, Appendix C.

<sup>2</sup> See Articles 87 & 88, Appendix C and Rules 69 & 71 of the Rules of Procedure.

<sup>3</sup> \_\_\_\_\_, "Trusteeship Council Approves Many Rules," United Nations Weekly Bulletin, II (April 22, 1947), p. 426.

to aid them in forming their first annual reports, with the understanding that it would be revised at the fall session of the Council and if necessary, adapted to specific trust territories.<sup>1</sup> However, at the fall session the provisional questionnaire was still in use, and as the first annual reports were submitted too late for discussion during the first half of the fall session, consideration of its revision was out of the question.<sup>2</sup>

The provisional questionnaire consists of 247 questions divided into twelve sections, with numerous sub-sections.<sup>3</sup> The statistical appendix is also of importance and includes tables showing information on the population for the last five years, the administrative structure of government, justice and penal administration, public finance, taxation, trade, enterprises and business organizations, housing, production, labor, cost of living, public health, and education in the trust territories.<sup>4</sup> This will give the Trusteeship Council additional information which is needed.

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1 \_\_\_\_\_. "Trusteeship Council Concludes First Session," United Nations Weekly Bulletin, II (May 6, 1947), pp. 483-87.

2 \_\_\_\_\_. "Trusteeship Council to Visit East Africa," United Nations Weekly Bulletin, III (December 9, 1947), p. 772. However definite plans are being made for its modification at a future date. See infra, Chap. III, n. 2, p. 235.

3 The main sections of the provisional questionnaire cover the following subjects: a brief introductory descriptive section, status of the territory and its inhabitants, international and regional relations, international peace and security and maintenance of law and order, political, social, and educational advancement, publications, research, suggestions and recommendations, and summary and conclusions. See Trusteeship Council Provisional Questionnaire, United Nations Doc. NO. T/44, 1947, pp. 5-17.

4 Ibid., pp. 15-17.

because the supervision under the mandate system broke down in 1939 upon the event of the Second World War. Similar consideration applies with regard to the request for the administering authorities to include copies of any publications, laws, and regulations issued by the local administration or the metropolitan government with respect to the trust territories.<sup>1</sup>

There is no doubt that the Trusteeship Council in carrying out this immense task benefited from the work previously done by the Permanent Mandates Commission. In addition, the Council obtained information and suggestions from the Economic and Social Council as well as from the specialized agencies.<sup>2</sup> Improvements will likely be made through the experience gained by the administering authorities in preparing the first annual reports to the General Assembly.

#### 4. Annual Reports of the Administering Authority

The administering authority for non-strategic areas is required by Article 88 of the Charter to submit an annual report to the General Assembly on the "political, economic, social, and educational advancement of the inhabitants" of the trust territory.<sup>3</sup> The Trusteeship Council is given the power under Article 87 to examine the annual reports submitted.

<sup>1</sup> Ibid., Question 244, p. 15.

<sup>2</sup> Yearbook of the United Nations 1946-47, op.cit., p. 578.

<sup>3</sup> See Article 88 of the Charter, Appendix C.

to the General Assembly by the administering authority. Each report is to be sent to the Secretary-General within four months after the termination of the year to which it refers and the Trusteeship Council is to consider the report at the first regular session, provided six weeks have elapsed since receipt of the report by the Secretary-General. These reports are to be transmitted to the members of the Council without delay so as to expedite their work.<sup>1</sup>

The administering authority is entitled to designate and have present a special representative during the examination of the report. The representative, who is to be well informed on the territory involved, may participate in the examination and discussion of the report, but is not allowed to vote nor contribute to the final conclusions concerning the examination.<sup>2</sup> This procedure is designed to enable the special representative to further clarify any information in the report that is hazy or inconclusive. The members of the Council will, as a result, be in a more favorable position in formulating the general report presented annually to the General Assembly which includes among other things an annual review of the conditions in each trust territory.<sup>3</sup>

Since annual reports had not been received by the Permanent Mandates Commission for the years 1939 to 1945, the Trusteeship Council thought

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<sup>1</sup> See Rules 72 & 73 of the Rules of Procedure.

<sup>2</sup> See Rules 74 & 75 of the Rules of Procedure.

<sup>3</sup> See Rule 101 of the Rules of Procedure.

that it would be placed at a disadvantage in examining the annual reports for the year 1947. The Committee on the draft questionnaire suggested that the Council request the administering authorities to forward with their first annual report a brief summary of conditions in the territory during the period for which no information had been submitted.<sup>1</sup> The idea was obtained from the reports received by the Secretariat based on New Zealand's responsibilities under the League of Nations mandate for Western Samoa for the years 1942 to 1945 and 1945 to 1946 inclusive. New Zealand had recognized the international responsibility bestowed upon her while the other nations, though possibly recognizing the fact, failed to display the same attitude as did New Zealand.<sup>2</sup> While the report was not necessarily complete, it served as an example for the other administering powers to follow and certainly helped the draft questionnaire committee in drawing up the provisional questionnaire.

Another report, but of a dissimilar nature, was submitted by the Union of South Africa for the former mandated territory of Southwest Africa. The General Assembly referred the report for the year 1946 to the Trusteeship Council and asked for its recommendations on the matter.<sup>3</sup>

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<sup>1</sup> Trusteeship Council Provisional Questionnaire, United Nations Doc. No. T/44, op.cit., p. 3.

<sup>2</sup> \_\_\_\_\_, "Trusteeship Council to Hold First Session," United Nations Weekly Bulletin, II (February 11, 1947) p. 104.

<sup>3</sup> \_\_\_\_\_, "Report on Southwest Africa Held Incomplete," United Nations Bulletin, IV (January 1, 1948), p. 32.

Southwest Africa was not a trust territory; therefore, the Council had no authority to examine the report, but the Assembly had authorized such an examination. Even though the Assembly had requested the examination, the Council was still confronted with the procedure and the extent to which it could examine it and make recommendations. During the examination, many questions were directed toward the representative of South Africa concerning the conditions of the natives in the territory. In conclusion, the Council adopted a resolution expressing its opinion that the report was incomplete and invited the Union of South Africa to supply supplementary information on certain questions before June, 1948, in order to enable the Council to submit its observations at the next session of the General Assembly. With such a precedence set, the Council will probably review not only the annual reports from Southwest Africa, but also perform any other task the General Assembly thinks pertinent, such as the drafting of the detailed statute for the City of Jerusalem<sup>2</sup> which had been requested by the General Assembly.

The first annual reports submitted were from New Zealand and Australia for the territories of Western Samoa and New Guinea. Even though both annual reports had been received after the November session was underway,<sup>3</sup> the Council decided to consider them. Both reports had been received later

<sup>1</sup> Ibid., pp. 32-33; See infra, Chap. III, n.1 & 2, p. 253.

<sup>2</sup> See infra, Chap. II, n. 1, p. 123.

<sup>3</sup> \_\_\_\_\_, "Trusteeship Mission to Visit East Africa," United Nations Weekly Bulletin, III (December 9, 1947), p. 772.

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 than was the customary rule, but this was excusable since the provisional questionnaires were not sent out until after the April, 1947 session of the Council.

The Council was in the process of examining the two annual reports when it was decided to recess the second session until sometime in February, 1948. Final consideration was, however, made at the second part of the session for only the Samoan report.<sup>2</sup>

The Council's supervision of the administration of the trust territories through the examination and recommendations made on the basis of the annual reports is becoming increasingly important from the standpoint of making comments and evaluations of the trusteeship system. Although the Trusteeship Council examined only two annual reports at its third session, those for Tanganyika and Ruanda Urundi, the same was not the case at its fourth session in which five annual reports were examined.<sup>3</sup>

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1 See Rule 72 of the Rules of Procedure.

2 See Trusteeship Council Official Records Second Session; Second Part from the Nineteenth Meeting (18 February, 1948) to the Thirty-fifth Meeting (10 March, 1948), United Nations Doc., 1948. The annual report for the trust territory of New Guinea was not finally considered until the Trusteeship Council's third session. See Trusteeship Council Official Records third Session Supplement, United Nations Doc. No. T/337, 1948, pp. 4-48.

3 See Trusteeship Council Official Records third Session from the First Meeting (16 June, 1948) to the 43 Meeting (5 August, 1948); United Nations Doc., 1948; See also \_\_\_\_\_, "Important Issues before the Trusteeship Council," United Nations Bulletin, VI (January 15, 1949), p. 88; The annual reports examined were for British and French Camerons, British and French Togoland, and Western Samoa. This marked the second annual report from Samoa and was therefore, especially significant for it enabled the Council to determine to what extent its recommendations were being followed in the trust territory. See infra, Chap. II, n. 2, p. 105



## 5. Petitions

A further means of gaining information on trust territories is by accepting and examining petitions in consultation with the administering authority.<sup>1</sup> Several meetings of the rules committee were devoted to the complex task of implementing this procedure, for it was necessary to approve the rules on petitions as soon as possible because there were a number of petitions already awaiting the Council upon the opening of its first session.<sup>2</sup> By far the largest section of the rules of procedure relate to petitions.

In general, the Council can accept and examine petitions if they concern the affairs of one of more trust territories or the operation of the international trusteeship system. For example, the petition requesting the internationalizing of the polar regions was thrown out because it did not pertain to the trusteeship system.<sup>3</sup> Likewise the petition presented by the Reverend Michael Scott concerning a tribe of natives, the Hereroes of Southwest Africa, who do not want annexation to the Union of South Africa but request being brought under the trusteeship system, was not considered because Southwest Africa was not a trust territory.<sup>4</sup> Petitions

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<sup>1</sup> See Article 87b, Appendix C.

<sup>2</sup> Agenda of Trusteeship Council, United Nations Weekly Bulletin, II (April 1, 1947), p. 310. For additional background material on Southwest Africa, see supra, Chap. II, pp. 92-94, & infra, Chap. II, pp. 118 & 119.

<sup>3</sup> Trusteeship Council Studies Petitions, United Nations Weekly Bulletin, III (December 2, 1947), p. 729.

<sup>4</sup> J. Gordon King, "Liberation Limited," The Nation, LKV (November 8, 1947), p. 500.

may be presented from within or from outside a trust territory and can be oral or written. The petitions may be submitted to the Secretary-general directly or through the administering authority with or without comments. Representatives of the Trusteeship Council can accept written petitions while engaged in visits to trust territories if permission from the Council has been obtained and may include any observations with regard to the petitions. Oral petitions may also be received provided a record is kept by the visiting mission, and prompt notice is given to the Secretary-General. However, these procedures are to come under Article 83 of the Charter if the petition relates to a strategic area.<sup>1</sup>

The Council may hear oral presentations in the support or elaboration of a previously submitted written petition as was done in the case of the petition presented by the Ewe people of French and British Togoland.<sup>2</sup> As further means of assisting the Council in its examination of petitions, provision was made that the administering authority concerned in a petition should be entitled to designate and to have present a special representative well informed on the territory involved.<sup>3</sup> The presence of such a representative will enable the Council to obtain more readily the answer to many questions which will more than likely arise during the examination of petitions.

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<sup>1</sup> See Rules 76, 77, 78, 82, 83, 84 & 89 of the Rules of Procedure.

<sup>2</sup> See Rule 80 of the Rules of Procedure; See also infra, Chap. II n.2, p. 98.

<sup>3</sup> See Rule 92 of the Rules of Procedure.

In order to facilitate the handling of petitions, the Council provided for the appointment of an ad hoc Committee on petitions to undertake a preliminary examination of the petitions on the agenda at the beginning of each session. This procedure will save the Council valuable time for nearly all irrelevant petitions will be noticed at this time.<sup>1</sup>

In examining the petitions before it during the first session, the Council used a general or provisional petition program until the rules relating to petitions were adopted. During the session twenty-three petitions from German and Italian residents or former residents of Tanganyika were examined. In all these petitions the plea advanced was to be allowed to return to Tanganyika or to remain there rather than be repatriated to Germany or Italy. The petitioners asked the Council to intervene so as to prevent the administering authority, Great Britain, from carrying out its plan of deportation. The Council asked the British representative many exacting questions, and when assurance was made that no persons would be excluded from Tanganyika solely on the grounds of nationality and that repatriation would be based only on the basis of sympathies, aid to the enemy, or general undesirability, the Council decided that no action would be taken at that time.<sup>2</sup> Similar action was taken in the fall session of 1947 relating to repatriation or the request to return to

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<sup>1</sup> See Rule 90 of the Rules of Procedure.

<sup>2</sup> \_\_\_\_\_, "Petitions from Tanganyika Examined," United Nations Weekly Bulletin, II (April 29, 1947), pp. 455-57; See also \_\_\_\_\_, "Trusteeship Council Concludes First Session," United Nations Weekly Bulletin, II (May 6, 1947), pp. 486-87.

Tanganyika and the British Cameroons. The sub-committee on petitions drew up a draft resolution which recalled the policy approved on the first session.

A petition of a far different nature was the one presented by the All-Ewe Conference. During the summer of 1947 the Ewe people met at Aua, a seaport of the Gold Coast Colony, to adopt a petition calling for the termination of the unnatural division of Eweland between French and British Togoland and the Gold Coast Colony which was to be replaced with unification under one administration.

A very interesting test question arose which dealt with whether the All-Ewe Conference should be allowed to support their petition with an oral statement as provided in Rule 80 of the Council's rules of procedure. The reason for the divergence of opinion was that the members of the Council felt the petitioners would be unable to send anyone in time for the fall session of the Council. The Council decided that to resort to the use of employing a professional petitioning lawyer would be dangerous; therefore, it was decided to postpone the consideration of the petition until a representative could arrive from Eweland. This marks the first

1     , "Trusteeship Mission to Visit East Africa," United Nations Weekly Bulletin, III (December 9, 1947), p. 772.

2     , "Trusteeship Council Studies Petitions," United Nations Weekly Bulletin, III (December 2, 1947), p. 729; For a Map of the Area, See     , "The People of Eweland," United Nations Weekly Bulletin, III (December 16, 1947), p. 800.

3     , "Trusteeship Council Studies Petitions," United Nations Weekly Bulletin, III (December 2, 1947), p. 729.

time a representative of a petitioner has appeared before the Council in person, thus paving the way for future action along these lines.<sup>1</sup>

The representative from Eweiland, Sylvanus Olympic, arrived on December 8, 1947, and the Council proceeded immediately to the discussion of the petition. He pointed out that protests and petitions had in the past been presented to the Permanent Mandates Commission but nothing was achieved. The All-Ewe Conference was not asking for independence or even self-government but only for unification under one administration. Mr. Olympic also invited the Council to make an on-the-spot investigation as had been done in the case of the Samoan petition.<sup>2</sup>

After a week's discussion the Council adopted the draft committee's resolution calling for a number of important remedial measures dealing with the breakdown of economic, financial, and cultural barriers. While this did not go as far as the Ewe petitioners had asked, the resolution does pay special attention to the basic needs of the Ewe people concerning the development of their capacity for self-government. In addition, the Council announced that the first periodic visiting mission to the Togoland trust territories is to take place in 1949.<sup>3</sup> Due to the fact that British

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<sup>1</sup> In the near future, the use of an oral hearing will again be employed, for provision has been made to hear a representative of the Bakweni Land Committee at the Council's Fourth Session. See *infra*, Chap. III, n. 3, p. 258, and n. 1, p. 259.

<sup>2</sup> *Measures Taken to Aid Ewe People*, United Nations Bulletin, IV (January 1, 1948), p. 34.

<sup>3</sup> *Ibid.*, pp. 35-36.

and French Togoland are on the list of the proposed territories the visiting mission will have an opportunity to pay special attention to the newly approved measures.

One thing overlooked by many is the fact that the Council is actually dealing with the political future of Africa. The resolution which was passed by the Council encourages the formation of regional development. What the French and British intend doing will no doubt portray the trend of Africa's future political development for some time to come. But still another thorn in the side of the Ewe peoples' plan for unification is the British attitude in regard to that part of the Gold Coast Colony inhabited by Ewe peoples. Great Britain will certainly be very jealous of her position when it comes to giving up any sovereignty in one of her colonies.

Perhaps the most significant petition received by the Council was that from the leaders and representatives of Western Samoa which was drawn up in November, 1946, for it afforded the Council its first opportunity to effectively implement the objectives of the Charter. The petitioners requested:

1. that Samoa be granted self-government;
2. that New Zealand act as protector and advisor to Samoa in the capacity as England is to Tonga; and

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<sup>1</sup> For a complete discussion of Nationalism in west Africa see Vernon McKay, "Nationalism in British West Africa," Foreign Policy Reports, XXIV (March 15, 1948), pp. 2-12.

3. that the unnatural division of the islands of the Samoan group enforced by the three powers (Germany, Great Britain, and the United States) in the past without the consent of the Samoans be left in abeyance until a meeting [could] be arranged between Eastern and Western Samoa.<sup>1</sup>

The first two points were considered by the Council at its first session and a special three-member mission was created for the purpose of visiting Western Samoa during the summer of 1947 so as to more fully determine the needs of the inhabitants.<sup>2</sup> The third point of the petition raised a very complex issue which was similar to that found in the Ewe petition. The United States had obtained Eastern Samoa by a treaty signed with Great Britain and Germany in 1898.<sup>3</sup> Under the same treaty Germany received Western Samoa but lost the territory after World War I. Since that time New Zealand has administered the territory, first as a mandate under the League of Nations, and now as a trusteeship under the United Nations. Because the Trusteeship Council is not authorized to deal with territories which are not under the trusteeship system, the third part of the petition was not considered.

As a result of the Council's actions in the Samoan petition, other trusteeship territories will undoubtedly be spurred into seeking similar measures for the attainment of self-government.<sup>4</sup>

<sup>1</sup> Trusteeship Council Concludes First Session, United Nations Weekly Bulletin, II (May 6, 1948), p. 483.

<sup>2</sup> Ibid., pp. 483-85.

<sup>3</sup> For a complete Report, See Joseph Waldo Eliason, "The Partition of Samoa: A Study in Imperialism and Diplomacy," Pacific Historical Review, VIII (September, 1939), pp. 259-288.

<sup>4</sup> See infra, Chap. II, p. 103

## 6. Visiting Missions

Article 87c of the Charter provides for, "periodic visits to the trust territories at times agreed upon with the administering authority."<sup>1</sup> The provisions concerning strategic agreements are also to be taken into consideration if such a visit is contemplated. Special investigations like the one conducted in Western Samoa can only be carried out provided the agreement of the administering authority is obtained.<sup>2</sup>

The Council selects the members of any proposed visiting mission, to consist preferably of members of the Council and the assistance of any experts or representatives of the local government needed in carrying out the mission. The mission thus constituted is responsible exclusively to the Council and is to conform to its instructions.<sup>3</sup>

A report is to be presented to the Council on the basis of the visiting mission's findings, and in turn the Council will review the report and prepare a resolution including recommendations and comments pertaining to the trust power's administration of the territory.<sup>4</sup> This manner of obtaining information is perhaps the most satisfactory way in which the Council can supervise the administration of the trust territories.

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<sup>1</sup> See Article 87, Appendix C.

<sup>2</sup> See Rules 94 & 97 of the Rules of Procedure.

<sup>3</sup> See Rules 95 & 96 of the Rules of Procedure.

<sup>4</sup> See Rule 99 of the Rules of Procedure.



As previously mentioned, the Charter and the rules of procedure provide for periodic visits to the trust territories. A very important way in which such a visiting mission may be created is through a petition from the inhabitants of the territory. This was the case in the petition presented from Western Samoa.<sup>1</sup> The Council at its first session decided unanimously to send a visiting mission to gain first-hand information on the conditions in the territory.<sup>2</sup> The visiting mission spent July and August touring Western Samoa and submitted its report to the Council during September, 1947. The mission studied the pertinent facts concerning the petition and then recommended measures for the development of self-government for Western Samoa.<sup>3</sup>

The Council at its December 5th meeting unanimously agreed that the people of Western Samoa should be granted full self-government as soon as they were able to assume the responsibilities. The resolution accepting the recommendations of its special mission called for a new scheme of government whereby certain legislative and executive powers would be given to the people. Instead of the New Zealand-appointed Governor having the public power, a council of representatives of the Samoans would, along with the New Zealand representative who is to preside over that body,

<sup>1</sup> See supra, Chap. II, n. 1, p. 101.

<sup>2</sup> \_\_\_\_\_, "Trusteeship Council Concludes First Session," United Nations Weekly Bulletin, II (May 6, 1947), p. 485.

<sup>3</sup> See Trusteeship Council Official Records Second Session Special Supplement No. 1 Report to the Trusteeship Council by the United Nations Mission to Western Samoa, United Nations Doc., 1948.

comprise the public authority. This new body is to be called the Legislative Assembly and will have real powers of legislation with the Samoans having an absolute majority.<sup>1</sup>

Certain powers are to be reserved to the New Zealand government such as, "adoption and amendments of the constitution, external relations, defense, currency, loans, control of foreign exchange, audits of public accounts, and the discharge of the responsibilities conferred upon New Zealand by the United Nations Charter and by the trusteeship agreement."<sup>2</sup> In addition, the New Zealand government is entitled to enact legislation through its parliament, and the Governor or High Commissioner of Western Samoa is to have the right of vetoing all measures passed by the Legislative Assembly but he should use it sparingly. The Council also favorably considered other recommendations of the mission concerning changes in village and district government, the achievement of racial equality, improvements in education and health, and a multitude of other things. During these discussions a member of the New Zealand administration for Western Samoa was present to answer any questions pertaining to the report or any other data concerning the territory.<sup>3</sup>

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<sup>1</sup> Ibid, p. 795; See also \_\_\_\_\_, "New 'Government of Western Samoa' Proposed," United Nations Weekly Bulletin, III (October 21, 1947), p. 542.

<sup>2</sup> Ibid, p. 542.

<sup>3</sup> Ibid, p. 542-43; See also \_\_\_\_\_, "Towards Samoan Self-Government," United Nations Weekly Bulletin, III (December 16, 1947), pp. 795-97.

The success of the visiting mission hinged on the policy the New Zealand government would take in carrying out the recommendations made by the Trusteeship Council. Even before the mission had concluded its investigation, New Zealand had outlined plans for the new government of Western Samoa which were similar to those of the report and the recommendations of the Council.<sup>1</sup> A more detailed picture is now forthcoming since the second annual report for the territory has been examined, and the Council has expressed its general satisfaction with prevailing conditions in the trust territory.<sup>2</sup> The achievements attained from the Samoan investigation constitute one of the more heartening assurances that international cooperation can reach a common objective according to the principles of the Charter of the United Nations.

The Council has as one of its functions the right to make periodic visits to trust territories at times agreed upon by the administering authority. This procedure is different from that of the Samoan visit because the latter arose from a petition to the Council which is provided for in Rule 97 of its rules of procedure.<sup>3</sup>

The Council included on its agenda for the second session arrange-

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<sup>1</sup> \_\_\_\_\_, "New 'Government of Western Samoa' Proposed," United Nations Weekly Bulletin, III (October 21, 1947), p. 543; See also \_\_\_\_\_, "Further Progress in Trusteeship," United Nations Bulletin, IV (January 1, 1948), p. 32.

<sup>2</sup> For the discussion of the progress made in the Samoan trust territory, see \_\_\_\_\_, "Council's Report on Western Samoa," United Nations Bulletin, VI (April 15, 1949), pp. 371-373.

<sup>3</sup> See Rules 94 & 97 of the Rules of Procedure.

ments for a periodic visiting mission to the trust territories in Africa.<sup>1</sup>  
 At the Council discussions it was decided to divide the trust territories  
 into three areas, for the purpose of visit: east Africa, west Africa, and  
 the Pacific.<sup>2</sup> In adopting this method each territory will more than likely  
 be visited once in every three years.

The first of such periodic visits was the journey to Tanganyika and  
 Ruanda Urundi which took place from July through September, 1948.<sup>3</sup> The  
 following year the members of the Council will visit west Africa which  
 has been in the limelight since the Council's discussion of the Ewe peti-  
 tion.<sup>4</sup> The information obtained will give the Council, and especially the  
 members of the visiting mission, first-hand contacts of great value. It  
 will tend to bring out the realities and the possibilities of the Council's  
 task. Of the three most important ways in securing information the per-  
 iodic visits to trust territories greatly surpass those of petitioning  
 and of the annual reports. Thus only the passage of time will accurately  
 reveal the multitudinous possibilities in store for the Trusteeship  
 Council in its task of investigation to be carried on by the periodic  
 visiting missions.

<sup>1</sup> \_\_\_\_\_, "Trusteeship Council Convenes for Second Session," United Nations Weekly Bulletin, III (November 25, 1947), p. 687.

<sup>2</sup> Department of State Publication No. 2850, op.cit., p. 12.

<sup>3</sup> Report of the Trusteeship Council Covering its Second and Third Sessions 29 April, 1947 - 5 August, 1948, United Nations Doc. No. A/603, 1948, p. 40.

<sup>4</sup> See supra, Chap. II, n. 2, p. 98.

## 7. Reports of the Trusteeship Council

The Trusteeship Council, in accordance with rule 100, presented to the General Assembly an annual report based on the conditions in each trust territory and on the activities and responsibilities of the Council under the international trusteeship system.<sup>1</sup> The Fourth Committee (Trusteeship) concluded the consideration of the report in September, 1947, and prepared a draft resolution which was submitted to and approved by the General Assembly on November 1, 1947. The resolution asked the Council to consider the comments made in the Committee discussion in order to benefit the work of the Council in the future.<sup>2</sup>

This is particularly significant because the annual report to the General Assembly takes into consideration the annual reports of the administering authorities, reports of visiting missions, petitions, and special investigations or inquiries which might arise as a result of the conditions in any of the trust territories. In doing so, any of the suggestions or recommendations of the Trusteeship Council will be made known along with the conclusions based on the execution and interpretation of the provisions of Chapters XII and XIII of the Charter.<sup>3</sup> However, at this

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<sup>1</sup> See Rule 100 of the Rules of Procedure.

<sup>2</sup> \_\_\_\_\_, "Trusteeship in Operation," United Nations Weekly Bulletin, III (October 7, 1947), p. 462; See also \_\_\_\_\_, "Trusteeship and Non-Self-Governing Territories," International Organization, II (February, 1948), p. 71.

<sup>3</sup> See Rule 101 of the Rules of Procedure.

time the report did not include any actual results on visiting missions, special investigations, or the annual reports submitted by the administering authorities; therefore the first report was primarily based on the first session of the Council. Because the approval of the eight trusteeship agreements did not take place until December, 1946, it was impossible to include the annual review of conditions in each trust territory, and the nearest step to such an undertaking was the consideration of the reports transmitted by the government of New Zealand for Western Samoa and the petitions which were awaiting the Council's first session.<sup>1</sup>

The Trusteeship Council was represented by Francis B. Sayre, President of the Council, at the general discussion of the report by Committee Four of the Assembly. He pointed out the accomplishments of the first session and made known some of the future undertakings of the Council such as the provision for visiting trust territories.<sup>2</sup> This enables the General Assembly to obtain further information by asking for clarifications on any matters not sufficiently covered or clearly presented. Representation at the discussion also enables the Council to defend its actions and the policies advocated in the report. In the future the general reports presented by the Council to the General Assembly will give

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<sup>1</sup> Official Records of the Second Session of the General Assembly, Supplement No. 4, Trusteeship Council Report to the General Assembly Governing its First Session (26 March-28 April, 1947) United Nations Doc. No. A/512, 1947, pp. 1-15.

<sup>2</sup> "Trusteeship in Operation," United Nations Weekly Bulletin, III (October 7, 1947), p. 463; See also Rule 103 of the Rules of Procedure.

a more detailed account of the functioning of the trusteeship system as more and varied information will be at the disposal of the Trusteeship Council.

Another way in which the Council aids the General Assembly is through recommendations dealing with the functions of the United Nations pertaining to trusteeship agreements. This includes the approval of the terms of the agreements and their alteration or amendment.<sup>1</sup>

### 8. Relations with Other Organs

One of the major responsibilities of the Trusteeship Council is its relations with the other organs of the United Nations. Up to this point the relations of the Council have dealt mainly with its activities in assisting the General Assembly in carrying out the functions of trusteeship in non-strategic areas.<sup>2</sup> However, mention has not been made of the General Assembly's power to authorize the Council to request advisory opinions from the International Court of Justice.<sup>3</sup> Also closely allied is the fact that a majority of the trusteeship agreements have an article which provides for the settling by the International Court of Justice of those disputes between the administering authority and another power when

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<sup>1</sup> See Rule 104 of the Rules of Procedure; See also Article 85, Appendix C.

<sup>2</sup> See Articles 85 & 87, Appendix C.

<sup>3</sup> See Article 96, Appendix C.

relating to the interpretation or application of the said agreement.<sup>1</sup>  
There is no doubt that if such a case arose the Council would more than likely be concerned to the extent that a detailed report on the matter would be forthcoming. Also the possibility of dispatching a visiting mission would not be overlooked.

The Charter provisions contemplated a close working relationship between the Trusteeship Council, the Economic and Social Council, and the specialized agencies in regard to the functions of the trusteeship system. In relations with strategic areas there was likewise to be close harmony.

Paragraph 3 of Article 85 of the Charter, which provides that the Security Council shall be assisted by the Trusteeship Council in carrying out the functions of trusteeship in strategic areas, has been implemented by the approval of the strategic trusteeship agreement submitted by the United States for the former Japanese mandated islands. Thus those functions relating to political, economic, social, and educational matters are to be applicable to the trust territory but are subject to security considerations.<sup>2</sup> In other words, the United States as administering authority can, under Article 13 of the trusteeship agreement, determine the extent to which the provision of Articles 87 and 88 of the Charter are applicable to any areas which may be designated as closed for

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<sup>1</sup> See Article 83, Appendix G; See also Rule 104 of the Rules of Procedure.

<sup>2</sup> See Article 19 of the Agreement for Tanganyika, Urundi Urundi, and British Togoland and the Cameroons.



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security reasons; therefore, during the summer of 1947 when the United States notified the United Nations that certain areas were to be closed for the purpose of conducting experiments in nuclear fission, it did not mean that the basic objectives of the trusteeship system were violated.<sup>2</sup>

Not until the annual report is presented or perhaps a visiting mission of the Trusteeship Council has been to the territory will the full extent of the cooperation between the two organs be known. Routine interrelationships have been regularly taking place such as the notifications addressed to each concerning the dates of their sessions and the publication of documents which are distributed to each by the Secretariat. The Security Council has, as yet, not found it necessary to call a special session of the Trusteeship Council nor has the occasion arisen for the Trusteeship Council, in accordance with rule 104 to perform such other functions as may be provided for in the strategic trusteeship agreement.<sup>3</sup> However, since March, 1949, closer cooperation has been attained through the Security Council's approval of the report presented by the Committee of experts appointed jointly by the two Council's. Under this agreement the Trusteeship Council, in addition to assisting the Security

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<sup>1</sup> See Article 13 of the Trusteeship Agreement for the Territory of the Pacific Islands; See also Articles 87 & 88, Appendix C.

<sup>2</sup> Department of State Publication No. 3004, The Department of State Bulletin, Vol. XVII, No. 441, 1947, p. 1174.

<sup>3</sup> See Rules 2 & 4 of the Rules of Procedure; See also Provisional Rules of Procedure of the Security Council, United Nations Doc. No. S/96/Rev. 3, 1947, pp. 3-16.

Council in those functions specified in Articles 87 and 88 of the Charter, is to send the questionnaire to the administering authorities of the strategic trust territories, is to advise and report to the Security Council on all reports and petitions from these areas, and is to assist the Security Council in making periodic visits to the strategic areas. As a result the role of the Trusteeship Council in strategic areas is now more easily determined.

Article 91 of the Charter provides that the Trusteeship Council is to avail itself of the assistance of the Economic and Social Council in matters which are common to both. The specialized agencies are also to be of assistance. For instance, when the Population Commission was considering the population of trust territories it recommended that the Economic and Social Council aid the Trusteeship Council with respect to population problems in the territories. In addition the Economic and Social Council was to recommend to the Trusteeship Council the possibility of making a demographic study for each trust territory. The Economic and Social Council passed a resolution to that effect and when the study is complete it will be ample evidence of the existing interrelationships.

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<sup>1</sup> "Trusteeship Council," International Organization, II (February, 1948), p. 113; See also Security Council Official Records Third Year Supplement for June, 1948, United Nations Doc., 1948, pp. 1-10; See also Security Council Official Records Fourth Year 415th Meeting: 7 March, 1948 No. 18, United Nations Doc., 1949, pp. 1-11. See also Articles 87 & 88, Appendix C; See also infra, Chap. III, n. 1 & 2, p. 230; &n. 1, p. 231.

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between the various organs of the United Nations.

The Trusteeship Council had from the outset planned for cooperation with the Economic and Social Council and the specialized agencies as evidenced by rule 105 of its rules of procedure. Also the Trusteeship Council considers proposals submitted by the Economic and Social Council and both they and the specialized agencies are invited to attend and to participate in meetings of the Council but are not allowed to vote. Special sessions of the Economic and Social Council are to be held at the request of the Trusteeship Council.

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Those sections of the provisional questionnaire which were of special concern to the Economic and Social Council and the specialized agencies were transmitted by the Trusteeship Council for their advice and recommendations. The annual reports of the administering authorities and other

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1 Yearbook of the United Nations 1946-47, op.cit., pp. 512-13; See also Article 91, Appendix C. The Population Division in the United Nations Department of Social Affairs is in the process of preparing a series of reports on the population of the trust territories. These reports are being prepared as a direct outgrowth of the discussion carried on between the Economic and Social Council and the Trusteeship Council. When this study is completed it will be of great benefit in stimulating the economic, social, and political advancement of the inhabitants of the trust territories. The only report thus far concluded is that for Samoa. See The Population of Western Samoa, Reports on the population of Trust Territories No. 1, Lake Success, New York: United Nations Department of Social Affairs Population Division, 1948.

2 See Rules 13 & 105 of the Rules of Procedure.

3 Rules of Procedure of the Economic and Social Council, United Nations Doc. No. E/33/Rev. 4, 1947, Rule 4, p. 5.

4 "Trusteeship Council Concludes First Session," United Nations Weekly Bulletin, II (May 6, 1947), p. 487.

reports and documents of special concern to them are to be communicated by the Secretary-General.<sup>1</sup>

Other measures primarily concerning procedure have ensured close cooperation with the Economic and Social Council, such as notification of meetings and the communication of the provisional agenda for each session of the Trusteeship Council.

Also petitions which concern the Economic and Social Council, though first examined by the Trusteeship Council, can then be sent to the appropriate Commission of the Economic and Social Council for advice.<sup>2</sup>

To further carry out the cooperation proposed in the Trusteeship Council's provisional agenda, the Charter provisions, and its rules of procedure, the President of the Council authorized the appointment of a committee of three members to confer with a like number from the Economic and Social Council. This action was the result of a recommendation instituted by the Economic and Social Council through the offices of the Secretary-General. In a similar manner the President of the Trusteeship Council is authorized to appoint a committee to work with the representatives of the Economic and Social Council regarding negotiations with any inter-governmental organizations.<sup>3</sup>

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<sup>1</sup> See Rule 105 of the Rules of Procedure.

<sup>2</sup> See Rules 4 & 8 of the Rules of Procedure.

<sup>3</sup> Official Records of the Second Session of the General Assembly, Supplement No. 4, Doc. no. A/512, op.cit., pp. 9-10.

Current questions of common interest and recommendations regarding methods of future cooperation are being considered by the joint committee on cooperation as of August, 1947. Meanwhile the committee on inter-governmental organizations had met and from the resulting discussions the Trusteeship Council participated in the negotiation of agreements between the United Nations and the Universal Postal Union, the International Monetary Fund, and several other world-wide organizations.

The provisions of the Charter concerning cooperation between the Economic and Social Council and the Trusteeship Council have been adequately carried out. In all probability the Economic and Social Council will continue to play its part in the functioning of the trusteeship system and has certainly aided the Trusteeship Council in dealing with international economic and social questions.

In discussing the relations carried on by the Trusteeship Council in respect to the other organs of the United Nations, the functions of the Secretariat must not be overlooked. As one of the principal organs of the United Nations it has rather an important role, for it makes an annual report to the General Assembly on the work of the organization and an appropriate section of the report includes a discussion on trusteeship. For example, the Secretary-General in the first report expressed his dis-  
<sup>2</sup>appointment because no trusteeship agreements had been submitted. A

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<sup>1</sup> \_\_\_\_\_, "Trusteeship Council Convenes for Second Session," United Nations Weekly Bulletin, III (November 25, 1947), p. 688.

<sup>2</sup> Report of the Secretary-General on the Work of the Organization, Assembly Doc. No. A/65, 1947, pp. 31-33.

similar statement had been made by the General Assembly; nevertheless, the Secretary-General's report furthered trusteeship aspirations.

The Secretary-General acts in a confidential capacity and superintends at the meetings of the Trusteeship Council as well as at the committee and sub-committee meetings and is likewise responsible for the arrangements of their meetings or any other activities. In addition, the Secretariat handles all the communications directed to and from the Council, and the staffing of the Council or any of its subsidiary bodies is carried out by the Secretary-General. Also the Secretary-General, at the request of the Council, makes oral or written statements concerning questions under consideration.<sup>1</sup>

One of the principal units of the Secretariat is the Department of Trusteeship and Information from Non-Self-Governing Territories. Besides the work done for the Council the department serves the Fourth Committee (Trusteeship) and provides documentation for the General Assembly in dealing with Chapters XI, XII, and XIII of the Charter.<sup>2</sup>

The primary concern is with the trusteeship aspect, which is one of the three main divisions of the department. The division of trusteeship takes into consideration the drafting and consideration of trusteeship agreements, questionnaires for each territory, visits, petitions, and annual reports both from the administering authorities and the Trusteeship

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<sup>1</sup> See Rules 23, 24, 25, 26, & 27 of the Rules of Procedure; See also Articles 97 & 98, Appendix C.

<sup>2</sup> Yearbook of the United Nations 1946-47, op.cit., p. 624.

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Council. In its work on trusteeship the Secretariat covers essentially the same work as does the Council, but devotes less time to the subject because it aids all the principal organs of the United Nations in a similar fashion. Nevertheless, the work carried on by the Secretariat greatly assists the Council and is also of value to the other organs of the United Nations because through its annual report on the work of the United Nations an impartial view is taken thus giving them a new slant to problems of trusteeship.

#### G. Prospect for Additional Trust Territories

One of the discrepancies at the London session of the General Assembly was the failure of those states concerned to present draft trusteeship agreements for the territories mentioned under Article 77. Since that time ten trusteeship agreements have been approved: nine non-strategic and one strategic. All the territories thus far placed under the trusteeship system were former mandates under the League of Nations. Article 77 of the Charter also enumerates two other categories of territories eligible for the trusteeship system: territories detached from enemy states, and non-self-governing territories placed under the system by the states responsible for their administration.<sup>2</sup>

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<sup>1</sup> Ibid., pp. 624-25.

<sup>2</sup> See Article 77, Appendix C.

## 1. Former Mandated Territories

### a. Southwest Africa

The failure of the Union of South Africa to submit the General Assembly a draft trusteeship proposal for the territory of Southwest Africa caused great concern. General Smuts presented in detail his reasons for not presenting a draft agreement and he advocated the incorporation of the territory into the Union. The Trusteeship committee considered the question fully and various proposals were considered. The claim that the natives favored annexation was not sufficient proof for the committee, so the question was turned over to the General Assembly. The Assembly, on December 14, 1946, approved a resolution which rejected South Africa's proposal for annexation. As a result, the General Assembly recommended that Southwest Africa be placed under trusteeship and invited the Union to submit a trusteeship agreement for the territory.

In the summer of 1947 South Africa informed the United Nations that it had decided not to annex Southwest Africa. This represented an improvement in the situation, but the Union had no intention of bringing the

<sup>1</sup> "General Discussion on Trusteeship," United Nations Weekly Bulletin, I (November 11, 1946), pp. 17-19.

<sup>2</sup> "Trusteeship Recommended for South West Africa," United Nations Weekly Bulletin, I (December 24, 1946), p. 48. The discussion of Southwest Africa also became involved with the issue over the treatment of Indians in South Africa. See Grant S. McClellan, "South Africa - Land of Conflict," Foreign Policy Reports, XXIII (June 1, 1947), pp. 62-72. See also "Treatment of Indians in South Africa," United Nations Weekly Bulletin, I (December 10, 1946), pp. 14-19.



former mandate under the trusteeship system and proposed to administer<sup>1</sup> the territory in the spirit of the League of Nations mandate system.

On November 1, 1947, the General Assembly recognized South Africa's decision and expressed the hope that the Union would still consider plac-<sup>2</sup>ing Southwest Africa under the trusteeship system. The future of South- west Africa at the present time remains unchanged, and on the basis of the examination of the first annual report on Southwest Africa, there seems little reason to believe that the territory will be placed under<sup>3</sup> the trusteeship system.

#### b. Palestine

The other former mandated territory which was not placed under the trusteeship system is Palestine. With the exception of Southwest Africa, the other League of Nations mandates are either independent states or are<sup>4</sup> under the trusteeship system.

Before discussion turns to Palestine proper, the status of Trans- Jordan must be clarified because these two countries were placed under a

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<sup>1</sup> \_\_\_\_\_. "Draft Resolution on Southwest Africa," United Nations Weekly Bulletin, III (October 21, 1947), p. 519.

<sup>2</sup> \_\_\_\_\_. "Trusteeship Urged for Southwest Africa," United Nations Weekly Bulletin, III (November 11, 1947), pp. 619-21.

<sup>3</sup> See supra, Chap. II, n. 1, p. 92; See also infra, Chap. III, n. 1 & 2, p. 253.

<sup>4</sup> For the Status of the former League of Nations Mandates, See Appendix E.

joint mandate of the League of Nations.<sup>1</sup> In 1928 the British recognized<sup>2</sup> the existence of an independent government in Trans-Jordan. Thus for all intents and purposes it became a separate mandated territory.

In January, 1946, Great Britain informed the General Assembly that steps were being taken to establish Trans-Jordan as an independent state. The signing of the Treaty of Alliance between Trans-Jordan and the United Kingdom on March 22, 1946, marked the termination of the mandated status of Trans-Jordan. However, the treaty relationship between the two countries provides, among other things, for the stationing of British-armed forces in the territory, facilities for training of the armed forces, and financial assistance to cover the cost of Trans-Jordan's army.<sup>3</sup> These provisions raise a question whether Trans-Jordan is a truly sovereign power as envisaged in Article 2 of the Charter. Although she has been recognized as an independent state, she has not been accepted as a member of the United Nations. The entangling military provisions found in her Treaty of Alliance with Great Britain undoubtedly influenced the General Assembly's vote on the matter.

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<sup>1</sup> See Article 25 for the Mandate of Palestine.

<sup>2</sup> League of Nations Official Journal, 1928, Part 2, p. 1453.

<sup>3</sup> "Report of the Membership Committee," United Nations Weekly Bulletin, II (September 2, 1946), pp. 4-5. See also the Treaty of Alliance between the United Kingdom and Trans-Jordan which has been deposited with the Secretariat of the United Nations, United Nations Treaty Series, United Nations Doc., Vol. 6, 1947, pp. 143-150. See especially Articles 1 through 9 of the Annex to the treaty.

Until May 15, 1948, Palestine had been administered by the British under a League of Nations mandate. But even previous to the British withdrawal, there was grave concern shown by the United Nations over the growing trouble in Palestine. The problem was first brought before the General Assembly at the request of the United Kingdom delegation on April 2, 1947.

In order to adequately handle the problem the first special session of the General Assembly was held in May. It created a Special Committee on Palestine composed of representatives from eleven states which excluded permanent members of the Security Council. The Special Committee was given the power to investigate all questions and issues relevant to the problem, including investigations in Palestine. With the problem in the hands of the Special Committee, the General Assembly adjourned until its regular fall session.

The report of the Special Committee was discussed by the Assembly, which recommended that Palestine be partitioned into an Arab state and a Jewish state, with the City of Jerusalem to be under the authority of the

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<sup>1</sup> Jacob Robinson, Palestine and the United Nations--Prelude to Solution (Washington: Public Affairs Press, 1947), pp. 1-263; For background material see Department of State Publication No. 2536, Anglo-American Committee of Inquiry, Far Eastern Series No. 2, 1946, pp. 1-91.

<sup>2</sup> "The Problem of Palestine," United Nations Weekly Bulletin, II (May 6, 1947), pp. 474-77; See also "General Assembly's Special Session Convened," United Nations Weekly Bulletin, II (May 6, 1947), pp. 467-70.

<sup>3</sup> For the organization and procedure of the Special Committee, its work and its major difficulties, see United Nations Palestine Commission Report to the General Assembly, Supplement No. 1, Doc. No. A/532, 1948, pp. 4-39.

Trusteeship Council, and that there could be an economic union for all of Palestine.<sup>1</sup> Under the plan the General Assembly was to appoint a five-man commission to implement its recommendations; to aid Great Britain, the mandatory, in performing its functions; and to assist in the establishing of the two new states which were to come into existence not later than October 1, 1948. The Commission was to act under the authority and guidance of the Security Council.<sup>2</sup>

The partition plan recommended by the General Assembly on November 29, 1947, marked the culmination of seven months of exhaustive labor by the United Nations. In the final debate both the United States and Russia supported partition while Great Britain abstained from voting and continued to maintain her previous policy of not using British troops to enforce a decision not acceptable to either side in Palestine.<sup>3</sup>

In the meantime the Trusteeship Council had been working overtime. It was the responsibility of the Trusteeship Council to set up a special committee to "elaborate and approve" a detailed statute for the City of Jerusalem. Therefore, the Council on December 2, appointed a six member working committee to prepare the draft of a detailed statute as required by the resolution of the General Assembly on November 29, 1947. Under

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<sup>1</sup> \_\_\_\_\_, "Committee Recommends Partition of Palestine," United Nations Weekly Bulletin, III (December 2, 1947), p. 741; See also \_\_\_\_\_, "Assembly Adopts Plan for Palestine," United Nations Weekly Bulletin, III (December 9, 1947), pp. 773-74. For a detailed map of the partition plan, see page 776 of this issue. For the proposed solutions to the problem, see Official Records of the Second Session of the General Assembly, Supplement No. II United Nations Special Committee on Palestine Report to the General Assembly Vol. I, Doc. No. A/364, 1947, pp. 39-64.

United Nations

<sup>2</sup> \_\_\_\_\_, "Accord on Implementing Palestine Partition," United Nations Weekly Bulletin, III (November 18, 1947), pp. 655-57.

<sup>3</sup> \_\_\_\_\_, "Assembly Adopts Plan for Palestine," United Nations Weekly Bulletin, III (December 9, 1947), pp. 773-74.

this resolution, the Council was to appoint the Governor of the city. He was to represent the United Nations in the city and would be responsible to the Trusteeship Council which was to have full powers of administration, legislation, and jurisdiction. In addition, local units of government were to be given wide powers and the demilitarization of Jerusalem was to take place. The detailed statute, when approved by the Council, was to remain in force for ten years with subsequent re-examination<sup>1</sup> by the Council at the end of that time. Although the Trusteeship Council had completed its draft statute for the City of Jerusalem, the Council did not have an opportunity to carry out its provisions because of the change in policy by the United States on the partition proposal.

The United States proposed that the Security Council should instruct the Palestine Commission to suspend its efforts to implement the partition plan and in its place create a temporary trusteeship for Palestine<sup>2</sup> under the Trusteeship Council of the United Nations. In order to put this plan into effect the Security Council directed the Secretary-General to call another special session of the General Assembly which convened on April 16, 1948.<sup>3</sup> This action marked a formal break in the previous Russian-American agreement on Palestine.

<sup>1</sup> Trusteeship Council Official Records Second Sessions Third Part from the Thirty-sixth Meeting (21 April, 1948) to the Forty-sixth Meeting (4 May 1948) Annex, United Nations Doc. 1948, pp. 5-24; See also \_\_\_\_\_, "Working Committee Studies Statute for Jerusalem," United Nations Weekly Bulletin, III (December 16, 1947), pp. 798-799.

<sup>2</sup> \_\_\_\_\_, "Council Debates Trusteeship for Palestine," United Nations Bulletin, IV, (April 1, 1948), p. 283. The Palestine Commission adjourned sine die on May 17, 1948. See also \_\_\_\_\_, "Assembly Authorizes Mediator for Palestine," United Nations Bulletin, IV (June 1, 1948), p. 435.

<sup>3</sup> \_\_\_\_\_, "General Assembly Reexamines Palestine Problem," United Nations Bulletin, IV (May 1, 1948), p. 351.

The United States maintained in the Assembly discussions that trusteeship was the only logical means of solving the present situation in Palestine for partition could not be implemented by peaceful means, and likewise that the Security Council's truce proposal would not ensure the continuence of governmental authority in Palestine. To support this contention the United States presented a working paper for consideration, but time was running short for the end of the British mandate was only several weeks away. At the same time Russia was using the United Nations to spread anti-American propoganda by charging the United States with sacrificing the partition plan because of oil interests and strategic considerations in the middle east.<sup>1</sup>

As time was the big element in the Palestine discussion, the tendency was to concentrate on emergency action. In the meantime the temporary trusteeship proposal which was before the Assembly had become involved in a lengthy discussion.<sup>2</sup> Therefore, the Security Council decided to set up a three-nation Palestine truce commission which was to safeguard the holy places in Jerusalem and to encourage the observance of the Council's

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<sup>1</sup> However, as the General Assembly's discussion on trusteeship ran its course, it became evident that the United States' temporary trusteeship proposal for Palestine likewise could not possibly work without the use of force. \_\_\_\_\_, "Trusteeship or Partition," United Nations Bulletin, IV (May 1, 1948), p. 356; For the United States working paper on trusteeship for Palestine, see Official Records of the Second Session of the General Assembly, Annex to Vol. I & II, 1948, pp. 12-31. See also Department of State Publication No. 3140, The Department of State Bulletin, XVIII No. 461, 1948, pp. 592-594.

<sup>2</sup> \_\_\_\_\_, "Assembly Considers Provisional Palestine Regime," United Nations Bulletin, IV (May 15, 1948), pp. 397-402.

cease-fire order. While this was going on, the Trusteeship Council was again in session. The Council was convened at the General Assembly's request on April 2, 1948, for the express purpose of saving the City of Jerusalem from complete destruction. The Council during its discussion considered many protection measures including the United States' proposal to place Jerusalem under a temporary trusteeship so as to maintain law and order. In its report to the Assembly, the Council did not include the temporary trusteeship proposal for Jerusalem because the majority of the Council had found it unacceptable. The chief reason for the trusteeship proposal not being acceptable was because the United Nations had no definite means of placing trusteeship into force. Nor had there been any actual detailed plans worked out in advance. In its place the Trusteeship Council had arranged for a truce which was to follow the cease-fire order<sup>1</sup> for Jerusalem and its environs.

The Assembly discussion over trusteeship had reached a stalemate by the time the British began their withdrawal from Palestine in accordance with their decision to terminate the mandate on May 15, 1948.<sup>2</sup> It became clear that neither the General Assembly nor the Security Council was prepared to act even though a threat to international peace and security actually existed.

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<sup>1</sup> \_\_\_\_\_, "Security Council Acts to End Palestine Fighting," United Nations Bulletin, IV (May 15, 1948), pp. 412-414; See also \_\_\_\_\_, "Safe-guarding Jerusalem City," United Nations Bulletin, IV (May 15, 1948) pp. 402-405.

<sup>2</sup> \_\_\_\_\_, " . . . To Consider Further the Future Government of Palestine," United Nations Bulletin, IV (April 15, 1948), p. 306.

With the withdrawal of British troops all semblance of authority became non-existent. The sporadic fighting which had been going on for some time between the Arabs and Jews developed into full scale warfare. On May 14, 1948, the State of Israel was proclaimed; therefore, it became evident that partition was taking place by force of arms.

The problem of recognition immediately came to the fore. An unusual situation took place on May 15, when the United States, although supporting the trusteeship plan then in discussion by the General Assembly, recognized Israel as a de facto state. Most of the other states soon followed suit with either de facto or de jure recognition.

This action did not, however, by any means settle the conflict between Israel and the adjoining Arab states. In its attempt at solving the Palestine situation, the General Assembly appointed Folke Bernadotte of Sweden as United Nations mediator in Palestine. Although the mediator succeeded in bringing Israel and the Arab states to truce terms for various time intervals, there were continual truce violations accompanied by sporadic fighting. It was not until April, 1949 that armistice negotiations were completed between Israel and Syria, the last of the Arab states to complete a cease-fire agreement with Israel.

1 \_\_\_\_\_, "Assembly Authorizes Mediator for Palestine," United Nations Bulletin, IV (April 15, 1948), p. 437.

2 See Department of State Publication No. 3151, The Department of State Bulletin, XVIII No. 464, 1948, p. 673. De jure recognition was extended to Israel on January 31, 1949, Department of State Publication No. 3427, The Department of State Bulletin, No. XX No. 502, 1949, p. 205.

3 \_\_\_\_\_, "How the Truce came to Palestine," United Nations Bulletin, IV (June 1, 1948), p. 432.

4 \_\_\_\_\_, "Paving the Way to Peace in Palestine, Significance of Israel-Jordan Armistice," United Nations Bulletin, VI (April 15, 1949) pp. 385-386.



In the meantime the General Assembly was considering Israel's application of membership to the United Nations, and on May 11, 1949 it admitted Israel to United Nations membership.<sup>1</sup> Israel's becoming a member of the United Nations, however, did not mean that the Palestine situation was settled, for there was still the problem of linking together the negotiations concerning refugees and those concerning the final boundaries of the year old state of Israel. Although a satisfactory solution to these problems has not been achieved, every effort towards this end is now being made by the United Nations Conciliation Commission for Palestine which is in session at Lausanne Switzerland.<sup>2</sup> Thus for all intents and purposes, the Palestine problem no longer is of importance as far as the trusteeship system is concerned.

## 2. Territories Detached from Enemy States

### a. Former Italian Colonies

As yet no trusteeship agreements have been submitted with regard to the second category of territories to which the international trusteeship

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<sup>1</sup> \_\_\_\_\_, "Assembly's Welcome to Israel," United Nations Bulletin, VI (June 1, 1949), p. 552.

<sup>2</sup> \_\_\_\_\_, "Bringing Peace to Palestine," United Nations Bulletin, VII (July 15, 1949), pp. 84-86. Israel stated that it could not accept the General Assembly's 1947 territorial division of Palestine. For a detailed map of the proposed settlement see \_\_\_\_\_, "Assembly adopts Plan for Palestine," United Nations Weekly Bulletin, III (December 9, 1947), p. 776.

system applies, but it is generally understood that the Italian Colonies in Africa, Libya, Eritrea, and Italian Somaliland will eventually come under the trusteeship system.

No decision was made at the Potsdam Conference on the disposition of the Italian colonies. The problem was to be handled by the Council of Foreign Ministers, representing the United States, the United Kingdom, France, Italy, and the Soviet Union, which met in London during September, 1945.<sup>1</sup>

A final decision was not reached at either the London or Paris Conferences of the Foreign Ministers. Russia had originally requested a trusteeship for Tripoltania and then later receded from its claim in favor of first a joint-Italian trusteeship and later in favor of an Italian trusteeship which has been advocated by the French. The United States favored placing the colonies under the trusteeship of the United Nations while the British, although favoring our proposals in general, placed reservations in respect to Cyrenaica for strategic reasons.<sup>2</sup>

Agreement was not reached on these varied proposals so the Council of Foreign Ministers decided, on July 3, 1946, that if a decision was not reached within one year after the signing of the Italian Peace Treaty the

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<sup>1</sup> Department of State Publication No. 2817, Participation of the United States Government in International Conferences: July 1, 1945-June 30, 1946, Conference Series No. 95, 1947, pp. 143-45.

<sup>2</sup> Department of State Publication No. 2572, Paris Conference of Foreign Ministers June 15-July 12, 1946, Conference Series No. 87, 1946, pp. 8-9.

governments of the United States, the United Kingdom, the Soviet Union, and France would jointly determine the disposition of the Italian colonies. If, however, a satisfactory solution was not reached, the General Assembly was to hand down the decision which would then be put into effect by the four powers.<sup>1</sup>

Although the Council of Foreign Ministers met in the autumn of 1948, they failed to reach an understanding on the future of the former Italian colonies. Likewise, the General Assembly postponed action on the problem by voting to delay its discussion until its session of April, 1949.<sup>2</sup>

The General Assembly debated the issue for over a month but to no avail and in the process decided by an overwhelming vote to postpone a final solution of the future status of the former Italian colonies until its fourth regular session in September. There were many and varied proposals set forth but the most important was the so-called Bevin-Sforza agreement which eventually became the proposal set forth by the First Committee and was then turned down by the General Assembly. The First Committee resolution provided for the placing of Tripoltania under Italian

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<sup>1</sup> Department of State Publication No. 2735, op.cit., p. 73; See also Article 23 and Annex XI of the Italian Peace Treaty, Department of State Publication No. 2743, Treaty of Peace with Italy, Bulgaria, Hungary, Rumania, and Finland, European Series No. 21, 1947, pp. 13 & 88-89.

<sup>2</sup> Department of State Publication No. 3490, The Department of State Bulletin, XX No. 511, 1949, pp. 484-485; See also General Assembly Official Records of the Third Session, Part I, 1948 First Committee Summary Records of Meetings 21 September-8 December 1948, United Nations Doc., 1948, p. 936.

trusteeship from 1951 to 1959 at which time all of Libya was to become independent. The rest of Libya was to be administered by Great Britain and France with the former administering Cyrenaica and the French administering the Fezzan until independence was attained in 1959. Italy was also to be given trusteeship over Italian Somaliland and Ethiopia was to annex all of Eritrea with the exception of the western province which was to be incorporated into the Anglo-Egyptian Sudan.<sup>1</sup>

A breakdown of the voting among the big four shows Great Britain and the United States supporting the resolution and France and the Soviet Union against. However, previous to the General Assembly voting France supported essentially the same view as did the United States with the exception that Ethiopia was entitled to Italian Somaliland. On the other hand Russia supported United Nations collective trusteeship for Libya, Eritrea, and Italian Somaliland before and after the General Assembly vote on Committee One's proposal. In the meantime the Italian colonies, with the exception of the Fezzan under the French, will be administered by the British military authorities.<sup>2</sup> It thus becomes apparent that the colonial question in relation to the Italian colonies has been a pawn in the settling of other questions; otherwise, a disposition of some kind

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1. \_\_\_\_\_, "Future of Former Italian Colonies - Assembly Defers Final Decision," United Nations Bulletin, VI (June 1, 1949), pp. 545-550.

2 Ibid., pp. 549-551; See also \_\_\_\_\_, "Future of Former Italian Colonies," United Nations Bulletin, VI (May 1, 1949), pp. 422-430; See also \_\_\_\_\_, "Former Italian Colonies in Africa-Proposals before Assembly Reviewed," United Nations Bulletin, VI (May 15, 1949), pp. 497-503.

would have been obtained.

b. Territorial Appendages of Japan

The insular possessions of Japan, if detached from the empire, will be eligible for trusteeship; however, such action must await the signing<sup>1</sup> of the Japanese Peace Treaty.

In November, 1945, at the First Cairo Conference the United States, the United Kingdom, and China issued a joint statement by which Japan would lose all the islands in the Pacific seized or occupied since the beginning of the first World War. In addition Manchuria, Formosa, and the Pescadores were to be returned to China while Korea was to become<sup>2</sup> "free and independent."

Verification of this plan was made in the Potsdam Declaration on July 26, 1945, which was signed by the United States, the United Kingdom, and China. The Cairo Declaration was to be carried out and Japanese sovereignty limited to the four home island and such other islands as may be determined.<sup>3</sup> Thus the fate of Okinawa, Iwo Jima, the Bonins, and the lesser islands will be determined at some later date.

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<sup>1</sup> Department of State Publication, No. 2784, op.cit., p. 14; See also Article 77, Appendix C.

<sup>2</sup> Department of State Publication No. 2665, Participation of the United States Government in International Conferences: July 1, 1941-June 30, 1945, Conference Series No. 89, 1947, pp. 90-91.

<sup>3</sup> Department of State Publication No. 2423, op.cit., p. 28.

Meanwhile the United States, Great Britain, China, and the Soviet Union discussed arrangements for Korea at the Moscow Conference of Foreign Ministers held in December, 1945. Under the Moscow agreement, the United States and the Soviet Union were to make proposals to these governments on the advisability of a four-power trusteeship to prepare the Koreans for independence within five years. On March 20, 1946, the Joint Commission met at Seoul, but agreement was not reached on which democratic parties and organizations in Korea were to be consulted in the ensuing discussions. In May the last of the meetings were held without any substantial achievements being obtained.

The following months were ones of inaction and it was not until September, 1947, that anything constructive appeared on the scene. At this time the United States presented the question of Korea to the United Nations. The Assembly heeded the request of the United States by establishing a Temporary Korean Commission which was to implement the Assembly's resolution of November 14. Under this resolution, the commission was to help re-establish Korean sovereignty and independence and to arrange for the withdrawal of Russian and United States forces within ninety days and to aid in the constituting of a Korean national security force. No mention

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<sup>1</sup> Department of State Publication No. 2448, Moscow Meeting of Foreign Ministers, December 16-26, 1945, Conference Series No. 79, 1946, p. 6; See also Department of State Publication No. 2735, op.cit., p. 75.

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was made regarding trusteeship possibilities.

Little if anything was accomplished by the commission and it looks extremely doubtful if Korea will achieve her independence in the near future. Korea could likely be a test issue between Soviet-United States relations. Perhaps the outcome will remain in doubt until the Japanese peace terms are concluded. The present situation, however, still leaves the advisability of a four-power trusteeship to be considered. Trusteeship would give Korea her eventual independence and would ensure more stable and peaceful conditions in the Far East as well as to reduce present world tension.

### 3. Other Non-Self-Governing Territories

Although the Charter provides for the placing of other non-self-governing territories under the international trusteeship system, there has been no such transfer as yet. The possibility of the colonial powers bringing their colonies under the system seems rather distant.

The Fourth Committee (Trusteeship) approved a resolution submitted by Sir Maharej Singh of the Indian delegation which invited those members who are administering non-self-governing territories to propose trusteeship agreements for those areas not yet ready for self-government. This

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1 Department of State Publication No. 2993, Korea's Independence, Far Eastern Series No. 18, 1947, pp. 11, 15-76; See also \_\_\_\_\_, "Assembly Takes Up Question of Korea," United Nations Weekly Bulletin, III (November 4, 1947), pp. 591-93; See also \_\_\_\_\_, "Assembly Establishes Korean Commission," United Nations Weekly Bulletin, III (November 25, 1947), pp. 683-84.

appeared to be advancement along the road to eventual independence or self-government for those territories which had previously little or no hope along these lines. But on November 1, 1947, the General Assembly defeated the draft resolution by failing to secure a two-thirds majority which was required for adoption.<sup>1</sup>

Perhaps the failure could be attributed to the implication that there was a lack of confidence in the administration of non-self-governing territories. It was also a bold attempt at what might be termed a veiled effort to rewrite the trusteeship provisions of the Charter for provision had already been made placing non-self-governing territories under the system. Because the resolution bordered on the compulsion, colonial powers became very jealous of their position and pointed again to the Charter provisions found in Article 77 which makes it very clear that the placing of territories under the trusteeship system is purely voluntary.<sup>2</sup> Thus the only colonial possessions likely to be placed under the system are those in which the colonial power is having a difficult time managing but yet wants to retain some strategic or economic advantage. The most suitable example would be The Netherlands' placing certain areas of Indonesia under the trusteeship system which she is more than likely to lose if the

1 \_\_\_\_\_, "Trusteeship for Non-Self-Governing Territories," United Nations Weekly Bulletin, III (October 28, 1947), p. 574; See also \_\_\_\_\_, "General Assembly: Record of the Second Session," United Nations Weekly Bulletin, III (December 9, 1947), p. 782.

2 \_\_\_\_\_, "Trusteeship for Non-Self-Governing Territories," United Nations Weekly Bulletin, III (October 28, 1947), p. 574.



Indonesian Republic does not come under the proposed federation consisting  
of the Netherlands and the United States of Indonesia.<sup>1</sup> However, if the  
Netherlands proceeds with such a plan, she will merely be forestalling the  
inevitable for what little prestige she could retain.

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<sup>1</sup> For a brief summary and a map of the area See \_\_\_\_\_, "What Future for  
Indonesia?" United Nations News, III (April, 1948), pp. 28-30; See also  
Department of State Publication No. 3088, The Department of State Bulletin  
Vol. XVIII, No. 454, 1948, pp. 323-36.

## CHAPTER III

Comparison of the Mandate and Trusteeship Systems

An analysis of the mandate and trusteeship systems readily reveals that while there are many similarities between the two, there are also some important differences. A comparison is difficult because the trusteeship system has been in operation less than three years, while the mandate system was in existence for approximately twenty years. Whether the two will differ greatly in actual practice is not clear at this time.

A. Dependent Areas in the Peace Settlements1. The Drafting of the Covenant and Charter in Relation to the Peace Settlements

The problem of the disposition of the non-metropolitan areas of the defeated countries was one of the major tasks at the end of both World Wars, and the treaty policy adopted has had, in each case, a definite bearing on the development of the mandate and the trusteeship systems.

The Covenant of the League of Nations was a part of the system of treaties at the end of World War I and the League itself was an institution designed to implement those treaties. At Paris in 1919 there was a great deal of disagreement in the general discussion over colonies.

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1 Baker, op-cit., Vol. I, pp. 23-94.

The Mandate system, which was established as an outgrowth of the issue over the disposition of the German and Turkish colonies, was in reality a compromise. It is evident that Article 22 of the Covenant partly reflected the effects of the secret treaties and agreements that were made during the course of the war. When the policy of annexationist imperialism came into conflict with that of an international administration in which the welfare of dependent peoples was uppermost, the result was none too favorable for the latter. As a result, an impartial adjustment of the disposition of the German and Turkish colonies was not obtained. Thus the League provisions pertaining to the mandate system suffered materially by being linked with the peace treaties. In addition, the League itself became identified with many of the unpopular provisions of the peace treaties.

This situation played an important part in the decision to keep separate the new organization and the peace treaties following World War II. To more fully carry this out, the framework of the United Nations was, in contrast to the League, agreed upon while the war was still in progress. As a result the United Nations Charter emerged a much more workable document than did the Covenant.

This was particularly true with respect to the trusteeship provisions of the Charter. Because there was no discussion of the actual territories to be included under trusteeship, it enabled the Conference committee discussions to proceed more satisfactorily. Nor were there secret treaties concerning the disposition of enemy colonies or those territories which

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<sup>1</sup> See supra, Chap. II, no 2, p. 46.

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 were still under mandate. Thus the prior existence of the United Nations was intended to give an assurance of over-all security not only to the trusteeship system but to all the organs and agencies of the United Nations Organization. In this way the peace settlement was to be freed of the rival contentions of the individual states for power.

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There is, however, an exception in the case of the Kurile islands. The official documents of the Yalta Conference do not mention any territorial changes in relation to the Japanese empire. One of the main reasons for not releasing the agreement concerning the Kuriles was that Russia was not then at war with Japan. In neither the Cairo Conference nor the Potsdam Declaration was there a statement made in relation to the Kurile islands or the southern half of Sakhalin island which was given to Japan at the Russo-Japanese peace conference held at Portsmouth, New Hampshire in 1905. The first official mention of the fact that there was a secret agreement concerning the Kuriles was the statement made by the Secretary of State, James F. Byrnes in January, 1946, which disclosed that the Kuriles, as well as the southern half of Sakhalin, were promised to Russia at Yalta. From the standpoint of the Atlantic Charter, such an agreement was in direct violation of the first two principles set forth in the document. Perhaps a logical explanation could be given in the case of the southern half of Sakhalin island because it was, prior to 1905, under Russian jurisdiction. As for the Kuriles, they had been theoretically under Japanese authority for centuries; however, Japanese occupation was far from effective in either Sakhalin or the Kuriles so in 1875 she was not unwilling to consider a convention by which she agreed to withdraw from the Kuriles. Thus there is no historically sound basis for the secret agreement which was reached concerning the Kurile islands. The future status of these islands will undoubtedly be considered when the Japanese peace settlement takes place. In any case this was the stand taken by the then acting Secretary of State, Dean Acheson, who told newsmen that the Russian occupation of the Kuriles was not a final territorial settlement. This was, however, promptly denied by Moscow. See Vernon McKay, "International Trusteeship Role of the United Nations in the Colonial World," *Foreign Policy Reports*, XII (May 15, 1946), p. 64; See also Department of State Publication, No. 2665, pp. 162-163; See also the *Encyclopaedia Britannica*, 14th ed. Article "Kuriles," XIII, p. 522; See also Thomas A. Bailey, *A Diplomatic History of the American People* (3rd ed., New York: F. S. Crofts & Co., 1947), p. 566. See also *The New York Times*, January 31, 1946, p. 7; See also *supra*, Chap. II n. 1 & 2, p. 131; See also *supra*, Chap. II n. 1, p. 44.

## 2. The Peace Settlements

The peace settlements are particularly significant in their relation to both the mandate system and the trusteeship system. World War I settlements restored a substantial measure of stability, whereas the World War II settlements, and the lack of them to date, have been productive of very little stability.

The order in which the peace treaties were concluded has had a rather important bearing on both the mandate and the trusteeship systems. In addition, the treaties have, to a large extent, determined the placing of ex-enemy colonial territories under the two systems. The pivot of the settlement after both World Wars was the treaty with Germany. After the first World War, the treaty with Germany furnished the pattern for the

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<sup>1</sup> These settlements pertain to the territories which were detached from Germany by the Treaty of Versailles and to Turkey by the Treaty of Sevres which was signed on August 10, 1920 with the Allied and Associated Powers, and with the final adjustments which were made at the Treaty of Peace with Turkey signed at Lausanne on July 24, 1923. Prior to or upon the signing of these treaties the "A", "B", and "C" mandates were allocated by the Supreme Allied War Council and then later approved by the Council of the League. In other words, stability was soon reached. In respect to the territories which have been detached from Italy and Japan there has been, as yet, no actual territorial allocation. Though the Italian Peace Treaty has been signed, the Italian colonies have not been placed under trusteeship. When the Japanese Peace Treaty is concluded, there is the possibility that it will produce a much more satisfactory territorial settlement in relation to the placing of territories under trusteeships. See Department of State Publication No. 2724, *op. cit.*, pp. 55-73; See also Treaties of Peace 1919-1923, Vol. II, *op. cit.*, pp. 789-941 & 959-1022; See also supra, Chap. I, Table I, pp. 7 & 8, n. 1, p. 11.

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settlements with Austria, Hungary, Bulgaria, and Turkey. The order was reversed after World War II.<sup>2</sup> The Assumption was that in so doing, the easy, non-controversial subjects could be disposed of, and the main treaties consequently would be easier to negotiate. As a result, no general peace conference was called at the end of World War II.

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It is true that Germany has no overseas territories to be taken into consideration, but the Italian colonies and the territorial appendages of Japan must be considered.<sup>3</sup> Though the treaty policy pursued after World

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<sup>1</sup> Department of State Publication No. 2724, op.cit., Preface, p. iii, 36-38.

<sup>2</sup> Department of State Publication No. 2369, Department of State Bulletin, Vol. XIII, No. 319, 1945, pp. 153-160. Thus far, peace treaties have been concluded with the enemy satellite countries & Italy; See Department of State Publication No. 2868, Paris Peace Conference 1946, Conference Series No. 103, 1946, Foreward, p. iii.

<sup>3</sup> Although the Italian peace treaty has been concluded, the issue over her colonies in Africa has not been settled. See supra, Chap. II, pp. 127-131. The territorial appendages of Japan will not be dealt with until the peace treaty. There are, however, many complications which will govern the possibility of concluding a peace settlement with Japan in the near future. The procedure of conducting the Japanese Peace Treaty will differ considerably from the treaties already concluded or the one which is in prospect for Germany. For instance, the responsibility of the German peace settlement will fall largely upon the Council of Foreign Ministers, but such will not likely be the case in relation to Japan. Even though the Council of Foreign Ministers created the Far Eastern Commission so as to have greater Allied participation in the control of Japan, the decision to hold a general peace treaty will more than likely emanate from the Commission because it is much closer to the scene. The Commission is to be composed of representatives from Australia, Canada, China, France, the Netherlands, New Zealand, the Philippines, the United Kingdom, and the Soviet Union. There is, however, another body which at present exercises far more control in Japan than does the Far Eastern Commission. It is the Allied Council for Japan which consists of the Supreme Commander, Douglas MacArthur, or his deputy, and a member from China, the Soviet Union, and a member representing jointly the United Kingdom, Australia, New Zealand, and India. This body is to consult and advise the Supreme Commander in regard to the terms of surrender, occupation, (footnote concluded on page 141.)

War II may have resulted in strengthening the Charter, such important issues as the placing of the Italian colonies under trusteeship or the conducting of the Japanese peace settlement have gone unsorted. It is possible that if the peace treaties and other issues which have not been agreed upon could now be placed before the United Nations for settlement, a satisfactory solution would be more easily obtained. This procedure is now being used by the General Assembly in the case of the former Italian colonies, but a satisfactory solution to the problem has not been obtained.

In contrast to this policy, a definite attitude was taken after World War I toward the German overseas empire and certain territories which were under Turkish jurisdiction. The Treaty of Versailles provided for the turning over of the German overseas empire to the principal Allied and Associated Powers. Likewise, the Treaty of Lausanne required Turkey to renounce her rights in certain territories previously under her jurisdiction.

(Footnote 3 from p. 140 concluded)  
and control of Japan. It has become apparent that through this interlocking control the Japanese peace settlement could be held up almost indefinitely. Also the policy toward Japan has been deeply influenced by the trend of American-Russian relations. So far, the United States has had freedom of action in Japan while the Russian influence is at a minimum. See Department of State Publication, No. 2888, Activities of the Far Eastern Commission February 26, 1946-July 10, 1947, Far Eastern Series No. 24, 1947, pp. 1-11 and the Preface, p. v; See also Department of State Publication No. 2774, Specifs., p. 14; See also Lawrence A. Roesinger, "The Occupation of Japan", Foreign Policy Reports, XXIII (May 15, 1947), pp. 50-59.

2. See supra, Chap. I, n. 1 & 2, p. 7.

1. See supra, Chap. II, n. 2 p. 129.

mandate system. Since there was no positive designation made as to the territories which were to be placed under the trusteeship system as was the case under the mandate system, the problem of the disposition of the Italian colonies and the territorial appendages of Japan has gone unsolved.<sup>1</sup>

### 3. The Allocation of Territories

The mandated territories, were all allocated by the Supreme Allied War Council, while there has been no general allocation of territories for the trusteeship system.<sup>2</sup> After World War II, the only territories thus far placed under trusteeship are some of the former League of Nations mandates. There is, however, the possibility that the Italian colonies will be allocated to some power or powers at the General Assembly's fourth regular session in September, 1949, but this does not necessarily mean they will all be placed under trusteeship.<sup>3</sup> Likewise, the insular possessions of Japan may be detached and then placed under the administration of one or more countries.<sup>4</sup> It is possible that these territories will not be allocated to any of the powers until there is a definite attitude shown that, when so allocated, they will be placed under trusteeship. At any rate, the experiences obtained from the allocation methods used by the

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1 See infra, Chap. III, n. 3, p. 154.

2 See supra, Chap. I, Table I, pp. 7 & 8.

3 See supra, Chap. II, pp. 127-131.

4 See supra, Chap. II, n. 1 & 2, p. 131.



Supreme Allied War Council during and after World War I should enable the victors in World War II to benefit from their procedures.

4. Occupation and Administration of Territories  
Prior to their being Placed under the Systems

In every case, in 1919, the mandate was allocated to the power which already enjoyed military control of the mandated territory. After World War II, with one exception, every trusteeship agreement so far approved by the Assembly or Security Council simply confirmed the trusteeship authority as a substitute for the former mandate authority. The exception was the United States strategic trusteeship over the Japanese mandated islands. But in this latter case, it was also simply a substitution of trusteeship for military possession. In this respect the trusteeship system has duplicated that of the mandate system. Nevertheless, there is the possibility of a change in this policy. For instance, the Italian colonies in Africa were occupied by Great Britain during World War II and are still being administered by them. More than likely one or more of these colonies will be placed under some other jurisdiction than that of the British. Likewise the United States occupied and is administering the majority of the insular possessions of Japan by right of conquest as the result of World War II. One or more of these possessions may possibly be allocated to a power other than the United States upon the signing of the peace treaty with Japan. In both instances it would then be up to these powers to place such territories voluntarily under the trusteeship system.

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1 See infra, Chap. III, n. 3 p. 154 .

### 5. Reasons for Establishing the Systems

The preferred reasons for establish the mandate system and the trusteeship system were the same. Both were stated as being the means of solving the problem of the administration of backward areas in the interest of the inhabitants and the world at large rather than in the interests of the administering authority. But a closer scrutinization of the underlying factors indicates other motives. The mandate system was a compromise between the imperialists and those who proposed an international administration. There was a difference under the trusteeship system, for all the powers at San Francisco recognized the necessity of carrying on the work done by the League of Nations,<sup>1</sup> whereas the imperialists in 1919 were definitely not in favor of a system of international control.<sup>2</sup> The conflict at San Francisco was perhaps more the result of divergent ideals and theories.

To more fully understand the issues at stake, it is necessary to consider not only the territories under trusteeship, but all colonial areas. Today, the tension is between the Russian demand for national independence and political self-determination as the goal of colonial government on the one hand and the Anglo-French and Anglo-American demands for internal self-government and the achievement of democratic rights on the

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<sup>1</sup> Department of State Publication No. 2490, op.cit., pp. 647-651, & 678-702.

<sup>2</sup> Baker, op.cit., Vol. I, pp. 47-81, & 267-268.

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other. Back of the Russian viewpoint is the realistic desire to see the disintegration of the western overseas empires with an interim system of trusteeship which would give Russia a share in the control of colonial

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1 Though the United States supported the French and British views at San Francisco, this was only true in the case of Chapter 11 of the Charter, the declaration regarding non-self-governing territories. Thus when the final draft of Chapter 11 was completed, it included only self-government as the ultimate political aim. In the United States interpretation of Chapter 12 of the Charter, a different outlook was taken. Self-government to the United States included the possibility of independence for those peoples who wanted it and were capable of assuming the responsibilities of an independent state. Thus at San Francisco when the issue of whether to include only self-government or both self-government and independence as one of the basic political objectives of the trusteeship system, the United States stood in between the conservative views of the French and British on the one hand and the more radical views of the Soviet Union on the other. In the resulting compromise self-government and independence were considered co-equal objectives. This, however, does not mean that any of the underlying attitudes of the natives concerned have been radically changed by the compromise. See Department of State Publication No. 2447, The Department of State Bulletin, Vol. XIII, No. 340, 1945, p. 1039; See also Hearings before the Committee on Foreign Relations, United States Senate, The Charter of the United Nations, 79th Congress, First Session, 1945, pp. 115-117; See also supra, Chap. II, n. 1, p. 49.

territory.<sup>1</sup> Russia adopted this argument, because without colonies herself she is naturally opposed to the colonial expansion of others. Against this stand the western powers are attempting to integrate their imperial possessions into economic and administrative units for the mutual benefit of both native inhabitants and the home population.<sup>2</sup> Such an underlying

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<sup>1</sup> See supra, Chap. II, n. 1, p. 49; See also Vernon McKay, "International Trusteeship-Role of the United Nations in the Colonial World," Foreign Policy Reports, XXII (May 15, 1946), pp. 57 & 60. A specific example of the Russian viewpoint can be found in the resolutions that were set forth in relation to the future status of South West Africa. She asked for an outright rejection of the incorporation of the territory and recommended that a draft trusteeship agreement be set forth for the territory. The United States, France, and a majority of the other countries supported the contention that at this time, December, 1946, there was not adequate information pertaining to the incorporation of the territory into the Union. Nothing was said about the Russian proposal for the presentation of a draft trusteeship agreement. Later the United States and most of the other countries, with the exception of Britain and her Dominions, supported the trusteeship proposal, but in doing so did not express themselves so vigorously as did the Russians. Also Russia supported with much more emphasis the views of India when the discussion on the treatment of Indians in South Africa was brought before the General Assembly. Likewise Russia supported the Indian delegations resolution which invited those powers administering non-self-governing territories to propose trusteeship agreements for those areas not yet ready for self-government. The United States, Great Britain, France, and the Netherlands were decidedly against the proposal. See \_\_\_\_\_, "Future of Southwest Africa," United Nations Weekly Bulletin, I (December 10, 1946), pp. 22-24; See also \_\_\_\_\_, "Trusteeship Recommended for South West Africa," United Nations Weekly Bulletin, I (December 24, 1946), p. 48; See also \_\_\_\_\_, "Decision on Indians in South Africa," United Nations Weekly Bulletin, I (December 17, 1946), pp. 4-8; In addition see supra, Chap. II, n. 1, p. 134.

<sup>2</sup> For an excellent report from the standpoint of the British, French, and Dutch see Vernon McKay, "Empires in Transition - British, French, and Dutch Colonial Plans," Foreign Policy Reports, XIII (May 1, 1947), pp. 34-47.

conflict was not so apparent in the mandate system. Also today, as under the League, the urge to acquire and to retain strategic bases is in conflict with the ideals of disinterested trusteeships over backward peoples. It thus becomes more apparent that the mandate system was a conception which belonged more to the old theory of colonial trusteeship than to the modern conception; more to the passive era of colonial administration than to the present dynamic age.

#### B. Scope of the Systems

Chapters 12 and 13 of the Charter are, broadly speaking, similar to Article 22 of the Covenant of the League of Nations, though there are certain important differences and improvements on the League system. From the standpoint of length and detail, there is a great contrast for Chapters 12 and 13 of the Charter consist of articles 75 through 91 inclusive, while Article 22 of the Covenant is comprised of only 2 paragraphs. This is not due only to the general character of the two documents but is due also to an obvious desire to invest the Trusteeship Council with greater power than its predecessors', thus making it more effective and decisive.

The Charter provides for a far wider extension of the principles pertaining to the well-being of the inhabitants of all non-self-governing territories. The Covenant, with the exception of a few general statements pertaining to the social activities of the native inhabitants of territories under the control of League members, makes little provision

for the welfare of the inhabitants of non-self-governing territories. Chapter II, the declaration regarding non-self-governing territories, is not to be construed as part of the trusteeship provisions of the Charter, many of its provisions are, nevertheless, basically the same because the trust territories are also non-self-governing. Because the trusteeship system is in many respects more flexible than the mandate system, the principles and methods established for trusteeships could be gradually extended to the whole colonial problem which is, at present, being taken care of through the information transmitted to the Secretary-General.

The Permanent Mandates Commission was actually confined in its scope to that of supervision and did not directly administer any territory. With the negligible and even debatable exception of Nauru, the administration of each area to which the mandate system applied was entrusted to a single mandatory power. In the case of Nauru the administrator was Australia, but the mandatory was the British Empire as a unit. By this procedure Australia, New Zealand, and the United Kingdom were to act on behalf of and be responsible to the British Empire. Since the Covenant did not set forth any provisions pertaining to the joint administration of the mandated territories, the mandate for Nauru was often under undue scrutiny.

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<sup>1</sup> See Articles 73 and 74, Appendix C; See also Edward Hambro and Leland M. Goodrich, *op.cit.*, pp. 234-235; See also Article 23 of the Covenant, Appendix A.

<sup>2</sup> P.M.C., Minutes of the Second Sessions, 1922, pp. 45-47; See also League of Nations Mandate for Nauru, Doc. No. 21/31/14A, 1920.

The Charter clearly recognizes the need for additional types of administering authorities. Thus the possible differentiation of a purely administrative nature is increased by the fact that the trusteeship system provides that "the administering authority may be one or more states or the Organization itself."<sup>1</sup> With the exception of the joint authority for Nauru,<sup>2</sup> the new alternative has not been put into use; however, the Organization may become an administering authority for one or more of the Italian colonies provided they are placed under the trusteeship system. The same holds true for the territorial appendages of Japan. Also if the United States' proposal for a temporary trusteeship for Palestine had been put into effect, the Organization would have become the administering authority.<sup>3</sup> In addition, there is the possibility of a collective authority as distinguished from a joint authority. An appropriate example would be the proposed four power trusteeship for Korea which has,

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<sup>1</sup> See Article 81, Appendix C.

<sup>2</sup> See *supra*, Chap. II, n. 1, p. 75.

<sup>3</sup> See *supra*, Chap. II, n. 2, p. 123.

<sup>4</sup> See *supra*, Chap. II, n. 1, p. 132. The difference between a joint and collective authority is not very broad and is not very easy to define. For example, the island of Nauru is being administered by three powers, Australia, New Zealand, and the United Kingdom. They are in accordance with the present policy of administration, but there is no reason for it to be otherwise because they are all within the British Commonwealth of Nations. However, in the case of Korea the administering authority would have been four separate and distinct powers, Great Britain, China, Russia, and the United States. Instead of having one of these powers to function as administrator on behalf of the others, as is being done in the case of Nauru, there would probably be a collective administrator made up of the four powers. The logical reason for such a procedure would be because of the suspicion, tension, and contention which exists today among the leading powers.

however, very little chance of being put into operation. In any case, a new method is at the disposal of the trusteeship system, and if used primarily to further the welfare of the inhabitants of the trust territories, it will prove a desirable addition:

#### 1. Aims and Objectives

The basic purposes of each system are set forth in an entirely different manner. The basic objectives of the trusteeship system have a definite source because they stem from the purposes of the United Nations which are enumerated in Article I of the Charter.<sup>1</sup> There is no corresponding article in the Covenant and in addition there is no generalization of the objectives of the mandate system as found in the trusteeship system.

Because Article 22 of the Covenant fails to state the purposes of the mandate system in any one of its 9 paragraphs, it is rather difficult to determine the basic objectives which apply to all the mandates of the system. The first paragraph of Article 22 does, however, set forth the general over-all purpose of promoting the "well being and development" of the inhabitants of the mandated territories. One of the main reasons for not being able to state the objectives together was because there were three different types of mandates. Owing to their size, population, remoteness, or their stage of civilization, they naturally had slightly

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<sup>1</sup> Department of State Publication No. 2368, op. cit., p. 3.



different objectives to achieve. For instance, under the "A" mandate, one of the principal objectives was the attainment of independence which is set forth in paragraph 4. In the case of the "B" mandate other objectives were set forth in paragraph 5 such as the prohibition of the slave trade, the arms and liquor traffic, and the guaranteeing of freedom of conscience and religion. In addition, there were clauses dealing with military provisions and equal opportunities in trade and commerce for other members of the League. The objectives for the "C" mandate were similar in that all the safeguards mentioned in the "B" were to apply provided they concerned the interests of the indigenous population. The interests of the indigenous population were considered to be only those safeguards which would be of concern to the native inhabitants of the territory; therefore, clauses pertaining to the rights of others would be absent in the "C" mandate, unless they were also of benefit to the natives.

The Charter obviously provides a far more systematic approach to the enumeration of the objectives of the trusteeship system. Although these objectives are to be found throughout Chapters XII and XIII of the Charter, they are brought together and summarized in Article 76 of the Charter. Article 76 is entirely devoted to this task and by so doing makes a much more positive attempt towards the promotion of the advancement of the peoples of trust territories. The provision to further international peace and security is not mentioned in Article 22; however, in the true-

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<sup>1</sup> See Article 22, Appendix A.

trusteeship system it is one of the main objectives. The development towards self-government or independence is one of the most basic of all the objectives found in Article 76 of the Charter, whereas only brief mention is made in Article 22 and then only in relation to the "A" mandates. The principle of equality of economic opportunity is to be guaranteed under the Charter, whereas the Covenant mentions it only in relation to the class "B" mandates. The provision for equality of treatment in social matters was not mentioned in Article 22 and in general the provisions relating to the positive promotion of native welfare are lacking. Article 23 of the Covenant does, however, include the provision for the just<sup>1</sup> treatment of the native inhabitants of each mandated territory.

The terms of the mandate charters are a far better guide than is Article 22 of the Covenant as to the interpretation of the mandate principles. The charters made an attempt to fill in the gaps and in this way made up for the inadequacies of Article 22. A good example was the inclusion in the "A" mandate charters of the principle of equal economic opportunity even though no mention was made in Article 22 to that effect.<sup>2</sup>

Under the trusteeship system, a greater emphasis is placed on the positive promotion of the welfare of the inhabitants of the trust territories because all phases of native life are taken into consideration.

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<sup>1</sup> See Article 76, Appendix C; See also Articles 22 & 23, Appendix A.

<sup>2</sup> See Article 22, Appendix A; See also Article 11 of the Mandate Charter for Syria and Lebanon, Appendix B.

In this phase the mandate system was largely negative in character, for it sought to protect the peoples under its charge from abuses which had arisen in dependent territories in the past. In accordance with the objectives set forth in Article 76, principles and mechanisms have been created which the inhabitants of the trust territories may employ in their own advancement.<sup>1</sup> Thus Article 76 of the Charter has committed the administering authorities to a continuing interest and participation in their progress.

## 2. Categories of Territories to which They Apply

The mandate system was established to provide only for those colonies and territories separated from Germany and Turkey as a result of the First World War. The Charter provides for an extension of the number and kinds of territories eligible for trusteeship. The trusteeship system is to be applied not only to former mandated territories but to such territories as may be "detached from enemy states as a result of the Second World War" and to "territories voluntarily placed under the system by states responsible for their administration."<sup>2</sup> In effect, all non-self-governing territories would be placed under the system.

On the League side the territories to be placed under mandate were absolutely prescribed in the Covenant; therefore, these governments had

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<sup>1</sup> See Article 76, Appendix C.

<sup>2</sup> See Article 77, Appendix C.

to go through with the provisions set forth by the Treaty of Versailles, of which the Covenant was a part, since they were all parties to the signing of the treaty.

The trusteeship system, besides being far wider in scope, differs in the way territories are placed under the system. The San Francisco Conference merely established machinery which might be used. It merely provides a "system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements."<sup>2</sup> Thus the system is purely voluntary in nature.<sup>3</sup> The procedure for placing mandated territories under the trusteeship system is precisely the same as that for eligible territories in the other two categories<sup>4</sup> by agreement between "the states directly concerned."<sup>4</sup>

There has apparently been much more emphasis on the manner in which territories are placed under the trusteeship system. Perhaps by such emphasis the administration of those territories which are placed under the system will, from the outset, tend to function in a more harmonious manner than was the case under the mandate system. Perhaps the element of compulsion in placing the territories under the mandate system far overshadowed the true desires of the powers to which the mandates were

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<sup>1</sup> See paragraphs 4, 5, and 6 of Article 22, Appendix A; See also Edward Hambro and Leland M. Goodrich, *op.cit.*, p. 239.

<sup>2</sup> See Article 75, Appendix C.

<sup>3</sup> See paragraph 2 of Article 77, Appendix C.

<sup>4</sup> See Article 79, Appendix C.

allocated. At any rate, if there had not been compulsion some of the powers would more than likely have failed to place the territories under the mandate system.<sup>1</sup> However, in the General Assembly, pressure has also been exerted towards encouraging the former mandatory powers to place the League mandates under the system. Likewise, similar action has been taken in regard to other non-self-governing territories.<sup>2</sup>

#### 6. Approval of the Mandate Charters and Trusteeship Agreements

The method of approval of the trusteeship agreements has been quite different from that of the mandate charters. For instance, the approval of the mandate charters was obtained by a unanimous vote of the Council, whereas the trusteeship agreements, if non-strategic, are approved by a two-thirds vote of the General Assembly. In the case of strategic agreements the unanimous approval of the Security Council is necessary.<sup>3</sup> In addition, the mandate charters were not approved individually but by categories. In other words when a disagreement concerning the approval of one of the mandate charters occurred, the others within that category, whether "A," "B," or "C," had their approval withheld. The approval of all three categories were delayed in this manner.<sup>4</sup>

<sup>1</sup> Baker, op.cit., Vol. I, pp. 267-275.

<sup>2</sup> See supra, Chap. II, n. 2, p. 58; See also supra, Chap. II, n. 1, p. 133.

<sup>3</sup> See Article 5 of the Covenant, Appendix A; See also Article 18 of the Charter, Appendix C; See also Article 27, Appendix C.

<sup>4</sup> Mander, op.cit., p. 55.

The United States, as one of the Allied and Associated Powers, had the right to be consulted when the mandate charters were being approved. Thus the United States, even though not a member of the League, was entitled as an interested state, to exercise her rights in obtaining separate agreements with all the mandatory powers pertaining to the provisions of the mandate charters. Such action prevented an earlier approval of the mandate charters because the Council of the League decided to withhold their official approval until the United States had obtained the treaty privileges she sought in the mandates. If the United States had signed the Treaty of Versailles, the mandate charters would have been approved at an earlier date. The mandate system was weakened in its initial phases because of this failure. Likewise, this same failure later tended to weaken the whole structure of the League of Nations.

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<sup>1</sup> Ibid., pp. 48-61; See also supra, Chap. I, n. 3, p. 11. The United States had a valid claim to the right of being consulted when discussing the former German colonies because she was at war with Germany. Germany, in fact, did, by Article 119 of the Treaty of Versailles, renounce all title and right to her overseas empire. On the other hand, when the discussion turned to the former Turkish Territories, the right of the United States to be considered, was not very sound, for she was not at war with Turkey. Nevertheless, the United States claimed the right to do so because of its contribution to the victory over Germany. Legally, the United States had the right to seek agreements not only with the powers administering the German overseas empire, but also with those powers administering the former Turkish areas because these negotiations were carried on not with the League but by diplomatic action with each mandatory power. See Mander, op.cit., pp. 54 & 475; See also supra, Chap. I, n. 1, p. 7, & n. 3, p. 11. In addition see League of Nations Official Journal, 1921, Part 2, pp. 642-643; See also League of Nations Official Journal, 1921, Part 1, pp. 137-143.

Under the trusteeship system, there has been much more emphasis in  
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 the approval of agreements. When the trusteeship agreements were pre-  
 sented for approval, a policy of impartiality was developed which pro-  
 vided for a system of equality and the non-assertion of special positions  
 between the powers. In this way the states directly concerned were not  
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 enumerated and the classification was waived. If such a procedure had

1 In the approval of agreements a lesson was learned from the League  
 experience. Under the mandate system, the "B" and "C" charters were  
 drafted with the assistance of the Supreme Allied War Council. The  
 actual work being done by the Milner Commission which was composed of  
 members representing Great Britain, France, Italy, Japan and the United  
 States. Thus the majority of the members represented the powers to which  
 the mandates were allocated. It is no wonder that in the majority of  
 cases the mandatory power had its own way when the charters were drafted.  
 Although the United States had set forth certain reservations in several  
 of the mandate agreements, they were not adhered to or even reconsidered  
 by the Council mainly because the United States failed to join the League.  
 The Council in officially approving the charters accepted the work done  
 by the Milner Commission almost in its entirety, thus making very few  
 modifications in the charters. In contrast to the partiality shown in  
 approving the mandate charter, a far more appropriate procedure was adopt-  
 ed in drawing up and approving the trusteeship agreements. In place of  
 a partial commission, which was entirely outside the League structure  
 drawing up the agreements, each state drafted its own agreement and pre-  
 sented it to Committee 4 of the General Assembly for approval. In the  
 process many suggested modifications were considered and when the agree-  
 ments were finally approved by the General Assembly, hardly any of the  
 Articles of the agreements were exactly the same as when first presented.  
 Thus the trusteeship agreements are the product of all the members of  
 the United Nations, whereas under the League only a few nations were  
 allowed to voice their opinions. See Temperley, op.cit., Vol. II, p. 237;  
 See also Charles Seymore & Edward Mandell House, What Really Happened  
 at Paris, (New York: Charles Scribner's Sons, 1921), pp. 440-443; See  
 also League of Nations Secretary General's Report to Second Assembly,  
 1921, pp. 45-46, cited by Wright, op.cit., p. 48, see also; See also  
supra, Chap. II, n. 1, p. 59 and n. 1, p. 62. Wright, op.cit., p. 114;

2 See supra, Chap. II, n. 1, p. 60.

not been adopted, a situation similar to that which arose under the mandate system would have developed. Months and perhaps even years would have elapsed before the trusteeship agreements which are now in existence would have been approved. Under the trusteeship system the Council could not be organized until a sufficient number of agreements had been approved.

1 Just such a situation as had developed under the mandate system would more than likely have taken place under the trusteeship system if the proper precautionary measures had not been taken. Instead of the United States being the power that had held up approval as was the case under the mandate system, it would have been the Soviet Union. If the Russian plan had been followed of requiring that the states directly concerned must be consulted, the method of approving the agreements would have been greatly altered. Thus prior to the Assembly discussion, such a course of action would have entailed a separate consultation between the state or states directly concerned and the power presenting the agreement. This would have been a slow and cumbersome procedure and could have possibly prevented some of the agreements now in effect from being approved. Without doubt, the experience obtained from the League was a great aid in enabling the General Assembly to adopt a simplified procedure so as to obtain an earlier approval of the trusteeship agreements. See supra, Chap. III, n. 1, p. 156; See also supra, Chap. II, n. 2, p. 62.

2 In illustrating the point, the use of a hypothetical case is employed. The five permanent members of the Security Council have automatically become members of the Trusteeship Council. Of the countries which have thus far submitted trust agreements, only three are not members of the Security Council. They are Australia, Belgium, and New Zealand. If these were the only agreements approved, the Council could not be organized because there would not be an equal division between the administering and non-administering powers. However, if either Great Britain and France, which are both members of the Security Council, had an agreement accepted, the Council could be created. This would bring the number of administering and non-administering powers to equality as required by Article 86 of the Charter. In this case four agreements would be necessary, but only three would be sufficient if both Great Britain and France had in conjunction with either Australia, Belgium, or New Zealand, presented agreements which were approved. In this way there would thus be three administering states who would be balanced by the three remaining non-administering powers. This discussion proves that a definite number of agreements had to be approved in order for the Trusteeship Council to be formed. Although more agreements were approved than was theoretically necessary, it was a good precautionary measure to have had eight agreements before the Assembly in December, 1946. See Article 86, Appendix C; See also supra, Chap. II, n. 3, p. 83 & n. 1 & 2, p. 84.



This was not the case in 1919. The Permanent Mandates Commission was organized in December, 1920; the same month and the same year as the "C" mandate charters were approved.<sup>1</sup> Although the mandate system was in existence prior to the establishing of the Commission,<sup>2</sup> it had been greatly reduced in effectiveness because of the failure to have the charters approved at an earlier date. The Commission did not hold its first session until October, 1921, partly because of the failure to have more mandate charters accepted. Thus, it was a year and one half from the signing of the peace treaty to the establishment of the Commission. It was, however, not until 1923 that all the mandate charters were ratified.<sup>3</sup>

The United Nations Charter was signed on June 26, 1945, but the first trusteeship agreements were not approved until December, 1946. Thus, in comparison with the League, approximately the same time interval existed between the signing of the United Nations Charter and the

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<sup>1</sup> P.M.C. Minutes of the First Session, 1921, p. 2; See also supra, Chap. I, n. 1, p. 11.

<sup>2</sup> The mandatory principle came legally into force on January 10, 1920, when the Versailles Treaty was officially declared ratified. Thus the principle of the system was in operation approximately eleven months prior to the establishing of the Commission. The Council in its report to the Assembly on the responsibilities of the League arising out of Article 22 stated that it was not essential for the Commission to be established at once since it need not enter upon its duties until the first reports dealing with the mandates had been rendered. See Department of State Publication No. 2724, op.cit., p. 9; See also League of Nations Official Journal, 1920, p. 340.

<sup>3</sup> See supra, Chap. I, n. 1, p. 11; See also P.M.C., Minutes of the First Session, 1921, p. 2.

organizing of the Trusteeship Council.<sup>1</sup>

In the initial phase the mandate system had only five territories to supervise, whereas the trusteeship system was responsible for eight. Although the mandate system later consisted of fourteen territories, the necessity has been clearly recognized of having as many territories initially as possible. It must not be forgotten that the Permanent Mandates Commission operated for nearly a year with only the five "C" mandates.<sup>2</sup>

The interval between the establishment of the Trusteeship Council and its first session was very short. In this way the Council was able to supervise the international trusteeship system almost as soon as it became operative, whereas under the mandate system there was for nearly a year no adequate machinery for carrying out the responsibilities that were required by Article 22 of the Covenant.<sup>3</sup> Without doubt, the policy followed in approving the trusteeship agreements and the way in which the Trusteeship Council was brought into early operation was a far more satisfactory method than that followed by the League.

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<sup>1</sup> Department of State Publication, No. 2568, *op. cit.*; See also *supra*, Chap. II, n. 1, p. 62. The Charter was not officially ratified until October 28, 1945. See also Department of State Publication No. 2409, Department of State Bulletin Vol. XIII, No. 331, 1945, pp. 679-680; The Trusteeship Council was established on December 14, 1946. See also *supra*, Chap. II, n. 3 p. 82.

<sup>2</sup> See *supra*, Chap. I, n. 1, p. 11 & Table I, pp. 7 & 8; See also *supra*, Chap. II, n. 2, p. 82.

<sup>3</sup> See *supra*, Chap. III, n. 2, p. 159; The Trusteeship Council was established on December 14, 1946, and held its first meeting in March, 1947. See *supra*, Chap. II, n. 3, p. 82 & n. 2, p. 83.

#### D. Classification of Territories

The trusteeship system has an elasticity which the mandate system definitely lacked. It avoids the rigid classification of territories into "A," "B," and "C" categories as provided for by the League mandate system.<sup>1</sup> Each trust territory which is under the new system is administered according to an agreement which has been tailored to the individual circumstances and needs of that territory. This is in recognition of the great diversity so characteristic of the trust territories with respect to population, resources, geographical location, and stage of advancement of the inhabitants.

Although the trusteeship system does away with the territorial classifications found in the mandate system, there is provision for two distinct types of trusteeship agreements. The distinction is based entirely on security considerations; therefore, the term strategic and non-strategic are appropriate. The non-strategic areas come under the General Assembly and are handled through the medium of the Trusteeship Council<sup>2</sup> while the strategic areas come under the Security Council. In the mandate system all the territories were initially subject to the jurisdiction of the League Council.<sup>3</sup>

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<sup>1</sup> See Article 22, Appendix A.

<sup>2</sup> See Articles 82, 83, and 85, Appendix C.

<sup>3</sup> See supra, Chap. I, n. 2, p. 25.

The question immediately arise whether the distinction between three different kinds of mandates was sound. Likewise the reasons for the division between strategic and non-strategic territories must be taken into consideration.

In the mandate system the division into "A," "B," and "C" territories was considered essential in order to satisfy the divergent needs of the various mandates. It was, however, not the only means of providing for the individual differences found in each territory. The reason for such a designation was the fact that certain interested countries, namely the British Dominions, would not otherwise have accepted the mandate system.<sup>1</sup> This was definitely a compromise feature of the system and was created not only for the benefit of the inhabitants but also for the benefit of the administering powers. It is true that Syria, Palestine, and Iraq were materially aided towards the recognition given to them in paragraph 4 of Article 22, but were the "C" mandates given due consideration? Paragraph 6 of Article 22 provided for the interests of the administering powers almost as much as for the interests of the inhabitants. Thus the method of classification employed by the mandate system, though being outwardly beneficial, did not always equally benefit the three<sup>2</sup> categories of mandates.

Conditions and ideas have changed in the last twenty-five years

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1 See supra, Chap. I, no. 1, p. 6.

2 See paragraphs 4, 5, and 6 of Article 22, Appendix A.

making it no longer necessary to consider a classification of territories such as the mandate system developed.<sup>1</sup> It has been recognized that the individual variations in the territories can best be taken into consideration by each individual agreement, provided it conforms to the objectives set forth in the Charter. In this way, all the general objectives of the system apply to each territory, whereas, under the mandate system only certain objectives applied to each of the three territorial classifications. Thus under the trusteeship system there has been no attempt to discover any single uniform remedy for the problems of these territories nor any single uniform goal for their political development. The mandate system would have actually benefited, if such a policy had been followed.

The division between strategic and non-strategic territories is entirely new. Article 22 made no mention of the part to be played by mandates in relation to international peace and security, whereas one of the basic objectives of the trusteeship system is the furtherance of international peace and security.<sup>2</sup> The reason for such a provision is clearly recognized. Nevertheless, the reason for the inclusion of the provision for strategic area trusteeships was one of political bargaining.

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<sup>1</sup> If the classification of trust territories into "A," "B," & "C" categories were used today, it would be considered an artificial classification. Since all the countries recognize the need for the continuation of the work done by the mandate system, there is no longer a necessity for the type of compromise that took place when the provisions of the mandate system were being written. Besides, today all non-self-governing territories are looked upon as being potentially equal, thus there is no need for any special political considerations such as were granted to the former "A" mandates.

<sup>2</sup> See Article 76, Appendix O.

The reason that the Big Five failed to hold their preliminary meetings on trusteeship prior to the San Francisco Conference was because of the controversy in the United States over whether to annex the former Japanese mandated islands or to place them under trusteeship. When the discussion of trusteeship took place at the Conference, the United States inserted the provisions for strategic trusteeships. Although the British at first protested, they and Russia failed to disapprove the United States proposals.<sup>1</sup> Here again the elements of compromise were present. The British were administering more non-self-governing territories than any other country. Included in this group were several League of Nations mandates. Naturally Great Britain did not want to antagonize the United States and by following a passive procedure probably thought that she would obtain benefits elsewhere. Even though Russia was not a colonial power, she likewise did not have anything to gain by not approving the Charter provisions on trusteeship. If the United States had not succeeded in having the strategic trusteeship provisions written into the Charter, she would more than likely not have placed the former Japanese mandated islands under trusteeship.<sup>2</sup> Thus this was the only way the Russians had of gaining a voice in their administration. It is quite possible that she felt that by doing so one of the Italian colonies would be placed under her trusteeship at a later date.

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<sup>1</sup> See supra, Chap. II, n. 3, p. 46.

<sup>2</sup> See supra, Chap. II, n. 1, p. 50; See also Vernon McKay "International Trusteeship-Role of the United Nations in the Colonial World," Foreign Policy Reports, XXII (May 15, 1946), p. 57.

<sup>3</sup> Ibid., pp. 63-65. Likewise if the Security Council had, to the dissatisfaction of the United States greatly amended the trusteeship agreement which was presented, it is highly probable that she would have refused to place the former Japanese mandated islands under trusteeship.

E. Mandate Charters and the Trusteeship Agreements

The provisions found in both the mandate charters and the trusteeship agreements are definitions of the manner in which the principles laid down in Article 22 of the Covenant and Chapters XII and XIII of the United Nations Charter are to be applied. Thus in order to compare them more fully, it will be necessary to refer back to the principles found in Article 22 of the Covenant and Chapters XII and XIII of the Charter. Likewise reference will continually be made concerning the objectives of the two systems, but they will be approached entirely from a comparative point of view.

A much more accurate description is found in the mandate charters than is found in the Covenant as to what the mandate system actually was the meant. One of the reasons for this fact that the authors of paragraph 8 of Article 22 supposed that the conventions dealing with the mandates were to be included in the Treaty of Versailles, or form annexes to it. Possibly this is one of the reasons for the briefness of Article 22. Because of the failure to have the charters incorporated into the peace treaty, a greater dependence had to be placed on the mandate charters.

Because of the well-rounded and more complete provisions found in the Charter, the trusteeship system is not nearly so dependent on the Articles of the individual trusteeship agreements as was the case with

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<sup>1</sup> Responsibilities of the League Arising out of Article 22, Assembly Doc. No. 161, Annex 4, 1920, p. 16.

the mandate charters. There is, however, a greater dependence on the United States strategic trusteeship agreement for the Territory of the Pacific Islands, for the Charter does not adequately cover strategic trusteeship. Nowhere in the Charter is there to be found an adequate statement pertaining to the responsibilities of the administering authority or a definition of the Security Council's powers relating to strategic trusteeship agreements.

#### 1. General Considerations

The terms of administration were embodied in the mandate charters just as they are now set forth in the trusteeship agreements. The limitations upon the authority of the mandatories differed according to the charters of the three different categories of territories "A," "B," and "C". Although no categories are used under the trusteeship system there is, however, a division between strategic and non-strategic agreements. As a result, there is a noticeable difference in the powers of the administering authority when pertaining to the strategic agreements.

The problem of comparing the more important provisions found in the two systems is made all the more difficult because of the great differences in territorial classifications. Because there were three types of mandates, the task of comparing would have to be based generally not on the system as a whole but on the three individual types within the system.

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1 See Articles 82 & 83, Appendix C; See also Edvard Hambro & Leland M. Goodrich, op.cit., p. 248.

2 See supra, Chap. II, n. 2, 3, & 4, p. 81.



Likewise, under the trusteeship system there is more than one type of trusteeship. Thus in order to facilitate the comparison procedure, and because the charters and agreements have been individually considered in Chapters one and two respectively, the comparisons will evolve, as much as possible, on the systems as a whole.

The administering authorities under both systems had certain rights in regard to their administration of the territories placed under their supervision. The powers of legislation, administration, and jurisdiction are very important to the administering power, as are the provisions pertaining to whether the territories are to be constituted into customs, fiscal, or administrative unions with adjacent territories under the jurisdiction of the administering authority.

The administering authorities were naturally interested in protecting their rights, but of much more importance were the duties that they were required to perform. These duties pertained to the administering authorities' obligations to the Trusteeship Council or Permanent Mandates Commission, and the other principal organs of the two international organizations. The obligations dealt primarily with responsibilities pertaining to the rights and privileges of the native inhabitants.

Such procedures as answering questionnaires and preparing the annual reports are very important, for they are procedures which have kept the League, now the United Nations, informed on conditions in the territories under their supervision. In this manner the international organization was informed as to whether the rights and privileges of the inhabitants have been properly safe-guarded.

With the exception of the "C" mandates, both systems sought to safeguard the native interests pertaining to land transfers. Provisions relating to slavery and the slave trade and forced labor are to be found in all the agreements and charters, with the exception of the strategic agreement for the Territory of the Pacific Islands. The control of the traffic in arms and ammunition and the traffic in drugs are also mentioned. Other essentials are to be found which are similar in nature, such as provisions pertaining to freedom of religion. Articles pertaining to education are to be found in the trusteeship agreements, but they are almost entirely lacking in the mandate charters. Likewise, the mandate charters failed to provide adequately for the promotion of the social advancement of the inhabitants, and less consideration was devoted to their economic welfare than is true under the trusteeship agreements. The development of the populations of the territories towards self-government and independence was mentioned only in respect to the "A" mandates, whereas all the trusteeship agreements declare the trustee's intentions of aiding the inhabitants towards the co-equal objectives of self-government or independence. There were also other innumerable provisions in the trusteeship agreements dealing with the general advancement of the inhabitants. They<sup>1</sup> were, however, not given their due consideration in the mandate charters.

The mandate charters tended to indicate that the principal beneficiary

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<sup>1</sup> See the Mandates for Samoa, British Togoland, and Syria and Lebanon, Appendix B; For the texts of the Trusteeship Agreements, see supra, Chap. II, n. 1, p. 68.

was the international community at large rather than the native population. Thus under the mandate system the rights of the inhabitants were not stressed as much as were those of the mandatories.

An entirely different approach is used under the trusteeship system. The rights of the inhabitants are of primary concern and the agreements set forth in detail those provisions pertaining to such rights. The reason for such elaboration is that Article 76 of the Charter recognizes that the benefits to be derived from a policy of guaranteeing the rights of the inhabitants will also benefit the international community.<sup>1</sup> In this way the rights of the administering authorities will not tend to overshadow the basic objectives of the trusteeship system which deal with the advancement of the inhabitants of the trust territories.

## 2. Military Provisions

It is difficult to differentiate between economic, political, and military provisions of the mandate charters and trusteeship agreements because many of the provisions could pertain to two or possibly all three areas of discussion. The task, however, is made easier because of some new and striking provisions which pertain only to the trusteeship system.

One of the most striking differences between the two systems is in the military provisions. The mandate system rested on the implied assumption that the mandated territory should forever be excluded from the

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<sup>1</sup> See Article 76, Appendix O.

sphere of strategy. The construction of any fortifications or defence works of any type was forbidden, and strict limitations on the military training of natives for defensive purposes were imposed. The natives could be trained only for the purposes of internal police and the local defence of the territory. In this way it was hoped that the mandated territory would not become a source of military strength for the manda-<sup>1</sup> tory powers.

There were discrepancies in this avowed policy of demilitarization. For instance, in direct violation of paragraph 5 of Article 22, the French mandate charters for Togoland and the Cameroons provided for the recruitment of native soldiers for general defensive purposes, including duty outside of the territory.<sup>2</sup> In the case of "A" mandate charters, the mandatory was allowed to use the roads, railways, and ports of the territory for the movement of its armed forces. These forces were to be used in the defence of the territory. Moreover, the local militia were to be organized and controlled by the mandatory power but were to be placed under the control of the local authorities when conditions became stable. The local militia was to be used primarily for the maintenance of order and the defence of the territory, and the consent of the mandatory had to be obtained for their use in any other enterprise.<sup>3</sup> One of the chief

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<sup>1</sup> See Article 4 of the Mandate for Samoa, and Article 3 of the British Mandate for Togoland, Appendix B.

<sup>2</sup> See supra, Chap. I, n. 2 & 3, p. 14.

<sup>3</sup> See Article 2 of the Mandate for Syria and Lebanon, Appendix B.

reasons for the more elaborate military provisions in the "A" mandate charters was the highly unstable conditions in these territories at the time of the drawing up of their charters. Even with these variations, the mandate system was still considered as out of the general security system for those nations which administered mandates. Thus the more pacific character of the covenant has been clearly reflected in the mandate system.

The general militancy of the Charter has been fully recognized by the trusteeship system. The trusteeship system envisages the trust territories as having a definite role in the world security system. This objective is implemented by the Charter provision which requires that the administering authority is to "ensure that the trust territory shall play its part in the maintenance of international peace and security."<sup>1</sup> In addition, the administering authority is expressly permitted to make use of volunteer forces, facilities, and other assistance from the territory, not only for local purposes, but also as part of the general system of collective security.<sup>2</sup> These two provisions, taken together, should ensure that the trust territories in the future make their full contribution to the security system of the United Nations.

The military prohibitions of the mandate system proved onerous, in some cases disastrous, to the mandatory powers, which unlike Japan,

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<sup>1</sup> See Article 76, Appendix C.

<sup>2</sup> See Article 84, Appendix C.

honored their obligations under the Covenant. Australia, New Zealand, and Great Britain followed the Covenant to the letter with regard to fortifications, the stationing of troops, and other military actions in the mandated territories of the south Pacific area. On the other hand, Japan, contrary to the Covenant, fortified and based a huge striking force on the then Japanese-mandated islands. She used the mandate as a base to attack Pearl Harbor and to overrun New Guinea and other areas in the south Pacific. The mandated islands made an effective screen which prevented the United States from coming to the aid of Guam, the Philippines, and China.<sup>1</sup> Thus modern warfare has shown that the theory of the neutralization of the mandated territories was illogical and unworkable.

One of the more positive inducements towards bringing existing mandated territory under the trusteeship system were the new military provisions of the Charter. These provisions deal with the military requirements in two ways. One of the main reasons for this differentiation was the bitter experience of the United States in the War with Japan.<sup>2</sup> The United States wanted to make sure that the former Japanese mandated islands never again would become a danger point to our security system; therefore, they were brought into its security system in the form of a strategic trusteeship. Thus under the new system, the trust territories, whether under the Trusteeship Council or the Security Council, may now

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<sup>1</sup> See Department of State Publication, No. 2784, op.cit., p. 15.

<sup>2</sup> Ibid, p. 16.

properly become centers of military power.<sup>1</sup>

### 3. Economic Provisions

In both the mandate charters and trusteeship agreements the economic provisions were based to a large extent on the principle of the "open door" and the according of "equal opportunity" for all members of the respective international organizations.

The mandate system rested on an attempt to eliminate colonial rivalries and promote equal access to raw materials by imposing on the mandatories an obligation to maintain what is generally called the "open door."<sup>2</sup> Thus it was destined to prevent the monopolistic exploitation by the guardians both of the purchasing power and of the natural resources of their wards. In the "B" mandates an absolute guaranty of non-discriminatory treatment for other members of the League was required. Likewise, similar provisions are found in the "A" mandate charters, even though

<sup>1</sup> See Articles 83 & 85, Appendix C.

<sup>2</sup> The "open door" means equal opportunities and treatments for the citizens of certain interested countries and their enterprises in some particular territory. Under the League and the United Nations, it would refer to those states being members of the organization. Such a policy is imposed often times upon weak nations, as was the case in China in the early 1900's, but the essence of the "open door" is not the fact that there is a lack of power by the governing authority of an "open door" territory to regulate its own tariff policy but is equal opportunity and the policy of no discrimination. The procedure of obtaining these rights is, as a rule, by treaty. See the report of the United States Tariff Commission, Dictionary of Tariff Information, The United States Tariff Commission, 1924, pp. 536-538.

Article 22 did not require that they be included. The "open door," however, did not pertain to the "C" mandates.<sup>1</sup>

Experience has shown that such an economic policy as pursued under the mandate system did not always operate in the interests of the inhabitants of the territories. The mandated territories, in actuality, had to give equal treatment to other countries without receiving equal treatment in return.<sup>2</sup> The trusteeship system has modified this discrepancy by making it clear that the according of equal treatment to other members of the United Nations and therefore nationals in social, economic, and commercial matters must be subordinated to the attainment of the main objectives of the trusteeship system, including the promotion of the political, economic, social, and educational advancement of the inhabitants.<sup>3</sup>

The "open door" does indeed figure prominently under the trusteeship system, but it is made subject to two qualifications. One is that "equal

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<sup>1</sup> See Article 4 of the Mandate for British Togoland, Appendix B; See also Article 11 of the Mandate for Syria and Lebanon, Appendix B; See also Article 2 of the Mandate for Samoa, Appendix B.

<sup>2</sup> None of the mandate charters had a provision which would require equal treatment for the inhabitants, companies, and associations of the territory in return for the granting of such privileges to the states it treats most favorably. This is, however, not the case in the trusteeship agreements for they specifically state that the same advantages as are granted to the members of the United Nations must in turn be granted to the trust territory. See Article 11 of the Agreement for Togoland, Ruanda Urundi, and British Togoland and the Cameroons; See also Article 8 of the French Agreements for Togoland and the Cameroons; See also Article 8 of the Agreement for the Territory of the Pacific Islands.

<sup>3</sup> See Article 76, Appendix C.



treatment in social, economic, and commercial matters for all members of the United Nations and their nationals" is to be sought without prejudice to the other objectives of the trusteeship system. Secondly, "equal treatment" is made subject to the individual trusteeship agreements, and pending those agreements existing rights are maintained.<sup>1</sup>

The flexibility of the Charter in connection with the maintenance of the "open door" does not mean abandonment of the principle that equal access to materials is in itself an important element in friendly international relations, and even in the maintenance of peace. What it does abandon is the idea that it is practicable to isolate trust territories from the problem of commercial policy in general. Thus the trusteeship system recognizes that bilateral trade arrangements and other practices bordering on discrimination are a means of furthering the economic development of the trust territory.<sup>2</sup> Such a policy, however, could lead to discrimination between countries' goods, but it is a manner in which the

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<sup>1</sup> See Article 76, Appendix C; For a more detailed approach see supra, Chap. II, n. 3, p. 54. The United States' strategic trusteeship for the Territory of the Pacific Islands is the most appropriate example which deals with the principle that "Equal treatment in social, economic, and commercial matters for all members of the United States and their nationals" is to be sought without prejudice to the other objectives of the trusteeship system. By this agreement the United States is given a preferential treatment in commercial matters, an arrangement which is not conceded to the states administering other areas. The reason for such a policy is because the basic role of the strategic territory is security; therefore, any other type of economic participation might prejudice this objective. See article 8 of the Agreement for the Pacific Islands.

<sup>2</sup> See Article 76, Appendix C; See also Edvard Hambro & Leland M. Goodrich, op.cit., p. 236.

progress of the territories will be furthered.

The trusteeship agreements, in following this economic policy, have been an improvement over the mandate charters which tended to overlook this aspect of the internal development of the territories. <sup>1</sup> Oftentimes the industrial development of the mandated territory was greatly handicapped by the misconception that the "open door" meant free trade and limited tariff rates. Thus the mandate system was less effective as a means of promoting the material development of the territories under its <sup>2</sup> care. In contrast, the trusteeship system has sought to bring about a more energetic and enterprising use by the administering authority of its own opportunities for the commercial development of a territory under <sup>3</sup> its control.

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<sup>1</sup> See Article 11 of the Agreement for Tanganyika, Ruanda Urundi, & British Togoland & the Cameroons; See also Article 8 of the French Agreements for Togoland & the Cameroons; See also Article 8 of the Agreement for the Territory of the Pacific Islands.

<sup>2</sup> An appropriate example would be the French proclamation of January 20, 1934, which dealt with contract loans for the development of public works in the French Togoland & the Cameroons. The law provided that the working equipment and material purchased outside the territory, when such loans were employed, must be of French origin & must be transported under the French flag. This promulgation was brought to the attention of the Permanent Mandates Commission, and as a result of the ensuing discussion, the law was finally abrogated. The repeal of this law undoubtedly had a retarding effect on the internal development of the two territories because there would likely be less incentive for any other countries to engage in such financial or building activities. In this case the French were legally in the right because under Article 6 of the two mandate charters she was authorized in the case of "essential works and services" to give preference to her own nationals. See *supra*, Chap. I, n. 2 & 3, p. 35; See also Article 6 of both the League of Nations French Mandate for the Cameroons, Doc. No. C.449(1) eM.345(e), 1922 and the League of Nations French Mandate for Togoland, Doc. No. C.449(1) d.M345(e), 1922.

<sup>3</sup> See Article 10 of the Agreement for Tanganyika, Ruanda Urundi, & British Togoland & the Cameroons; See also Article 9 of the Agreements for French Togoland and the Cameroons; See also Article 8 of the Agreement for the Territory of the Pacific Islands.

#### 4. Political Provisions

##### a. Introduction

The political provisions of the mandate charters and the trusteeship agreements cannot be entirely differentiated from the consideration of economic and social problems as well as the military provisions of the agreements and charters.

Under the trusteeship system, provision is made for the progressive<sup>1</sup> development of self-government or independence as co-equal goals. This is in recognition of the fact that self-government can only be real if the choice of independence is open. The same problem of whether self-government involves also political independence arose during the discussion of the mandates. Article 22 of the Covenant compromised by distinguishing between three categories of territories giving only the "A" mandates the promise of independence. In addition, self-government was implied as a provisional step for the granting of eventual independence.<sup>2</sup> Thus there is a much more adequate manner of preparing the inhabitants of the trust territories for self-government and eventual independence than was the case under the mandate system.

In relation to the appointment of the administering authority, neither system has adequately provided for the consideration of the

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<sup>1</sup> See Article 76, Appendix C.

<sup>2</sup> See paragraph 4 of Article 22, Appendix A.

expressed wishes of the native inhabitants. Mention of this provision was made in the Covenant but was restricted to the "A" mandates, and in their case the inhabitants were not allowed to exercise their choice in selecting the administering authority.<sup>1</sup> No such consideration was made in either Chapters XII or XIII of the Charter or in the individual trusteeship agreements. There is, however, a possibility that, in the case of the Italian colonies, the inhabitants will have an influence in choosing the administering power or powers which will be appointed to administer the respective colonies.<sup>2</sup> If these areas then become trust territories, the provision for the inhabitants selecting the administering authority would have been taken into consideration.

b. Political Implications Arising out of the Mandate Charters

There were many political implications that were peculiar only to the mandate system; however, many of its characteristics have been perpetuated because most of the former League of Nations mandates are now under the trusteeship system. This is true, for example, in the case of the Togolands and Cameroons. These two territories, which formerly belonged to Germany, were both divided between the British and French regardless of tribal boundaries. The petitions received from these two

<sup>1</sup> Ibid., Appendix A.

<sup>2</sup> See \_\_\_\_\_, "Future of Former Italian Colonies," United Nations Bulletin, VI (May 1, 1949) p. 433; See also \_\_\_\_\_, "Proposals before Assembly reviewed," United Nations Bulletin, VI (May 15, 1949), pp. 498-499.

areas clearly backs up this contention. These areas are now under trusteeship, and though the same conditions exist, a more honest attempt has been made with regard to tribal interests and organization. Also it seemed anomalous, for example, that the small island of Nauru should have been assigned to not one but three administering authorities. Here again it is rather difficult to determine whether the consideration was primarily political or economic, but at any rate, one of the fundamental reasons was the importance attached to the rich phosphate deposits on the island.

The political implications were especially prominent in the "A" mandates. For instance, the mandate charter for Iraq was never ratified, and the relationship between the administering authority and Iraq was governed by treaty relationship. In regard to Palestine, it could be said that the whole mandate charter was political in nature, for the mandate charter was especially designed for the benefit of the Jews who comprised only a fraction of the population. Thus the rights of the Arabs were not adequately taken into consideration; however, this was not true in that part

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<sup>1</sup> See supra, Chap. II, n. 2, p. 98 & n. 1 & 3, p. 99; France and Great Britain made a declaration on July 10, 1919 which was later approved by the Council, whereby Togoland was divided into two mandates. For the French and British mandates of the Cameroons and Togoland, and the declarations concerning the division of the territories, see Terms of League of Nations Mandates, United Nations Doc. No. A/70, 1946.

<sup>2</sup> See supra, Chap. II, n. 1, p. 75.

<sup>3</sup> See supra, Chap. I, n. 4, p. 19 & n. 1, p. 20.

of Palestine lying on the eastern side of the Jordan River. By Article 25 of the Palestine mandate, Transjordan was dealt with separately, and the provisions of the mandate respecting the Jewish national home and the Holy Places did not apply. To more adequately carry this out, Transjordan<sup>1</sup> later became a separate mandated territory. In the mandate for Syria and Lebanon, provision was made for the progressive development of Syria and Lebanon as independent states.<sup>2</sup> Although a similar provision was found in the Palestine mandate, it was not nearly as definite as that for Syria and Lebanon.

No similar provision has been made in any of the trusteeship agreements. There is very little need for any further subdivision of the trust territories, but if the French and British soon recognize the desirability of providing for self-government and the eventual independence of Togoland and the Cameroons as incorporated units rather than as separate entities, a great advancement in trusteeship will be attained.<sup>3</sup>

Also of importance is the precedent set by the mandate system concerning those colonial areas taken from Germany by the Treaty of Versailles, but to which the mandate system did not apply. These territories were the Kionga triangle of southern Tanganyika and approximately one hundred thousand square miles of territory adjoining the French Kongo. These two

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<sup>1</sup> League of Nations Mandate for Palestine and Transjordan, Doc. No. G.P.M. 269, 1922; See also supra, Chap. I, n. 3, p. 19. For a report on the feelings of the executive committee of the Arab Palestine Congress, see League of Nations Official Journal, 1921, part 2, pp. 331-340.

<sup>2</sup> See Article 1 of the League of Nations Mandate for Syria and Lebanon, Doc. No. G.528, N.313, 1922.

<sup>3</sup> See supra, Chap. III, n. 1, p. 179.

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 areas were ceded to Germany by Portugal and France respectively. Be-  
 cause the use of pressure was resorted to by Germany, both Portugal and  
 France presented their claims to these respective areas. The Council of  
 the League officially recognized these claims by approving the French  
 mandate for the Cameroons and the British mandate for Tanganyika both of  
 which had provisions pertaining to the delineation of these respective  
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 areas.

Although the practice of concluding secret treaties and the scramble  
 for colonial areas has generally vanished, there is, nevertheless, the  
 possibility that it might re-manifest itself in the discussion of the dis-  
 position of Italy's former African colonies. This possibility is an out-  
 growth from the provisions of the Secret Treaty of London of 1915, which  
 was signed by Great Britain, France, Italy, and Russia. By the Secret  
 treaty, Great Britain and France were to compensate Italy if they increased  
 their colonial possessions in Africa at the expense of Germany.<sup>3</sup> In com-  
 pliance with the treaty, Great Britain ceded Jubaland in Kenya colony,  
 and the Jarabub Oasis in Egypt, while France rectified the boundary of  
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 Tunisia. There is a remote possibility that during the General Assembly's

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1 For a map of the areas concerned, see Wright, op.cit., p. 635; See  
 also Moore, op.cit., pp. 120 & 131.

2 Terms of League of Nations Mandates, United Nations Doc.No.A/70, 1946.

3 H.W.V. Temperley, A History of the Peace Conference of Paris,  
 Vol. 1, (London: Oxford University Press, 1920), pp. 170-171; For a text  
 to the Treaty of London see . . . "Secret Treaty with Italy," Current History,  
 VII (March, 1918), pp. 494-497.

4 For a map of the areas concerned see Wright, op.cit., p. 635; See  
 also Moore, op.cit., pp. 137- 222.

fourth regular session in September, 1949 a claim to these areas will be made on the basis of their prior occupation. This is especially true when in relation to the Jam bub Oasis which was given to Italy at the expense of Egypt.<sup>1</sup> If, however, either Great Britain, France, or Egypt make such a territorial claim, it would be contrary to not only the principles of the Atlantic Charter but also to the Charter of the United Nations.<sup>2</sup>

3 c. Powers of Legislation, Administration, and Jurisdiction

It has been left to each individual charter and agreement to define how the administering power intends to execute its authority in carrying out the objectives of the trusteeship system, for the provisions in the Covenant and the United Nations Charter do not state any of the specific

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<sup>1</sup> Egypt in 1915 was under British sovereignty; therefore, she might possibly agitate for a restoration of the Jarabub Oasis on the basis that she was an unwilling party to the said transferal. When the Italian colonies are finally allocated, and if Egypt is appointed to administer eastern Libya, the possibility of such action being taken will be materially increased. See also supra, Chap. II, n.2, p. 129.

<sup>2</sup> See supra, Chap. II, n. 1, p. 44; See also Article 1 of the United Nations Charter, Appendix C.



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details pertaining to the administration of the territories.

The powers of legislation, administration, and jurisdiction have been set forth with a great deal of emphasis in both the mandate charters and the trusteeship agreements. At the end of the fiscal year, the administering authority was, under both systems, required to present an annual report to the governing body.<sup>2</sup> This has been one of the ways in which the administering authority could be held accountable for such matters as taxation, the court system, electoral procedures, legislative processes, native participation in the government, and the many other innumerable functions which are under the supervision and management of the administering power.

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1 However, in neither the mandate charters nor the trusteeship agreements is there any mention of the type or quality of the administering personnel to be employed by the administering power in its administration of the mandate or trust territory. The administering personnel form a vital part of the administration of the trust territory as was the case under the mandate system. Although there was little actual discussion of personnel under the mandate system, this is not so apt to be the case under the trusteeship system because the questionnaire adopted by the Trusteeship Council delves into the administrative structure of the government in detail. An appropriate example of this type of questioning can be obtained by scrutinizing Great Britain's annual report to the Trusteeship Council on the administration of Tanganyika for 1947. See Trusteeship Council Provisional Questionnaire, United Nations Doc. No. T/44, 1947. See also Report by His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland to the Trusteeship Council of the United Nations on the Administration of Tanganyika for the Year 1947, Colonial No. 220, London: His Majesty's Stationery Office, 1948, pp. 30-31, 34, & 178-190.

2 See infra, Chap. III, Section 7, Part F, pp. 236-243.

In the trusteeship system there has been a great deal more clarification of the administrative functions of the trust powers. One of the reasons is the more detailed discussion among these powers during the approval of the trusteeship agreements. In the case of the mandate system, the mandate charters were approved by the Council of the League, with very little of the discussion pertaining to the actual administration of the mandated territories. The discussion that did take place was mostly carried on by the United States through bilateral agreements with the mandatory powers and by Viscount Ishii in his reports concerning the modification of the "B" draft mandates.

All the trusteeship agreements thus far approved have provided the administering authority full powers of administration and legislation over the territory. The same provision was included in the "B" and "C" mandate charters, but, with exception of Palestine, it did not pertain to

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<sup>1</sup> Wright, *op.cit.*, pp. 43-63; See also *supra*, Chap. III, n. 1, p. 157; H. Hyman in his report to the Council of the League stated that the degree of authority, control, or administration is, so far as the "B" and "C" mandates are concerned, a question of only secondary importance. League of Nations Official Journal, 1920, pp. 337-338.

<sup>2</sup> See *supra*, Chap. III, n. 1, p. 156 & Chap. I, n. 3, p. 11; For Viscount Ishii's reports of February and July of 1922 which were accepted by the League Council, see League of Nations Official Journal, 1922, Part 2, Annex 574, pp. 847-862. Ishii also made recommendations concerning the "A" mandates. See also League of Nations Official Journal, 1922, Part 2, pp. 791-793 & 821-823. Of important significance was the fact that the Japanese were given a greater opportunity to present modifications for the "A" and "B" drafts than did the other members of the League Council. The main reason was because Japan had been appointed to administer only a "C" mandate and they had previously been approved.

<sup>1</sup>  
the "A" mandates. In their case Article 22 of the Covenant recognized that only advice and assistance from the mandatory was needed, because they were already far enough advanced along the road to independence so as to allow them a greater share of participation in legislative and administrative duties.<sup>2</sup> However, in either system, the granting of full powers of administration and legislation must end at the point where there is interference with the provisions of the trusteeship agreements and the mandate charters.

The provisions pertaining to customs, fiscal, and administrative unions with the adjacent territories of the administering power are of primary concern in the trusteeship system just as they were under the mandate system. In the mandate system all the "B" mandate charters included a provision which allowed the mandatory to "constitute the territory into a customs, fiscal, or administrative union or federation" with other

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<sup>1</sup> See supra, Chap. I, n. 1, p. 18; Article 2 of the Palestine Mandate provided the mandatory with full powers of administration and legislation in the territory. The main reason for such action was because of the difficulty of handling the two diverse national groups in Palestine. See League of Nations Mandate for Palestine and Transjordan, Doc. No. C.P.M. 269, 1922.

<sup>2</sup> See paragraph 4 of Article 22, Appendix A.

territories under the sovereignty of the mandatory.<sup>1</sup> With the exception of Samoa and Nauru, the same provisions are included in each of the trusteeship agreements,<sup>2</sup> but one other provision is also added, that of establishing common services between such territories. The same situation took place under the mandate system, but the failure to clarify it in the mandate charters resulted in much misunderstanding.<sup>3</sup>

Though administrative unions are recognized as legal by all the trusteeship agreements, a clarification in regard to their application to each trust territory was needed, for they are dealing with the political identity of the trust territories. There is a possibility that the judicial status of the trust territories could be impaired by the use of administrative unions.

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<sup>1</sup> No like provision was made in the "A" mandate charters. For the "B" mandate charters see Terms of League of Nations Mandates, United Nations Doc. No. A/70, 1946. Although the "C" mandate charters did not specifically state that the mandatory had the authority to constitute the mandated territory into a customs, fiscal, or administrative union, there was no reason for their not doing so, for each of the "C" mandate charters gave the mandatory full powers of legislation and administration in the territory. Also by allowing the "C" mandates to be governed as an "integral part" of the home territories admits in itself that the mandates could be governed with such governmental devices. A specific example of this pertains to the "C" mandate of Southwest Africa. A section of the Southwest Africa known as the Caprivi Zipfel was administratively separate from the rest of the mandate and was brought under an administrative union with the Bechuanaland protectorate. See P.M.C., Minutes of the Sixth Session, 1925, pp. 16-17, 134-135, & 216-217.

<sup>2</sup> One of the main reasons that the trusteeship agreements for Nauru and Samoa did not include this provision is that they are islands with no adjoining territories. See supra, Chap. II, n. 2, p. 70.

<sup>3</sup> For an analysis of the problem, see Wright, op.cit., pp. 405-435.

The problem was first brought up in June, 1948, when the annual report for the trust territory of Tanganyika was being discussed. Prior to the discussion, the United Kingdom had made plans for the establishment of an administrative union between Tanganyika and the British colonies of Kenya and Uganda.<sup>1</sup> It was rather fortunate that a partial solution to the problem could be worked out so early in the trusteeship system's existence. The same question had plagued the Permanent Mandates Commission for years.

In the Trusteeship Council's discussion, the United States led the way by providing for the criteria for establishing such unions. Among them were the recommendation that "the interests of the inhabitants of trust territories must be paramount, that the status and identity of trust territories must be retained unchanged, and that separate statistics should be kept and included in the report of an administering authority on a given trust territory."<sup>2</sup> Comments were then made on the proposals that were set forth by the United States representative. The general consensus of the other trust powers was that the administering authority was not required to consult the Council prior to the formation of such a union, as the United States intended to do in case of the Territory of the Pacific Islands became a part of an administrative union. Likewise disfavor was also shown toward the proposed inclusion of the statistical

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<sup>1</sup> \_\_\_\_\_, "Trust Territories and Administrative Unions," United Nations Bulletin, V (July 15, 1948), p. 574.

<sup>2</sup> Ibid., pp. 574.

reports covering the territory or territories which were participating with the trust territory in an administrative union, as the United States<sup>1</sup> had recommended.

On the basis of the work done during the Tanganyika discussion, the Council, in its examination of the annual report of the trust territory of New Guinea, was in a better position to ask the representative from Australia more exacting questions pertaining to the administrative union of the trust territory with the adjacent colony of Papua. During the discussion, the Australian representative answered many questions and in doing so attempted to justify the reasons for such a union. He pointed out that it was not a political union of the territories but merely the use of joint machinery for administering the two areas. The interests of the inhabitants of the trust territory would be furthered in this way because there would be a larger governmental staff employed than if the two areas were operated separately.<sup>2</sup> Thus from the discussion based on administrative unions, it becomes apparent that, if used properly, they will materially benefit the natives of the trust territories. Better services, from a social, economic, and administrative point of view, can undoubtedly be offered to the inhabitants by resorting to such a union.

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1 Ibid., p. 574.

2 \_\_\_\_\_, "Conditions and Prospects in New Guinea," United Nations Bulletin, V (August 1, 1948), pp. 605-606. Although customs, fiscal, and administrative unions were not differentiated, customs and fiscal unions are, for all intents and purposes, considered as merely a part of a more broader field, that of administrative unions.

Of special interest to the discussion of administrative unions is the Trusteeship Council's visiting mission to East Africa which departed on July 15, 1948 for Tanganyika and Ruanda-Urundi. While there, the Mission gave particular attention to the administrative union which is now in existence in Tanganyika, but any further decision by the Trusteeship Council on administrative unions will not take place until its fifth session in June, 1949 when final action will be taken on the visiting mission's report.

Closely allied to the creation of customs, fiscal or administrative unions is the term "integral part," which means that the territory can be administered under the laws of the administering authority. The line which divides the administration of a territory as an "integral part" of another country and the actual incorporation of the first country into the second is not very broad and not very easily defined. Essentially it means that the territory will be governed as if it were an "integral part" of the home territories.

The term is to be found in both the mandate charters and trusteeship agreements. Originally it was to apply to only the "C" mandates, but it was nevertheless incorporated in all the "B" mandate charters with the

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1 \_\_\_\_\_. "Council Debates East Africa Mission Reports," United Nations Bulletin, VI (April 15, 1949), pp. 360-365. See also \_\_\_\_\_. "Issues before the Trusteeship Council," United Nations Bulletin, VI (June 15, 1949), pp. 625-626.

exception of Tanganyika.<sup>1</sup> As for the trusteeship agreements, the term is included in all but the agreements for Tanganyika, Samoa, Nauru, and the Territory of the Pacific Islands.<sup>2</sup>

From the discussion of the powers of legislation, administration, and jurisdiction at the disposal of the administering power, there is ample proof that inconsistencies do exist in carrying out the legislative and administrative provisions of both the mandate charters and the trusteeship agreements. It appears that the phrases "as an integral part," full powers of legislation and administration, and the provision for customs, fiscal, and administrative unions are often used as a subterfuge. They are similar in nature; therefore, if one of the phrases was not included in either the mandate charters or trusteeship agreements, there is the tendency to use one of the others in order to accomplish the same purpose.<sup>3</sup>

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<sup>1</sup> See paragraph 6 of Article 22, Appendix A; See supra, Chap. I, n. 4, p. 14.

<sup>2</sup> See supra, Chap. II, n. 2, p. 69 & n. 1, p. 78.

<sup>3</sup> Oftentimes one of the phrases was deleted because one or more of the powers objected to its inclusion in the trusteeship agreements or mandate charter. The power that presented the agreement or charter made sure that a similar measure was included. For instance, Article 3 of the agreement for Samoa provided for essentially the same provisions as would have been included if the phrases "as an integral part" had remained. Likewise, the agreement for Tanganyika, though not mentioning "as an integral part," is now carrying out through an administrative union many of the same measures as would have otherwise been made. Another specific example was the case of Southwest Africa where the mandatory employed an administrative union in part of the mandate, though no provision was made in the mandate agreement, and justified her actions through her right to administer the mandate "as an integral part" of the union's domains. See Article 3 of the Agreement for Samoa; See also Article 5 of the Agreement for Tanganyika; See also supra, Chap. III, n. 1, p. 186.



d. Regional Development.

A possible threat to the trusteeship system would be the adoption of regionalism when not in conformity to the trusteeship provisions of the Charter. The use of customs, fiscal, and administrative unions are in fact a form of regionalism. These devices could be used in conjunction with a regional authority as a screen for political designs. Today this is particularly true in the case of Africa. In 1945 the white settlers of Kenya Colony urged the United Kingdom to call a conference to discuss the coordination of the British territories of eastern, central and southern Africa. This is particularly significant because Kenya Colony borders the trust territory of Tanganyika. Both Tanganyika and Kenya Colony are now participating in an administrative union with the colony of Uganda. If such a regional conference is held and a closer union of these British possessions is the outcome, it will be well to watch the effects of their program in relation to the trust territory of Tanganyika.

One of the reasons why regional arrangements or commissions are generally thought to be undesirable when related in any way to trust territories, is because of the unfortunate experience with its use by Japan. Japan organized the South Seas Bureau so as to govern the Japanese mandated islands more efficiently. But in so doing, the Japanese

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1 Vernon McKay, "International Trusteeship - Role of the United Nations in the Colonial World," Foreign Policy Reports, XIII (May 15, 1946) 55-56; See also supra, Chap. III, n. 1, p. 187.

government failed to separate the revenues and expenditures of the South Seas Bureau from the expenditures of the Japanese government. The reason for failing to do so was that the South Seas Bureau was not only a branch of the home government but was also an agency in the administration of the mandated territory. In addition, the Bureau's activities were so inter-related with the actions of the other Japanese possessions that in many cases the mandated islands could not be differentiated from the other areas under Japanese jurisdiction. This Japanese subterfuge was entirely in non-conformity with the principles of Article 22 of the Covenant. It thus became more apparent that the effects of political interests were perhaps the greatest in the case of the former Japanese mandated islands. In her case it was purely the development of a kind of regime properly described as regional.

Regional commissions are permissible when in the interests of the United Nations Charter. So far they have been conducted primarily within the realm of Chapter XI of the Charter, the declaration on non-self-governing territories. Both the South Pacific Commission and the Caribbean Commission are functioning in close relationship with the United Nations Organization. Just what the relationship of the trust territories of New Guinea and Samoa will have with the South Pacific Commission remains to be seen.

<sup>1</sup> P.N.O., Minutes of the Fifth Session, 1925, p. 195; See also P.N.O., Minutes of the Tenth Session, 1926, pp. 37-38; See also Wright, op.cit., p. 573.

<sup>2</sup> See Articles 73 & 74, Appendix C; See also Department of State Publication, No. 2812, 1947, op.cit., pp. 37-41 & Appendix 21, pp. 105-106.

Still another type of regional arrangement, and far and above the most important from the native point of view, is regionalism based entirely on the desire to unify certain areas primarily for the benefit of the inhabitants. Such a possibility exists in the area comprised of French and British Togoland, and a part of the Gold Coast Colony under British jurisdiction. The Trusteeship Council, after reviewing a petition from the inhabitants, made a recommendation encouraging regional development for the area in which the Ewe people reside.<sup>1</sup> Regional development in this instance, if carried out along idealistic lines, could result in an amalgamation of the two Togoland trust territories into a collective Franco-British trusteeship, along with that part of the Gold Coast inhabited by Ewe peoples. The decision will, however, remain in the hands of the French and British, and the chances of carrying out this policy will not more than likely take place in the near future.

It thus becomes apparent that the trusteeship agreements made so far provide for a closer degree of assimilation or integration of the trust territories with the administering authority than was contemplated in the "A" and "B" mandates. This is a significant trend towards the aims of self-government through closer association. This, however, does not mean that there will be less participation of the natives in the government of the trust territory than was the case under the mandate system.<sup>2</sup>

<sup>1</sup> See supra, Chap. II, p. 53.

<sup>2</sup> See infra, Chap. III, n. 1, p. 195.

### 6. Native Participation in the Government

The "B" and "C" mandate charters did not provide for native participation in the administration of the mandates; however, the "A" mandates make provisions for native representation and participation. The "A" mandatories were required to do so by the provisions of Article 22 of the <sup>1</sup>Covenant. There was naturally a greater participation of the natives in the government of Iraq because Great Britain did not act under a mandate charter but by treaty relationship. The opposite was true in Palestine <sup>3</sup> where the mandatory had full powers of administration and legislation. The only example of native participation in the mandatory government of a "C" mandate which is worthy of mention was that carried on in Samoa. Although the participation was of an advisory nature, the Permanent Mandates Commission showed a great deal of interest in such participation by <sup>4</sup>the natives.

In contrast to the general policy under the mandate system of not requiring or promoting native participation in the government of a territory, a positive stand is taken under the trusteeship system. Each administering authority is committed by Article 76 of the Charter to promote the

<sup>1</sup> See paragraph 4 of Article 22, Appendix A; See also the Mandates for Samoa, British Togoland, and Syria and Lebanon, Appendix B.

<sup>2</sup> See supra, Chap. III, n. 1, p. 185; & Chap. I, n. 4, p. 19, & n. 1, p. 20.

<sup>3</sup> P.M.C., Minutes of the Third Session, 1923, p. 283; See also P.M.C. Minutes of the Twelfth Session, 1927, pp. 109-112; See also P.M.C. Minutes of the Thirteenth Session, 1928, pp. 126-127.

advancement of the inhabitants of the trust territories towards self-government or independence. In order to adequately carry out this program, the trust powers have included provisions pertaining to native participation in the government of the territory.<sup>1</sup> This is particularly true in the trust territory of Western Samoa in which the natives are not only participating in the actual administration of the government, but are also on the road to full self-government.<sup>2</sup> As was noted above, the native participation in the Samoan government had its beginnings under the mandate system. In the future there probably will be a greater amount of native representation in the legislative machinery because the Trusteeship Council is showing an increasing concern in the matter.<sup>3</sup>

<sup>1</sup> See Article 6 of the Agreements for Tanganyika, Ruanda-Urundi, British Togoland and the Cameroons, and the Territory of the Pacific Islands, Article 5 of the Agreements for Samoa and French Togoland and the Cameroons, and Article 8 of the Agreement for New Guinea.

<sup>2</sup> See Article 5 of the Samoan Agreement; See also *supra*, Chap. II, pp. 102-106. There is also ample evidence that the native inhabitants of the trust territory of Tanganyika are participating in the governmental administration, for there were 2,318 native Africans employed in various administrative functions during 1947. See Report by His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland to the Trusteeship Council of the United Nations on the Administration of Tanganyika for the Year 1947, Colonial No. 220, London: His Majesty's Stationary Office, 1948, pp. 30-36 & 178-190.

<sup>3</sup> The Trusteeship Council, when examining the recent annual reports for the trust territories of Tanganyika, New Guinea, and Ruanda Urundi, asked the representatives of the administering authorities who were present at the examination what measure, if any, were being taken to foster native participation and representation in the legislative and administrative machinery of the government. See \_\_\_\_\_, "Conditions and Prospects in New Guinea," United Nations Bulletin, V (August 1, 1948), pp. 605-606. See also \_\_\_\_\_, "Tanganyika; Record of Largest Trust Territory," United Nations Bulletin, V (July 15, 1948), p. 565; See also, \_\_\_\_\_, "Conditions in Ruanda-Urundi," United Nations Bulletin, V (July 1, 1948), p. 532.

F. Composition of the Mandate Commission and  
the Trusteeship Council

The composition of the Permanent Mandates Commission and the Trusteeship Council is radically different. In contrast to the Permanent Mandates Commission which was little more than a committee of the League Council, and although the Trusteeship Council is under the authority of the General Assembly, it is given the status as being one of the principal organs of the United Nations.<sup>1</sup> The Council was also given far wider authority than that of an advisory capacity which was characteristic of the Commission, and in order to more fully carry out this authority a much firmer basis of support by governments was needed. Therefore, Article 86 of the United Nations Charter provides that states will hold membership in the Trusteeship Council and delegates will be official members appointed by those governments, whereas the Commission was composed of independent experts appointed by the Council of the League and did their work irrespective of governments.<sup>2</sup>

The appointment of specially qualified experts carried on under the auspices of the League Council as required by paragraph a. of the Permanent Mandates Commission's constitution was a very desirable procedure. Though the Trusteeship Council is made up of representatives from states, it does not mean that the expert qualifications of those delegates will

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<sup>1</sup> See Article 7 of the Charter, Appendix C.

also

<sup>2</sup> See Article 86, Appendix C; See supra, Chap. I, n. 3, p. 25.

be lost, for the representatives appointed to serve on the Council have been selected by the member states in compliance with section 2 of Article 86 of the Charter which calls for the designation of one specially qualified person to represent each member of the Council.<sup>1</sup>

So far, the representatives at the Council meetings have been, generally speaking, experts in the field of colonial affairs, and if not, have shown, nevertheless, that being a representative of a state does not mean that independence of judgment is lacking on their part.<sup>2</sup> There is, however, a natural tendency for the representatives on the Council to show partiality on important issues concerning their states, but in this way the Council is given added strength because the representatives of the Council are supporting their states policy. Because the Commission was an impartial body, there was a lack of forcefulness in the recommendations which were made. Thus there will be a tendency for the administering authorities to be much more respectful towards the Council's decisions than was the case under the mandate system.

Another important manner in which the composition of the Commission and the Council were dissimilar was the balance between administering and non-administering states in the latter. But a comparison is difficult to make because under the mandate system the members were only nationals of states but not representatives of those states, whereas in the trusteeship system the members are states with nationals representing those states.

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<sup>1</sup> See paragraph a, Constitution of the P.M.C., Appendix A; See also Article 86, Appendix C.

<sup>2</sup> For the qualifications of the representatives of the Trusteeship Council see Appendix D.

Even though the members of the Commission did not represent states, they were nevertheless drawn from mandatory and non-mandatory states. In this way it was thought that the international interests and national interests could best be served. Also the native interests were not overlooked, for they were to be safeguarded by the impartial and expert qualifications of all the members.<sup>1</sup>

While the majority of the Commission were nationals of non-mandatory states, these members were, as a rule, chosen from states which possessed colonial territories.<sup>2</sup> The advantage of appointing nationals from states possessing colonial territories was of great importance, for it had an influence on the actions of these states. Thus these states had a tendency to put into practice in their colonial territories many of the principles set forth by the Commission for the mandated territories.<sup>3</sup>

Likewise, the League Council, in its search for technical experts picked members that had previously served in governmental capacities since they were usually the most qualified men in the colonial field.<sup>4</sup> Because these men had served in such positions in the past, they naturally tended to show favoritism for their government's policy. This was particularly true of the Japanese national on the Commission who resigned his position in 1938 when Japan withdrew her cooperation with that body.<sup>5</sup>

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<sup>1</sup> See paragraph a, Constitution of the P.M.C., Appendix A. For an excellent viewpoint on the composition of the Commission see W. Ormsby-Core in—, "The League of Nations Starts, An Outline by its Organizers," (London: Macmillan and Co., Ltd., 1920), pp. 115-118.

<sup>2</sup> See Appendix D for composition of the P.M.C.

<sup>3</sup> See infra, Chap. III, pp. 2 309-311.

<sup>4</sup> For a list of the former experiences of members of Commission see Appendix D.

<sup>5</sup> P.M.C. Minutes of the Thirty-fifth Session, 1938, pp.162-171.



The Trusteeship Council, besides having delegates appointed by the member states, is a delicately balanced body with as many members of the United Nations administering trust territories as those who do not.<sup>1</sup> However, this does not mean that it is composed of two opposing groups, but that it is based upon the theory of giving an equal voice to the two groups of states rather than the idea of preventing the administering authorities from obtaining a majority of the power. Such a practice calls for cooperation on the part of both groups in order to achieve the purposes<sup>2</sup> and objectives for which the Council was established.

<sup>1</sup> See Article 86, Appendix B; See also Edvard Hambro & Leland M. Goodrich, op.cit., p. 252.

<sup>2</sup> Although the Trusteeship Council is composed of only administering and non-administering powers, it is nevertheless composed of three groups of states. They are the administering states, the permanent members of the Security Council which are non-administering powers, and a number of independent states. This is in effect a three-way balance by which the great powers ensure that the trust territories will play their part in the maintenance of peace and security while the non-administering powers not members of the Security Council will protect the interests of the inhabitants of the territories from being sacrificed to the special interests of either the administering authorities or the great powers. See supra, Chap. II, pp. 83-84. From an analysis of the Trusteeship Council's voting, it is generally evident that there has not been a division in voting between the administering and non-administering members. See Trusteeship Council Official Records Second Session: Third Part from the Thirty-sixth Meeting (21 April, 1948) to the Forty-sixth Meeting (4 May, 1948), 1948, pp. 8-9, 125, 128, 129, & 131-133; See also Trusteeship Council Official Records Third Session from the First Meeting (16 June, 1948) to the Forty-third Meeting (5 August, 1948), 1948, pp. 10, 29, 91, 98, 108-109, 127-128, 220-222, 224-225, 231, 242, 244-248, 250, 252-253, 547-548, 547-548, & 557.

Though at present the number of states represented in the Council closely corresponds with the number of individuals on the Commission this will not necessarily always be the case. The Commission had ten members, not counting the extraordinary members and the expert which was present on behalf of the International Labour Organization when questions relating to labor were discussed.<sup>1</sup> The Council now has twelve members, but because Article 86 of the Charter required that there be a balance between the administering and non-administering powers, the Council will be subject to change if additional trust powers place territories under the trusteeship system.<sup>2</sup> Likewise, the Council would be subject to change if

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<sup>1</sup> See supra, Chap. II, n. 1, p. 25.

<sup>2</sup> See composition of the Trusteeship Council, Appendix D; See also Article 86, Appendix A. The Council has had a greater number of representatives present from other agencies than was the case at the Commission's sessions. In addition to the representative from the International Labor Organization which was the only agency represented at the sessions of the Commission, there were also present at the Council's first session representatives present from the United Nations, Educational, Scientific, and Cultural Organization and from the Food and Agricultural Organization. Also present was an official observer from Brazil. At the Commission's sessions observers were not permitted to attend the meetings unless they were open to the public; therefore there was no reason to send an accredited observer because with the exception of the opening meeting of each session, there were very few meetings open to the public; however, at the sessions of the Council official observers from states would be welcome as most of the Council's meetings are open to the public. Besides the qualified representative which was to be present at the discussion of the annual report of each administering power, as was the case under the mandate system, other members of the United Nations are allowed to send representatives to the Council's meetings providing they have proposed items on its agenda. Thus, although the number of members on the Commission and the Council are similar, there is a much larger representation at the meetings of the Council. These representatives, however, are not given the right to vote. See composition of the Commission and the Council, Appendix D; See also Constitution of the P.M.C., Appendix A; In addition see also Rules 11, 12, 13, & 44 of the Trusteeship Council's Rules of Procedure.

a trust territory becomes independent, and the trusteeship system does not gain additional territory.

The Trusteeship Council has a great advantage over the Commission because of the relative ease with which personnel can be changed at the respective sessions. Since the members of the Commission were appointed by the League Council, it would be contrary to the Commission's constitution for the member to suggest a replacement and would be entirely out of the question for the member national state to make a request on the new appointment. The League Council did, however, allow in special cases for a substitute at the insistence of the member. Even so there was seldom a session at which all the members were present for all the meetings of the Commission and in some instances members were not present for any of the sessions. Such a situation does not exist at the sessions of the Council, because a member state can appoint a new representative at any time. In addition, each representative on the Council is accompanied by alternates and advisers, any of whom may take the representative's position at his request. Also there is much more adequate provision for the use of advisers at the Council sessions since each representative can use as many advisers as he may require. Under the mandate system, the Commission as a body summoned the necessary technical experts, thus preventing freedom of initiative on the part of

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<sup>1</sup> See constitution of the P.M.C., Appendix A.

<sup>2</sup> P.M.C., Minutes of the Eighth Session, 1926, pp. 8 & 171. See also P.M.C., Minutes of the Thirty-fourth Session, 1938, p. 9. M. Orts and Lord Haily missed the entire session.

any member in his selection of qualified experts.<sup>1</sup>

Because the delegations to the Trusteeship Council are representatives of states, any of their members can hold other positions in their governments.<sup>2</sup> This is a very desirable situation because the activities of the Trusteeship Council does not keep the delegation busy the year round. Thus by being representatives of states the delegations can be remunerated for full time positions as they are usually performing other official duties when the Council is not in session. For instance, Sir Carl Berendsen, New Zealand's representative on the Council and Vice-President for the first two sessions, is serving as Envoy Extraordinary and Minister Plenipotentiary to the United States and was in addition chairman of the Fourth (Trusteeship) Committee at its meetings in October, 1947.<sup>3</sup>

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<sup>1</sup> See paragraph U of the Constitution of the P.M.C., Appendix A; See also Rule 18 of the Trusteeship Council's Rules of Procedure.

<sup>2</sup> Likewise they can easily be transferred from representation on one organ of the United Nations and thence placed on another if the need arises. This is a very desirable situation for in some instances the services of a representative could best be used in another organ of the United Nations and his experience in the first position could in most cases be used in the latter position. Thus, Mr. Norman J. O. Makin of Australia, who is now serving on the Economic and Social Council, will undoubtedly be able to use in his new position the experience obtained while serving on the Trusteeship Council. See composition and qualifications of the Trusteeship Council, Appendix D.

<sup>3</sup> Because Sir Carl represented New Zealand at the <sup>4</sup> (Committee) Trusteeship, it enabled the Committee to obtain first hand information on the activities of the Trusteeship Council. Such a policy did not, however, enable New Zealand to defend its policy in the trust territory of Samoa any more than would have been the case if another delegate had represented her because in the final analysis they would both be representatives of the same state. This is only one example of the possible benefits to be derived from placing a states representative on several related subjects but within different organs of the United Nations. See composition and qualifications of the Trusteeship Council, Appendix D. See \_\_\_\_\_, "Trusteeship in Operation," United Nations Weekly Bulletin, III (October 7, 1947) pp. 462-463.

In this way men of top caliber are retained for the coming sessions of the Council, whereas it was rather difficult for the Commission to retain the services of top personnel because the per diem paid the members did not adequately reimburse them for the time lost from their other positions.<sup>1</sup> Likewise, oftentimes the most lucrative fields of work for their qualifications were government positions, and since the members could not also be employed in government service they frequently hesitated serving on the Commission.<sup>2</sup> Thus the policy of not allowing a member of the Commission to serve in governmental capacities when not occupied with the work of mandates tended to hinder the Commission's chances of obtaining and then being able to retain the most expert men in the colonial field.<sup>3</sup>

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<sup>1</sup> The Constitution of the P.M.C. provided for 100 gold francs per day during the Commission's meetings but this was changed in 1926 to 2,000 Swiss francs per year providing the member was present at the meetings during more than thirty days in all. One of the main arguments used for not making the members salaried officials of the League was because the voluntary character and breadth of independence of the Commission would tend to disappear. League of Nations Official Journal, 1926, Part 2, p. 856.

<sup>2</sup> However, there was a discrepancy in the policy of not allowing members of the Commission be in a position of direct dependence on their governments. At the minutes of the second session of the Commission, reference is made to M. Frier d'Andrade's failure to arrive in time for the session as he had become ill while carrying out an important mission in South Africa for his country. From the wording of the report, it appears that a direct violation of the Commission's Constitution was made. Thus arises the question of just where could the line be drawn if cases of a similar nature had occurred. This is one point in the Commission's Constitution which should have been more fully clarified. See Minutes of the Second Session, 1922, p. 2.

<sup>3</sup> See supra, Chap III, n. 2 & 3, p. 202, and n. 1, p. 203.

The permanency of membership differs in several additional ways from that of the Commission. In the first place, the states which are permanent member of the Security Council will be members of the Trusteeship Council at all times.<sup>1</sup> In the true sense of the word there are no permanent members on the Commission because there was always the possibility that the League Council would remove an individual member and place a national of another power in his place. Such a situation did not occur, but in 1928, upon the death of the Norwegian national, a Swedish national was appointed to the Commission.<sup>2</sup> In addition members resigned in order to take positions in the home governments, thus leaving it up to the Council to appoint other members in their places. In all these instances the Council appointed another national from the same state.<sup>3</sup>

Perhaps the only semblance of a permanent member on the Commission resulted from the practice of considering the nationals of Great Britain, France, Japan, and Belgium as permanent members, for they were the only mandatory states which had nationals on the Commission.<sup>4</sup> This was not always the case, when Japan withdrew her cooperation with the Commission the Japanese national also resigned, even though there was no requirement for his doing so.<sup>5</sup> In addition, permanency in this case would hold true

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<sup>1</sup> See Article 86, Appendix A.

<sup>2</sup> P.M.C., Minutes of the Thirteenth Session, 1928, p. 10.

<sup>3</sup> See Composition of the P.M.C., Appendix D; See also P.M.C., Minutes of the Third Session, 1923, p. 7.

<sup>4</sup> See Composition of the P.M.C., Appendix D.

<sup>5</sup> See supra, Chap. III, n. 5, p. 198.

only to the extent that the mandated territory or territories under those administering authorities did not become independent. This did not occur under the League for only one mandate became independent under League auspices, and Great Britain, the mandatory power, was administering three other territories in Africa at the time. The same principle would apply to the administering powers of the Trusteeship Council which were not permanent members of the Security Council. In other words, if the trust territory or territories that they were administering under the trusteeship system become independent, it would not longer be necessary for those states to be represented as trustee powers on the Council.

With the exception of Russia and China, which hold permanent membership in the Trusteeship Council because of their being permanent members of the Security Council, an entirely different tenure applies to the other non-administering powers appointed by the Council. In order to keep the Council in equilibrium, the General Assembly has had to elect a number of non-administering powers. These states hold membership for only a three-year period, thus enabling a greater number of states to be represented on the Council over a period of years.<sup>1</sup>

So far, the General Assembly has acted wisely in selecting these members. Mexico and Costa Rica are familiar with the problems of underprivileged peoples and Iraq and the Philippines have not been independent for long. These states will be able to serve the Council well as they

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<sup>1</sup> See Article 86, Appendix C; See also supra, Chap. II, n.1, p. 84 & n. 3, p. 84.

will be more fully qualified than the other members with respect to many of the problems of the trusteeship system, for they have had experience or still are experiencing these same problems. If the General Assembly continues to select such members, the interests of the natives will continue to be more ably represented.<sup>1</sup>

The Trusteeship Council has not, as yet, experienced a situation such as confronted the Commission in the latter nineteen thirties.<sup>2</sup> Although the Soviet Union did not send its delegate to the Council meetings until April, 1943,<sup>3</sup> the Council was not hampered by this loss nearly as much as the Commission was hindered by the resignation of or failure of some of its members to attend the sessions.

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<sup>1</sup> During the third session of the Trusteeship Council, the representatives from Iraq, Mexico, Costa Rica, and the Philippines asked the representatives from the administering powers many searching questions when their respective annual reports were being examined. See \_\_\_\_\_, "Tanganyika: Record of Largest Trust Territory," United Nations Bulletin, V (July 15, 1948), pp. 565-567; See also \_\_\_\_\_, "Conditions in Ruanda-Urundi," United Nations Bulletin, V (July 1, 1948), p. 531. Since these non-administering powers hold office for three years, the next elections will not take place until 1950. Iraq and Mexico will be replaced at this time for they were appointed in December, 1946, whereas Costa Rica and the Philippines will not be replaced until 1951 as they were elected in November, 1947. See supra, Chap. III, n. 1, p. 205; See also section No. II, Appendix D.

<sup>2</sup> See especially supra, Chap. I, n. 1, p. 40. See also supra, Chap. I, n. 4, p. 38 & n. 2 & 3, p. 42. As evidenced by the turning over to Turkey of the Sanjak of Alexandretta, which was a part of the Syrian mandate, the Commission was finding it increasingly difficult to obtain recognition from the mandatory states to even the most basic objectives of the mandate system.

<sup>3</sup> See supra, Chap. II, n. 2, p. 64.



The Commission was not really at fault and the main offender in this case was the Council of the League. The Council failed to appoint a new member to replace M. Sakenobe, the Japanese national on the Commission, who resigned in 1938, following Japan's withdrawal from cooperation with the Commission.<sup>1</sup> In addition, the German and Italian nationals on the Commission discontinued their attendance of the meetings when their states withdrew from the League, but the League did not require them to withdraw from the Commission as they did not officially represent either Germany<sup>2</sup> or Italy. Thus the Commission was powerless to act, and when Marquis Theodoli finally resigned just prior to its thirty-fourth session, the Commission had been without his services for four full sessions. In addition Mr. Ruppel, the German national on the Commission, did not officially resign but merely notified the Commission at its twenty-fourth session that he would be unable to attend. His statement also implied that he would no longer be available.<sup>3</sup>

Under such circumstances, the League Council should have asked for the Italian national's resignation and then appointed a national from a more deserving state. The British Dominions would have been likely choices for they were mandatory powers but did not have a national on the

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<sup>1</sup> See supra, Chap. III, n. 2, p. 198.

<sup>2</sup> See Composition of the P.M.C., Appendix A; See also Constitution of the P.M.C., Appendix A.

<sup>3</sup> P.M.C., Minutes of the Thirty-fourth Session, 1938, p. 10; See also P.M.C., Minutes of the Twenty-fourth Session, 1933, p. 12.

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 Commission. As for a decision on the German national, it would have been feasible for the League Council to have officially reduced the Commission members back to the original nine.<sup>2</sup>

In the meantime the Commission was overburdened at its sessions and could not adequately carry out its functions because the remaining members were overworked even before they were required to take care of the duties carried on by the three absent members.<sup>3</sup> As a result of the Council's failure to keep the Commission up to working strength, the remaining years of League supervision over mandates was decidedly lacking. Thus it is apparent that in order for the Trusteeship Council to function efficiently all the member states, but especially the big powers, should have representatives present at every meeting of each Council session.

G. Powers and Functions of the Commission and the Council

It has been fully recognized that the effective operation of the mandate system depended in a large measure on the nature of the mandate characters by which territories were placed under that system. The same is true for the trusteeship system, but more important even than satisfactory trusteeship agreements is the actual methods used in operation of the system and the personnel assigned to this task, both national and

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1 See supra, Chap. I, n. 2, p. 25.

2 See Constitution of the P.M.C., Appendix A.

3 P.M.C., Minutes of the Twenty-fourth Session, 1933, pp. 12, 46, & 105.

international.<sup>1</sup>

Despite these difficulties, it has been relatively simple both in 1919 and in 1945 to discover a formula of agreed principles and purposes to which most states will adhere. Nevertheless it has been and still is vastly more difficult to carry out the supervision, inspection, and control of the territories under the two systems.

### 1. Jurisdiction

The agency of control in closest association with the mandate system was the Permanent Mandates Commission. In the case of the trusteeship system, the Trusteeship Council performs a similar function, but the framers of the United Nations Charter clothed the Council with functions and powers far broader than those enjoyed by the Commission.

The Council was established by the Charter as one of the principal organs of the United Nations, thus not becoming a mere repetition of the Commission which was essentially an advisory body with fact finding as one of its major tasks. Because the Commission was a subsidiary organ of the League Council, its work was preliminary in character, and its decisions were not binding.<sup>2</sup> The Council, on the other hand, represents responsible power in the hands of governments themselves, whereas the Commission did not have the firm support of states behind its actions.<sup>3</sup> Thus

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<sup>1</sup> For a discussion of the personnel of the Trusteeship Council and the Permanent Mandates Commission see Chap. III, Sect. 6, pp. 155-163; See also supra, Chap. III, n. 1, p. 183.

<sup>2</sup> See Article 7 of the United Nations Charter, Appendix C; See supra, Chap. I, n. 2, p. 32; See also supra, Chap. I, n. 2, p. 23; see also paragraph 8 of Article 22, Appendix A.

<sup>3</sup> See supra, Chap. III, n. 2, p. 196.

the Commission was essentially a technical body, whereas the Council has the combined attributes of both technical and political responsibilities.

a. Voting

Even though the Council is, in contrast to the Commission, one of the principal organs of the United Nations, it operates under the authority of the General Assembly.<sup>1</sup> But under the trusteeship system, there is, however, a drastic change in the authority of the Council as compared with that of the Commission, for it is the directly responsible organ of the United Nations in the functioning of the trusteeship system. However, the decisions of the Trusteeship Council are always subject to the review of the Assembly if that body desires to consider them.<sup>2</sup> This is perhaps the reason that the Trusteeship Council is allowed to make decisions by only a simple majority vote.<sup>3</sup> But this is a far more satisfactory procedure

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<sup>1</sup> See supra, Chap. II, n. 1, p. 85; See also Article 57, Appendix C.

<sup>2</sup> See Article 10, Appendix C.

<sup>3</sup> Likewise the Commission's decisions were voiced by a simple majority. However, decisions made by the Trusteeship Council will always require the concurring vote of at least one representative of an administering authority, for half of the members of the Council represent such authorities. Here then is a sharp break with the mandate system because by the Commission's constitution it consisted entirely of experts who served as individuals and not as government representatives, and a majority of these experts had to be nationals of non-mandatory powers. As a result, in order for a decision to become final in the council, the administering authorities must, as a general rule, be in agreement with the non-administering authorities. So far there has been close harmony between the administering and non-administering powers of the Council, with the administering powers wholeheartedly supporting the decisions of the Council. See Rule 3 of the Rules of Procedure of the P.M.C., Appendix A; See also Article 39, Appendix C; See also Section 6 of Chap. III.

than that carried on under the mandate system which placed the Commission under the direct supervision of the Council of the League, thus preventing the conclusions of the Commission from becoming final until approved by the League Council. Thus it was impossible for the Commission to make binding decisions on the mandatory powers or to address direct recommendations to them.<sup>1</sup>

In contrast, the Trusteeship Council has the power to make binding decisions and issue direct recommendations to the trust powers.<sup>2</sup> Also of considerable importance in this respect is the fact that if the General Assembly votes on an issue concerning trusteeship, an approval by two-thirds of the General Assembly is all that is necessary to bring about the required action. Under the League both the Council and the Assembly were required to act by unanimity in all substantive decisions.<sup>3</sup> Thus in respect to the General Assembly's voting, the trusteeship system has a decided advantage over that of the mandate system because action is more likely to be taken towards the solution of a problem, whereas under the League the unanimity ruling required the approval of all the members of

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<sup>1</sup> See supra, Chap. I, n. 2, p. 25; See also supra, Chap. I, n. 2, p. 26.

<sup>2</sup> For instance, the Trusteeship Council can modify the questionnaire which it had previously formulated, and the trust powers have to accept such a decision made by the Council. See Rule 69 of the Council's Rules of Procedure; See also Article 88, Appendix C; See also supra, Chap. II, pp. 103-106 for the recommendations which the Council directed to New Zealand concerning its conclusions based on the visiting mission to Samoa.

<sup>3</sup> See Article 18, Appendix C; See Article 5 of the Covenant, Appendix A.

the Council and the Assembly. Because of such a voting procedure, action was oftentimes not taken, or when unanimity was finally obtained the mandate system had in the meantime suffered materially.<sup>1</sup>

There is, however, a potential disadvantage in the voting procedure of the Security Council as it concerns the trusteeship system. Since the Security Council must have, on all substantive decisions, a concurring vote of 7 out of 11 votes, including those of the five great powers, there is the possibility that important decisions may not receive the necessary vote since one of the big five by resorting to its privilege of vetoing a proposal could thus prevent its passage.<sup>2</sup> Although there has not been, as yet, any occasion for the use of the veto in trusteeship matters, it will more than likely be employed in the event that the vital interests of one of the big five are either threatened or jeopardized. Just such a situation could have occurred in the case of the discussion which took place in the Security Council over the issue involving the Trusteeship Council's role in the supervision of the strategic trust territory of the Pacific Islands.<sup>3</sup>

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<sup>1</sup> For an appropriate example of such action see infra, Chap. III, n. 2 p. 227.

<sup>2</sup> See Article 27, Appendix C; For a resume of the discussion of the Security Council's voting formula see Hearings before the Committee on Foreign Relations United States Senate, The Charter of the United Nations, 79th Congress, First Session, 1945, pp. 75-79; See also Documents of the United Nations Conference on International Organization, San Francisco, 1945, Commission III Security Council, Vol. XI (New York: United Nations Information Organizations, 1945), pp. 117-133.

<sup>3</sup> See infra, Chap. III, n. 1 & 2, p. 231.

b. Division of Authority

Even in the case of a strategic area the assistance of the Trusteeship Council is not entirely excluded in the performance of those functions of the United Nations under the trusteeship system relating to political, economic, social, and cultural matters, for the Security Council is required to avail itself of the assistance of the Trusteeship Council in the performance of these functions. However, security considerations must not be prejudiced, and such assistance must not be contrary to the agreements concerning strategic areas. As a result, the scope of the United Nations power is much more limited and less clearly defined with regard to the trust areas placed under the Security Council, for the Charter provisions did not so adequately clarify the powers of the Security Council as was done in the case of the General Assembly's authority over non-strategic areas.<sup>1</sup>

Under the mandate system there was, likewise, a division of authority over the territories under that system.<sup>2</sup> Though there was not a direct division of supervision such as exists under the trusteeship system

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<sup>1</sup> See Article 83, Appendix C; See also Article 85 & 87, Appendix C.

<sup>2</sup> By Article 3 of the Covenant the Assembly was, along with the Council, given the right to discuss any questions relating to mandates because of its power to deal with any subject within the sphere of action of the League. See Article 3 of the Covenant, Appendix A.

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when in respect to strategic and non-strategic territories, there was, nevertheless, a question as to whether both the League Council and the Assembly of the League had the power to discuss questions and then make recommendations to the Commission or the mandatory powers in relation to the mandates.

Since both organs did deal with questions pertaining to mandates, the problem arose as to whether the Commission could also direct its advice to the League Assembly.<sup>2</sup> The Commission decided at its third session that since the Covenant mentions the Council as the recipient of its observations it was, therefore, primarily obligated to the League Council.<sup>3</sup>

Although the Security Council is authorized to consider problems arising in non-strategic trust territories if there is a definite threat to the maintenance of international peace and security, it is unlikely there will be difficulty in ascertaining which organ has primary jurisdiction such as arose under the League.<sup>4</sup> The reason is that the Charter

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1 In the strategic areas the Security Council exercises such functions as the United Nations possesses in regard to trusteeship, including the authority to approve the terms of the trusteeship agreements, whereas in the non-strategic trust territories, the General Assembly or under its authority, the Trusteeship Council, speaks for the United Nations, See supra, Chap. II, n. 1, p. 85.

2 One of the most appropriate examples of both Council and Assembly participation in the discussion of a question pertaining to mandates was the Bondelzwart Rebellion of 1922. See supra, Chap. I, n. 2, p. 28.

3 P.M.C., Minutes of the Third Session, 1923, p. 63; See also League of Nations Official Journal, 1923, Part 2, p. 1576; See also paragraph 9 of Article 22, Appendix A.

4 See Article 34, Appendix C.



provisions more adequately enumerate the powers and jurisdictions of both the Security Council and the General Assembly than was the case in the League Covenant. Thus as a general rule, and although the authority of the United Nations is not clearly defined when concerning strategic areas as compared to non-strategic areas, the powers of the other organs of the United Nations have been more clearly defined in their relation to the trusteeship system than were those of the organs of the League when in respect to the mandate system.

## 2. Rules of Procedure

Perhaps one of the more important ways in which the greater authority of the Trusteeship Council is evidenced over that of the Commission is through a comparison of their rules of procedure. To begin with, the Commission had only 10 rules of procedure as compared to 107 for the Council.<sup>1</sup> Even though the Commission had, in addition to its rules of procedure, a Constitution for the organization, still many of the complex procedures of the mandate administration were not adequately covered. Actually the rules of procedure were little more than a glossed-over version of its constitution.<sup>2</sup> In contrast, the Council's rules cover petitions, questionnaires, and many other procedures which were definitely lacking in the

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<sup>1</sup> See Rules of Procedure of the P.N.C., Appendix A; See also Rules of Procedure for the Trusteeship Council, United Nations Doc. No. T/1/ Revised 1, 1947.

<sup>2</sup> See Constitution of the P.N.C., Appendix A; See also Rules of Procedure of the P.N.C., Appendix A.

Commission's rules. Also the Commission's rules were essentially rules to govern the organization and to conduct its business, whereas under the trusteeship system the Council's rules cover not only the basic necessities, but also elaborate in specific detail these provisions of the United Nations Charter which relate to the actual work of the Council.<sup>1</sup>

The Council also benefits in many other ways because of the greater content and breadth of its rules. This is particularly evident in comparing the time interval between the approval of the Commission's rules and those of the Council. Although the Commission held its first session in October, 1921, it did not have its rules of procedure approved by the League Council until January 10, 1922.<sup>2</sup> The Trusteeship Council, on the other hand, not only had its rules of procedure approved during its first session, but in addition the Council did not have to submit its rules to any other body for approval as did the Commission, thus giving the Council

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<sup>1</sup> See Articles 87 through 91 of the United Nations Charter, Appendix C, in order to compare them with the provisions found in the Trusteeship Council's Rules of Procedure.

<sup>2</sup> See *supra*, Chap. III, n. 3, p. 159; See *supra*, Chap. I, n. 2, p. 24. The Commission was, however, not at as great a disadvantage as is portrayed in the above statement, for the Commission had, prior to the League Council's approval of its rules, the benefit of its Constitution which served as working rules of procedure.

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a greater measure of authority than its predecessor. Also the Trusteeship Council was aided by the work previously done by the Preparatory Commission of the United Nations which had formulated 62 provisional rules of procedure in order to aid the Council in its preliminary work. In this aspect the Permanent Mandates Commission was at a greater disadvantage, as it did not have the benefit of any prior work which might have been done on the subject.

Although there is a great divergence in many of the functions and procedures of the two organs, basically they were carrying on essentially the same work. Thus there was little difference in conducting the routine

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1 See supra, Chap. II, n. 1, p. 87; See also Article 90, Appendix C. Not only did the League Council have to approve the Commission's rules, but likewise before amendments could become effective, they had to meet with the Council's approval. Thus when any important changes in the rules become necessary, the Trusteeship Council can place them into operation within a minimum of time, whereas there was a considerable delay under the mandate system. Nevertheless the Trusteeship Council, in amending its rules of procedure, cannot violate the United Nations Charter. In this way an effective check is placed on the Council's amending process. See Rules 106 & 107 of the Trusteeship Council's Rules of Procedure; See also Rule 10 of the Rules of Procedure of the P.M.C., Appendix A; See also P.M.C., Minutes of the Twelfth Session, 1927, pp. 97-98, 158, & 199-200. The Trusteeship Council has already amended Rule 99 of its rules of procedure and has adopted entirely new rules in order to give more advance notice to petitioners. In addition the Council intends to revise all of its outmoded rules at its fourth session. The Commission did not at any time consider a general revision of its rules. "United Nations Digest," United Nations Bulletin, IV (January 1, 1948) p. 42; See also Report of the Trusteeship Council Covering its Second and Third Sessions 29 April, 1947 - 5 August, 1948, United Nations Doc. No. 20, A p. 603, 1948, p. 4.

2 See supra, Chap. II, n. 2, p. 86.

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business of the two bodies. For instance, their rules of procedure both provide for the election of a president and a vice-president for the period of one year,<sup>2</sup> and likewise almost identical wording is to be found in many of their other procedural matters.

### 3. Sessions

As to the number of sessions per year, the Trusteeship Council's rules are much more elastic. By rule 1 of its rules of procedure the Council is to have two regular sessions each year with the first session in June and the latter in November. Originally the Commission held only one regular session each year, but due to the increasing amount of business in 1925, it decided to hold two regular sessions each year.<sup>3</sup> The dates of these sessions generally corresponded to those provided for in the Council's rules of procedure.

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<sup>1</sup> For a basic comparison of the functions and procedures of the two organs see the Rules of Procedure of the P.M.C., Appendix A, and also the Rules of Procedure of the Trusteeship Council previously cited above. Generally speaking there is a fundamental likeness in the rules of the two bodies.

<sup>2</sup> In the Permanent Mandates Commission their title is chairman and vice-chairman, but their functions are correspondingly the same. See Rule 4 of the Rules of Procedure of the P.M.C., Appendix A; See also Rules 19 & 20 of the Trusteeship Council's Rules of Procedure.

<sup>3</sup> In 1923 the Commission discussed the plausibility of holding two sessions each year. At its 4th session in 1924 only 6 of the annual reports were considered, thus necessitating another session later in the year. Because of this situation, the Commission, though deciding not to amend its rules of procedure, thereafter held two regular sessions each year. League of Nations Official Journal, 1925, Part 1, pp. 209; See also P.M.C. Minutes of the Third Session, 1925, p. 189; See also P.M.C., Minutes of the Fifth (Extraordinary) Session, 1924, pp. 116-117; See also Rule 1 of the Rules of Procedure of the P.M.C., Appendix A; See also Rule 1 of the Rules of Procedure of the Trusteeship Council.

a. Special Sessions

In regard to special sessions there is a great deal of difference. The Commission held only two special sessions, the fifth and the eighth, of which the eighth was the more important for it was called in order to consider the troubled situation in Syria.<sup>1</sup> Although the Trusteeship Council has not, as yet, held a special session, there is greater elasticity in the procedure adopted by the Council. Under the mandate system a request for a special session had to emanate from one of the members of the Commission and be approved by a majority of its members and by the President of the League Council. In the case of the Trusteeship system other means besides the majority approval of the Trusteeship Council can be brought into use when the need for special sessions arises.<sup>2</sup>

Requests by the General Assembly or the Security Council for special sessions of the Trusteeship Council was made possible by rule 2 of the Trusteeship Council's rules and is very desirable because in many instances the Trusteeship Council may either fail to call a session when there is apparent need for one, or on the other hand may not even be aware of its necessity. Under the League the Council and Assembly could also do the same, but a statement of such was not included in the Commission's rules of procedure.<sup>3</sup>

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<sup>1</sup> P.M.C., Minutes of the Fifth (Extraordinary) Session, 1924; See also P.M.C., Minutes of the Seventh Session, 1925, pp. 130-132; See also P.M.C., Minutes of the Eighth (Extraordinary) Session, 1926; See supra, Chap. I, n. 2, p. 18.

<sup>2</sup> See also Rule 1 of the Rules of Procedure of the P.M.C., Appendix A; See also Rule 2 of the Trusteeship Council's Rules of Procedure.

<sup>3</sup> See supra, Chap. III, n. 2, p. 219.

### b. Place of Sessions

As for holding sessions elsewhere, the Trusteeship Council's rules make adequate provision, whereas the rules of the Commission did not include a similar statement. When the Eighth Extraordinary Session of the Commission was held at Rome in 1927, in order to seek a solution to the revolt in Syria, the League Council stated that it was not to be considered as a precedent.<sup>1</sup> Thus the desirability of holding a special session closer to the scene of a problem was not recognized by the League Council. When and if a special session of the Trusteeship Council is held, the possibility of political influence being exerted, such as was thought to have taken place during the Commission's session at Rome, will not have the same drawbacks under the trusteeship system because the Trusteeship Council, unlike the Commission, is made up of representatives of states instead of independent experts.<sup>2</sup>

### 3. Reconvening and Adjournment

Closely allied to the provision for the holding of special sessions is the stipulation that the Trusteeship Council may adjourn a session

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<sup>1</sup> See Rules 2 & 6 of the Trusteeship Council's Rules of Procedure.

<sup>2</sup> League of Nations Official Journal, 1926, Part 1, p. 269; See also P.M.C., Minutes of the Seventh Session, 1925, pp. 130-132.

<sup>3</sup> See supra, Chap. III, Section 6.

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temporarily and then resume it at a later date. In this way the Council does not necessarily have to resort to the calling of a special session. Such a situation took place during the Council's second session. In the autumn of 1947, the Palestine situation called for the action of not only the General Assembly and the Security Council but the Trusteeship Council as well.

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As the Trusteeship Council had finished the discussion of a number of the items on the agenda, it decided to reconvene in February of 1948, in order more adequately to prepare for the action to be taken in relation to the Palestine question. This enabled the Council to devote nearly all of the second part of its second session to that issue. Because the Palestine situation called for an increasing amount of the Trusteeship Council's time, a third part to the second session was necessary and was held from April 21 through May 4, 1948.

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1 See Rule 7 of the Trusteeship Council's Rules of Procedure; See also Rule 5 which is closely related to the adjournment of sessions and the holding of special sessions. Rule 5 is very important since it gives the Trusteeship Council the right to alter the date of a regular session, thus enabling them to hold the regular session either earlier or later so as to skip the necessity of a special session. No similar provision was made in the Commission's rules of procedure.

2 See supra, Chap. II, n. 3, p. 123.

3 Trusteeship Council Official Records Second Session: Second Part from the Nineteenth Meeting (18 February 1948) to the Thirty-Fifth Meeting (10 March 1948), United Nations Doc. 1948; See Trusteeship Council Official Records Second Session: Third part from the Thirty-Sixth Meeting (21 April 1948) to the Forty-Sixth Meeting (4 May 1948), United Nations Doc., 1948, p. 1. The other questions discussed during the 3rd part of the 2nd session, and then only briefly, were the composition of the visiting mission to east Africa and the procedure of placing the annual reports of the mandatories at the disposal of the Council prior to the holding of its 3rd session. Thus for all intents and purposes the 3rd part of the 2nd session was devoted almost entirely to the Palestine question.

would have had to either remain in continuous session or call a special session. This device undoubtedly saves time and also cuts down on the additional work that the Secretariat would normally have to do in preparing a special session.<sup>1</sup> Thus the Council, by making use of this provision of its rules of procedure, was in a much more favorable position when its third session was held from June 3 through August 5, 1948, because the majority of the work connected with the Palestine situation was taken care of prior to the opening of the session, thus enabling the Council to devote its attentions to the examination of the annual reports on the administering authorities' administration of the trust territories and other important matters such as petitions from the natives of the trust territories.<sup>2</sup> The Commission could have definitely benefited if a similar provision had been inserted in its rules of procedure.

#### 4. The Agendas

The agenda for the session is adopted at the beginning of each session of the Trusteeship Council, but prior to this it is prepared by the Secretary-General and then approved by the President of the Council. The

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<sup>1</sup> Because the Secretariat has other duties besides the work being carried out for the Council, a special session would tax that organization to the utmost in order to assist in the preparation of the agenda for the session and to the sending of notifications of the session to the members of the Council and the other organs of the United Nations which are concerned and in addition any other duties which are likely to arise.

<sup>2</sup> See Trusteeship Council Official Records Third Session from the First Meeting (16 June 1948) to the Forty-third Meeting (5 August 1948), United Nations Doc., 1948.



same procedure was used by the Commission, but in place of the Secretary-General its rules designated the Secretariat as a whole.<sup>1</sup> The Secretariat in both cases communicated the agenda and the notices of the time of the sessions to the members of the Commission and the Council respectively, but under the trusteeship system the specialized agencies also receive the agenda. Such a provision was lacking in the Commission's rules, and in addition there was no mention of the notification of the Commission's sessions to the primary organs of the League or to League members which proposed items for the agenda, whereas under the trusteeship system notices were sent to the Security Council, to the Economic and Social Council, to the members of the United Nations which have proposed items of the Council's agenda and to the specialized agencies which are mentioned in rule 4 of the rules of procedure.<sup>2</sup>

As to the comparison of the actual agendas of the Commission and the Council, there is a general similarity. The Commission, with the exception of its first session, covered in its agenda a comprehensive list of items to be considered. The Commission did exceptionally well in formulating its agenda for such short explanation in its rules of procedure.<sup>3</sup>

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<sup>1</sup> See Rules 8 & 10 of the Trusteeship Council's Rules of Procedure; See also Rule 6 of the Rules of Procedure of the P.M.C., Appendix A.

<sup>2</sup> See Rules 4 & 8 of the Trusteeship Council's Rules of Procedure.

<sup>3</sup> P.M.C., Minutes of the Twelfth Session, 1927, Annex 1, p. 171; See also P.M.C., Minutes of the Twenty-seventh Session, 1935, Annex 2, pp. 189-192; See also P.M.C., Minutes of the First Session, 1921, pp. 1-40; See also Rule 6 of the Rules of Procedure of the P.M.C., Appendix A.

One of the reasons the Council has been able to function in a more satisfactory manner is because its rules provide for a list of considerations which must be examined at its regular sessions, thus ensuring that none of the routine items are bypassed. This enables the Trusteeship Council to have an extensive list of 13 items on the agenda of its first session, whereas the Commission, although it considered as many items, did not have a definite procedure to follow until its second session. In addition, the Council treats its rules on a provisional basis, whereas the Commission's rules were of a more permanent nature.<sup>1</sup>

In the addition or revision of items, the Council also had a much more satisfactory procedure. Though the Commission could add items there was no mention of other possible methods of revision such as deferring or deleting items as is done by the Council. Thus the Council has a definite advantage as can be seen by studying the minutes of its second session in which many of the items on the provisional agenda were deferred during the first part of the second session and were not again discussed until the third session so as to allow the Council to devote its full time to the Palestine situation.<sup>2</sup>

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<sup>1</sup> See Rules 9 & 10 of the Trusteeship Council's Rules of Procedure; See United Nations Trusteeship Council Official Records First Year: First Session from the First Meeting (25 March 1947) to the Twenty-seventh Meeting (28 April 1947), United Nations Doc. 1947, Preface P. X. See P.N.C., Minutes of the Second Session, 1922, Annex 1, pp. 80.

<sup>2</sup> See Rule 10 of the Trusteeship Council's Rules of Procedure; See also Rule 6 of the Rules of Procedure of the P.N.C., Appendix A; See Trusteeship Council Official Records Second Session: First Part from the First Meeting (20 November 1947) to the eighteenth Meeting (16 December 1947), United Nations Doc., 1948.

## 5. Questionnaires

Before the discussion can proceed to consideration of the major administrative duties and matters of policy formulation, it will be necessary to compare the questionnaires which were used in the preparation of the administering authorities' annual reports. The reason for stressing the importance of the questionnaire is that it has a direct bearing on the content of the annual reports which were so valuable in providing the Commission with information just as it does under the trusteeship system.<sup>1</sup>

Certain provisions, though not found in the League Covenant nor in the Commission's rules of procedure, were used in practice. One of the more important functions not mentioned was the formulation of a questionnaire for the mandatories in order to aid them in preparing their annual reports on the mandates under their supervision. This practice has been formalized in the United Nations Charter and is also included in the Trusteeship Council's rules of procedure thus giving the Council more adequate reports on trust territories from the outset.<sup>2</sup>

At its first session in 1921 the Commission drew up questionnaires for the "B" and "C" mandates but could not send them directly to the mandatories since the League Council had not only to approve them but also had to send them under Council authority. The questionnaires were short

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<sup>1</sup> See infra, Chap. III, pp. 236-243.

<sup>2</sup> See Rules 68 through 70 of the Council's Rules of Procedure; See also Article 88, Appendix C.

and did not begin to cover all the necessary questions which would effectively supply the Commission with the information necessary for an effective supervision of the mandate system. Because of its briefness, the mandatories often included an appendix to their annual reports which gave a brief resume of other important data concerning the mandates under their administration. In 1926, the Commission sought to augment its information on mandates by preparing a new questionnaire of one hundred and eighteen questions under twenty-two headings as compared to the fifty-one questions in use for the "D" mandates and the fifty in use for the "C" mandates which were each composed of thirteen sections. Such a move was especially desirable because the questionnaires then in use were based almost entirely on the articles of the mandate agreements, thus failing to portray the

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1 For the original "B" and "C" questionnaires which also remained in use, see P.M.C., Minutes of the Second Session, 1922, Annexes 2 & 3 pp. 81-84; See also supra, Chap. I, n. 1, p. 53. The main sections of the "B" and "C" questionnaires were the same and they consisted of thirteen sections under the following headings: slavery, labor, arms traffic, trade and manufacturing of alcohol and drugs, liberty of conscience, military clauses, economic equality, education, public health, land tenure, moral, social and material welfare, public finances, and demographic statistics.

2 See Annex C Mandates List of Questions which the Permanent Mandates Commission Desires Should be Dealt with in the Annual Reports of the Mandatory Powers, Assembly Doc. No. A. 14, 1926, VI [C.P.M. 407 (11)] 1926.

actual administration of the mandates.<sup>1</sup> As a result of this procedure, the Commission knew very little as to the structure of the mandate governments or the type of personnel used in their operation.

The approval of the League Council was necessary before the more comprehensive questionnaire could be placed into operation, but the League Council failed to reach unanimity on the subject.<sup>2</sup> Perhaps the major reason for not approving the Commission's proposal was that the mandatories, other than Belgium, protested against its adoption. Since three of the mandatories were members of the League Council at the time, the Council did not even bother to call for an official vote as the outcome was obvious. During the discussion the mandatories accused the Commission of usurping its original powers enumerated in the Covenant and claimed that the adoption of the revised questionnaire would extend the Commission's supervision to fields hitherto under the sole prerogative of the mandatory

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<sup>1</sup> See supra, Chap. I, n. 2, p. 35. In addition, the order of the questions was changed. Instead of starting with the particular and moving to the general considerations, the revised questionnaire began with the governmental policy of the mandatory along with the legal conceptions concerning the mandates administration. The 22 main headings were as follows: status of the territory, status of the native inhabitants of the territory, international relations, general administration, public finance, direct taxes, indirect taxes, trade statistics, judicial organization, police defence of the territory, arms and ammunition, social morale, and material condition of the natives, conditions and regulation of labor, liberty of conscience and worship, education, alcohol, spirits and drugs, public health, land tenure, forests, mines, and population.

<sup>2</sup> F.M.C., Minutes of the Eleventh Session, 1927, pp. 14-15-166-169, & 200. The Council supervised all the actions of the Commission and its prior approval was necessary on all substantive decisions. See supra, Chap. III, n. 1, p. 211.

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powers. Because of advance criticism by the mandatory powers, the effectiveness of the Commission was greatly reduced when it came to the detailed supervision of the mandates.

As for the questionnaire used in the "A" mandates, there was much discussion. One of the main reasons was due to the more thorough coverage given in the mandate charters concerning the actual administrative functions of government. Since the "A" mandates were farther advanced politically as well as economically, there was a greater necessity for more information in order to determine their diverse needs. Also the questionnaires for the "A" mandates were not alike as conditions were quite different in each of the three "A" mandates. For instance, the Palestine questionnaire was more extensive than the one for Syria and Lebanon because of the information required in relation to the establishment of a Jewish National Home in Palestine and many of the other complex problems of the Palestine mandate.

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1 League of Nations Official Journal, 1926, Part 2, pp.1253, 1255, & 1647-1653. Even though there was considerable opposition in the council it was rather strange that the measure was not approved because in the preamble of the questionnaire the Commission stated that it only desired that the mandatory reports be drawn up in accordance with the general plan of the questionnaire and should not be necessarily reproduced in the reports. This provision, it seems, would have taken care of at least some of the major objections of the mandatory powers. See League of Nations "B" and "C" Mandates List of Questions which the Permanent Mandates Commission Desires should be Dealt with in the Annual Reports of the Mandatory Powers, Doc. No. A 14, 1926, VI. [C.P.M. 407 (1)].

2 For an analysis of the questionnaires for the "A" mandates see League of Nations Mandate for Palestine Questionnaire, Doc. No. A, 38, 1922, VI and League of Nations Mandate for Syria and Lebanon Questionnaire, Doc. No. A. 54 1922 VI. The Questionnaire for Palestine consisted of 22 sections, whereas the one for Syria & Lebanon had only 16 sections. The Questionnaire for Iraq was postponed and never used because of the alteration of the mandate for Iraq. See P.M.C., Minutes of the Second Session, 1922, pp. 7 & 74; See also P.M.C., Minutes of the Tenth Session, 1926, p. 17.

In the trusteeship system there is only one questionnaire for all non-strategic territories. As a result, the answers to the individual questions will vary since each trust territory has been recognized as distinctly different from the others in relation to the manner by which the provisions of the trusteeship agreements are carried out. Actually the same held true for the mandate system, but the use of a single questionnaire was not adopted. It would have been more advantageous to have adopted one unified questionnaire for all the mandates, thus enabling the Commission to standardize its examination of the mandatory reports. However this could not have been achieved unless the whole system of questioning had been revolutionized, for the questions were based primarily on the articles of the mandate agreements. Instead of questions being concerned with only the specific guarantees of the agreements it would have necessitated caching them in broader titles as had been done in the trusteeship system. Likewise the questions are not drawn directly from the articles of the trusteeship agreements. As a result, the Trusteeship Council is now receiving more satisfactory reports than was the case under the mandate system.

In the near future, however, there will be two types of questionnaires for the trusteeship system. Although the questionnaire for the

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<sup>1</sup> See Trusteeship Council Provisional Questionnaire, United Nations Doc. No. T/44, 1947.

<sup>2</sup> For an appropriate example see the questionnaires for Palestine and Syria and Lebanon which have in parenthesis after each main section of the questionnaires the appropriate article or articles to which the question pertains. See supra, Chap. III, n. 2, p. 228.

Strategic Trust Territory of the Pacific Islands has not been drawn up, on March 7, 1949 the Security Council requested the Trusteeship Council<sup>1</sup> to formulate a questionnaire for the territory. Presumably this would mean that if any additional strategic trust territories were placed under the trusteeship system, they would likewise have a separate and distinct questionnaire. Thus in the future there might be not only two types of questionnaires but also several variations of the one for strategic areas. Just what the situation will be in regard to the questionnaire for an area in a trust territory which is later declared strategic is also another question which may possibly arise. All of these situations have an important bearing on the authority of the Trusteeship Council because the Security Council has the jurisdiction over all strategic trust territories. However, the Security Council is to avail itself of the assistance of the Trusteeship Council when appropriate.<sup>2</sup> In conformance to this provision of the United Nations Charter, the Security Council has already considered the role of the Trusteeship Council in its preparation of the questionnaire for the Territory of the Pacific Islands, and the Trusteeship Council is to send the questionnaire to the Security Council one month before

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<sup>1</sup> \_\_\_\_, "Role of the Council in 'Strategic' Trust Areas," United Nations Bulletin, V (July 1, 1948), pp. 549-551; United Nations Security Council Official Records Third Year 327 Meeting: 25 June 1948, No. 90, United Nations Doc., 1948, pp. 9-10; See also Security Council Official Records Fourth Year 415th meeting: 7 March 1949 No. 18, United Nations Doc., 1949 pp. 1-11; See also \_\_\_\_, "Responsibilities in Strategic Areas," United Nations Bulletin, VI (April 1, 1949) pp. 344-345.

<sup>2</sup> See Article 83, Appendix C.



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forwarding it to the administering authority. It is now evident that the Trusteeship Council will participate in an increasing amount in the strategic trust territory as a direct result of the work done in preparing  
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the questionnaire for the territory.

In relation to preparing the questionnaire for the non-strategic territories, the Trusteeship Council was in a much more favorable position than the Commission when it drew up the questionnaire for the "B" and "C" mandates. To begin with, the Council benefited from the experiences of the mandate system. In addition, information and suggestions were obtained  
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from the Economic and Social Council and from the specialized agencies. Because of this aid, the Council was able to approve the provisional questionnaire at its first session, whereas the Commission did not have any questionnaires prepared until the end of its second session. As a result, the Commission was unable to get the questionnaire to the administering authorities as soon as did the Trusteeship Council, thus resulting in many  
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irregularities in the first annual reports to the Commission.

There is an apparent contrast in the size and content of the Trusteeship Council's questionnaire to those used in the mandate system. There

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1 See supra, Chap. III, n. 1, p. 230.

2 See infra, Chap. III, Section H.

3 See supra, Chap. II, n. 4, p. 89.

4 P.N.C., Minutes of the Second Session, 1922, Annexes 2 & 3, pp. 81-84; See supra, Chap. II, n. 1, p. 89; See infra, Chap. III, pp. 236-242.

were 247 questions as compared to only 50 and 51 for the "C" and "B" mandates respectively, and a somewhat larger number for the "A" mandates. The content of the Council's questionnaire was similar to the Commission's revised one for the "B" and "C" mandates, but it was more thorough and exacting. Also of importance is the brief introductory descriptive section which was missing from the questionnaire prepared by the Commission. Besides a well-rounded group of questions on legal concepts and the actual administration of the territory, there is a more appropriate selection of questions pertaining to the economic and social advancement of the natives as well as to their educational advancement. If the actual questions were counted within each numbered question the number would actually be trebled, whereas the questionnaires used by the Commission usually attached a number to each question. Also under these main headings were included many sub-headings which oftentimes corresponded with some of the main sections of those used by the Commission. By this procedure the Trusteeship Council was able to use a number of new section headings without an increase over the number of main headings which were used by the Commission. With the principal headings held to a minimum, there was a tendency to more fully develop each major area of investigation.

The last four sections of the Trusteeship Council's questionnaire are entirely new in comparison with the Commission's questionnaires. The

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<sup>1</sup> See the mandate questionnaires which were previously cited above; See also *supra*, Chap. II, n. 5, p. 69; See also Trusteeship Council Provisional Questionnaire, United Nations Doc. No. T/44, 1947.

last section was particularly important because it was designed in order to permit the trust powers to show the achievements which have been attained in the economic, political, social, and educational fields in the trust territories under their supervision. Closely allied to this practice is the section concerning research which requests information on the local facilities engaged in conducting research in such fields as anthropology, geology, agriculture, economics, industry, law, education, and medicine. An investigation along these lines will tend to encourage the administering authorities to devote more time and energy toward the development of more adequate technological research in the trust territories. Also of importance is the section pertaining to the measures taken by the administering authorities in order to implement the suggestions and recommendations of the Trusteeship Council and the General Assembly. Without these last sections, the Trusteeship Council's questionnaire would have lost much of its effectiveness and thus as a result would have lost one of its major advantages over the questionnaires employed by the Commission.<sup>1</sup>

In addition, the questionnaire calls for a statistical appendix which is to supply information on population, taxation, trade, the administrative structure of the government and many other matters of importance. It is true that the questionnaires used by the Commission did include some information on the same subjects which are to be found in the statistical appendix, but they tended to lose their effect because they were

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<sup>1</sup> Ibid., p. 15.

not placed in a condensed form for ready reference.<sup>1</sup> The administering authorities are also required to give the Trusteeship Council additional information by supplying copies of all publications, laws, and regulations, issued by the local administration or the metropolitan government which relate to trust territories.<sup>2</sup> Under the mandate system, this procedure was followed in the case of the "A" mandates because the mandate charters called for such a provision and at several "B" and "C" mandates also agreed to supply the same information at the ninth session of the Commission.<sup>3</sup> It would have been beneficial to the Commission if all the official gazettes of the legislation for each mandate had been included as an appendix to the annual reports.

Since the Commission had to obtain the approval of the League Council before its questionnaires could be placed into operation its authority was greatly limited. On the other hand the Trusteeship Council did not have to obtain the General Assembly's approval before placing its questionnaire into operation, thus it was in a much more favorable position in relation to the relative authority of the two organs. As a result, the

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<sup>1</sup> Ibid., pp. 15-17. The Statistical Appendix consists of 13 sections which are: population, administrative structure of government, justice and penal administration, public finance, taxation, trade, enterprises and business organizations, housing, production: a. Agriculture, b. wines c. industries, d. fisheries, e. other, labor, cost of living, public health, and education.

<sup>2</sup> Ibid., Question 244, p. 15.

<sup>3</sup> See Article 17 of the Mandate for Syria and Lebanon, Appendix B; See also P.M.C., Minutes of the Sixth Session, 1925, p. 173; See also P.M.C., Minutes of the Ninth Session, 1926, p. 11.

administering authorities in the trusteeship system were not in as favorable a position to obstruct the approval of the Trusteeship Council's questionnaire when it was presented to the trust powers.<sup>1</sup> The situation is also true in relation to alterations, and although the Council did not revise its questionnaire during its fourth session as planned, definite consideration will be taken at the Council's fifth session.<sup>2</sup> Thus the Council has definitely shown that the questionnaire now in operation is on a provisional status, and when the revisions are made, it will be entirely possible that the Council will accept some of the administering authorities suggested revisions. The other organs of the United Nations will be consulted as well as the specialized agencies. Such cooperation was lacking in the mandate system.<sup>3</sup>

#### 6. Reports

The importance of the discussion on questionnaires will be further included in the comparison of the various types of reports used in the

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<sup>1</sup> For a detailed explanation of the manner in which the mandatories obstructed the approval of the Commission's modified questionnaire, see supra, Chap. III, pp. 226-228; See also supra, Chap. II, n. 2, p. 88; See also supra, Chap. III, n. 2, p. 209;

<sup>2</sup> Report of the Trusteeship Council Covering its Second and Third Sessions 29 April 1947-5 August 1948, United Nations Doc. No. A/603, 1948 p. 4; See also \_\_\_\_\_, "Important Issues before the Trusteeship Council," United Nations Bulletin, VI (January 15, 1949) p. 89; See also \_\_\_\_\_, "Issues before the Trusteeship Council," United Nations Bulletin, VI (June 15, 1949), p. 625.

<sup>3</sup> See infra, Chap. III, Section H.

two systems, as well as in the examination procedures adopted and the ultimate results obtained.

a. The Administering Authorities Annual Reports

There was a great deal of importance attached to the administering authorities annual reports which were reviewed by the Commission. Rule 8 of the Commission's rules of procedure and paragraphs 7 and 9 of Article 22 of the Covenant placed particular stress on its importance.<sup>1</sup> Likewise the trusteeship system emphasized the necessity of the administering authorities annual reports.<sup>2</sup> It is only natural, since the annual reports are one of the chief means of receiving information for the Trusteeship Council and was definitely the most important means of obtaining information for the Commission.

In the mandate system the annual reports were sent directly to the League Council while in the trusteeship system those for non-strategic areas are sent to the General Assembly, whereas the Security Council receives the reports for strategic trust territories.<sup>3</sup>

Although the reports for non-strategic areas are not made directly to the Trusteeship Council, it examines them in the first instance. The

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<sup>1</sup> See Rule 8 of the Rules of Procedure of the P.M.C., Appendix A; See also paragraphs 7 & 9 of Article 22 of the Covenant, Appendix A.

<sup>2</sup> See Rules 72 & 75 of the Trusteeship Council's Rules of Procedure; See also Articles 87 & 88, Appendix C.

<sup>3</sup> See Article 83, Appendix C; See also infra, Chap. III, n.3, p.256.

same policy was followed by the Permanent Mandates Commission, but its examination was of a preliminary nature as compared with the investigation<sup>1</sup> carried on by the Trusteeship Council.

Even though the reports of the mandatories received the most careful consideration at the preliminary examination by the Commission, it nevertheless had to have the League Council's approval before any of its recommendations, based on the annual reports, could be adopted. The Trusteeship Council, on the other hand, has the power to carry out its decisions. However, if these decisions are not to the satisfaction of the Assembly they can of course be amended, because the Council is under the authority<sup>2</sup> of the General Assembly. Such a procedure will enable urgent matters to be handled in a much shorter time interval, but yet at the same time the necessary safeguards are thus included.

The effectiveness of the mandate system was definitely reduced by the long drawn out procedure of having the Commission's observations first sent to the League Council, thence to the mandatories, who at that time commented on the Commission's recommendations, replied back to the League Council, which in turn informed the Commission of the mandate powers' action.<sup>3</sup> With the greatly shortened procedure adopted by the trusteeship system, the annual reports take on an added significance. For instance,

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<sup>1</sup> See supra, Chap. III, n. 2, p. 209; See infra, Chap. III, n. 2, p. 237.

<sup>2</sup> See supra, Chap. III, n. 1, p. 211; See Article 67, Appendix C.

<sup>3</sup> P.M.C., Minutes of the Second Session, 1922, p. 75.

the recommendations based on the annual reports which are reviewed by the Council are forwarded to the administering authorities by the General Assembly, but in the Council's name, and then in turn the trust powers inform the Trusteeship Council directly of the action to be taken.

There are several significant differences in relation to the promptness of the presentation of the annual reports and their review by the Commission and the Trusteeship Council. Although the reports for the mandates were to be placed in the possession of the Commission approximately six weeks prior to its meeting, the mandatories did not always follow this practice.<sup>1</sup> In fact at its eleventh session only three of the eight reports due on May 20, 1927 were placed in the hands of the Commission. Although prior to that date the Commission attempted to review each of the reports, it was not too successful, thus nearly causing a delay in the review of several reports.<sup>2</sup>

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<sup>1</sup> The annual reports for Palestine, Syria, French Cameroons and Togoland, Tanganyika, Southwest Africa, New Guinea, and Nauru were to be placed in possession of the Commission before May 20, of each year which allows less than a month's leeway prior to the Commission's June session, while those concerning, Iraq, British Cameroons and Togoland, Ruanda-Urundi, Western Samoa, and the Japanese mandated islands were to be presented before September 1, of each year, thus giving the Commission at least two months to review the reports prior to its November session. See Rule 5 of the Rules of Procedure of the P.M.C., Appendix A.

<sup>2</sup> P.M.C., Minutes of the Eleventh Session, 1927, p. 13; See also P.M.C., Minutes of the Twelfth Session, 1927, pp. 13-14. A similar discrepancy was noticed at the twelfth session, at which time four out of the six reports that were examined were received after the deadline fixed by the League Council.



Also the antiquated rules of the Commission did not take into consideration the fact that some of the mandatories did not base their reports on the calendar year. Australia's report for New Guinea ran from July 1 to June 30 while New Zealand's report on Western Samoa was from April 1 to March 31. Because of this procedure Australia was given until the following May 20 before its report on New Guinea was presented to the Commission. As a result conditions in the mandate remained unreviewed for almost a year and without necessary recommendations for beneficial changes in the administration of the territory. Such a situation did not provide the inhabitants of the territory with the proper safeguards, and though the problem was discussed by the Commission during its 1925 and 1926 sessions, a decision was not reached as to the feasibility of having the report examined at the Commission's November session. In addition, the presentation of the New Zealand report for Western Samoa was postponed until the September 1 deadline, but the reasons for granting a postponement on the reports for the Pacific islands mandate, British Cameroons and Togoland, Ruanda-Urundi, and Iraq are not very well explained.

Under the trusteeship system a much more satisfactory plan has been adopted. The Council's rules of procedure provide that the annual reports

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<sup>1</sup> P.M.C., Minutes of the Sixth Session, 1925, p. 6; See also P.M.C., Minutes of the Seventh Session, 1925, p. 6, 211; See also League of Nations Official Journal, 1926, Part 1, pp. 269-270. The desirability of having the New Guinea report examined at the November session, as was the New Zealand report, is obvious. By such a procedure, the report would have been examined six months earlier than was the actual case.

shall be presented to the Council within four months after the termination of the year to which it refers, whereas under the Commission's rules of procedure the report merely had to be presented approximately six weeks to two months prior to its sessions, that is on May 20, for the June session and on September 1, for the November session. As a result, some of the mandatories were hard pressed in order to have the reports in by the deadline, but this situation will not ordinarily take place under the trusteeship system because all the administering authorities are entitled to four months after the end of their administrative year in order to prepare their reports.<sup>1</sup>

Nevertheless, such a situation did occur during the examination of the administering authorities first annual reports. Since the trusteeship system did not become operative until March 1947, the administering authorities experienced difficulty in presenting the reports within the proper time interval. This was one of the reasons for the overdue reports with respect to British Togoland and the Cameroons and French Togoland and the Cameroons.<sup>2</sup> However, because of the flexibility of the Trusteeship Council's rules pertaining to sessions, these reports have been considered at

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<sup>1</sup> See *supra*, Chap. III, n. 3, p. 238; See rule 72 of the Trusteeship Council's Rules of Procedure.

<sup>2</sup> Report of the Trusteeship Council Covering its Second and Third Sessions 29 April 1947 - 5 August 1948, United Nations Doc. No. A/630 1948, p. 5.

its fourth session which was held in January through March, 1949.<sup>1</sup> As the Council had other important business during its third session, the delay in their discussion was reasonable, but for the benefit of the inhabitants and the international community there should be a promptness on the part of the administering authorities in the presentation of their annual reports at the required time and a desire on the part of the Trusteeship Council to review these reports at the earliest opportunity. In addition these reports were not in the possession of the Council for the required six weeks prior to the holding of the third session which commenced on June 16, 1948. The Council, nevertheless, decided to review the report on the administration of Ruanda-Urundi, even though it was transmitted to the Secretary-General on May 6, 1948, just one day later than required by rule 72 of its rules of procedure.<sup>2</sup> If this practice is not continually re-started to, it will benefit the trusteeship system by giving it an added flexibility over that of the mandate system.

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<sup>1</sup> See supra, Chap. III, pp. 218-223; See also Trusteeship Council Official Records Third Session from the First Meeting (16 June 1948) to the Forty-third Meeting (5 August 1948), United Nations Doc. 1948, pp. 478-479; See also \_\_\_\_\_, "Council's Report on British Togoland," United Nations Bulletin, VI (April 15, 1949), pp. 370-371; See also \_\_\_\_\_, "Council's Report on British Cameroons," United Nations Bulletin, VI (April 15, 1949), pp. 366-368; See also \_\_\_\_\_, "Council's Report on French Cameroons," United Nations Bulletin, VI (April 15, 1949), pp. 368-370.

<sup>2</sup> See Rule 72 of the Trusteeship Council's Rules of Procedure; See also the Report of the Trusteeship Council Covering its Second and Third Sessions 29 April 1947-5 August 1948, United Nations Doc. No. /670, 1948, p. 5.

As for the content of the reports and their form, there was a great deal of diversity in the mandate system. They ranged from 50 to 300 pages in length depending on the administering authorities practices and in which category the mandate belonged.<sup>1</sup> With relation to the annual reports received by the Trusteeship Council, it is, at the present time rather difficult to relate any data as to their general form or content. Since the Council receives only 400 copies of each annual report, access to them is practically impossible.<sup>2</sup> Also the United Nations Secretariate has made no provisions for the publishing of any additional copies for the benefit of the general public. This is definitely a system of supervision very favorable to the interests of the administering authorities and very unfavorable for the inhabitants of the trust territories. Likewise, it places those interested persons engaged in research at a disadvantage. Thus, with only 400 copies of each report there are barely

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<sup>1</sup> Wright, *op.cit.*, pp. 161 & 203.

<sup>2</sup> However, copies can be obtained by applying directly to the administering authorities. The annual reports for Tanganyika and British Cameroons were received in this manner. See Report by His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland to the Trusteeship Council of the United Nations on the Administration of the Cameroons under United Kingdom Trusteeship for the year 1947, Colonial No. 221, London: His Majesty's Stationery Office, 1948; See also Report by His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland to the Trusteeship Council of the United Nations on the Administration of Tanganyika for the Year 1947, Colonial No. 220, London: His Majesty's Stationery Office, 1948.

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enough for the use of the organs of the United Nations. Just such a situation also took place under the mandate system; however, only 100 copies of each report were presented to the Commission thus placing the Commission at a greater disadvantage than the Trusteeship Council. In addition, the mandatories oftentimes failed to send the required number of copies. An attempt was made in 1925 to make the reports more available to the public, and in that year they were printed by the League. This practice was discontinued because of the added expense, thus giving the general public the opportunity to review only one years annual reports. 2 It would be extremely desirable to have the United Nations Secretariat republish the administering authorities annual reports. If not done, this function of the trusteeship system will be definitely lacking and at present shows little improvement over that of the mandate system. As a result, the only avenue open is to determine the content and desirability of their reports through the comments and recommendations set forth by the Commission and the Trusteeship Council in their reports to the League Council and the General Assembly respectively.

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1 See Rule 75 of the Trusteeship Council's Rules of Procedure.

2 See Rule 5 of the Rules of Procedure of the P.M.C., Appendix A; See also P.M.C., Minutes of the Seventh Session, 1925, p. 8; See also P.M.C., Minutes of the Ninth Session, 1926, p. 9; See also P.M.C., Minutes of the Tenth Session, 1926, p. 13. However, copies of the annual reports when available could be obtained by request from the publications department of the League Secretariat. This practice was somewhat more advantageous than the one now being resorted to by those interested in obtaining the administering authorities annual reports from the trust territories. It enabled scholars to obtain copies without being obliged to apply to the administering authorities in four different continents as is now the situation under the trusteeship system.

b. Reports of the Commission and the Trusteeship Council

The comments and recommendations of the Trusteeship Council are much more comprehensive than those of the Commission. For instance, instead of following a trend of thought through to its ultimate end, the Commission's reports to the Council usually referred back to the minutes of the last session. In other words, the Commission frequently indicated the page numbers to refer to in order to obtain the full account on a certain

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1 The Trusteeship Council discusses the annual report on each trust territory individually just as was done by the Commission. The Commission, however, failed to give a review of conditions in the trust territories based on the annual report of the mandatories. Without such preliminary background material, the observations of the Commission did not have the proper emphasis. Likewise the Trusteeship Council divided its review on each trust territory into a much more satisfactory arrangement. Whereas the Commission used general and special observations as its main sub-divisions, the trusteeship Council developed its discussion into not only observations with its numerous sub-headings but in addition adopted a section on conclusions and recommendations. Without an enumeration of the Trusteeship Council's conclusions and recommendations, this part of the report would be little better than the procedure developed by the Commission. As a result, it is rather difficult to determine in many instances whether the Commission was merely making a general observation or was recommending that the mandatory comply to certain observations of the Commission. In addition, the Trusteeship Council handled the section on petitions in a more complete manner by including enough background material so as to acquaint the reader with the problems being discussed. Report of the Trusteeship Council covering its Second and Third Sessions 29 April 1947-5 August 1948, United Nations Doc. No. A/603, August 1948, pp. 5-39. See also P.M.C., Minutes of the Twelfth Session, 1927, pp. 197-205; See also P.M.C., Minutes of the Twenty-seventh Session, 1935, pp. 224-238.

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topic of discussion. Because of this practice it is rather difficult to determine whether the Commission was actually requesting additional information or merely making a general observation.<sup>2</sup>

The Commission's reports were handled in this manner because of its decision to publish the minutes of the session and its reports to the Council as one document. However, the document or documents covering the minutes of the Trusteeship Council's sessions have so far consisted of 700 or more pages, thus making it impracticable to include its annual report within such a voluminous document. On the other hand the Commission's minutes did not as a rule run over 200 to 250 pages at the most.<sup>3</sup> As a result it was convenient for the Commission to include its report to the Council within the document covering the minutes of the sessions.

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1 This procedure in itself would have been very desirable providing that enough background material would have been included so as to bring about a continuity of thought to the problems or issues being discussed. The Trusteeship Council did indeed refer to additional documents but not in such a way that would tend to disrupt the trend of thought in the topic being discussed. See *supra*, Chap. III, n. 1, p. 244.

2 See the minutes of the Sessions of the Permanent Mandates Commission. See also Trusteeship Council Official Records First Year: First Session from the first meeting (26 March 1947) to the Twenty-seventh Meeting (28 April 1947), United Nations Doc., 1947; See also Trusteeship Council Official Records Third Session from the First Meeting (16 June 1948) to the Forty-third Meeting (5 August 1948), United Nations Doc., 1948.

3 See the minutes of the Sessions of the Permanent Mandates Commission; See also Trusteeship Council Official Records First Year: First Session from the First Meeting (26 March 1947) to the Twenty-seventh Meeting (28 April 1947), United Nations, Doc. 1947; See also Trusteeship Council Official Records Third Session from the First Meeting (16 June 1948) to the Forty-third Meeting (5 August 1948), United Nations Doc., 1948.

This procedure failed, however, to present an over-all picture of the Commission's work. For instance, many of the questions concerning petitions or the legislative enactments of the administering authorities could not always be properly discussed on the basis of just one session of the Commission. The Trusteeship Council, however, has remedied this situation by providing for an annual report to the General Assembly on its activities in discharging its responsibilities under the trusteeship system.<sup>1</sup> Thus the Council's report is not based almost exclusively on the mandatory annual reports as was the case under the mandate system. Oftentimes, little else was included in the Commission's reports to the Council, whereas the Trusteeship Council refers to the trusteeship activities throughout the entire year instead of merely the business before the Council at the time of its sessions.

One point must be raised at this time in relation to the Trusteeship Council's annual reports and its comparison to the reports that were presented by the Commission. They are similar in that the Trusteeship Council's report is presented following the conclusion of one of its sessions. Due to the flexibility of its sessions the report will not always be presented at the same time each year, for the Council's rules of procedure merely state that its general report must be presented annually to the General Assembly, therefore not specifying any definite date.<sup>2</sup> In

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<sup>1</sup> See Rule 101 of the Trusteeship Council's Rules of Procedure; See also supra, Chap. III, n. 4, p. 106.

<sup>2</sup> See Rule 100 of the Trusteeship Council's Rules of Procedure; See also supra, Chap. III, pp. 172-175.



comparison, the Council's report to the General Assembly for 1947 was presented in June, while the report for 1948 was presented in August, 1948. In fact the Council did not terminate its third session until August 5, 1948, thus its second report follows very closely to the above deduction that the Council's annual report will continue to normally follow upon the completion of one of its sessions.<sup>1</sup>

In respect to the manner in which the comments of the administering authorities are presented, there is a great divergence. Under the mandate system the Commission's observations were sent to the mandatories and their accredited representative was entitled to attach his own remarks. These remarks were then included at the end of the Commission's report to the Council.<sup>2</sup> However, this device was not extensively used, and as a result the Commission had frequently to request not only additional information on certain subjects, but also had to request the mandatories to reply directly to the League Council on the action or actions they were taking in order to comply with the Commission's requests.<sup>3</sup>

Previous to this time, the mandatories were answering the Commission's requests for additional information by including the material in their

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<sup>1</sup> Trusteeship Council Report to the General Assembly Covering its First Session (26 March-28 April 1947), United Nations Doc. No. A/312, June 12, 1947; See also Report of the Trusteeship Council Covering its Second and Third Sessions (29 April 1947-5 August 1948), United Nations Doc. No. A/607, August, 1948.

<sup>2</sup> See Rule 8 of the Rules of Procedure of the P.M.C.; See also P.M.C., Minutes of the Twenty-seventh Session, 1935, p. 239.

<sup>3</sup> P.M.C., Minutes of the Fourteenth Session, 1928, p. 16; See also P.M.C., Minutes of the Fifteenth Session, 1929, pp. 20-24, 130-131, 204 & 290.

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next annual reports. But this practice made it difficult for the Commission to determine whether the mandatories had actually complied with its recommendations since the information was usually lost within the annual reports. Even if such information had been included under a special section of the reports, the results would not have been as satisfactory as those now being obtained by the trusteeship system.

Under the trusteeship system, the administering authorities do not attach their remarks to the Trusteeship Council's annual report to the General Assembly as was sometimes the case under the mandate system.<sup>2</sup> Since the administering authority is entitled to have a special representative present at the discussion of the annual report for the trust territory or territories under its supervision, the views of the administering authority will be made fully known at this time.<sup>3</sup>

The appointing of a representative who is well informed on the trust territory is of tremendous value to the Trusteeship Council as well as to the administering authority. In this way the administering authority can have its interests protected by having a fully qualified representative to defend its administration. Likewise the Trusteeship Council could obtain a clearer picture as to the actual conditions in the trust territories. The same practice was followed in the mandate system but it was not

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1 P.M.C., Minutes of the Twelfth Session, 1927, p. 13.

2 See supra, Chap. III, n. 2, p. 247.

3 The mandatories, likewise, had the opportunity to appoint a specially qualified representative to be present at the sessions of the Permanent Mandates Commission. See Rule 8 of the Rules of Procedure of the P.M.C.

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employed to any considerable degree.

Whether under the mandate system or the trusteeship system, the special representative of the administering authority was, as a general rule, an individual who had participated in colonial administration. In several instances the representative was the Governor of the Territory. Such was the case during the discussion of the Belgian report for Ruanda-Urundi which was reviewed at the Trusteeship Council's third session.<sup>2</sup> It would be very desirable if all the administering authorities would follow the Belgian practice of appointing the Governor of the trust territory as special representative during the examination of their annual reports. In this way, the Trusteeship Council would be in a much more favorable position to receive adequate first hand information on the questions raised concerning conditions in the trust territories than would have ordinarily been the case.

In several instances the mandatories did not send a representative to answer questions when the annual report on their respective mandates were being discussed.<sup>3</sup> Such a situation has not as yet taken place under

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1 See Rule 74 of the Trusteeship Council's Rules of Procedure. See the Minutes of the Sessions of the P.M.C. and the Minutes of the Sessions of the Trusteeship Council for additional information on the types of questions asked and the answers given.

2 Report of the Trusteeship Council Covering its Second and Third Sessions (29 April 1947-5 August 1948), United Nations Doc. No. A/603, August 1948, pp. 5-10; See also P.M.C., Minutes of the Ninth Session, p. 216. At the ninth session 5 of the 8 representatives at the examination of the annual reports were governors of the mandated territories.

3 P.M.C., Minutes of the Second Session, 1922, p. 16; See also P.M.C., Minutes of the Seventh Session, 1925, p. 16, 134 & 216.

the trusteeship system. However a discrepancy of a similar nature took place during the review of Australia's annual report for the trust territory of New Guinea. The report was to be examined during the second session, but the government of Australia did not send a special representative to be present at the Council's final discussion of the report. During the first part of the second session, a preliminary examination was held, and it was decided that the final examination be postponed until the administering authority was able to obtain information on a number of questions which were discussed at that time. At the Council's thirty-third meeting the report was again considered but Australia did not send a special representative to be present at the discussion. As a result, the final examination of the New Guinea report was postponed until the

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third session.

This is a discrepancy which, if allowed to take place again, may possibly establish a dangerous precedence. The final review of the report should have taken place during the second part of the Council's second session which was terminated on March 10, 1946, whereas it was not held until July, 1948. In order for the trusteeship system to function properly, a prompt review of the annual reports is necessary; therefore, it might be advisable to revise rule 74 of the Council's rules of procedure so as to make it mandatory that a special representative be present when

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<sup>1</sup> Report of the Trusteeship Council Covering its Second and Third Session (29 April 1947-5 August 1948), United Nations Doc. No. A/603, August 1948, p. 10-11.

each of the annual reports on the trust territories is being reviewed. At present, rule 74 provides that the administering authority shall be entitled to have a special representative present at the discussion of the annual report.<sup>1</sup>

### c. Special Reports

In addition to the administering authorities annual reports, special reports are frequently necessary. Such reports were requested by the Commission in order to obtain further information on matters which necessitated immediate review. Two of the most important examples were the Bondelzwart Rebellion and the Druse-Arab revolt of 1925-26.<sup>2</sup> However, the Commission did not institute the requests for additional information. These two situations were brought to the attention of the Commission through action initiated by the Assembly of the League so the Commission could not request the administering authority to answer by special report without the League Council's approval.<sup>3</sup>

A similar situation does not exist in the trusteeship system because the Trusteeship Council does not have to await the General Assembly's approval in case a special report is necessary. Although there have not been any situations in the trusteeship system necessitating a special report to the Trusteeship Council, the administering authorities have submitted routine information on request.<sup>4</sup>

<sup>1</sup> See Rule 74 of the Trusteeship Council's Rules of Procedure.

<sup>2</sup> See supra, Chap I, n. 2, p. 28.

<sup>3</sup> See supra, Chap. III, n. 2, p. 209 & n. 1, p. 211.

<sup>4</sup> Report of the Trusteeship Council Covering its Second and Third Sessions 29 April 1947-5 August 1948, United Nations Doc. No. A/603, 1948; See supra, Chap. II, n. 1, p. 105.

In addition, the Trusteeship Council has reviewed reports of a very special nature which were not presented by the administering authorities. The two most important reports of this nature were the report to the Trusteeship Council by the United Nations Mission to Eastern Samoa and the report submitted by the Union of South Africa for the former mandated territory of Southwest Africa.<sup>1</sup> Under the mandate system the Commission was not given the authority to review reports of this nature nor to make comments upon them.<sup>2</sup>

In the Samoan report, the Trusteeship Council conducted the entire examination which would have been unheard of in the mandate system; moreover the Trusteeship Council did not first have to secure the General Assembly's permission.<sup>3</sup> An entirely different situation exists in consideration of the report of Southwest Africa. Because not only is the territory not under the trusteeship system but the Trusteeship Council did not request the report. The report was requested by the General Assembly and was examined by the Trusteeship Council only after authorization had been received from the Assembly. This was a very peculiar situation because the Council did not have the authority to examine the report since the area was not under the trusteeship system. The Trusteeship Council, upon

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<sup>1</sup> See supra, Chap. II, n. 3, p. 103; See also supra, Chap. II, n. 3, p. 92.

<sup>2</sup> See supra, Chap. III, n. 2, p. 209 & n. 1, p. 211.

<sup>3</sup> The report to the Trusteeship Council by the United Nations Mission to Eastern Samoa will be further discussed in the section on visits. See infra, Chap. III, n. 1 & 2, p. 263 and n. 1, p. 264.

examining the report, found that additional information was necessary so it requested the Union of South Africa to supply additional information in the form of a special report to the Council. This special report was examined by the Council at its third session, and the Council's observations were examined by Committee 4 (Trusteeship) of the General Assembly from the ninth to the twenty-second of November, 1948. Although at this time it is too early to determine the extent to which the Union intends to follow the recommendations of the General Assembly and Trusteeship Council, the next annual report will undoubtedly shed additional light on the topic. The Council has definitely set a precedence which will more than likely tend to increase the Council's activities beyond those of the actual trust territories, providing of course the General Assembly gives its approval.

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<sup>1</sup> See supra, Chap. II, pp. 92-94. See also Resolutions adopted by the Trusteeship Council during its Second Session from 20 November 1947 to 4 May 1948, United Nations Doc., 1948, pp. 16-21. The 50 questions which the Trusteeship Council transmitted to the Union of South Africa were very thorough and exacting. They dealt with government, financial, and economic questions, land and reserves, education, and health, but by far the greater number of these questions dwelt on the Southwest African land problem. Just what the Union of South Africa intends doing in order to improve the inhabitants well-being remains to be seen. However, the Trusteeship Council's method of questioning will aid the General Assembly in making the necessary recommendations to the Union of South Africa pertaining to the administration of Southwest Africa.

<sup>2</sup> See Trusteeship Council Official Records Third Session Supplement, United Nations Doc. T/137, 1948, pp. 51-152; For a discussion of the Council's observations, see Official Records of the Third Session of the General Assembly, Part I Trusteeship Fourth Committee Summary Records of Meetings 21 September - 22 November 1948, United Nations Doc., 1948, pp. 287-378.

These practices are contrary to those of the mandate system and typify the divergency in scope of operation between the Commission and the Council. One example which typifies the Commission's lack of authority was its role in the demarkation of the boundaries of the mandated territory of Iraq. The League Council took complete charge and did not consult the Commission on the matter.<sup>1</sup>

The activities of the Trusteeship Council in the Palestine situation are also worthy of mention. The General Assembly gave the Trusteeship Council a free hand in elaborating and approving a detailed statute for the City of Jerusalem. The Council gave the General Assembly a detailed report on its draft statute and also issued a separate report on the protection of the City of Jerusalem and its inhabitants.<sup>2</sup> The granting of such power by the General Assembly enabled the Trusteeship Council to act more quickly and much more satisfactorily than was the usual case in the mandate system.

#### 7. Petitions

In the various ways of obtaining information which have been discussed, there has been little or no mention of the petitioning procedures used under the mandate system and the trusteeship system.

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<sup>1</sup> See supra, Chap. I, n. 5, p. 51.

<sup>2</sup> See supra, Chap. II, n. 1, p. 123; See also Report of the Trusteeship Council Covering its Second and Third Sessions 29 April 1947-5 August 1948, United Nations Doc. No. A/603, August 1948, pp. 41-42.



Regardless of their source, petitions have an important place in the trusteeship system just as they had in the mandate system. They are one of the most important sources of obtaining information from the native inhabitants of the territories or any other interested persons or organized groups.

No specific reference was made concerning petitions in either the League Covenant or the rules of procedure of the Permanent Mandates Commission. Even the mandate agreements themselves did not mention the possibility of petitions. As a result, when the question arose before the Commission, an important decision had to be made. Since the Commission could not pass on such questions, the League Council had to hand down a decision. In so doing, the Council used a British memorandum as a basis<sup>1</sup> for its ruling on petitioning procedures.

Under this plan petitions from the inhabitants of a mandate had to be transmitted first to the mandatory power which was entitled to attach<sup>2</sup> comments before dispatching the petition to the Commission. This was convenient for the mandatory power, as it could make its policy or position much more acceptable. Because of this procedure, there was a natural tendency on the part of the natives to fear that they would be punished since the mandatory might possibly fail to send the petition on to the

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<sup>1</sup> P.M.C., Minutes of the Second Session, 1922, p. 15; See also P.M.C., Minutes of the Twelfth Session, 1927, pp. 176-77; In addition see League of Nations Official Journal 1922, part 2, pp. 1176-1245; See also League of Nations Official Journal, 1923, part 1, pp. 200 & 211.

<sup>2</sup> See supra, Chap. I, n. 3, p. 29.

Commission. In one instance the mandatory actually tried to discourage the natives from petitioning the Commission. This occurred during the disturbances in Western Samoa in 1927.<sup>1</sup>

Such a situation is unlikely under the trusteeship system because its rules of procedure tend to remedy this type of abuse. Petitions no longer have to follow the channel of being submitted to the administering authority but may be communicated directly to the Secretariat of the United Nations. However, the League procedure of submitting the petition to the Council can still be used.<sup>2</sup>

In regard to petitions from other sources, the trusteeship system is also much more liberal. The Trusteeship Council will receive petitions from any and every source inside or outside the trust territory. That is, of course, providing they concern one of the trust territories on the operation of the international trusteeship system. Thus the Trusteeship Council has thrown out certain petitions which did not pertain to the trusteeship system.<sup>3</sup>

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<sup>1</sup> P.M.C., Minutes of the Thirteenth Session, 1928, pp. 123 & 133-134.

<sup>2</sup> For additional information on the petitioning procedure of the Trusteeship system, see supra Chap. II, pp. 94-102; See also Rules 82 & 83 of the Trusteeship Council's Rules of Procedure.

<sup>3</sup> See Rules 76 & 77 of the Trusteeship Council's Rules of Procedure; See supra, Chap. II, n. 2 & 3, p. 95. However, the function of the Trusteeship Council with respect to petitions from strategic areas are not governed by the Trusteeship Council's rules of procedure but by Article 83 of the United Nations Charter. In other words, the role of the Trusteeship Council in relation to petitions from strategic areas is governed by the conclusions reached by the joint-committee of 3 members representing the Trusteeship Council and a similar number from the Security Council. The Security Council, in approving these recommendations, has authorized the Trusteeship Council to formulate the questionnaire for the strategic Trust Territory of the Pacific Islands and has directed the Trusteeship Council to participate in the petitioning procedures. See supra, Chap. II, n. 1 & 2, p. 66; See supra, Chap. III, pp. 229-231 and n. 1, p. 230.

Under the mandate system there was also the difficulty of determining just what type of communication could be considered as a petition. Due to the lack of a proper definition, many memoranda, memorials, and other communications were treated as petitions when they could just as easily be handled as additional or supplementary information. This procedure would have worked very satisfactorily since routine information was catalogued and prepared by the League Secretariat for the Commission's use. However, in the trusteeship system a stricter policy has been adopted as to what actually constitutes a petition. Also the Council has an ad hoc Committee on petitions which conducts a preliminary examination of all the petitions on the agenda of its coming session. In this manner the Trusteeship Council has saved valuable time which has enabled it to obtain more satisfactory results after the substance of petitions have been reviewed.

As for oral petitions, there was no provision for their consideration under the mandate system. Consideration was given to the matter but favorable action failed to materialize. The main reason was that the administering authorities felt it would tend to undermine their authority.

<sup>1</sup> P.M.C., Minutes of the Fifth Session, 1924, pp. 115-116; See also Minutes of the Twelfth Session, 1927, p. 176.

<sup>2</sup> See Rules 79 & 81 of the Rules of Procedure of the Trusteeship Council; See supra, Chap. II, n. 1, p. 97; For a good example of petitions being turned down because they did not pertain to the Trusteeship system or because of previous Council rulings pertaining to them, see Report of the Trusteeship Council Covering its Second and Third Sessions 29 April 1947-5 August 1948, United Nations Doc. No. A/603, 1948, pp. 32-29.

<sup>3</sup> League of Nations Official Journal, 1926, Part 2, pp. 1231-37; See P.M.C., Minutes of the Eleventh Session, 1927, pp. 10-11; See supra, Chap. I n. 4, p. 31.

Thus the petitioners who actually applied for an oral hearing of their petitions were turned down by the Commission.<sup>1</sup> But it was an entirely different situation in the trusteeship system. The Trusteeship Council has already permitted the use of oral hearings of previously submitted written petitions. The most outstanding oral hearing to date was the petition from the All-Swe Conference which sent a representative to the council's second session in December 1947. This resort to an oral hearing proved very successful, thus paving the way for its future use.<sup>2</sup>

There is also the provision for petitions to be heard orally which have not been previously submitted in writing.<sup>3</sup> Such a petition of this type has not been heard but a very important decision has been reached concerning written petitions which are also up for an oral hearing. During the Council's third session the petition from the Bakweri Land Committee of the Cameroons was up for examination. Before the session, the petitioners requested that they be granted an oral hearing. The Trusteeship Council refused to allow it because the Bakweri Land Committee did not have a representative present. It looked as though the Council was attempting to abuse the rights of the petitioners. However, this was not the true situation. In reality, the Council was preventing a dangerous abuse before it could materialize for the Bakweri Land Committee had

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1 See supra, Chap. I, n. 4, p. 31.

2 See supra, Chap. II, pp. 97-100; See infra, Chap. III, n.1, p. 259.

3 See Rule 80 of the Trusteeship Council's Rules of Procedure.

intended to employ someone other than a member of their group so as to enable the petitions to be reviewed at the Council's third session.<sup>1</sup> By so doing, they would not have to pay the expenses for an individual to make the trip from Africa. This would have resulted in the use of a professional petitioning lawyer, which if allowed to take place, would result in a dangerous precedent, since nearly all petitions would be heard orally if a precedent of this sort had been set. It would also have tended to undermine the whole petitioning system.

The Trusteeship Council has by this use of forthought prevented its having the character of being merely a court of appeal for hearing complaints. It is true that the Trusteeship Council has a greater tendency along these lines than was the case under the mandate system. The Commission tended to treat petitions more as a source of information than as definite grievances set forth by petitioners.<sup>2</sup> However, the Trusteeship Council has designed the rules concerning petitions to prevent many insignificant grievances from reaching its sessions.<sup>3</sup> Thus the Council has achieved not only what the Commission was seeking, mainly information,

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<sup>1</sup> \_\_\_\_\_, "Trusteeship Council Discusses Oral Hearings," United Nations Bulletin, V (July 1, 1948), p. 528; See also Report of the Trusteeship Council Covering its Second and Third Session, 29 April 1947-5 August 1948, United Nations Doc. No. A/603, August 1948, pp. 37-38. The Bakweri Land Committee's petition was to be reviewed at the Trusteeship Council's Fourth Session at which time the Bakweri Land Committee would have a representative present for an oral hearing.

<sup>2</sup> P.M.O., Minutes of the Eighth Session, 1926, p. 201.

<sup>3</sup> See Rules 79 & 81 of the Trusteeship Council's Rules of Procedure.

but also a conformity in handling complaints or grievances.

When petitions were reviewed by the Commission, a special representative of the mandatory power was on hand to answer questions concerning the petition. The same procedure is also used under the trusteeship system, but there is a great amount of difference in the manner in which results are to be obtained.<sup>1</sup>

Under the mandate system<sup>2</sup> the administering authority attached its observations to the petition before sending it on to the Commission. This is not always the case in the trusteeship system, since most of the petitions are sent directly to the United Nation Secretariat and thence on to the Council. Due to this change, the administering authority transmitted its observations, if any, to the Council<sup>3</sup> as soon as possible upon the Council's notification to the trust power that such a petition had been presented. The normal procedure has been to allow fourteen days between the time the comments are presented to the Council and the date before the petition can be examined.

Upon the conclusion of the examination of a petition, the Commission had to report its observations to the League Council. The League Council, after examining the Commission's report, transmitted its decisions to the

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<sup>1</sup> See supra, Chap. II, n. 3, p. 96; See also P.M.C., Minutes of the Twenty-seventh Session, 1935, pp. 15, 103.

<sup>2</sup> See supra, Chap. I, n. 3, p. 29.

<sup>3</sup> See Rule 86 of the Trusteeship Council's Rules of Procedure.

petitioners as well as to the administering authority.<sup>1</sup> Often a great deal of time was lost because the Council was not necessarily in session when the Commission's observations were forwarded. The Trusteeship Council, on the other hand, not only immediately transmits its recommendations to the petitioners and the administering authorities but also transmits to them the official records of the public meetings at which the petitions were examined.<sup>2</sup>

The trusteeship system has vastly improved upon the petitioning procedures used by the mandate system. It is rather obvious that the rules which the Trusteeship Council has drafted regarding petitions are far more liberal than the Commission's procedures on the subject. This is especially in evidence in view of the fact that by far the largest section of the Council's rules of procedure relate to petitions.<sup>3</sup>

### 8. Visits

Perhaps the most important means of obtaining information is by conducting investigations in the territory in question. By resorting to an actual visit to an area, a much more thorough understanding can be obtained of the problems which confront the area.

The necessity of sending commissions of inquiry to the field was

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<sup>1</sup> League of Nations Official Journal, 1925, Part 2, pp. 1364 & 1522.

<sup>2</sup> See Rule 94 of the Trusteeship Council's Rules of Procedure.

<sup>3</sup> The Trusteeship Council devotes 18 of its rules of Procedure to petitioning procedures. See supra, Chap. II, pp. 94-102.

realized almost from the outset by the Permanent Mandates Commission. The Commission investigated the possibility of sending an investigatory body to Southwest Africa during 1923 in order to obtain additional information on the Bondelzwart rebellion. Since the Commission did not have authority to conduct such an investigation, the matter was soon dropped.<sup>1</sup>

An entirely different situation exists in the trusteeship system. No longer will the Trusteeship Council, except in the case of strategic areas, need to depend entirely on the reports from others concerning conditions in the territory under the trusteeship system as was done under the mandate system.<sup>2</sup>

The Trusteeship Council has already employed the use of a visiting mission. The Council's visiting mission to the trust territory of Western Samoa was the direct outgrowth of a petition from that territory.<sup>3</sup> Likewise, under the mandate system, a petition from the Palestine Arab Congress also promoted the Commission to consider a visit to that area. However, the League Council advised the Commission to make recommendations on the information already on hand.<sup>4</sup> Without the resort to a first hand investigation, the Trusteeship Council could not possibly have handed down

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<sup>1</sup> See supra, Chap. I, n. 2 & 5, p. 31.

<sup>2</sup> Strategic trust territories are under the jurisdiction of the Security Council; therefore, the Trusteeship Council will have to consult the Security Council when information is desired from strategic areas. See supra, Chap. II, n. 1, p. 85.

<sup>3</sup> See supra, Chap. II, pp. 102-106.

<sup>4</sup> See supra, Chap. I, n. 1, p. 31; See also League of Nations Official Journal, 1926, Part 1, p. 270.



the proper decisions or recommendations on the subject, likewise the best interests of the indigenous inhabitants would not have been maintained.

Because the Council's use of visits to the trust territories when based on petitions received from these areas, it is necessary to explain the interrelationships between the trusteeship Council's rules of procedure on petitions and visiting missions.

For instance, when the Council's visiting mission was in New Zealand the representatives could have accepted written petitions from the inhabitants of the trust territory. This authorization was of course subject<sup>1</sup> to the instructions which the Council gave to the visiting mission. Likewise, the mission was also entitled to hear oral petitions or oral presentations. In carrying out these responsibilities the members were authorized to attach any observations that were pertinent upon a prior consultation with the local representatives of the administering authority.<sup>2</sup> Although no oral or written petitions, as such, were received, the visiting mission did hear oral presentations. Two of these presentations were rather important. One was submitted by the European Citizens Committee while the other was received from the Fautua, which consisted of members of the Legislative Council, Associate Judges, and District

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<sup>1</sup> See Rules 84 & 95 of the Trusteeship Council's Rules of Procedure; See Trusteeship Council Official Records Second Session Special Supplement No. 1 Report to the Trusteeship Council by the United Nations Mission to Western Samoa, United Nations Doc. 1948, p. 4.

<sup>2</sup> See Rule 89 of the Trusteeship Council's Rules of Procedure.

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Representatives of Western Samoa. These activities constituted an important factor in the visiting missions report to the Trusteeship Council and definitely have a direct relationship to the Council's thorough and very advanced rules pertaining to petitions.

With the use of visiting missions, the Council is able to conduct more extensive enquiries, thus making it possible for the Council to act more quickly than <sup>did</sup> the Permanent Mandates Commission on the more serious and important situations which required its attention. It is definitely an additional safeguard for good administration in the trust territories. If the Commission could have handled the Syrian and Bondelzwart difficulties in this manner, the exhaustive enquiries undertaken and the attention given to the native uprisings in these mandates would not have been necessary. <sup>2</sup> A visiting mission to these areas would have undoubtedly saved time and effort on the part of the Commission in its attempts to achieve

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<sup>1</sup> The European Citizens' Committee recommended constitutional changes in the Legislative Council and that a transition period of ten years be established in order to train the people of Samoa for self-government. Equal representation was also mentioned and in addition proposals pertaining to finance, education, and agriculture were included. The more important points considered by the Fautua were recommendations concerning representation in Parliament or the legislature and the authority of the representative of the New Zealand government. Health, education, public works, finance, and agriculture were mentioned as well as proposals concerning the return of certain lands to the Samoans. Trusteeship Council Official Records Second Session Special Supplement No. 1 Report to the Trusteeship Council by the United Nations Mission to Western Samoa, United Nations Doc., 1948, pp. 119-122.

<sup>2</sup> See supra, Chap. I, n. 2 & 3, p. 28; See also supra, Chap. I, n. 3, p. 30.

satisfactory solutions to the problems that confronted the mandate system.

In addition to the conducting of special investigations in the trust territories, provision has been made in the Council's rules for periodic visiting missions to each trust territory. These visits of course have to be approved by the administering authority.<sup>1</sup> However, this has not proved a hindrance as yet, since the administering authorities for Tanganyika and Ruanda-Urundi showed the visiting mission to the trust territories of east Africa all the necessary hospitality. If the Council's preliminary recommendations for increased native participation in the territorial government are observed by the administering authorities, as well as the provisions for increased educational facilities for the inhabitants, then provisions for periodic visits to the trust territories will definitely add a beneficial feature to the Trusteeship Council's means of obtaining information.<sup>2</sup>

#### a. Additional Means of Obtaining Information

In direct relation to the obtaining of information and its documentation for the trusteeship council, the Secretariat of the United Nations

<sup>1</sup> See Rules 94 & 97 of the Trusteeship Council's Rules of Procedure.

<sup>2</sup> See \_\_\_\_\_, "Report of the Visiting Mission to the Trust Territory of Ruanda-Urundi under Belgian Administration," International Conciliation, CGOCLVIII (February, 1949), pp. 126-149; See also \_\_\_\_\_, "Report of the Visiting Mission to the trust territory of Tanganyika under British Administration," International Conciliation, CGOCLVIII (February 1949), pp. 150-184; See also \_\_\_\_\_, "Council Debates East Africa Mission Reports," United Nations Bulletin, VI (April 15, 1949), pp. 360-365.

performs an invaluable task just as the Secretariat of the League had done for the Permanent Mandates Commission.

a. The Secretariat

The Secretariat of the United Nations assists the Council in the documentation of the minutes of its sessions as well as the formulation of its provisional agenda. In addition, the Secretariat supplies the Council with the information necessary in conducting its supervision of the trusteeship system which includes the handling of the communications addressed to the Council. This is very important since the Council consists of only twelve authorized representatives from the member states and of course their advisors and alternates, thus making it impossible for the Council to handle the comparatively large staff necessary for the committee, sub-committees, and other subsidiary bodies which the Council may find necessary to establish. The Council's task would be made much more difficult if the Secretariat did not assist the Council in its work, and as a result of the expert work being done by the Secretariat, the Council can devote, when in session, its entire time to the problems of trusteeship while the Secretariat handles the routine work of documentation and the supplying of important information to the Council.

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<sup>1</sup> See Rules 25 through 27 of the Trusteeship Council's Rules of Procedure; See supra, Chap. II, pp. 115-117. To what extent the Secretariat of the United Nations will attempt to follow in the steps of the Secretariat of the League when in relation to collecting of secondary information for the Trusteeship Council remains to be seen. The Mandate Section of the Secretariat collected data for the Commission's use from a variety of sources. Among them were legislative debates, public lectures & articles, and comments in prominent journals and newspapers. See supra, Chap. I, n. 2, p. 30.

For instance, under both the mandate system and the trusteeship system, there has been specialization and distribution of work carried out by the Trusteeship Council and the Commission respectively. This was, in fact, more necessary in the mandate system since the Commission was not as adequately staffed with Secretariat personnel as is now the case.<sup>1</sup> As a result, each member of the Commission, in addition to making himself familiar with the contents of all the reports, specialized in one particular field of mandatory administration.<sup>2</sup> Specialization was very valuable and oftentimes contributed additional information for the Commission's use. In several instances the members of the Commission used their particular knowledge to prepare special studies on education, public health, and various other selected topics.<sup>3</sup>

The Trusteeship Council is now making strides in this direction. At its second session a resolution was adopted which provides for the assigning of small groups of members to make detailed studies of one or more of the four broad fields of political, economic, social, and educational advancement of the inhabitants of the trust territories. This work is to be undertaken with the assistance of the Secretariat, thus enabling the

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<sup>1</sup> See infra, Chap. III, n. 2 & 3, p. 268 & n. 1, p. 269.

<sup>2</sup> P.M.C., Minutes of the Tenth Session, 1926, p. 43. During the Trusteeship Council's second session the following special assignments were made: Political advancement, China, France, and New Zealand; Social advancement, Australia, Iraq, and Mexico; Economic advancement, Belgium, Costa Rica, and the United Kingdom and the United States.

<sup>3</sup> P.M.C., Minutes of the Third Session, Annexes 3 & 9, pp. 239-256 & 297-305. Mr. Bugge-Wickeell prepared a special study based on education in the mandates, while Count de Ballobar prepared a selected topic pertaining to public health problems in the mandates. Incidentally these topics were in their assigned specialized field as well as being fields which they were personally qualified in previous to their appointment to the Commission.

Council members to make use of the voluminous documentary evidence compiled by the Secretariat.<sup>1</sup> To what extent the Council intends to follow in the footsteps of the Commission in the specialization of its members remains to be seen; however the steps taken by the Council, thus far, will enable it to speed up its reviewing processes because the necessary research in many instances will have been previously done by those members qualified on special topics.

It is true that the Commission was aided by the League Secretariat, but the Commission's rules did not adequately explain the duties of the Secretariat in this respect.<sup>2</sup> There was a Mandates Section of the Secretariat just as there now is a Department of Trusteeship and Information from Non-Self-Governing Territories in the United Nations Secretariat, but under the mandate system there was no provision explaining duties of the Secretariat when applying to mandate questions, whereas the Charter of the United Nations makes specific reference of the staff which is to be assigned to aid the Trusteeship Council.<sup>3</sup> Because of this failure to include a definite program from the outset, there was at first no index of either the mandatories' replies or those of their representatives concerning the Commission's observations. As a result, the work of the

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<sup>1</sup> Report of the Trusteeship Council covering its Second Session and Third Session 29 April 1947, 5 August 1948, United Nations Doc. No. A/603, 1948, p. 2.

<sup>2</sup> See Rule 7 of the Rules of Procedure of the P.N.C., Appendix A.

<sup>3</sup> See supra, Chap. I, n. 1, p. 27 & n. 2, p. 30; See also Article 6 of the Covenant, Appendix A; See also Articles 98 & 101, Appendix C.

Commission was greatly handicapped during this period. Likewise the minutes of both the Council and the Assembly committee meetings which were related to mandates were not recorded for the Commission's use until its fifth session in 1924.<sup>1</sup>

b. The Annual Report of the Secretary-General

Also, in relation to the Secretary General's Report to the League Assembly, in which there was a section on mandates, there was a lack of reference in the Covenant, and in addition the Commission's rules of procedure did not include reference to such a report.<sup>2</sup> At first there was a divergence of opinion as to what the term of reference would be for the Secretary-General's Report. Originally it was called the "Report of the Council" but later was designated as the "Report of the Secretary-General on the Work of the Council" and soon thereafter, the Secretary-General changed the name of the report to the Annual Report on the Work of the League. The latter title was much more appropriate since the League Council did not actually make the report but merely approved it, and likewise the change was desirable because in the first place the League Council was not required to report to the Assembly.<sup>3</sup> As a result of the

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<sup>1</sup> P.M.C., Minutes of the Fifth Session, 1924, p. 128.

<sup>2</sup> See Rules of Procedure of the P.M.C., Appendix A; See also Article 6 of the Covenant, Appendix A.

<sup>3</sup> John Spencer Bassett, The League of Nations (New York: Longmans, Green and Co., 1928), p. 94.

indefiniteness of the reports in the early years of the League, the section on mandates did not give adequate coverage to the mandate system. In later years the Secretary-General's annual report included a very comprehensive report on the work of the Commission as well as a general review of the whole of the mandate system.<sup>1</sup> In fact these reports compare favorably with those presented to the General Assembly by the Secretary-General of the United Nations. However, with the exception of the report for the year 1946, the Annual report to the General Assembly was much more comprehensive than those to the League Assembly for the first few years of the League's existence, thus enabling the United Nations to obtain from the outset an overall review of trusteeship happenings.<sup>2</sup>

#### 10. The Direction of Policy

Although the Permanent Mandates Commission made relatively effective use of the information at hand, its main objective was the prevention of breaches of rules rather than positive direction of policy. In doing so,

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<sup>1</sup> For an appropriate example of the Secretary-General's report when considering mandates, see League of Nations Report on the Work of the League since the Fourteenth Session of the Assembly, Assembly Doc. No. 6, 1934, Part 1, pp. 45-50 & Part 2, pp. 39-45; See also League of Nations Report on the Work of the League since the Fifteenth Session of the Assembly, Assembly Doc. No. 6, 1935, Part 1, pp. 66-70 & Part 2, pp. 17-22.

<sup>2</sup> See Report of the Secretary-General on the Work of the Organization, United Nations Doc. No. A/65, 1946, pp. 31-33; See also Annual Report of the Secretary-General on the Work of the Organization, United Nations Doc. No. A/315, 1947, pp. 51-56; See also Annual Report of the Secretary-General on the Work of the Organization 1 July 1947-30 June 1948, General Assembly Official Records, Third Session, Supplement No. 1, United Nations Doc. No. A/565, 1948, pp. 90-98.



the Commission had, as a rule, proved itself effective in the negative task of checking abuses, but it had generally been too aloof, too far removed from the day-to-day problems of colonial administration, to advocate positive means of improvement. This gave the mandatory power a greater opportunity to explain its case to the world. One of the main reasons for the Commission's policy was that it was essentially a committee of League officials appointed by the League to receive and examine the annual reports of the mandatories, to make decisions on petitions, and to advise the Council on matters concerning mandates.<sup>1</sup>

The Commission, unlike the Trusteeship Council, was thus not placed in a very good position to make the proper recommendations of criticism to the administering authorities. The Commission was almost powerless to express direct criticism, and oftentimes when it did the League Council softened its conclusions.<sup>2</sup> Usually the Commission requested further information from the mandatories and by doing so hoped that the administering authority would observe and comply with this method of indirect criticism. In addition, the Commission would recommend certain measures that it hoped

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<sup>1</sup> See supra, Chap. III, pp. 208-211.

<sup>2</sup> See supra, Chap. I, n. 1, p. 32. The Trusteeship Council, besides making recommendations to the Trust powers, may also submit recommendations to the General Assembly concerning the functions of the United Nations pertaining to trusteeship agreements. The General Assembly has, to date, approved the Council's reports, and has not altered the Council's recommendations to the administering authorities. From this, it appears that the General Assembly will allow the Trusteeship Council a freer hand in making recommendations and drawing up conclusions than was the case in the mandate system. See supra, Chap. II, n. 1, p. 109.

the administering authority would institute in the mandate or mandates under its administration, and in almost the same breath would congratulate the mandatory on its achievements in the territory.<sup>1</sup> The Commission had to resort to such means so as to pacify the League Council and also to goad the administering authorities into complying with its recommendations by the use of flattery. Likewise, by expressing satisfaction with the measures taken by the administering authorities, there was also the possibility that the other mandatory powers might adopt similar measures in the mandates under their supervision.

It is true that the Trusteeship Council uses tact in its recommendations to the trust powers, but it does not have to resort to all the complex devices which were employed by the Commission in its attempts to secure satisfactory administration in the mandates. In its recommendations to the administering authorities policy in the trust territories, the Council has thus far had little or no need for actual criticism. The distinction between recommendations and criticism is somewhat fine, and since the Trusteeship system has been in operation for such a short time, there has not been the need, as yet, for the resort to direct criticism of the administering authorities activities in the trust territories. When and if the need arises, the Trusteeship Council will be in a much more favorable position to use direct criticism than was the Commission. This is especially true since the Council's powers of direct supervision are much

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<sup>1</sup> See supra, Chap. I, n. 4, p. 35.

stronger than those of the Commission.<sup>1</sup> Therefore, the prestige and authority of the Council should certainly be greater than that enjoyed by the Commission, and its recommendations should carry correspondingly more weight.

#### H. Relations with other Organs

The relations between the Trusteeship Council and the other organs of the United Nations are of particular importance just as were the relationships between the Permanent Mandates Commission and the other League organs. These relations, however, differ to some extent.

Over and above a comparison of the relative authority of the Trusteeship Council and the Commission, there are variations in the coordination of the activities concerning trusteeships from those adopted by the mandate system.<sup>2</sup> The Commission was dependent not only to the League organs but also to other agencies lying outside the League which carried on activities pertaining to mandates than is the Trusteeship Council in its relations with the other organs of the United Nations, as well as to associated agencies. Since the Commission could not carry on inspections in the mandates, it had to rely on the information and oftentimes the decisions of the other League organs, whereas the Trusteeship Council is in a much more favorable position. Thus the Council's relations with other organs

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<sup>1</sup> See supra, Chap. III, pp. 208-211.

<sup>2</sup> For an analysis of the Trusteeship Council's relations with the other organs of the United Nations, see supra, Chap. III, pp. 109-117.

and agencies were placed on a higher plane than were those of the Commission.

The League's activities concerning the mandate system, in addition to the Commission's main work, were handled by the Council, the Assembly, the Secretariat, and the Permanent Court of International Justice.<sup>1</sup> In the United Nations there is a greater diversification of the activities relating to the trusteeship system. This is in part true because of the use of a larger number of specialized agencies which conduct activities that can be utilized to benefit the work of the Trusteeship Council. Besides the General Assembly, the Security Council and the International Court of Justice there is an additional organ of the United Nations which carries on highly important activities with the Trusteeship Council. This organ<sup>2</sup> is the Economic and Social Council of which there was no corresponding counterpart under the League of Nations. A majority of its activities which pertained to or were of value to the trusteeship system could have been similarly used under the mandate system.

With the exception of the Commission's relationship with the International Labor Organization, the Commission did not provide in its rules of procedure for the cooperation which is so characteristic in the

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1 See supra, Chap. I, pp. 22-23.

2 See supra, Chap. II, pp. 111-115.

Trusteeship Council's activities with the specialized agencies.

The Trusteeship Council on the other hand provided in its rules of procedure for a wide variety of activities pertaining to not only the United Nations organs and the specialized agencies but also with various intergovernmental regional bodies such as the South Seas Commission. The Commission was not authorized to participate in such regional bodies. This activity will greatly enhance the Trusteeship Council's position and provides an additional means of obtaining information from a hitherto

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1 See Rule 2 of the Rules of Procedure of the P.M.C., Appendix A, See also *supra*, Chap. I, n. 2, p. 22. The question thus arises as to just what is a specialized agency. A specialized agency is an intergovernmental agency having wide international responsibilities. Under the United Nations such organizations as the United Nations Food and Agriculture Organization, the Educational, Scientific, and Cultural Organization, and the International Labor Organization fall within this category. In comparison the League also carried on activities with organizations of a specialized nature. Among these were the World Health Organization and the International Labor Organization.

The Commission did participate in the activities of the Committee on Native Labor, which was set up in 1927 by the International Labor Office, as well as participating in the work of the Temporary Commission on Slavery. However, in these two instances the Commission's participation was upon the suggestion of the General Assembly, and in reality these two commissions were not in themselves to be classified as specialized agencies of the League. See P.M.C., Minutes of the Eleventh Session, 1927, p. 11.

An excellent example dealing with the Commission's activities in relation to organizations lying outside the League itself was the aid the World Health Organization gave the Commission in drawing up those sections of its mandate questionnaires pertaining to public health. See P.M.C., Minutes of the Second Session, 1922, p. 64; See also P.M.C., Minutes of the Third Session, 1923, pp. 9-10; See also Article 57, Appendix C.

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untapped source.

To achieve similar results the members of the Commission attended various unofficial institutions such as the meetings of the International Colonial Institute at the Hague and the International Missionary Congress at Le Zoute, Belgium.<sup>2</sup> These were, however, only personal relations and were not under the auspices of the Commission so could not possibly carry the proper significance. Thus the Trusteeship Council can avail itself of the assistance of not only more bodies and organizations than could the Commission, but can also carry on its relations with them in a more authoritative manner since it is one of the principal organs of the United Nations.

#### 9. The Question of Sovereignty and International Law

Sovereignty over mandates was not clearly decided by the League just as it has not been decided by the United Nations in the case of trusteeships.<sup>3</sup> Both are, however, akin in their historical origin as well as in their legal structure, but neither the charter nor the Covenant expressly solved the problems which arose from the question of possession of

1 See Rule 105 of the Trusteeship Council's Rules of Procedure; See also supra, Chap. III, n. 2, p. 192.

2 P.M.C., Minutes of the Eleventh Session, 1927, pp. 6-7.

3 For a discussion of the location of sovereignty in the mandates see L. Appenheim, International Law Vol. 1 (4th ed., London: Longmans, Green and Co., 1928), pp. 213-215; See also Wright, op.cit., pp. 319-344. For a discussion of the legal problems arising from the trusteeship system, see Frances B. Sayre, "Legal Problems Arising from the United Nations Trusteeship System," American Journal of International Law, XLII (April, 1948), pp. 263-298.

sovereignty in the mandates and its present counterpart under the trusteeship system.<sup>1</sup>

It was extremely difficult to assign a locus of sovereignty under the mandate system. One of the main reasons was the peculiarities involved in the allocation of the mandates. Since Article 119 of the Treaty of Versailles actually gave to the principal Allied and Associated Powers all the rights and titles over Germany's overseas empire and since all the mandates were allocated by the Supreme Allied War Council, they had a legal case in their favor.<sup>2</sup> There were, however, other factors to be taken into consideration. Although there was no treaty providing for the placing of title of the mandates under the League of Nations, the League must, nevertheless, be considered as one of the more important links in the discussion of where sovereignty actually lies in the mandated territories. It was to the League that the mandatories were responsible in making their annual reports on the mandated territories, and in general the mandatories accepted its supervision.<sup>3</sup>

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<sup>1</sup> A proper definition of sovereignty is rather difficult because of the many inconsistencies in its application. This is especially true when attempting to throw light on sovereignty as it relates to mandates. The technical usage of sovereignty involves the principal of a sovereign state having and exercising an undivided authority over all persons and property within its borders and being independent of direct control by any other power. This definition, however, should serve to clarify most of the questions pertaining to sovereignty in general. See Charles G. Fenwick, International Law (2nd ed., New York: D. Appleton Century Company, 1934), pp. 47, 68-69; See also Oppenheim, op.cit., pp. 138-142, 248-253.

<sup>2</sup> See supra, Chap. I, n. 1, p. 7; See supra, Chap. III, n. 3, p. 142.

<sup>3</sup> For a discussion of the League's right of control over the mandatories' administration see supra, Chap. I, n. 1, p. 36.

From this standpoint it is a rather safe conclusion to state that the title to the mandates did not lie in the hands of the mandatory, for if it had, their administration over the mandates would not have been supervised by the League.<sup>1</sup>

There was one other consideration which is especially important. It is that of the ultimate location of sovereignty. Sovereignty will eventually be held by the inhabitants of a territory if it becomes independent, as is the case in all the former "A" mandates.<sup>2</sup> One of the most basic or underlying objectives of the mandate system, and also of the trusteeship system, was the obtaining of eventual independence for the inhabitants of these territories.<sup>3</sup> In a sense, their sovereignty is held in suspense pending the completion of the territories' advancement to an independent status.

The United Nations charter sought to do away with the many contingencies which had arisen in the mandate system over questions of sovereignty. That is, perhaps, why individual allocations were used in the

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<sup>1</sup> The mandatory, however, did obtain a possessory title over the various mandates through the Supreme Allied War Council's allocations of 1919 & 1920, and since the Permanent Mandates Commission did not hold a session until October, 1921 the mandatory acquired the right to administer the territories without the precise terms of the trust being decided. See *infra*, Chap. III, n. 3, p. 159.

<sup>2</sup> See Appendix E for the status of the former mandates.

<sup>3</sup> Article 22, paragraph 4, of the Covenant expressly provided for the eventual independence of the "A" mandates while Article 76 of the charter provides for the progressive development of the inhabitants of the trust territories towards self-government or independence as appropriate to the individual territories. See article 22, Appendix A; See also Article 76, Appendix C.



trusteeship system as opposed to the group allocation methods used by the Supreme Allied War Council at the end of World War I.<sup>1</sup> But in trying to profit from the League experiences along such lines, the United Nations ran into a hitherto untouched subject concerning sovereignty. It was the issue over "states directly concerned" which very nearly prevented the approval of the first eight trusteeship agreements.<sup>2</sup> The term "states directly concerned" is actually an individual display of sovereignty by those powers which signed the United Nations Charter, for by doing so they each individually sought to protect their future rights by approving this phrase which is found in Article 79 of the Charter. Although this problem resulted in much undue controversy, its ironing out prevented the delay in approval of the trusteeship agreements by months or perhaps even years.<sup>3</sup>

There is ample evidence that title to the mandates does not rest with the administering authorities. A very good example is the case of the United States declaring that the phrase "integral part", which is found in the trusteeship agreement for the Territory of the Pacific Islands,

1 See supra, Chap. III, n. 3, p. 142.

2 For a discussion of the issue over "states directly concerned" see supra, Chap. II, n. 2 & 3, p. 59 and n. 1, p. 63.

3 The approval of the mandate agreements were greatly delayed because of questions closely relating to sovereignty. In this case it was likewise a refusal to surrender a sufficient degree of national sovereignty. See supra, Chap. III, n. 1, p. 157 and n. 1, p. 158.

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does not employ sovereignty over that territory.

Likewise, the United Nations does not hold title to the trust territories for there was no direct transfer of title from the League to the United Nations. Since the League did not hold title to the mandates there was no possible way to turn them over to the United Nations. So, in theory, what is actually being done is that the international community holds in suspense the sovereignty over the trust territories with the expressed understanding that these areas will be advanced progressively towards self-government or independence depending on the particular circumstances in each territory. Thus the trust powers are to act as servants more than as masters and in this way will tend to give the wards more benefit than the guardians.<sup>2</sup>

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<sup>1</sup> Department of State Publication, No. 2784, op.cit., p. 5; There was also ample evidence in the mandate system that title to the mandates did not rest with the administering authorities. One of the more appropriate examples was the usage of the term sovereignty in the delineation of the frontier between Southwest Africa and the Portuguese colony of Angola. The Commission felt that the Union of South Africa used the term sovereignty in such a way as to denote actual sovereignty over the area and asked the League Council to request that the Union clarify the terminology used. In its statement South Africa declared that the word sovereignty so used did not actually mean the possession of sovereignty over the territory. See supra, Chap. I, n. 2, p. 36.

<sup>2</sup> A special point of interest concerning the title of territory under trusteeship was the discussion that took place during the work of the Preparatory Commission of the United Nations. The representative of China besides supporting a United States amendment, which stressed the responsibilities of the administering powers to the peoples of the trust territories, also pointed out the fact that the essence of both the mandate system and trusteeship system was that the title of the territories under both systems belonged to its people. Yearbook of the United Nations 1946-47, (Lake Success, New York: Department of Public Information, 1947) p. 79.

Closely allied to questions of sovereignty are those pertaining to international law as it relates to the mandate system and the trusteeship system. Article 22 of the Covenant represented an attempt to apply a form of international guardianship for the mandates. This article also recognized the "A" mandates as having an international personality by stating that they had reached a stage of development at which their existence as independent nations could be provisionally recognized.<sup>1</sup> And it is true that one of the main considerations in both the mandate system and now in the trusteeship system has been to give the territories and their inhabitants an international status as a protection against the weaknesses of a purely national regime, whatever terminology might be used to define it. But whether this also meant the recognition of an international personality for the "B" and "C" mandates is another question. Charles G. Fenwick, well known authority on international law, doubts if the "B" mandates could claim any degree of international personality, while he was rather certain that the "C" mandates had no international personality.<sup>2</sup>

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<sup>1</sup> See paragraph 4, Article 22, Appendix A.

<sup>2</sup> Charles G. Fenwick, International Law (3rd ed. Appleton-Century-Crafts, Inc. 1948), p. 127. In partial opposition to this statement, notice should be made that the United States, not a member of the League, recognized the international status of the Japanese mandated islands as well as the status of the other mandates. This certainly tends to prove that the "B" and "C" mandates had at least a provisional form of international personality. See supra, Chap. III, n. 1, p. 156. Perhaps Fenwick meant to say that international law had not authoritatively determined the status of the mandated territories.

On the other hand, the trust territories are more qualified to have an international personality similar to that provisionally provided in Article 22 of the Covenant for the "A" mandates. Article 76 of the Charter recognizes this principal by providing for the co-equal objectives of self-government or independence as goals to be attained by each of the trust territories and its peoples.

Just what benefit this will have remains to be seen. However, one thing is certain, the provisions found in Article 76 will tend to influence the future codification of international law pertaining to trusteeships. Since there was no codification of the international law of mandates, that is to say, the practices and usages of states in their relations with mandates, anything in this direction for trusteeships will be a welcome gesture.

The Charter of the United Nations does provide for the General Assembly's initiation of studies and the making of recommendations for the purpose of promoting the progressive development of international law and its codification. Even though the General Assembly has created the International Law Commission to further the codification of international law it looks extremely doubtful if there will be any codification of law pertaining to trusteeships in the near future, for the International Law Commission, according to Article 15 of its statute, is to cover fields where

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<sup>1</sup> See Article 76, Appendix C.

there has already been extensive state practice, precedent and doctrine.<sup>1</sup>

It is true that international law has emerged from the recent war greatly strengthened and developed, but unhappily at the same time new conditions have arisen which have created problems hitherto beyond the law thus challenging the United Nations to find a constructive solution to these problems. Among these new conditions is the whole legal structure of the trusteeship system. The result of the codification of the international law of trusteeships will tend to achieve by degrees a body of treaty law which will take precedence over the existing customary practices on the subject.

Throughout the years of the existence of the mandate system, there were many claims in respect to the treatment of not only alien persons in the mandates but also in relation to the treatment of the inhabitants of the mandates when traveling or residing outside the country.<sup>2</sup> The Treaty of Versailles had recognized the necessity of providing for the protection of the inhabitants of the former German overseas possessions by providing for their diplomatic protection by the governments exercising the

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<sup>1</sup> See Article 13, Appendix C; See also Survey of International Law in Relation to the Work of Codification of the International Law Commission, United Nations Doc. No. A/C.4/1, 1948, p. 14; See also Yuen-li Liang, "The General Assembly and Codification of International Law," American Journal of International Law, XLII (January 1948) pp. 66-97.

<sup>2</sup> For decisions concerning diplomatic protection of the inhabitants of the mandates, see James O. Hales, "The Creation and Application of the Mandate System," The Grotius Society, XXV (January-December, 1939) pp. 264-282.

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mandates over these areas. Both Great Britain and France adhered to this policy by providing for diplomatic and consular protection to the inhabitants of Palestine and of Syria and Lebanon respectively. 2 There were, however, no similar statements in the "B" and "C" mandates.

The United States Strategic Trusteeship for the Pacific Islands is the only agreement which includes the provision for the diplomatic and consular protection of the inhabitants of the trust territories when outside the administering authorities jurisdiction. 3 Neither the Charter nor the other trusteeship agreements provide for any such contingencies. Some of the agreements do, however, mention the fact that the inhabitants of the trust territories are entitled to equality of treatment with the nationals and companies of those states which it treats most favorably. These provisions pertain especially to the economic and commercial field and thus would have only an indirect bearing on any equality that might exist in the diplomatic or consular field. Still another provision in most of the agreements provides for continuing in effect of all international agreements and conventions which are now in force. It is possible

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1 See Article 127 of the Treaty of Versailles, Department of State Publication No. 2724, Conference Series No. 92, op.cit., p. 282.

2 See Article 3 of the Mandate for Syria and Lebanon, Appendix B; See also Article 12 of the League of Nations Mandate for Palestine and Trans-Jordan, League Doc. No. O.P.M. 269, 1922.

3 See Article 11 of the Agreement for the Territory of the Pacific Islands. An added point of interest is the fact that international law is mentioned in only the French trusteeship agreements for Togoland and the Cameroons. See Article 4 of Agreements for French Togoland and the Cameroons.

that such agreements and conventions might have a bearing on the granting of diplomatic and consular protection to the inhabitants of the trust territories.<sup>1</sup> But even with these provisions in the trusteeship agreements, the protection accorded the inhabitants of the trust territories while outside the territory seems to be wholly or at least partially lacking in the majority of the trusteeship agreements.

Closely related to the provision for diplomatic and consular protection is the status of citizenship of the inhabitants of the trust territories. The strategic trusteeship agreement for the Territory of the Pacific Islands is the only agreement which mentions the status of citizenship for the inhabitants.<sup>2</sup> Such a provision is highly desirable, as has been previously proven by the experiences under the mandate system. Perhaps one of the reasons that the remaining agreements did not include an article on citizenship is that the administering authorities were all administrators of the same territories under the mandate system in which provisions concerning citizenship had previously been in used.

For instance, in 1924 an Iraq nationality law was passed which gave Iraq nationality to the inhabitants. Likewise during the same year,

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<sup>1</sup> See Articles 11 & 14 of the Agreement for the Territory of the Pacific Islands; See also Articles 7 & 11 of the Agreement for Tanganyika; See also Articles 6 & 8 of the Agreements for French Togoland & the Cameroons.

<sup>2</sup> See Article 11 of the Agreement for the Territory of the Pacific Islands.

<sup>3</sup> See *supra*, Chap. III, n. 2, p. 285 for cases pertaining to citizenship and allied subjects. The United States is the only administering authority which was not the administering power under the mandate system.

distinct nationalities were created in the mandate of Syria and Lebanon. In 1925 a nationality law was also created for Palestine and Trans-Jordan in fulfillment of Article 7 of the mandate agreement.<sup>1</sup>

But since the "A" mandates have since become independent it is necessary to look to the "B" and "C" mandates for information concerning any precedent which might evolve relating to citizenship in the trusteeship agreements so far concluded.

The Commission considered the problem of nationality in the "B" and "C" mandates and decided to send recommendations to the League Council on the subject. In April, 1923, the League Council's amended propositions provided that the native inhabitants of the mandates did not hold the nationality of the mandatory power but that individual inhabitants could obtain naturalization from the mandatory if they chose to do so. The Council also expressed the desire that the native inhabitants be designated by a descriptive title so as to specify their status under the mandate.<sup>2</sup>

<sup>1</sup> James C. Hales, "Some Legal Aspects of the Mandate System: Sovereignty-Nationality-Termination and Transfer," The Gratius Society, XXIII (January - December 1937), pp. 98, 99, & 102; See also article 7 of the League of Nations Mandate for Palestine and Transjordan, League Doc. No. C.P.M. 269, 1922.

<sup>2</sup> See supra, Chap. I, n. 1, p. 37. It must be pointed out that these decisions did not pertain to the 7,000 German nationals who were in the Southwest Africa at the time the territory became a mandate. At this time the League Council decided to approve the South African plan for collective naturalization of those persons who were of German origin in the territory, thus qualifying its recommendations somewhat. Such an understanding on the part of the part of the Union was bound to result in many legal inconsistencies and upon several instances the commission questioned the mandatory on the status of these naturalized inhabitants. See League of Nations Official Journal, 1923, Part 1, pp. 569-572, 603-604, & 658-659; See also P.M.C., Minutes of the Fourteenth Session, 1929, pp. 128-131; See also Article 22 of the treaty of Versailles which pertains to the treatment of the German nationals in the colonies which were taken from Germany. Department of State Publication, No. 2724, op.cit., Conference Series No. 92, p. 280.



The mandatories did adopt a descriptive title for the inhabitants of each mandate. New Zealand adopted the title "British protected person - Native Samoan" while the French used the phrase "Natives of Togoland or the Cameroons protected under French Mandate."<sup>1</sup> The other descriptive titles were similar in nature.

From these titles it is apparent that the native inhabitants of the "B" and "C" mandates were given only an administrative status and not a national status as was the case with the "A" mandates. This will more than likely be the situation under the trusteeship system, at least for the present. Citizenship is an important necessity to the inhabitants of the trust territories because it is one of the essentials of self-government and could necessarily be a forerunner to the obtaining of independence for these peoples. It would be very desirable, not only from the natives standpoint but also from its effect on nationality in international law for the Trusteeship Council to study the subject closely and to formulate resolutions pertaining to the establishment of a separate citizenship for the inhabitants of each trust territory.

If there are disputes which cannot be settled by the powers involved concerning citizenship or diplomatic and consular protection, these disputes are to be settled by the International Court of Justice. In fact, any disputes relating to the interpretation or the application of the trusteeship agreements, if not settled by negotiation, are to be submitted

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<sup>1</sup> P.M.C., Minutes of the Ninth Session, 1926, p. 86; See also P.M.C., Minutes of the Tenth Session, 1926, p. 27.

to the Court.<sup>1</sup>

However, the strategic trusteeship for the Territory of the Pacific Islands makes no mention of submitting disputes to the International Court of Justice nor do the non-strategic agreements for New Guinea and Nauru. It is, nevertheless, generally understood that the agreements for New Guinea and Nauru at least infer to the principal of submitting such disputes to the court. But the situation in the strategic trusteeship agreement is not as clearly defined. Since the Security Council exercises the powers of supervision over the United States strategic trusteeship and since it has also the right to make certain recommendations when a dispute has not been satisfactorily settled before the International Court of Justice, the failure to mention settlement of disputes in this manner is not nearly so significant.<sup>2</sup>

There have been, as yet, no disputes before the International Court of Justice concerning the trusteeship system. Thus it is necessary to turn to the League experiences. All of the mandatories included in their mandate agreements the recognition that the Permanent Court of International Justice was to be the final interpreter of their terms in any dispute

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<sup>1</sup> See supra, Chap. II, n. 2, p. 74.

<sup>2</sup> The administering authorities for New Guinea and Nauru by stating that they will undertake to apply the provisions of international agreements in the trust territories have actually agreed upon the principal of submitting disputes to the International Court of Justice, since all members of the United Nations are also parties to the statute of the Court. See Articles 36, 37 & 93 - 96 of the Charter, Appendix C; See also supra, Chap. II, n. 2, p. 74.

between the mandatory and another member of the League which could not be settled by negotiation.<sup>1</sup>

There were only two cases of this type under the mandate system. One involved the "Mavromatis Palestine Concessions" case. Although it took three decisions of the Court in order to settle satisfactorily the dispute, each was of special importance for they involved not one but several points bearing on international law as it concerned mandates. One of the more important points brought out was that Article 11 of the Palestine mandate had to be interpreted by the court in handing down its decisions.<sup>2</sup>

The other case involved a dispute over the boundary between Iraq and Turkey. This dispute is, however, somewhat different from the "Mavromatis Palestine Concessions" case, in that it did not involve the claim or claims of one of the nationals of the disputing states but was a controversy between Turkey and Great Britain, as mandatory for Iraq. In addition, in this case the opinion handed down was only advisory since the League Council had requested an opinion on the matter, whereas in the

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<sup>1</sup> See *supra*, Chap. I, n. 2, p. 27; See also Article 7 of the Mandate for Samoa, Article 12 of the Mandate for British Togoland, and Article 20 of the Mandate for Syria and Lebanon. In addition the judicial tribunal under the League was called the Permanent Court of International Justice while under the United Nations the tribunal is termed the International Court of Justice.

<sup>2</sup> For a history of the case and the decisions handed down, see *The Permanent Court of International Justice*, (Geneva: Information Section League of Nations Secretariat, 1970), pp. 35-36, 39-40, & 48-49; See also James O. Hales, "The Creation and Application of the Mandate system," *The Grotius Society*, XIV (January-December, 1939) pp. 258-261.

"Mavromatis Palestine Concessions" case the dispute had not previously been under the Council's jurisdiction. Nevertheless, the decision handed down might be a useful precedent when and if boundary disputes take place in the trusteeship system.<sup>1</sup> But one thing is certain, the Permanent Court of International Justice, by handing down these decisions, definitely aided in the further development of international law.

There were also other boundary disputes, but they were either settled by the powers concerned or in conjunction with the League Council. One is of special importance in that it has set a precedence for future trusteeship policies on the subject, when and if any arise. The dispute was over the boundary between the mandated territory of Tanganyika and the Portuguese colony of Mozambique. Portugal, though not a member of the League, was nevertheless invited by the League Council to attend its discussion of the question. As a result, when the discussion of frontier disputes involving non-members of the United Nations were discussed before the Trusteeship Council, it was decided that no rules of procedure would be necessary on the matter, for the League Council had previously created a precedent. The discussion hinged on the question as to whether the administering authority or the trusteeship Council was the proper authority to deal with such a problem when a non-member of the United Nations was

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<sup>1</sup> For background material on the dispute and its settlement, see The Permanent Court of International Justice, op.cit., pp. 43-44; See also supra, Chap. I, n. 5, p. 31.

involved.<sup>1</sup> Thus the administering authority and not the Trusteeship Council was to act when such contingencies arise. However, the Trusteeship Council could take the proper action if and when such a dispute did arise.

Territorial disputes figured very prominently in the accumulation of law pertaining to disputes when a mandated territory was involved. This accumulation of law will definitely aid the trusteeship system when and if boundary disputes do take place, for this law will serve as valuable precedent. In addition, the courts of the mandatory powers have contributed to the development of case law on certain matters such as nationality and the nature of sovereignty in the mandates.<sup>2</sup>

Although it is too early to determine the extent to which the administering authorities of the trust territories have put to use these accumulated usages, they will, nevertheless, be of value from time to time.

#### J. Termination and Modification of a Mandate and of a Trusteeship

Neither the Covenant nor the Charter made a specific statement concerning the termination of a mandate or a trusteeship.

Although independence was recognized in the Covenant, at least for

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<sup>1</sup> \_\_\_\_\_, "Rules of Trusteeship Council Debated," United Nations Bulletin, II (April 15, 1947), pp. 394-395.

<sup>2</sup> For the decisions and accumulation of case law on these questions, see James C. Hales, "The Creation and Application of the Mandate System," The Grotius Society, XXV (January-December, 1939), pp. 264-279.

the "A" mandates, there were no concrete details as to the necessary steps which were to be taken in terminating a mandate. In 1930, the League Council recognized this situation by requesting the Commission to submit recommendations pertaining to the conditions that were to be fulfilled before a mandate could be terminated.<sup>1</sup>

It was necessary to prepare this memorandum because, although Iraq had already fulfilled many of the basic objectives in order to obtain eventual independence, the Commission felt that more specific conditions should be fulfilled.<sup>2</sup>

Among these conditions were that:

1. [The territory] must have a settled government and from an administration capable of maintaining the regular operations of essential government services;
2. It must be capable of maintaining its territorial integrity and political independence;
3. It must be able to maintain the public peace throughout the territory;
4. It must have at its disposal adequate financial resources to provide regularly for normal government requirements;
5. It must possess laws and a judicial organization which will afford equal and regular justice to all.<sup>3</sup>

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<sup>1</sup> P.M.C., Minutes of the Twentieth Session, 1931, pp. 228, 149-157, & 179-190. The two latter groups of pages cover in detail the debates and discussions pertaining to the conditions necessary before a mandate could be terminated.

<sup>2</sup> See Article 22, paragraph 4, Appendix A; See also supra, Chap. I, n. 2 & 3, p. 20.

<sup>3</sup> P.M.C., Minutes of the Twentieth Session, 1931, p. 229.

In addition to these specified conditions the Commission drew up a list of guarantees which were to be adhered to by the mandate. These guarantees were:

1. The effective protection of racial, linguistic and religious minorities;
2. The privileges and immunities of foreigners in the Near Eastern Territories. \* \* ;
3. The interests of foreigners in judicial, civil, and criminal cases in so far as interests are not guaranteed by capitulation;
4. Freedom of conscience and public worship and the free exercise of religious, educational and medical activities of the religious missions, subject to measures for the maintenance of public order, morality and effective administration;
5. The financial obligations regularly assumed by the former mandatory power;
6. Rights of every kind legally required under the mandate regime;
7. The maintenance in force, subject to their duration and the right of denunciation of the parties, of international conventions, both general and special, to which, during the mandate, the mandatory power acceded on behalf of the mandated territory.<sup>1</sup>

Iraq signed this declaration and after a thorough investigation by the League of Nations she was admitted to the League in October, 1932.<sup>2</sup> Thus Iraq had gained its independence through legal process and was constitutionally recognized as independent under international law. As for the other "A" mandates, they have since all become independent.<sup>3</sup> However

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<sup>1</sup> Ibid, p. 229.

<sup>2</sup> See supra, Chap. I, n. 4, p. 20.

<sup>3</sup> For the status of the former mandated territories, see Appendix E.

different circumstances governed their attainment of independence. Since the mandate system of the League failed to adequately function after the outbreak of World War II, the method employed in terminating the mandate for Iraq was no longer used. In fact Article 78 of United Nations Charter provided for the recognition of Syria and Lebanon's independence by inserting the provision that the trusteeship system was not to apply to territories which had become members of the United Nations. While before the signing of the Charter, the French had confirmed Syria and Lebanon's independence, this did not juridicially terminate the mandate because there was no ratified treaty signed between France and Syria and Lebanon. Nor did the League Council give its approval, for it was not even consulted on the situation. But, at least in part, the mandate was terminated according to the specifications set forth by the Commission and the League Council because Syria and Lebanon, by signing the Charter, had to live up to the Charter obligations required of every member. Many of these obligations are much more stringent than those which Iraq had to agree to before becoming eligible for League membership.

As for Trans-Jordan, she gained her independence through the use of British good offices just as was the situation in the case of Iraq. But in this situation, the mandatory, Great Britain, informed the United Nation's General Assembly of its intentions for the League of Nations was in the process of being liquidated. Trans-Jordan did not sign a declaration,

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1 See Article 78, Appendix G; See also supra, Chap. II, n. 4, p. 53.

2 See supra, Chap. II, n. 3, p. 120; See also supra, Chap. I, n. 1, p. 43.



as did Iraq under the mandate system, to protect the interests of foreigners in judicial, civil, and criminal cases as well as to other privileges and immunities to foreigners.<sup>1</sup> Thus the protection of the interests of the other countries which were members of the League were not clarified as they were when the mandate status of Iraq was terminated. Nevertheless, many of these interests would still be adhered to because Trans-Jordan, by becoming a member of the United Nations, would have to comply to the Charter principles which are required of all members.

The situation was somewhat different with the Palestine mandate. Palestine had been administered by Great Britain as a mandate until May 15, 1948, but after that date came under the control of the opposing Jewish and Arab forces, with the United Nations exercising only a thin guise of jurisdiction. During the same period, the various powers began<sup>2</sup> to recognize Israel as an independent state. As a result, the protection of the interest of those states which had been previously assured under the mandate would now no longer be in effect. In addition, there was no higher authority to decide whether Israel had completed the necessary steps in order to obtain her independence as was the cases under the mandate system. But in this situation the mandate was terminated after the

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<sup>1</sup> See supra, Chap. II, n. 3, p. 120; See also supra, Chap. I, n. 1, p. 43.

<sup>2</sup> See supra, Chap. II, n. 4, p. 120; See also supra, Chap. II, n. 1, p. 124, n. 1 & 2, p. 125; & n. 1, 2, 3, & 4, p. 126.

League of Nations had been brought to a close, and since Great Britain had not wished to continue as mandatory until a satisfactory solution was reached, the United Nations could have and should have exercised its authority in such a way as to have brought Palestine peacefully into the family of nations.

From the experience resulting from the termination of the "A" mandates it appears that there was a wide discretion vested in the mandatory for determining when the mandates were to be liberated from their external control. Conditions were such that the League Council was able only to review the granting of independence to Iraq. There was no final judge in determining if Trans-Jordan was in a position to fulfill the usual obligations of becoming a sovereign state, whereas the countries who signed the United Nations Charter officially sanctioned the independence of both Syria and of Lebanon because of their acceptance of the final wording of Article 78 of their Charter.<sup>1</sup>

But an entirely different situation took place in the recognition of Israel as an independent state. She had gained the recognition of independence through her exploits on the battlefield and in addition by the political maneuvering of the big powers. However, the new state did not become a member of the United Nations until May 11, 1949. In addition,<sup>2</sup> her boundaries have not been authoritatively determined. Thus of the "A"

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<sup>1</sup> Each of the mandate agreements recognized that it was necessary to have the League Council's approval in any modification of the terms of the mandates. See also *supra*, Chap. I, n. 1, p. 12; See also Article 78, Appendix C.

<sup>2</sup> See *supra*, Chap. II, pp. 126-127.

mandates, though all are now independent, Trans-Jordan is not, as yet a member of the United Nations. As originally planned by the Permanent Mandates Commission, the mandate was to be admitted to membership in the League of Nations when it had fulfilled the requirements for independence, to the satisfaction of the League Council.<sup>1</sup> Because Trans-Jordan, so far, has not been accepted into the United Nations, one of the important objectives of the mandate system has not been realized in the new international organization.

There is no specific provision in the United Nations Charter for the termination of trusteeship over any territory with the exception of the provisions in Article 78 of the Charter which provides that trusteeship cannot apply to territories which have become members of the United Nations and the provisions for alteration or amendment of the trusteeship agreements. But specific provisions for the termination of trusteeship, even to the extent of stating an exact date, can be written into any trusteeship agreement. Even so, such provisions have not so far been made in any of the agreements.<sup>2</sup>

Although the termination of a trust would normally come by independence, it is conceivable that the granting of full self-government might also terminate the trusteeship agreement for Article 76 of the Charter specifically provides for the co-equal goals of self-government or

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<sup>1</sup> See supra, Chap. I, n. 4, p. 20; See also supra, Chap. III, n. 2, p. 56.

<sup>2</sup> See Articles 78, 79, & 81, Appendix C.

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or independence. In this way the door is left open for the modification or termination of the trust in the interests of the people concerned. It will be recalled that this was done in the case of Iraq, for the mandate charter was never ratified, and a treaty relationship between Great Britain and Iraq took its place. Nevertheless, it can still be disputed that Great Britain had its own interests in mind when she requested the League Council to approve the treaty relationship, which was in many respects similar to the unratified mandate charter.<sup>2</sup>

Besides the termination of a trust territory by the granting of independence, there are other possible means of altering the status of a trust territory such as granting of self-government, revocation of an administering authorities trust, or amending the trusteeship agreements. So far, there have not been any alterations in the trusteeship agreements, but Article 79 of the Charter does provide for their alteration or amendment. In addition, Articles 83 and 85 of the Charter include the statement that the Security Council and the General Assembly are to exercise the approval of the alteration or amendment of the strategic and non-strategic trusteeship agreements respectively.<sup>3</sup> In the autumn of 1946, Russia proposed to fix a date for the revision of the trusteeship agreements, but it was rejected by the mandatory powers during the sessions of the Fourth

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<sup>1</sup> See Article 76, Appendix C.

<sup>2</sup> See *supra*, Chap. I, n. 1, p. 20.

<sup>3</sup> See Articles 79, 83, & 85, Appendix C.

Committee (Trusteeship) of the United Nations General Assembly. There were other suggestions set forth, such as the Chinese proposal to have trusteeship agreements amended or altered within ten years after they were invoked. This proposal was approved by the Fourth Committee, but it was voted down by the General Assembly.<sup>1</sup> Even though the proposal might have been approved and placed in the form of a new article for each of the trusteeship agreements, which were then being examined by the General Assembly, it would have been unlikely for the powers who had placed these agreements before the Assembly to have approved such measures.<sup>2</sup>

On the other hand, several mandates charters were altered. This was particularly true when in the case of the boundary rectifications which took place between mandatory powers of adjoining mandates. For instance, in 1923 there was a transfer of territory between the mandates of Tanganyika and Ruanda-Urundi under the supervision of the Orts-Milner Commission and approved by the League Council.<sup>3</sup> Other modifications of this type were provided in the mandate agreements for British and French Cameroons whereby<sup>a</sup> special commission was to make minor modifications in the boundaries

<sup>1</sup> "Trusteeship Council Formed," United States Weekly Bulletin, I (December 24, 1946), p. 14; See also Official Records of the Second Part of the First Session of the General Assembly Fourth Committee Trusteeship Part I Summary Records of Meetings 1 November - 12 December, 1946, United Nations Doc., 1947, pp. 158-168 & 178.

<sup>2</sup> For the section on the drafting of the trusteeship agreements, see supra, Chap. II, pp. 57-62.

<sup>3</sup> P.M.C., minutes of the Second Session, 1922, pp. 72-75; See also P.M.C., Minutes of the Third Session, 1923, pp. 136 & 316; See also P.M.C., Minutes of the Fourth Session, 1924, pp. 7 & 65.

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subject to the approval of the two governments.

Two other important changes were made, but they involved the creation of new mandates out of previously existing ones. In 1926 France created the Lebanon Republic; thus for all intents and purposes the French mandate could be treated as two distinct entities consisting of Syria and Lebanon. Likewise, in 1928, similar conditions took place in Palestine as the British recognized the existence of an independent governing in Trans-Jordan. From that time on Trans-Jordan was considered as a separate mandate.

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In these two instances new mandate charters were not created. Lebanon was administered on the basis of the mandate agreement and her newly created constitution, but the mandatory sent only one report for Syria and Lebanon to the Permanent Mandates Commission. In regard to Trans-Jordan, the Palestine mandate was adopted as the basis for mandatory administration, but those sections pertaining to the Jewish national home and the Holy places did not apply to Trans-Jordan. After 1928 Great Britain included a special section on Trans-Jordan within her annual report for the Palestine mandate.

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Alterations of this nature were definitely in

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<sup>1</sup> See Article 1 of both the League of Nations French Mandate for the Cameroons, Doc. No. C. 449(1) e M. 345(e), 1922 and the League of Nations French Mandate for Togoland, Doc. No. C. 449(1) d. M 345(e), 1922.

<sup>2</sup> See supra, Chap. I, n. 1 & 3, p. 19.

<sup>3</sup> See supra, Chap. I, n. 2, p. 19; See also P.M.C., Minutes of the Twenty-seventh Session, 1935, pp. 64-67 & 67-100.

accordance with paragraph 4 of Article 22 of the Covenant because they were logical steps in the mandatory attempts to facilitate the progressive development of the "A" mandates towards their attainment of eventual independence.<sup>1</sup>

Besides these modifications, there was another of a much more serious nature. It was the transferal of the Sanjac of Alexandretta, which was a portion of the Syrian mandate, to Turkey in 1939. This was in direct violation of Article 4 of the Syrian mandate since France was responsible for seeing that no part of the territory of Syria and the Lebanon were ceded, leased, or in any way placed under the control of a foreign power. Perhaps if the Sanjac had been placed under Turkish mandate instead of transferring sovereignty directly to Turkey, the situation would have been somewhat ameliorated. But both France and Great Britain had greatly influenced the League Council in its decision to modify the Syrian mandate in May 1937. In this way Great Britain and France had hoped to gain Turkish friendship in order to offset Germany's rising influence in the near east.<sup>2</sup> As a result of the policy followed by the League Council concerning the Sanjac of Alexandretta, it is evident that the mandates were not kept out of politics.

Provisions were included in both the mandate charters and the trusteeship agreements pertaining to their modification. All of the mandate

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<sup>1</sup> See Article 4, paragraph 4, Appendix A.

<sup>2</sup> See Article 4 of the Mandate for Syria and Lebanon, Appendix B; See also supra, Chap. I, n. 1, p. 40.

charters mentioned the fact that the consent of the League Council was required for any modification.<sup>1</sup> These statements, however, in themselves did not portray the rights of the mandatories but merely stated the League Council's jurisdiction in the mandate system. On the other hand, the trusteeship agreements set forth the manner in which they can be amended as well as the relative authority of the General Assembly and Security Council in respect to the alteration of non-strategic and strategic agreements respectively. Besides these provisions, the agreements are not to be amended without the consent of the administering authority.<sup>2</sup> Although the same conditions were generally understood in the mandate system, there was a lack of definite reference to them. Of particular interest is the United States agreement for the Territory of the Pacific Islands which states in Article 15 that the terms of the present agreement shall not be altered, amended or terminated without the consent of the administering authority.<sup>3</sup> None of the other agreements are quite so emphatic.

Another topic which must be considered is the possibility of revoking a trusteeship and the placing of the territory in the hands of another power. There was, under the mandate system, a considerable amount of

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<sup>1</sup> See supra, Chap. I, n. 1, p. 12.

<sup>2</sup> See Articles 17 & 19 of the Agreement for Tanganyika, Article 12 of the Agreements for French Togoland and the Cameroons, Article 18 of the Agreement for Ruanda-Urundi, & Article 15 of the Samoan Agreement.

<sup>3</sup> See Article 15 of the Agreement for the Territory of the Pacific Islands.



discussion in regards to the revocation of a mandate. During the fifth session of the Commission Lord Lugard pointed out that revocation, though conceivable, was for all intents and purposes not practical. Likewise similar views were expounded by M. Rappard and other members of the Commission.<sup>1</sup> Thus only upon a gross violation of the trust would there be justification for revoking the mandate.

If revocation of a mandate had taken place under the mandate system, Articles 13 and 14 of the Covenant would have become applicable providing, of course, that the dispute in question was placed before the Permanent Court of International Justice. But revocation proceedings more than likely would have been initiated by the Council of the League since it was to deal with any matter pertaining to League functions or affecting world peace.<sup>2</sup>

Since the Council required unanimity in all of its decisions involving other than procedural matters, the mandatory, as a member of the Council, could vote contrary to the revocation proceedings invoked against it thus preventing the attainment of Unanimity. Thus revocation could not be carried out, but by the terms of Article 16 of the Covenant any member of the League could have been expelled if it had violated any of the League Covenants.<sup>3</sup>

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<sup>1</sup> P.M.C., Minutes of the Fifth Session, (Extraordinary) 1924, pp. 176-177; See also P.M.C., Minutes of the Sixth Session, 1925, pp. 154-158.

<sup>2</sup> See Articles 4, 13 & 14 of the League Covenant, Appendix A.

<sup>3</sup> See Articles 5 & 16 of the League Covenant, Appendix A.

As a result, the departure of Japan from the League in 1933, brought the problem of revocation of a mandate into the realm of practical politics. Japan was in no position to veto revocation since she was no longer a member of the League, and in addition Japan's activities in Manchuria and elsewhere tended to reflect additional bad light on her mandate policy which was in itself not particularly sound.<sup>1</sup>

Although Japan stated at the twenty-eighth session of the Commission that she would be bound by the conditions of trust as set forth when she was a League member, there were no effective means of sound supervision since Japan was no longer a member of the League.<sup>2</sup> At any rate there were no decisions reached at this time or at any later date concerning the dismissal of a mandatory in case it ceased to fulfill the obligations set forth in the Covenant. Therefore, it was rather evident that the Japanese had not intended to allow the League to withdraw her mandate over the Pacific Islands and that the use of force would have been necessary in order to have compelled Japan to relinquish the territory to the League or to any power which the League had appointed as mandatory. Nevertheless, these experiences under the mandate system have proved rather beneficial in relation to the question of the withdrawal of a trust from an administering authority.

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<sup>1</sup> See supra, Chap. I, n. 5, p. 37; n. 4, p. 38; & n. 1, p. 39.

<sup>2</sup> See supra, Chap. I, n. 5 & 6, p. 37; See also P.M.C., Minutes of the Twenty-eighth Session, 1935, p. 126.

The Charter does not provide for any more authority to withdraw a trust or transfer it than it provided for the automatic creation of a trust. Thus it could be stated that possession which was not given by the United Nations could not necessarily be taken away by that body.<sup>1</sup> In addition the Trusteeship Council cannot, in itself, oust the administering power even though there be a flagrant case of maladministration. The same was true in the case of the Permanent Mandates Commission.<sup>2</sup>

An attempt was made at the San Francisco Conference to include provisions for the termination of a trust or its transfer from one administering authority to another, but without success. During its discussion by the conference Technical Committee on Trusteeship, Committee II/4, the Egyptian delegate sought to include provisions in the Charter which would provide for the termination of trusteeship of non-strategic territories by the General Assembly upon the instance of the trust power or by recommendation of any member of the Assembly. Provision was also made for the transfer of a trust to another power when and if the terms of the trusteeship agreements were violated by the administering authorities. Besides violations being committed, if the administering power ceased to be a member of the United Nations for any reason the trusteeship would likewise

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<sup>1</sup> For a Discussion of sovereignty in the trust territories, see supra, Chap. III, pp. 276-281.

<sup>2</sup> These powers belonged to the League Council under the mandate system while in the trusteeship system the General Assembly handled them for non-strategic trust territories and the Security Council was in charge of the strategic trust areas.

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be transferred.

These provisions were thoroughly discussed, and due to the many conflicting views on the subject, the Egyptian delegate withdrew his motion in favor of a more complete study of the matter. The chairman of Committee II/4 suggested that the delegate of the United States and Great Britain prepare a report on the subject, which was to then be included in the Rapporteur's report of Committee II/4.<sup>2</sup>

The statement which the delegates of the United States and Great Britain submitted was not included as a part of the Committee II/4 report,<sup>3</sup> but it was decided that the statement should, nevertheless, be appended.

One of the questions which was of particular importance was the procedures to be used in case the administering authority of a trust territory commits an act of aggression. What is of main concern here is the relationship of the trust territory in the matter. As previously discussed, the Security Council can investigate any situation which might give rise to international friction so as to prevent a threat to international peace and security. In this way, the Security Council can recommend to the administering authorities the necessary adjustments to be made. Likewise, the same situation would apply even if the administering

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<sup>1</sup> Documents of the United Nations Conference on International Organization, San Francisco, 1945, Commission II General Assembly, Vol. X, op.cit., p. 547. For a definition of Committee II/4 and its functions, see supra, Chap. II, n. 2, p. 47.

<sup>2</sup> Ibid., Vol. X, p. 548.

<sup>3</sup> Ibid., Vol. X, pp. 548-601-603.

authority is not a member of United Nations since the trust power would still be obligated to the Trusteeship Council unless the trust was withdrawn. Measures could be taken against the administering authority if it violated the trusteeship agreement. These sanctions, measures, or recommendations are provided for in Chapter 7 of the Charter and would be the same as those applied in case the administering power was a member of the United Nations. But if the trust power was expelled from the organization or withdrew for some other reason and in addition refused to abide by the recommendations of the United Nations, such as transferring of the trust to another authority, the situation would then have to be judged by the General Assembly and the Security Council on the basis of the conditions prevailing at the time.

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1 *Ibid.*, Vol. X, pp. 620-621; See also Articles 39-41 of the Charter, Appendix C, which pertain to the measures which could be taken against an administering authority who violates its trusteeship agreement. In addition, the withdrawal of an administering authority from the United Nations is very important when in consideration of the transfer of a trust to another power. Whereas the covenant of the League makes provision for a members withdrawal from the League after two years notice of its intentions to do so, the United Nations Charter fails to answer the all important subject. Japan was the only mandatory which withdrew from the League, but in doing so it is very questionable whether she had fulfilled all her obligations and those of the Covenant at the time of her withdrawal. The Japanese withdrawal from the League definitely weakened the organization, and it is apparent from this experience that the League Covenant gave too much encouragement to members to withdraw. This same belief was set forth by the delegates participating in Committee I/2, the Conference Technical Committee on Membership, Amendment, and Secretariat. Therefore, the Committee incorporated in its report certain provisions pertaining to the reasons for not making an express statement either to permit or to prevent withdrawal from the United Nations; See Article 1, paragraph 3, of the Covenant, Appendix A. See also Documents of the United Nations Conference on International Organization, San Francisco, 1945, Commission I General Provisions, Vol. VII (New York: United Nations Information Organization, 1945), pp. 262-267.

As a result, the statement made jointly by the delegates of the United States and Great Britain tends to reassure the administering authorities that action will more than likely not be taken against them unless they depart drastically from the premises that they themselves chose to approve in the trusteeship agreements. The delegates felt that even though an administering power withdraws from the organization, provided of course that the reasons involved did not reflect discredit upon it, there should not be any reason for transferring the trust territory to another power. In this situation there must also be shown a willingness on the part of the authority to continue to accept the terms of the trusteeship agreement as well as the procedures used by the trusteeship system such as annual reports, periodic visits, and petitions. Thus because of so many contingencies involved, the delegates thought that the practice of making provisions in advance on the subject would not do justice to each individual situation.<sup>1</sup>

Perhaps the Charter should have placed more emphasis on the termination of a trusteeship agreement, other than by independence, and likewise on the explicit methods of dealing with the administering authorities which commit violations against the trusteeship agreements. It is true that the trusteeship system has more expertly handled the situation in theory than was the case under the mandate system, as witnessed by the League's failure to act when the Japanese were not living up to their

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<sup>1</sup> See Documents of the United Nations Conference on International Organization, San Francisco, 1945, Vol. X, op.cit., p. 261.

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mandate agreement for the Pacific Islands. The League was definitely handicapped because of the lack of reference pertaining to the handling of such matters. But it, nevertheless, remains to be seen just what the situation will be when and if a practical test is made of the trusteeship systems provisions on the subjects.

#### K. The Principle of Accountability

One of the more basic and under-lying principles of the mandate system was that of international criticism.<sup>2</sup> The questionnaires employed by the Commission and the methods resorted to in asking for additional information from the mandatory when conditions were none too satisfactory in the mandates were in themselves types of criticism.

For example, the League Assembly discussed the "Bondelzwart Rebellion" during its session of 1922, and in so doing requested the Commission to consider the incident.<sup>3</sup> The Assembly thus brought the problem to the eyes of the world, and it no doubt had a strong influence on the Union of South Africa's future policy in the mandated territory.

The examination of petitions by the Commission was also another important means of exercising the weapon of public criticism. The grievances of the inhabitants were brought to the fore and a record of their review

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1 See supra, Chap. III, n. 1 & 2, p. 304.

2 For a discussion on the value of international criticism, see Moon, op.cit., pp. 509-512.

3 See supra, Chap. I, n. 2, p. 28 & n. 1 & 2, p. 29.

and the recommendations set forth by the Commission can be found in the minutes of the Permanent Mandates Commission's sessions which are preserved for posterity. Thus this material, in conjunction with the Commission's reports to the League Council, helped to enlighten interested persons and governments on the administration of the mandates.

It also seems clear that the effects of international criticism had been extended beyond the territories under the mandate system. True, the commission's jurisdiction did not legally extend outside the territories under mandate, but its influence was not confined to artificial boundaries. As a result, the spirit of Article 22 of the Covenant greatly influenced colonial policy during the years of the League's existence.<sup>1</sup>

Reports of the past have been none too flattering to some of the colonial powers. Perhaps one of the prime examples was the administration of the Portuguese colonies of Angola and the Mozambique. Undoubtedly, the Portuguese were influenced by the presence of the mandated territories which were adjacent to their colonies, and felt themselves obliged to adopt some of the worthwhile projects which the mandatories were undertaking in the mandates under their supervision.<sup>2</sup> Likewise, the mandatories

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<sup>1</sup> See Article 22, Appendix A.

<sup>2</sup> For the undesirable practices carried on by the Portuguese in their colonies, see Leslie Raymond Buell, The Native Problem in Africa, Vol. I (New York: The Macmillan Co., 1928), pp. 29, 31-33; See also Major Archibald Church, East Africa A New Dominion, (London: H. A. & G. Witherby, 1927), pp. 28, 29, 49, & 229-231; See also S. E. Crowe, The Berlin West African Conference 1884-1885, (Longmans, Green, and Co. 1942) pp. 10-11 & 200-203; See also Arthur N. Holcombe, Dependent Areas in the Post-War World, (Boston: World Peace Foundation, 1941), p. 36; See also Wright, op.cit., pp. 228 & 233.



had neighboring colonies and even though they may have maintained as high, or higher, standards than called for under the mandate system many of the ideas obtained from the mandate administration tended to influence their colonial administration elsewhere.

These influences might be considered as indirect results of the mandate system. Although, they were most apparently felt in Africa where the example of the territories under "B" mandates were evident, the influences of the mandate system extended throughout all the colonial areas of the world. The practices of the mandate system received recognition in other areas through the practice of appointing nationals from states possessing colonial territories as members of the Commission. It is true that these members did not represent their state when serving on the Commission, but since they had previously often served in state capacities, it tended to influence the actions of these states in the colonial field.<sup>1</sup>

The mandate system was established on the principle of international responsibility, and the essentials of accountability have been reaffirmed in Chapters XII and XIII of the Charter of the United Nations.<sup>2</sup> In this way the territories which have been placed under trusteeship have become an international responsibility. The trusteeship system can, in theory,

<sup>1</sup> See *Supra*, Chaps. III, 2 & 3, p. 198; The Colonial powers which had nationals appointed to the commission were: Italy, Spain, Portugal, and the Netherlands. For a composition of the Permanent Mandates Commission see Appendix D.

<sup>2</sup> Throughout Chapters XII & XIII of the Charter there can be found evidence of the responsibility placed on the administering authorities and the manner in which they are to be held accountable. See Chapters XII & XIII, Appendix C.

be considered as the trustee on behalf of the inhabitants of the territory and the international community at large with the administering authority as the agent of the trustee. The administering authority, being the agent of the trustee, is responsible to the trusteeship system for the conduct of its administration in the trust territory. By this means the trust power will be exposed to the influence of international appraisal and opinion.

Two rather important instances in which the world is now watching the outcome with varied interest is the progress being made in Samoa toward the development of self-government and the measures being taken by Great Britain and France in order to facilitate a closer union between the Ewe peoples of French and British Togoland and the Gold Coast.<sup>1</sup>

International criticism is now at work in the trusteeship system just as it was under the mandate system. In addition to Chapters XII and XIII of the Charter there is a declaration for non-self-governing territories which is found in Chapter XI. It is merely an extension of the influences which were found operating in the mandate system concerning the accountability of the colonial powers to world review of their colonial administration.<sup>2</sup>

An appropriate example of international criticism now at work outside the trusteeship system is the examination of the report on the administration of the former mandated territory of Southwest Africa. Even though

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<sup>1</sup> See supra, Chap. II, pp. 97-100; See also supra, Chap. II, pp. 102-105.

<sup>2</sup> See Chap. XI, Appendix C; See also paragraphs 1 & 2 of Article 22, Appendix A.

the General Assembly authorized the Trusteeship Council to examine the report, it must be considered as information on a non-self-governing territory under Chapter XI of the Charter. There is, however, a slight difference in this report from those of the other non-self-governing territories because of the Union of South Africa intended to administer Southwest Africa as if it were a mandate and has already presented to the Assembly an annual report for the territory on the basis of those for the former mandate. The annual report was found inadequate in many ways, for the Trusteeship Council has drawn up fifty questions for the Union of South Africa to answer. In this manner the Union has been censured and held accountable to international criticism.<sup>1</sup>

Although Chapter XI of the Charter is to be considered as beyond the scope of this discussion, it has been necessary to consider certain of its factors which are rather important when international accountability is discussed. For example, trusteeship for any of the British, French, Portuguese, or Dutch colonies, or for that matter any of the non-self-governing territories of the other colonial powers, is not anticipated, but since they are members of the United Nations, with the exception of Spain, it is possible for questions to be asked in the General Assembly and its appropriate committees on the fulfillment in these territories of the declaration embodied in Chapter XI of the Charter.<sup>2</sup>

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<sup>1</sup> See supra, Chap. III, n. 1, p. 253.

<sup>2</sup> See Articles 74 & 75, Appendix O.

Because of the moral pressure of world opinion which has brought into existence not only the trusteeship system but Chapter XI as well, the British, French, and Dutch have each launched comprehensive plans for reorganizing their empires along progressive lines. Thus machinery such as found in Chapter XI, by its mere existence, should stimulate the other colonial powers to make creditable if not outstanding records in colonial administration.

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<sup>1</sup> For information concerning the reorganizing of colonial empires see, Vernon McKay, "Empires in Transition -- British, French, and Dutch Colonial Plans," Foreign Policy Reports, XIII (May 1, 1947), pp. 34-47.

## CHAPTER IV

~~SUMMARY AND CONCLUSIONS~~

The trusteeship system continues with distinct improvements, as a modern adoption of the League mandate system. These improvements are in part the result of both the successes and failures of the old system.

The principles underlying the mandate system were lofty ones; but there were many weaknesses in the operations of the system which resulted in performances short of expectations. But it did improve standards of administration, the welfare of the populations, and the progress of some of the territories toward self-government. The Permanent Mandates Commission did a good job under difficult conditions. That its work was taken seriously by the mandatory powers is indicated by the seriousness with which they regarded the discussion of their annual reports by the Commission. Nevertheless, the mandate system had some definite weaknesses.

Likewise there are certain weaknesses in the trusteeship system, but as a whole it is superior to the mandate system. The principal points of difference between the two systems are as follows:

1. There was no positive statement in Article 22 of the Covenant that the mandatory powers were responsible for promoting the advancement of the peoples of mandated areas toward self-government or independence, while it is definitely provided in the United Nations Charter for the

population of trust territories. Thus under the mandate system the rights of the inhabitants were not stressed as much as those of the mandatories, whereas in the trusteeship system the rights of the administering authorities do not tend to overshadow the basic objectives which deal with the advancement of the inhabitants of the trust territories.<sup>1</sup>

2. Because the Permanent Mandates Commission was, in essence, a committee of the League Council, it was unable to supervise closely the mandates administration and was limited mainly to a negative function of criticism. The Trusteeship Council, as a principal organ of the United Nations, is in a position to direct the day-to-day administration of the trust territories by positive measures of supervision over the administering authorities. This was especially true when it came to the examination of the administering authorities annual reports. Since the Commission's examination was of a preliminary nature, its recommendations and observations to the mandate powers had to first be approved by the League Council. On the other hand, the Trusteeship Council had the authority to carry out its decisions and its work was reviewed by the General Assembly only upon the Council's presentation of its annual report to that body.<sup>2</sup>

3. In order to give the Trusteeship Council a far more effective authority than the advisory capacity of the Commission, a much firmer basis of support by governments was made. Instead of having the Council composed

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<sup>1</sup> See supra, Chap. III, pp. 150-153.

<sup>2</sup> See supra, Chap. III, pp. 196-208; See supra, Chap. III, 235-243.

of impartial and independent experts appointed for their technical and expert qualifications irrespective of governments as was the case under the mandate system, the Council is composed of member states with the delegates being the official member appointed by those states. In this manner the Council is able to perform its functions more realistically than did the Commission, for the representatives of the Council have the backing of and represent the power of their member governments.<sup>1</sup> However, under the trusteeship system, it is rather questionable if the technical and expert qualifications of the representatives will be of as great a value as they were under the trusteeship system, for their expert opinions may, on occasion, be overridden by the vital interests of the state which they represent.

4. The Commission was severely handicapped, especially during its first few years of operations, because it had very few instructions as to its method of work. Rules of procedure had to be drawn up, questionnaires had to be formulated, petitioning procedures and the examination of annual reports had to be worked out, and other innumerable devices and procedures had to be arranged. This work was pioneering in nature and was unquestionably beneficial to the trusteeship system since a large majority of it was incorporated in the Trusteeship Council's rules of procedure. As a result, the Council was in a much more favorable position from the outset than was the Commission in its supervision over mandates.

5. Though many of the powers and functions of the Trusteeship Council

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See supra, Chap. III, pp. 196-208.

are similar to those of the Commission, for the most part, they show definite improvement over the latter. The petitioning procedures adopted by the Council were very elaborate in comparison to those used by the Commission. The Council is empowered to receive petitions directly from the inhabitants of the trust territories which was not the case under the mandate system. The right of an oral hearing of a previously written petition is also granted <sup>1</sup> to the inhabitants. Another serious fault in the mandate system, which has been remedied under the trusteeship system, was the Commission's lack of authority to conduct investigations in the mandates. On the other hand, the Trusteeship Council has already made use of its right to conduct visits in the trust territories. Since the Commission had to rely so heavily on printed documents, it was oftentimes unable to make the necessary recommendations to the administering authorities; therefore, its efforts to protect the rights and to safeguard the <sup>2</sup> interests of the indigenous inhabitants were greatly hampered.

6. One of the more striking differences between the two systems are the military provisions. Under the mandate system, the mandates were excluded from the sphere of strategy, whereas the trusteeship system envisages the trust territories as having a definite role in the world security system. The administering authorities can use the local militia not only for local purposes, as was the case under the mandate system, but also

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1 See supra, Chap. III, pp. 254-261.

2 See supra, Chap. III, pp. 261-266.



for the general system of collective security. However, this policy was pursued by the French in their mandates for Togoland and the Cameroons even though it was in direct violation of the League Covenant.<sup>1</sup>

Another violation of the military provisions of the trusteeship system, and one of great significance, was the Japanese violation of its mandate in the Pacific. In this instance, the Japanese not only fortified the mandated islands in direct violation of the trust, but also later invaded the Australian mandated territory of New Guinea with comparative ease for Australia had lived up to the pacific character of the military provisions of the mandate system. Thus this was one of the reasons for providing that the trust territories could be fortified.<sup>2</sup>

7. An additional outgrowth of the general militancy of the provisions found in the trusteeship provisions of the Charter, is the United States strategic trust territory over the Pacific islands. The United States wanted to make sure that the former Japanese mandated islands never again would become a danger point to our security system; therefore, they were brought into our security system in the form of a strategic trusteeship. But at the San Francisco Conference and also prior to the approval of the strategic agreement, the United States intimated that it was on a take it or leave it basis, and that if the United States proposals on strategic trusteeship were not acceptable, the area would not be placed

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1 See supra, Chap. III, pp. 173-177.

2 See supra, Chap. III, n. 1, p. 172.

under trusteeship. Thus a note of compulsion was evident which tended to heap criticism on the United States trusteeship policy.<sup>1</sup>

The interpretation by the United States of its responsibilities as administering authority of the Territory of the Pacific Islands will be a definite test of whether the security requirements of the territory will be incompatible with the political, economic, social, and educational advancement of the inhabitants. In the first place, United States strategic trusteeship covered all the former Japanese mandated islands. Why could it not have covered just a few of the islands with the others administered under a non-strategic trusteeship? Article 82 of the Charter provides for just such a contingency.<sup>2</sup> If the United States had followed such a procedure, its trust policy would likely be under less fire from dissatisfied sources. There has also been a great deal of concern shown in relation to the application of the provisions found in Article 87 and 88 of the Charter. Whether the United States will permit periodic visits to the islands under the strategic trusteeship is extremely important to the proper functioning of the trusteeship system. For instance, the United States has already closed one area for security reasons. Insurance has, however, been given that the welfare of the inhabitants of Eniwetok Atoll will be safeguarded. In other words, the examining of petitions, the sending of annual reports based on the

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<sup>1</sup> For background material see supra, Chap. II, pp. 76-82; See also supra, Chap. III, p. 164.

<sup>2</sup> See Article 82, Appendix C.

political, economic, social, and educational advancement of the inhabitants of the trust territory, and the other activities pertaining to the basic objectives of the trusteeship system, will continue to apply. These considerations are likewise important because the inhabitants of Eniwetok Atoll have been moved to other islands in the Caroline group, and at the present time it is rather difficult to tell whether their best wishes have been looked after.<sup>1</sup> There will undoubtedly be additional information on the matter when the first annual report from the strategic trust territory is examined.

8. The mandate system was less effective as a means of promoting the material development of the territories under its care. In contrast, the trusteeship system has sought to bring about a more energetic and enterprising use by the administering authority of its own opportunities for the commercial development of a territory under its control. As a result, the trusteeship system has not overlooked the internal developments of the trust territories at the expense of the outmoded conception of the "open door" which tended to isolate the mandates from the problem of commercial policy in general.<sup>2</sup>

9. There is a great deal of difference between the mandate charters and trusteeship agreements. This was in part due to the lack of length

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<sup>1</sup> See Articles 76, 87 & 88, Appendix C; See also Security Council Official Records, Second Year, Supplement No. 20, United Nations Doc. S/613, 1947, pp. 169-171.

<sup>2</sup> See supra, Chap. III, pp. 173-177.

and detail of the provisions found in Article 22 of the Covenant in comparison with those found in Chapters XII and XIII of the Charter, for the provisions of the agreements and charters are definitions of the manner in which the principles laid down in Article 22 and Chapters XII and XIII are to be applied. By way of comparison Article 22 is comprised of only nine paragraphs while the trusteeship provisions of the Charter consist of Articles 75 through 91 inclusive; therefore, it is no wonder that the trusteeship agreements were a definite improvement over the mandate charters.<sup>1</sup>

For instance, the trusteeship agreements provide for greater native participation in the administration of the trust territories and also have much further advanced provisions pertaining to native education than those found in the mandate charters. Nevertheless the mandate charters did provide more information concerning the diplomatic and consular protection of the native inhabitants of the mandates as well as to their status of citizenship.<sup>2</sup>

10. Another point of difference is found in the manner of classification of territories under the two systems. The trusteeship system avoided the rigid classification of territories into "A", "B", and "C" categories as provided for by the League mandate system. Thus the trusteeship system has an elasticity which the mandate system definitely

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1 See supra, Chap. III, p. 165; See also supra, Chap. III, p. 147.

2 See supra, Chap. III, n. 1 & 2 p. 69; See also supra, Chap. III, pp. 283-285.

lacked, for it recognized that, because of the great diversity between each of the trust territories, there was a greater need for an agreement specifically tailored to the needs of the territory rather than an artificial classification of territories as found under the mandate system. There is, however, provision for two distinct types of trust territories but the distinction is based entirely on security considerations, therefore, the terms strategic and non-strategic are appropriate.<sup>1</sup>

11. The mandate system was definitely weakened by the failure to provide adequately for the placing of additional territories under that system. Although Article 22 of the Covenant made an attempt to leave the way open for the placing of other non-self-governing territories under the mandate system, there were no well rounded provisions like those found in Article 77 of the Charter.<sup>2</sup> Because no other territories were placed under the system, it was brought increasingly under suspicion.

Even though the Charter provides for the voluntary placing of other non-self-governing territories under the trusteeship system, the only territories thus far placed under the system are the former mandates which merely confirmed trusteeship authority in the hands of former mandatory states over former mandated territory, with the exception of the United States strategic trusteeship over the Japanese mandated islands. If there is a continuation of this policy, the trusteeship system will

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<sup>1</sup> See supra, Chap. III, pp. 160-164.

<sup>2</sup> See supra, Chap. III, pp. 153-155.

1 see supra, Chap. II, n. 1 & 2, p. 118 & n. 1 & 2, p. 119.

possibility of having Italy, Egypt, Ethiopia, or the Arab League as the  
territories are appointed as trust authorities over those areas. The  
to see if any new powers other than those already administering trust  
placed under the trusteeship system. It will be extremely interesting  
likelihood that some, or all, of the former Italian colonies will be  
World War II, are placed under the trusteeship system. There is the  
if some of the territories detached from enemy states, as a result of  
This undesirable situation might be alleviated, at least in part,  
territories from this source.

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greatly hindering the possibility of there being any additional trust  
territories might follow the example set forth by South Africa, thus  
under the system. Also the powers which possess other non-self-governing  
of its lack of authority to see that South Africa places the territory  
the operation of the trusteeship system, to unduly denature it because  
be a tendency on the part of those countries which are dissatisfied with  
seen fit to place the area under trusteeship. As a result, there will  
Although being morally bound by Article 77, the Union has so far not  
mandated territory of Southwest Africa under the trusteeship system.  
spot because of the Union of South Africa's failure to place the former  
At the present time, the trusteeship system is being placed on the  
undoubtedly lose some of its prestige.

administering authority over one of the former Italian colonies is not yet out of the question.<sup>1</sup> Also the outcome of the Italian colonial controversy may have a strong influence on the settlement of the territorial issues which are bound to arise when the Japanese peace settlement is concluded. In this case China, Russia, or even Japan might become administering authorities over former Japanese territory.<sup>2</sup> Thus in case any of these powers become administering authorities, the trusteeship system will not so likely be criticized because only certain privileged nations are placed in authority over areas detached from enemy states because of World War II. Perhaps if Germany had been permitted to act as a mandatory over one or more of her colonies detached because of World War I, the mandate system would have been more favorably acceptable to the world.

12. Under the mandate system, there was no provision for the administration of a mandate other than by a single administering power, with the negligible and even debatable exception of Nauru. Although the Covenant did not provide for the joint administration of a mandate, Australia, New Zealand and the United Kingdom acted on behalf and were responsible to the British Empire as the mandatory, for Nauru. The Charter, on the other hand, clearly recognizes the need for a wider interpretation of the administering authority by providing that "the

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<sup>1</sup> See supra, Chap. II, pp. 127-132.

<sup>2</sup> See supra, Chap. II, n. 1 & 2, p. 131.

administering authority may be one or more states or the organization itself.<sup>1</sup>

So far, there have not been any trusteeships with more than one state as the administering authority nor have any territories been placed under the direct supervision of the Trusteeship Council in the form of a United Nations Organization trusteeship. But due to the disagreement over who should be trustees for the former Italian colonies, individual trusteeship for these areas is out of the question, temporarily at least, thus leaving the way open for other types of administering authorities.

Most of these points which have been discussed not only tend to show that there were definite weaknesses in the mandate system but also that the new system is an attempt to remedy these weaknesses. There were, however, other difficulties in the mandate system which have heretofore, not been considered and which do not specifically apply to the trusteeship system. Among these difficulties were some of the mistakes that the mandatories made during the early years of their mandate administration. Oftentimes inexperienced administrators were appointed, such as demobilized soldiers, to fill the positions vacated by the German administration. There was also an interruption in the scientific research which was carried on by German experts of tropical industries and agriculture at the Amani Institute of Tanganyika.<sup>2</sup>

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<sup>1</sup> For a discussion of the different types of administering authorities, see supra, Chap. III, n. 1-4, p. 149.

<sup>2</sup> Mander, op.cit., p. 728.



But then too the trusteeship system also has problems particularly peculiar to itself. It is noticeable that the existing system is the product of fierce international rivalries, jealousies, and tensions. The trusteeship system is called upon to operate in a world rent more than ever by conflicting ideologies and divergent political and economic systems. Under such conditions the measure of general agreement necessary for the success of international cooperation in the field of trusteeship is made all the more difficult. Thus the concerted action, at least for the present, will be subordinated to the separatist interests and aspirations of the major powers.

This is particularly true in relation to Russia's participation in the activities of not only the Trusteeship Council's sessions but its general attitude towards the system as a whole. Russia boycotted the Trusteeship Council for slightly over a year, and though participating in the Council's sessions since April, 1948, has not withdrawn its charge that the trusteeship agreements were illegal. Likewise she declared that since the trusteeship agreements were illegal, the Trusteeship Council was not legally formed.<sup>1</sup> Such an attitude by one of the permanent members of the Trusteeship Council is bound to be harmful to the organization. The full cooperation of the Soviet Union is necessary in order to obtain a more complete world sanction of the trusteeship systems ideals and purposes. It must be remembered, however, that the world

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<sup>1</sup> See supra, Chap. II, pp. 62-63.

has been removed from World War II by only four years; therefore, it is unreasonable to expect that there will be an immediate ironing out of difficulties. Only time will tell whether the trusteeship system will reflect national rivalries more sharply than did the mandate system.

What is still needed is an affirmative continuous collaboration between governments directly interested in the welfare and progress of a particular region. Harmony between the Trusteeship Council and the administering authorities must continue in order for the trusteeship system to achieve satisfactory results. Thus success or failure will depend to a large extent on the readiness of the member governments to subordinate their own short-term interests to the supreme long-term interests of the international trusteeship system.

The Charter contains many loop-holes; therefore, the value of trusteeship will depend on how it is used which, of course, is true of the entire Charter. One of its chief stumbling blocks at the present time is the exaggerated nationalism which has been intensified by the war. Nevertheless if the strain of the post-war readjustment can be overcome, the trusteeship system can make a great contribution to the promotion of international cooperation and understanding.

The United Nations Organization is responsible for promoting "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."<sup>1</sup> It is not so easy,

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<sup>1</sup> See paragraph 3, Article 1, Appendix C.

however, to see how the compliance of the members with these principles is to be secured. These principles are now being applied inductively and experimentally in the trust territories. Thus, the trusteeship system is functioning as a useful testing ground.

Chapters XII and XIII of the Charter and the institutions of the United Nations relating to trusteeship provides greater opportunities for the economic, social, and political development of the dependent peoples toward their full participation in the family of nations than they have ever had before. As a result, it is of utmost importance to the United Nations that the Trusteeship Council continue to work smoothly and effectively and discharge its functions and exercise its powers in accordance with the spirit and the basic objectives of the trusteeship system.

Like all new institutions the trusteeship system will be confronted with many problems. There will, undoubtedly, be a number of lessons to be learned from the Trusteeship Council's first sessions, and through the years these experiences should be improved. Because there is no final solution to a great social problem, there can only be adjustments in the direction of a final valid aim, and these adjustments must take into account the varied factors that enter into the problem. The continued success of the Trusteeship system's work should also be based upon a careful consideration of such legal and constitutional problems which arise in Chapters XII and XIII of the Charter. By pursuing such a policy, assurance will be made that the trusteeship system does not play

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the same roll as did the mandate system, which would be doomed automatically to repeat the mistakes of that system.

Finally, the relative merits of the two systems are, at least at this time, a matter of judgment, but there is general agreement that in most of the specific comparisons which have been made, the trusteeship system represents a rather marked improvement over the mandate system of the League of Nations.

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A P P E M D I X

## APPENDIX A

- I Article 22 of the Covenant and other Selected Articles
- II Constitution of the Permanent Mandates Commission
- III Rules of Procedure of the Permanent Mandates Commission
- IV Territories Administered under the League of Nations Mandate System

APPENDIX ANo. I

Source of Information for No. I: League of Nations Official Journal, Part 1, 1920, pp. 5-12.

Article 22 of the Covenant and other Selected Articles

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who, by reason of their resources, their experience or their geographical position, can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

Certain Communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

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 defense of territory, and will also secure equal opportunities for the trade and commerce of other members of the League.

There are territories, such as Southwest 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 centers of civilization, 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.

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

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.

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.

#### Article 1 (paragraph 3)

Any member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.

#### Article 3 (paragraph 3)

The Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

#### Article 4 (paragraph 4)

The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.



### Article 5

Except where otherwise expressly provided in this Covenant, or by the terms of the present Treaty, decisions at any meeting of the Assembly or the Council shall require the agreement of all the members of the League represented at the meeting.

All matters of procedure at meetings of the Assembly or of the Council, including the appointment of Committees to investigate particular matters, shall be regulated by the Assembly or by the Council and may be decided by a majority of the members of the League represented at the meeting.

The first meeting of the Assembly and the first meeting of the Council shall be summoned by the President of the United States of America.

### Article 6

The permanent Secretariat shall be established at the Seat of the League. The Secretariat shall comprise a Secretary-General and such secretaries and staff as may be required.

The first Secretary-General shall be the person named in the Annex; thereafter the Secretary-General shall be appointed by the Council with the approval of the majority of the Assembly.

The secretaries and the staff of the Secretariat shall be appointed by the Secretary-General with the approval of the Council.

The Secretary-General shall act in that capacity at all meetings of the Assembly and of the Council.

The expenses of the Secretariat shall be borne by the members of the League in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union.

### Article 13

The members of the League agree that, whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject matter to arbitration.

Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration.

For the consideration of any such dispute the court of arbitration to which the case is referred shall be the court agreed on by the parties to the dispute or stipulated in any conventions existing between them.

The members of the League agree that they will carry out in full good faith any award that may be rendered and that they will not resort to war against a member of the League which complies therewith. In the event of any failure to carry out such an award, the Council shall propose what steps should be taken to give effect thereto.

#### Article 14

The Council shall formulate and submit to the members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

#### Article 16

Should any members of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall inso facto be deemed to have committed an act of war against all other members of the League, which hereby undertake immediately to subject it to the severance of all ~~trade~~ or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a member of the League or not.

It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

The members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimize the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League.

Any member of the League which has violated any covenant of the League may be declared to be no longer a member of the League by a vote of the Council concurred in by the Representatives of all the other members of the League represented thereon.

#### Article 23

Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the members of the League:

(a) will endeavor to secure and maintain fair and humane conditions of labor for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organizations;

(b) undertake to secure just treatment of the native inhabitants of Territories under their control;

(c) will intrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children and the traffic in opium and other dangerous drugs;

(d) will intrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest;

(e) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all members of the League. In this connection, the special necessities of the regions devastated during the war of 1914-1918 shall be borne in mind;

(f) will endeavor to take steps in matters of international concern, for the prevention and control of disease.

APPENDIX ANo. II

Source of Information for No. II: Permanent Mandates Commission Constitution, League Doc. No. C.P.M., 386, 1928.

League of NationsPermanent Mandates CommissionConstitution

Approved by the Council on December 1, 1920.

Edition embodying the amendments adopted by the Council on January 10, 1922, and September 8, 1927.

The Council of the League of Nations in accordance with paragraphs 7 and 9 of Article 22 of the Covenant, namely:

"In every case of Mandate, the Mandatory shall render to the Council an Annual Report in reference to the territory committed to its charge."

"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," has decided as follows:

(a) The Permanent Mandates Commission provided for in paragraph 9 of Article 22 of the Covenant, shall consist of ten members. The majority of the commission shall be nationals of non-Mandatory Powers.

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1 Note by the Secretariat: The Council, on the 11, December, 1924, decided to add to the Commission an extraordinary member, it being understood that this appointment should not prejudice the composition of the Commission as originally decided upon after careful study of all the considerations involved.

All the members of the Commission shall be appointed by the Council and selected for their personal merits and competence. They shall not hold any office which puts them in a position of direct dependence on their Governments while Members of the Commission.

The International Labor Organization shall have the privilege of appointing to the Permanent Commission an expert chosen by itself. This expert shall have the right of attending in an advisory capacity all meetings of the Permanent Commission at which questions relating to labor are discussed.

(b) The Mandatory Powers should send their annual report provided for in paragraph 7 of Article 22 of the Covenant to the Commission through duly authorized representatives who would be prepared to offer any supplementary explanations or supplementary information which the Commission may request.

(c) The Commission shall examine each individual report in the presence of the duly authorized representatives of the Mandatory Power from which it comes. This representative shall participate with absolute freedom in the discussion of this report.

(d) After this discussion has ended, and the representative of the Mandatory Power has withdrawn, the Commission shall decide on the wording of the observations which are to be submitted to the Council of the League.

(e) The observations made by the Commission upon each report shall be communicated to the duly authorized representative of the Mandatory Power from which the report comes. This representative shall be entitled to accompany it with any comments which he desires to make.

(f) The Commission shall forward the reports of Mandatory Powers to the Council. It shall annex to each report its own observations as well as the observations of the duly authorized representative of the Power which issued the report, if the representative so desires.

(g) When the Council publishes the reports of the Mandatory Powers and the observations of the Permanent Commission, it shall also publish the observations of the duly authorized representatives of those Mandatory Powers which have expressed such a desire.

(h) The Commission, acting in concert with all the duly authorized representatives of the Mandatory Powers, shall hold a Plenary Meeting to consider all the reports as a whole and any general conclusions to be drawn from them. The Commission may also utilize such a meeting of the representative of the Mandatory Powers to lay before them any other

matters connected with Mandates which in their opinion should be submitted by the Council to the Mandatory Powers and to the other States, Members of the League. This Plenary Meeting shall take place either before or after the presentation of the annual reports as the Commission may think fit.

(i) The Commission shall regulate its own procedure subject to the approval of the Council.

(j) The Commission shall sit at Geneva. It may summon technical experts to act in an advisory capacity for all questions relating to the application of the system of Mandates.

(k) The Members of the Commission shall receive an allowance of 70 gold francs per day during their meetings. Their traveling expenses shall be paid. Expenses of the Commission shall be borne by the League of Nations.

APPENDIX ANo. III

Source of Information for No. III: Permanent Mandates Commission Rules of Procedure, League Doc. No. C.P.M. 8, 1924.

League of NationsPermanent Mandates CommissionRules of Procedure

Approved by

The Council of the League of Nations

Whereas, in conformity with Article 22 of the Covenant, the Permanent Mandates Commission is entrusted with the duty of receiving and examining the Annual Reports which the Mandatory Powers shall render to the Council in reference to the territories committed to their charge, and of advising the Council on all matters relating to the observance of the mandates:

and whereas, by the provisions of the Constitution of the Permanent Mandates Commission, which was approved by the Council on December 1, 1920, the Commission is instructed to draw up its own Rules of Procedure, subject to the approval of the Council:

Now therefore the Commission adopts the following provisions for its Rules of Procedure, subject to the above-mentioned reservation:

Rule 1

The Permanent Mandates Commission will assemble for its ordinary session once a year at the seat of the League of Nations, as a rule in the second half of June.

It will meet for extraordinary sessions at the request of one of its members, on condition that this request, which should be addressed to the Secretary-General and submitted by him to the other members of the Commission, be approved by the majority of those members and by the President of the Council of the League.

The Mandatory Powers and the President of the Council shall be informed, at least one month in advance, of the dates of sessions.

#### Rule 2

The Permanent Mandates Commission shall consist of nine members, as laid down by paragraph (a) of its Constitution.

The International Labor Organization may detail an expert, selected by itself, to sit on the Permanent Commission. This expert shall be entitled to attend, in an advisory capacity, all the meetings of the Permanent Commission at which questions connected with the labor system are discussed.

#### Rule 3

At any meeting five members shall constitute a quorum.

All decisions of the Commission shall be adopted by a majority of the votes of the members present at the meeting. In case of equality of votes, the Chairman shall have a casting vote. Any statement of views by a minority consisting of one or more members of the Commission shall be transmitted to the Council at the request of the minority.

#### Rule 4

At the beginning of each ordinary session, the Commission shall elect from among its members, by secret ballot, a Chairman and a Vice-Chairman for a period of one year. The Mandates Section of the Secretariat of the League will constitute the permanent Secretariat of the Commission.



### Rule 5

The Commission shall be put in possession, at least before May 20, of the annual reports which, in conformity with the provisions of paragraph 9 of Article 22 of the Covenant, it is constituted to receive.

The Mandatory Powers shall be requested to send one hundred copies of those reports to the Secretariat of the League, and one copy each, at the same time, to the members of the Permanent Mandates Commission, whose names and addresses shall be communicated, with this object in view, to the Governments of these Powers.

### Rule 6

The Agenda for each session shall be prepared by the Secretariat of the League, submitted for the approval of the Chairman of the Commission, and communicated to the members, together with the notice convening the Commission.

The Commission may decide, during the course of a session, by a two-thirds majority of the members present, to add any questions to the agenda.

### Rule 7

The Chairman shall convene the Commission through the agency of the Secretariat; he shall direct the work at the meetings, ensure that the provisions of the Rules of Procedure are observed, and announce the results of ballots.

The Secretariat shall draw up the minutes of each meeting. These minutes, after being approved by the Commission, shall be kept in a special file. Copies shall be communicated to the Council and to the Mandatory Powers.

### Rule 8

At the beginning of the ordinary session, the Commission shall undertake a separate examination and discussion of each of the annual reports submitted by the Mandatory Powers. The examination and the discussion shall take place, in each case, in the presence of the accredited representatives of the Mandatory Power which issued the report.

After this examination, the Commission shall decide upon the form to be given to the observations to be transmitted to the Council of the League. If the Commission is not unanimous, it may present its observations in the form of majority and minority reports. These observations shall be, in every case, communicated to the accredited representative of the Power which issued the report to which they refer. The representative concerned may attach his own remarks.

The Commission shall forward the reports of the Mandatory Powers to the Council. It shall annex to each report its own observations as well as the observations of the duly authorized representative of the Power which issued the report, if the representative so desires.

If a majority of the members of the Commission should express the desire, the Commission shall hold a plenary meeting in the presence of the duly authorized representatives, when it has adopted the final terms of its observations on all reports which it has examined. The Commission may take advantage of the presence of the duly authorized representatives of the Mandatory Powers to bring them all matters connected with the Mandates which, in its opinion, should be submitted by the Council to the Mandatory Powers and to the other Members of the League.

The meetings, as well as the plenary meeting, shall be public if it be so decided by a majority of the Commission.

#### Rule 9

French and English shall be the official language of the Commission.

If a member of the Commission should express the desire, the Secretariat will cause all written documents emanating from the Commission, together with the annual reports of the Mandatory Powers and the remarks of the duly authorized representatives of the latter, to be translated into French when they have been submitted in English, and vice versa.

Members of the Commission may speak in French or in English. On the request of a member of the Commission, speeches in French will be summarized in English, and vice versa, by an interpreter on the staff of the Secretariat.

#### Rule 10

Subject to the approval of the Council, these Rules of Procedure may be modified if at least five members of the Commission so decide.

APPENDIX A

No. IV

Territories Administered under the League of Nations Mandate System<sup>1</sup>

<u>Territory</u>	<u>Class</u>	<u>Mandatory</u>	<u>Area</u> <u>Sq. Mi.</u> <sup>3</sup>	<u>Population</u> <u>(1938)</u>
Iraq	A	British	116,511	3,300,000 <sup>2</sup>
Palestine	A	British	9,010	1,435,341
Transjordan			20,000	300,214
Syria	A	French	52,000	2,920,000
Greater Lebanon			8,000	850,000
Tanganyika	B	British	373,494	5,257,929
Ruanda-Urundi	B	Belgium	21,429	3,752,742
Togoland (Br.)	B	British	13,240	370,327
Togoland (Fr.)	B	French	20,077	780,699
Cameroons (Fr.)	B	French	164,094	2,609,508
Cameroons (Br.)	B	British	34,236	857,675
Southwest Africa	C	Union of South Africa	322,393	292,079
Western Samoa	C	New Zealand	1,333	57,759
Nauru	C	Australia	9	3,400
New Guinea	C	Australia	91,500	587,625
North Pacific Islands	C	Japan	830	121,128

<sup>1</sup> Figures for area and population are taken from the Mandates System; Origin - Principles - Application, Geneva: League of Nations, 1945.

<sup>2</sup> See League of Nations Year-Book of the League of Nations 1931/32, Geneva: League of Nations, 1932, p. 22.

<sup>3</sup> The reconversion figure of 1 square kilometer = 0.3861 of a square mile was used in order to convert from kilometers to miles.

## APPENDIX B

- I Mandate Charter for German Samoa
- II Mandate Charter for Togoland (Br.)
- III Mandate Charter for Syria and the Lebanon

APPENDIX BNo. 1

Source of Information for No. 1: League of Nations Mandate for German Samoa, League of Nations Dec. No. 21/51/14/B, 1920.

Mandate for German Samoa

## Article 1

The territory over which a Mandate is conferred upon His Britannic Majesty for and on behalf of the Government of the Dominion of New Zealand (hereinafter called the Mandatory) is the former German Colony of Samoa.

## 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 Dominion of New Zealand, and may apply the laws of the Dominion of New Zealand 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 labor 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 10, 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 the 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, the 17th day of December, 1920.

APPENDIX BNo. II

Source of Information for No. II: League of Nations Mandate for Togoland, League Doc., No. C, 449 M. 345(b), 1922.

British Mandate for Togoland

## Article 1

The territory for which a mandate is conferred upon His Britannic Majesty comprises that part of Togoland which lies to west of the line laid down in the Declaration signed on July 10, 1919, of which a copy is annexed hereto.

This line may, however, be slightly modified by mutual agreement between His Britannic Majesty's Government and the Government of the French Republic where an examination of the localities shows that it is undesirable, either in the interests of the inhabitants or by reason of any inaccuracies in the map Sprigade 1: 200,000, annexed to the Declaration, to adhere strictly to the line laid down therein.

The delimitation on the spot of this line shall be carried out in accordance with the provisions of the said Declaration.

The final report of the Mixed Commission shall give the exact description of the boundary line as traced on the spot; maps signed by the Commissioners shall be annexed to the report. This report with its annexes shall be drawn up in triplicate; one of these shall be deposited in the archives of the League of Nations, one shall be kept by His Britannic Majesty's Government, and one by the Government of the French Republic.

## Article 2

The Mandatory shall be responsible for the peace, order and good government of the territory, and for the promotion to the utmost of the material and moral well-being and the social progress of its inhabitants.

### Article 3

The Mandatory shall not establish in the territory any military or naval bases, nor erect any fortifications, nor organize any native military force except for local purposes and for the defence of the territory.

### Article 4

The Mandatory:

(1) shall provide for the eventual emancipation of all slaves, and for as speedy an elimination of domestic and other slavery as social conditions will allow;

(2) shall suppress all forms of slave trade;

(3) shall prohibit all forms of forced or compulsory labor, except for essential public works and services, and then only in return for adequate remuneration;

(4) shall protect the natives from abuse and measures of fraud and force by the careful supervisions of labor contracts and the recruiting of labor;

(5) shall exercise a strict control over the traffic in arms and ammunition and the sale of spirituous liquors.

### Article 5

In the framing of laws relating to the holding or transfer of land, the Mandatory shall take into consideration native laws and customs, and respect the rights and safeguard the interests of the native population.

No native land may be transferred except between natives, without the previous consent of the public authorities, and no real rights over native land in favor of non-natives may be created except with the same consent.

The Mandatory shall promulgate strict regulations against usury.

### Article 6

The Mandatory shall secure to all nationals of States Members of the League of Nations the same rights as are enjoyed in the territory by his own nationals in respect of entry into and residence in the territory, the protection afforded to their person and property, and acquisition of property, moveable and immovable, and the exercise of their profession or trade, subject only to the requirements of public order, and on condition of compliance with the local law.



Further, the Mandatory shall ensure to all nationals of States Members of the League of Nations on the same footing as to his own nationals, freedom of transit and navigation, and complete economic, commercial and industrial equality; except that the Mandatory shall be free to organize essential public works and services on such terms and conditions as he thinks just.

Concessions for the development of the natural resources of the territory shall be granted by the Mandatory without distinction on grounds of nationality between the nationals of all States Members of the League of Nations, but on such conditions as will maintain intact the authority of the local Government.

Concessions having the character of a general monopoly shall not be granted. This provision does not affect the right of the Mandatory to create monopolies of a purely fiscal character in the interest of the territory under mandate and in order to provide the territory with fiscal resources which seem best suited to the local requirements; or in certain cases, to carry out the development of natural resources, either directly by the State or by a controlled agency, provided that there shall result therefrom no monopoly of the natural resources for the benefit of the Mandatory or his nationals, directly or indirectly, nor any preferential advantage which shall be inconsistent with the economic, commercial and industrial equality hereinbefore guaranteed.

The rights conferred by this article extend equally to companies and associations organized in accordance with the law of any of the Members of the League of Nations, subject only to the requirements of public order, and on condition of compliance with the local law.

#### Article 7

The Mandatory shall ensure in the territory complete freedom of conscience and the free exercise of all forms of worship which are consonant with public order and morality; missionaries who are nationals of States Members of the League of Nations shall be free to enter the territory and to travel and reside therein, to acquire and possess property, to erect religious buildings and to open schools throughout the territory; it being understood, however, that the Mandatory shall have the right to exercise such control as may be necessary for the maintenance of public order and good government, and to take all measures required for such control.

#### Article 8

The Mandatory shall apply to the territory any general international conventions applicable to its contiguous territory.

#### Article 9

The Mandatory shall have full powers of administration and legislation in the area subject to the mandate. This area shall be administered in accordance with the laws of the Mandatory as an integral part of its territory and subject to the above provisions.

The Mandatory shall therefore be at liberty to apply its laws to the territory subject to the mandate with such modifications as may be required by local conditions, and to constitute the territory into a customs, fiscal or administrative union or federation with the adjacent territories under his sovereignty or control, provided always that the measures adopted to that end do not infringe the provisions of this mandate.

#### Article 10

The Mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council, containing full information concerning the measures taken to apply the provisions of this mandate.

#### Article 11

The Consent of the Council of the League of Nations is required for any modification of the terms of this mandate.

#### Article 12

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 instrument shall be deposited in original in the archives of the League of Nations. Certified copies shall be forwarded by the Secretary-General of the League of Nations to all Members of the League.

APPENDIX BNo. III

Source of Information for No. III: League of Nations Mandate for Syria and Lebanon, League Doc. No. C. 528. M. 313, 1922.

Mandate for Syria and the LebanonArticle 1

The Mandatory shall frame, within a period of three years from the coming into force of this mandate, an organic law for Syria and the Lebanon.

This organic law shall be framed in agreement with the native authorities and shall take into account the rights, interests, and wishes of all the population inhabiting the said territory. The Mandatory shall further enact measures to facilitate the progressive developments of Syria and the Lebanon as independent States. Pending the coming into effect of the organic law, the government of Syria and the Lebanon shall be conducted in accordance with the spirit of this mandate.

The Mandatory shall, as far as circumstances permit, encourage local autonomy.

Article 2

The Mandatory may maintain its troops in the said territory for its defence. It shall further be empowered, until the entry into force of the organic law and the reestablishment of public security, to organize such local militia as may be necessary for the defence of the territory, and to employ this militia for defence and also for the maintenance of order. These local forces may only be recruited from the inhabitants of the said territory.

The said militia shall thereafter be under the local authorities, subject to the authority and the control which the Mandatory shall retain over these forces. It shall not be used for purposes other than those above specified save with the consent of the Mandatory.

Nothing shall preclude Syria and the Lebanon from contributing to the cost of the maintenance of the forces of the Mandatory stationed in the territory.

The Mandatory shall at all times possess the right to make use of the ports, railways and means of communication of Syria and the Lebanon for the Passage of its troops and of all materials, supplies and fuel.

#### Article 3

The Mandatory shall be entrusted with the exclusive control of the foreign relations of Syria and the Lebanon and with the right to issue exequaturs to the consuls appointed by foreign Powers. Nationals of Syria and the Lebanon living outside the limits of the territory shall be under the diplomatic and consular protection of the Mandatory.

#### Article 4

The Mandatory shall be responsible for seeing that no part of the territory of Syria and the Lebanon is ceded or leased or in any way placed under the control of a foreign Power.

#### Article 5

The privileges and immunities of foreigners, including the benefits of consular jurisdiction and protection as formerly enjoyed by Capitulation or usage in the Ottoman Empire, shall not be applicable in Syria and the Lebanon. Foreign consular tribunals shall, however, continue to perform their duties until the coming into force of the new legal organization provided for in Article 6.

Unless the Powers whose nationals enjoyed the afore-mentioned privileges and immunities on August 1, 1914, shall have previously renounced the right to their re-establishment, or shall have agreed to their non-application during a specified period, these privileges and immunities shall at the expiration of the mandate be immediately re-established in their entirety or with such modifications as may have been agreed upon between the Powers concerned.

#### Article 6

The Mandatory shall establish in Syria and the Lebanon a judicial system which shall assure to natives as well as to foreigners a complete guarantee of their rights.

Respect for the personal status of the various peoples and for their religious interest shall be fully guaranteed. In particular, the control and administration of Wakfs shall be exercised in complete accordance with religious law and the dispositions of the founders.

## Article 7

Pending the conclusion of special extradition agreements, the extradition treaties at present in force between Foreign Powers and the Mandatory shall apply within the territory of Syria and the Lebanon.

## Article 8

The Mandatory shall ensure to all complete freedom of conscience and the free exercise of all forms of worship which are consonant with public order and morality. No discrimination of any kind shall be made between the inhabitants of Syria and the Lebanon on the ground of differences in race, religion or language.

The Mandatory shall encourage public instruction, which shall be given through the medium of the native languages in use in the territory of Syria and the Lebanon.

The right of each community to maintain its own schools for the instruction and education of its own members in its own language, while conforming to such educational requirements of a general nature as the administration may impose, shall not be denied or impaired.

## Article 9

The Mandatory shall refrain from all interference in the administration of the Councils of management (Conseils de fabriques) or in the management of religious communities and sacred shrines belonging to the various religions, the immunity of which has been expressly guaranteed.

## Article 10

The supervision exercised by the Mandatory over the religious mission in Syria and the Lebanon shall be limited to the maintenance of public order and good government; the activities of these religious missions shall in no way be restricted, nor shall their members be subjected to any restrictive measures on the ground of nationality, provided that their activities are confined to the domain of religion.

The religious mission may also concern themselves with education and relief, subject to the general right of regulation and control by the Mandatory or of the local government, in regard to education, public instruction and charitable relief.

## Article 11

The Mandatory shall see that there is no discrimination in Syria or the Lebanon against the nationals, including societies and associations, of any State Member of the League of Nations as compared with

its own nationals, including societies and associations, or with the nationals of any other foreign State in matters concerning taxation or commerce, the exercise of professions or industries, or navigation, or in the treatment of ships or aircraft. Similarly, there shall be no discrimination in Syria or the Lebanon against goods originating in or destined for any of the said States; there shall be freedom of transit, under equitable conditions, across the said territory.

Subject to the above, the Mandatory may impose or cause to be imposed by the local governments such taxes and customs duties as it may consider necessary. The Mandatory, or the local governments acting under its advice, may also conclude on grounds of contiguity any special customs arrangements with an adjoining country.

The Mandatory may take or cause to be taken, subject to the provisions of paragraph 1 of this article, such steps as it may think best to ensure the development of the natural resources of the said territory and to safeguard the interests of the local population.

Concessions for the development of these natural resources shall be granted without distinction of nationality between the nationals of all States Members of the League of Nations, but on condition that they do not infringe upon the authority of the local government. Concessions in the nature of a general monopoly shall not be granted. This clause shall in no way limit the right of the Mandatory to create monopolies of a purely fiscal character in the interest of the territory of Syria and the Lebanon, and with a view to assuring to the territory the fiscal resources which would appear best adapted to the local needs, or, in certain cases, with a view to developing the natural resources either directly by the State or through an organization under its control, provided that this does not involve either directly or indirectly the creation of a monopoly of the natural resources in favor for the Mandatory or its nationals, nor involve any preferential treatment which would be incompatible with the economic, commercial and industrial equality guaranteed above.

#### Article 12

The Mandatory shall adhere, on behalf of Syria and the Lebanon, to any general international agreements already existing, or which may be concluded hereafter with the approval of the League of Nations, in respect to the following: the slave trade, the traffic in drugs, the traffic in arms and ammunition, commercial equality, freedom of transit and navigation, aerial navigation, postal, telegraphic or wireless communications, and measures for the protection of literature, art or industries.

#### Article 13

The Mandatory shall secure the adhesion of Syria and the Lebanon, so far as social, religious and other conditions permit, to such measures of common utility as may be adopted by the League of Nations for preventing and combating disease, including diseases of animals and plants.

#### Article 14

The Mandatory shall draw up and put into force within twelve months from this date a law of antiquities in conformity with the following provisions. This law shall ensure equality of treatment in the matter of excavation and archaeological research to the nationals of all States Members of the League of Nations.

#### Article 15

Upon the coming into force of the organic law referred to in Article 1, an arrangement shall be made between the Mandatory and the local governments for reimbursement by the latter of all expenses incurred by the Mandatory in organizing the administration, developing local resources, and carrying out permanent public works, of which the country retains the benefit. Such arrangement shall be communicated to the Council of the League of Nations.

#### Article 16

French and Arabic shall be the official languages of Syria and the Lebanon.

#### Article 17

The Mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council as to the measures taken during the year to carry out the provisions of this mandate. Copies of all laws and regulations promulgated during the year shall be attached to the said report.

#### Article 18

The consent of the Council of the League of Nations is required for any modification of the terms of this mandate.

#### Article 19

On the termination of the mandate, the Council of the League of Nations shall use its influence to safeguard for the future the fulfillment by the Government of Syria and the Lebanon of the financial obligations, including pensions and allowances, regularly assumed by the administration of Syria or of the Lebanon during the period of the mandate.

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1 This article contains eight additional clauses which go into great detail with regards to the treatment of antiquities and excavations.

## Article 20

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 instrument shall be deposited in original in the archives of the League of Nations and certified copies shall be forwarded by the Secretary-General of the League of Nations to all Members of the League.



## APPENDIX C

- I Chapter XII The International Trusteeship System
- II Chapter XIII The Trusteeship Council
- III Miscellaneous Articles from the United Nations Charter

APPENDIX CNo. I

Source of Information for No.'s I & II & III: Charter of the United Nations and Statute of the International Court of Justice, U. S. Department of State Publication No. 2368, Conference Series No. 76, Washington: United States Government Printing Office, 1945.

Chapter XII The International Trusteeship System

## Article 75

The United Nations shall establish under its authority an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements. These territories are hereinafter referred to as trust territories.

## Article 76

The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

- a. to further international peace and security;
- b. To promote the political, economic, social and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;
- c. to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and
- d. to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

#### Article 77

1. The trusteeship system shall apply to such territories in the following categories as may be placed thereunder by means of trusteeship agreements:

- a. territories now held under mandate;
- b. territories which may be detached from enemy states as a result of the Second World War; and
- c. territories voluntarily placed under the system by states responsible for their administration.

2. It will be a matter for subsequent agreement as to which territories in the foregoing categories will be brought under the trusteeship system and upon what terms.

#### Article 78

The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality.

#### Article 79

The terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the states directly concerned, including the mandatory power in the case of territories held under mandate by a Member of the United Nations, and shall be approved as provided for in Articles 83 and 85.

#### Article 80

1. Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79 and 81, placing each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties.

2. Paragraph 1 of this Article shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system as provided for in Article 77.

#### Article 81

The trusteeship agreement shall in each case include the terms under which the trust territory will be administered and designate the authority which will exercise the administration of the trust territory. Such authority, hereinafter called the administering authority, may be one or more states or the Organization itself.

## Article 82

There may be designated, in any trusteeship agreement, a strategic area or areas which may include part of all of the trust territory to which the agreement applies, without prejudice to any special agreement or agreements made under Article 43.

## Article 83

1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the Security Council.

2. The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.

3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas.

## Article 84

It shall be the duty of the administering authority to ensure that the trust territory shall play its part in the maintenance of international peace and security. To this end the administering authority may make use of volunteer forces, facilities, and assistance from the trust territory in carrying out the obligation towards the Security Council undertaken in this regard by the administering authority, as well as for local defense and the maintenance of law and order within the trust territory.

## Article 85

1. The functions of the United Nations with regard to trusteeship agreements for all areas not designated as strategic, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the General Assembly.

2. The Trusteeship Council, operating under the authority of the General Assembly, shall assist the General Assembly in carrying out these functions.

APPENDIX CNo. IIChapter XIII The Trusteeship Council

## Article 86

1. The Trusteeship Council shall consist of the following Members of the United Nations:

- a. those Members administering trust territories;
- b. such of those Members mentioned by name in Article 23 as are not administering trust territories; and
- c. as many other Members elected for three-year terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those Members of the United Nations which administer trust territories and those which do not.

2. Each member of the Trusteeship Council shall designate one specially qualified person to represent it therein.

## Article 87

1. The General Assembly and, under its authority, the Trusteeship Council, in carrying out their function, may:

- a. consider reports submitted by the administering authority;
- b. accept petitions and examine them in consultation with the administering authority;
- c. provide for periodic visits to the respective trust territories at times agreed upon with the administering authority; and
- d. take those and other actions in conformity with the terms of the trusteeship agreements.

## Article 88

The Trusteeship Council shall formulate a questionnaire on the political, economic, social and educational advancement of the inhabitants of each trust territory, and the administering authority for each trust territory within the competence of the General Assembly shall make an annual report to the General Assembly upon the basis of such questionnaire.

## Article 89

1. Each member of the Trusteeship Council shall have one vote.
2. Decisions of the Trusteeship Council shall be made by a majority of the members present and voting.

## Article 90

1. The Trusteeship Council shall adopt its own rules of procedure, including the method of selecting its President.
2. The Trusteeship Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

## Article 91

The Trusteeship Council shall, when appropriate, avail itself of the assistance of the Economic and Social Council and of the specialized agencies in regard to matters with which they are respectively concerned.

APPENDIX CNo. IIIMiscellaneous Articles from the United Nations Charter

## Article 1

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

## Article 7

1. There are established as the principal organs of the United Nations: a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice, and a Secretariat.
2. Such subsidiary organs as may be found necessary may be established in accordance with the present charter.

## Article 16

The General Assembly shall perform such functions with respect to the international trusteeship system as are assigned to it under Chapters XII and XIII, including the approval of the trusteeship agreements for areas not designated as strategic.

### Article 13

1. The General Assembly shall initiate studies and make recommendations for the purpose of:

a. promoting international cooperation in the political field and encouraging the progressive development of international law and its codification;

b. promoting international cooperation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

2. The further responsibilities, functions, and powers of the General Assembly with respect to matters mentioned in paragraph 1(b) above are set forth in Chapters IX and X.

### Article 18

Each member of the General Assembly shall have one vote.

Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include: recommendations with respect to the maintenance of international peace and security, the election of the non-permanent members of the Security Council, the election of the members of the Economic and Social Council, the election of members of the Trusteeship Council in accordance with paragraph 1(b) of Article 86, the admission of new Members of the United Nations, the suspension of the rights and privileges of membership, the expulsion of members, questions relating to the operation of the trusteeship system, and budgetary questions.

Decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting.

### Article 27

Each member of the Security Council shall have one vote.

Decisions of the Security Council on procedural matters shall be made by an affirmative vote of seven members.

Decisions of the Security Council on all other matters shall be made by an affirmative vote of seven members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.



## Article 36

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.

2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.

3. In making recommendations under this article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

## Article 37

1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by means indicated in that Article, they shall refer it to the Security Council.

2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

## Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

## Article 40

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

## Article 41

The Security Council may decide what measures not involving the use of armed force to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

## Article 57

The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.

Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialized agencies.

## Article 62

1. The Economic and Social Council may make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General Assembly, to the Members of the United Nations, and to the specialized agencies concerned.

2. It may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.

3. It may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence.

4. It may call, in accordance with the rules prescribed by the United Nations, international conferences or matters falling within its competence.

## Article 93

1. All Members of the United Nations are ipso facto parties to the Statute of the International Court of Justice.

2. A state which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.

## Article 94

1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.

2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

## Article 95

Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

## Article 96

1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.

## Article 97

The Secretariat shall comprise a Secretary-General and such staff as the Organization may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organization.

## Article 98

The Secretary-General shall act in that capacity, in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council, and shall perform such other functions as are entrusted to him by these organs. The Secretary-General shall make an annual report to the General Assembly on the work of the Organization.

## Article 101

1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.

2. Appropriate staffs shall be permanently assigned to the Economic and Social Council, the Trusteeship Council, and, as required, to other organs of the United Nations. These staffs shall form a part of the Secretariat.

3. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

## APPENDIX D

- I Composition and Qualifications of the  
Permanent Mandates Commission
- II Composition and Qualifications of the  
Trusteeship Council

APPENDIX DNo. I

Source of Information for No. I: P.M.C., Minutes of the First through the Thirty-seventh Sessions, 1921-1939. Also, League of Nations Official Journal, 1921-1939.

Composition and Qualifications of the Permanent Mandates Commission

Nationals of Non-Mandatory States

Italian

1921-1938 - Marquis Theodoli, Chairman of the Commission at nearly every session. He was former undersecretary of state to the ministry of colonies.

Although he did not resign until 1938, he was not present for the thirtieth through the thirty-fourth sessions. The League Council did not appoint a national of another state to fill the vacancy.

The Netherlands

1921-1934 - P. W. Van Roes, vice chairman at most of the Commission's sessions. Formerly, he was vice-president of the Council of the Dutch East Indies.

Died in October 1934. There was no Dutch national present for the twenty-six session lasting from October 29, to November 12, 1934.

1935-1939 - Baron Van Asbeck, expert in colonial matters and International Law.

Spanish

1921-1922 - M. Ramon Penla, former undersecretary of state to the minister of foreign affairs and ambassador of Spain at Rome. He resigned because he accepted a position in the government of his country.

1922-1924 - Count de Ballabor, former consul at Jerusalem. He resigned in 1924.

1924-1939 - M. Leopoldo Polocios, professor at the University of Madrid.

#### Portuguese

1921-1929 - M. Frier D'Andrade, former governor of Lorenzo Marques, former governor-general of Mozambique, former minister of foreign affairs.

Resigned because of ill health but was absent at two sessions prior to that time.

1929-1939 - Count de Penha Garcia, authority on international questions pertaining to colonial matters.

#### Swedish

1921-1928 - Mme. Anna Bugge - Wicksell, was an educator. She died in 1928.

#### Norwegian

1928-1939 - Mille Valentine Dannevig, was an educator. The Council of the League appointed the Norwegian national in order to fill the vacancy created by the death of Mme. Anna Bugge - Wicksell. It was the only instance of a different national being appointed upon the death or resignation of one of the members of the Permanent Mandates Commission.

#### German

1927-1929 - Ludwig Kastl, former senior official in the colonial administration and former chief of the reparation section of the finance ministry. He resigned owing to his other numerous duties.

1929-1935 - M. Ruppel, He was an official in the Cameroons administration from 1908-1913 and was chief of section in the German colonial ministry.

He was absent from the twenty-fourth session in 1935 on but did not officially resign from the Commission. Probably one of the reasons that the League Council did not appoint a national of another power to fill the vacancy was because the Council had created the position in 1937 especially for a German national. Since the German national on the Commission had failed to attend its meetings after Germany withdrew from the League in 1933, the League Council should have either amended the Commission's Constitution so as to have reduced the permanent membership to nine or have appointed another member in order to have brought the Commission to full strength.

## Nationals of Mandatory States

### British

1921-1923 - Mr. W. G. Armsby-Gore, member of the House of Commons. He resigned to take a position as Under-Secretary of State for the colonies in the British government.

1923-1936 - Lord Frederick Lugard, former governor of Nigeria. He resigned in 1936.

1936-1938 - Lord Hailey, held administrative posts in the British government. He resigned in 1938.

1939-1939 - Lord Hankey, Secretary of the Committee of Imperial Defence from 1912-1938 and held other enumerable government positions.

### French

1921-1926 - M. Beau, former governor - general of French Indo-China, also former ambassador of France at Berne. Was unable to attend the eighth session because of ill health and died in February, 1926.

1926-1926 - M. H. Roume, honorary governor - general of the colonies. He was substitute for M. Beau during the eighth session.

1926-1934 - M. Martial Merlin, former governor - general of French Indo-China. He died in 1934.

1935-1936 - M. Fancerop, had an administrative, diplomatic, and colonial career in France and Africa. He died in 1936.

1937-1939 - M. Giraud, former colonial governor of French West Africa.

### Japan

1921-1924 - M. Kunio Yanagita, former secretary - general to the House of Peers. He was not present at the fourth session and resigned in 1924.

1924-1928 - M. H. Chiyoaki Yamanaka, former counselor of embassy. He was absent his first session which was the fifth and resigned in 1928.

1928-1938 - M. Nobumichi Sakenobe, former minister to Chile. He resigned in 1938 when Japan withdrew her co-operation with the Permanent Mandates Commission. The League Council did not appoint a national of another state so as to fill the vacancy.

## Belgian

1921-1939 - Mr. Pierre Orts, former secretary - general of the ministry of foreign affairs.

## Extraordinary Member

## Swiss

1925-1939 - William E. Rappard, professor at the University of Geneva, former director of the mandates section of the Secretariat.

## Representative of the International Labor Organization

## British

1921-1929 - Mr. Harold A. Grinshaw, expert in labor affairs. He died in 1929.

1929-1939 - Mr. C. W. H. Weaver, expert on labor matters.



APPENDIX DNo. II

Source of Information for No. II:

I Delegation to the United Nations No. II March - April 1948, United Nations Publication, 1948, Protocol and Liaison Section, United Nations Doc., 1948.

II United Nations Trusteeship Council Official Records First Year: First Session from the First Meeting (26 March 1947) to the Twenty-seventh Meeting (28 April, 1947), United Nations Doc., 1947.

III The United Nations Weekly Bulletins, Vol. I-III and the United Nations Bulletin, Vol. IV-VI.

Composition and Qualifications of the Trusteeship Council

President for Sessions Nos. 1 & 2:<sup>1</sup>

The Honorable Francis B. Sayre  
(United States of America), Ambassador

Vice-President for Sessions Nos. 1 & 2:

Sir Carl August Berendsen  
(New Zealand), Envoy Extraordinary and Minister Plenipotentiary to the United States.

President for Sessions Nos. 3 & 4:

M. E. Dr. Lui Chieh  
(China), Ambassador Extraordinary and Plenipotentiary to Canada.

Vice-President for Sessions Nos. 3 & 4:

Sir Alan Guthbert Maxwell Burns\*  
(United Kingdom), G.C.M.G.

Administering Powers

The United States

Representative

Francis B. Sayre, President of the Trusteeship Council for its first year. Mr. Sayre was Assistant Secretary of State for six years. He was

1 At the beginning of the Trusteeship Council's regular session in June of each year a President and Vice-President are elected from among the representatives of the members of the Trusteeship Council and neither shall be eligible for immediate re-election.

\* Members present at the third session but that did not serve at the first session.

also served as High Commissioner of the Philippines, assistant to Secretary of State Cordell Hull, and as diplomatic advisor to U.N.R.R.A. Mr. Sayre also served as Chairman of the visiting mission to Samoa in the summer of 1947.

#### Deputy Representative

Mr. Benjamin Gerig, chief of the Department of States' Division of Dependent Affairs. Acted advisor on trusteeship questions to the United States delegation to the San Francisco Conference in 1945 and to the General Assembly in 1946. In addition he served from 1929-1939 with the League of Nations Secretariat as a member of the Information and Mandates Sections.

#### Advisors

Mr. A. E. Wellons

Mr. W. L. Yoomans

### The United Kingdom

#### Representative

Mr. Ivor Thomas, \*\*representative to the Trusteeship Council at its first session. He was Under-Secretary of State for the colonies and has been a member of Parliament since 1942.

Sir Alan Outhbert Maxwell Burns, \* vice-President to the third and fourth sessions of the Council. He has had a distinguished career as a colonial administrator. Among his more important positions were the twelve years from 1912 that he served with the Nigerian administration, five years as governor of British Honduras, and as Governor and Commander-in-Chief of the Gold Coast from 1941 to 1947. During this time he was also responsible for the administration of British Togoland which became a trust territory in 1946.

#### Alternate Representative

Mr. A. H. Poynton, C. M. G.

#### Advisors

Mr. P. S. Falla, also serves on Committees and on the Security Council and Atomic Energy Commission and as an adviser on the General Assembly's Interim Committee.

Mr. B. Cockram, first Secretary and Head of Chancery. He is also on the permanent delegation to the Economic and Social Council

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\*\* Designates that the delegate has been replaced since the first or second session of the Council.

## New Zealand

## Representative

Sir Carl August Berendsen, Envoy Extraordinary and Minister Plenipotentiary to the United States. In addition he serves as New Zealand representative on the General Assembly's Interim Committee. He was also Chairman of the Fourth (Trusteeship) Committee at its meetings in October 1947.

## Alternate Representative

Mr. G. R. Laking\*

Mr. John S. Reid\*

Mr. R. S. Taylor\*\*served as alternate and adviser at the first session.

## Adviser

Mr. G. Crow. He also serves as an adviser on the Interim Committee.

## France

## Representative

M. E. M. Roger Garneau, an excellent linguist and has seen service in the far east and Europe. He has participated in many conferences including the fourth session of the Council of Foreign Ministers. His present rank is ambassador and he is a French representative to the United Nations interim headquarters.

## Alternate Representative

M. Henri Laurentie. He is currently serving as the chairman of the visiting mission to Tanganyika and Ruanda-Urundi. Mr. Laurentie has a long list of colonial activities and was appointed Secretary-General of French Equatorial Africa in 1943. Is also a French Representative at the United Nations interim headquarters.

## Advisers

M. Jean de la Grandville\*\*

M. G. Monod, Secretary of Embassy

M. J. Maillet\*

## Belgium

## Representative

M. Pierre Ryckmans, has had a long career in connection with non-self-governing territories. He served in the former mandated territory of Ruanda-Urundi and from 1934-1946 he was Governor-General of the Belgian Congo.

## Adviser

M. J. Naaykens

## Australia

## Representative

Mr. Norman J. O. Makin\*\*, is now ambassador Extraordinary and Plenipotentiary to the United States of America. He is also serving as representative on the Economic and Social Council.

Mr. W. D. Forsyth\*, serves as counselor of Embassy and serves as an adviser on the Economic and Social Council.

## Advisors

Colonel W. R. Hodgson\*\*

Mr. T. A. Pyman\*\*

Mr. E. W. P. Chinnery, is currently serving on the visiting mission to Tanganyika and Ruanda-Urundi.

Mr. A. H. Laomes\*

## Non-Administering Powers

## Ex-Officio Members

## The Soviet Union

## Representative

Russia did not have any delegates present at either the first or second sessions. Mr. Tsarapkin was appointed a member of the Council in April, 1948, but his assistants were not named at that time.

Mr. Semen K. Tsarapkin, was educated at the Institute of Oriental Studies. Mr. Tsarapkin was chief of the Second Far Eastern Department of the Foreign Affairs and was later appointed chief of the American Department of that ministry. In addition he has served as a member of the Soviet delegation to the Dumbarton Oaks Conference in 1944, to the San Francisco Conference in 1945 and to the second session of the General Assembly he served with the Soviet delegation on the Fourth (Trusteeship) Committee.

## China

## Representative

Mr. E. Mr. Liu Chieh, currently serving as President for the third and fourth sessions of the Trusteeship Council. From 1932-1939 he served as an adviser to the Chinese delegation to the League of Nations. In addition he has participated in the Dumbarton Oaks Conference and the San Francisco Conference. In addition to his activities on the Council he serves as Ambassador Extraordinary and Plenipotentiary to Canada.

**Alternate**

Dr. Shunsi Hsu\*\*, is now an alternate representative to the Security Council and is serving on their committee of experts. He is also serving as alternate representative on the Interim Committee.

**Adviser**

Mr. K. W. Yu\*\*

Dr. Lin Moueheng, was formerly the head of the Research Section of the United Nations and is now serving on the visiting mission to Tanganyika and Ruanda-Urundi. He also serves as an adviser to the Chinese representative on the Security Council.

**Assistants**

Dr. K. C. Wang

Mr. Hugo H. C. Yen, He is in charge of liaison affairs and is third secretary for the Chinese representatives at the Interim Headquarters.

**Independent States Elected as Members by the General Assembly  
and which Serve for Three-Year Terms**

**Iraq - Member until 1950**

**Representative**

H. E. Mr. Ali Jawdat, served as a representative of Iraq at the San Francisco Conference and to the first session of the General Assembly. He has been Minister of Iraq to the United States since 1942.

**Permanent Alternate Representative**

Mr. Awni Khalid, Secretary of Embassy

**Adviser**

Mr. Abdulla Bakr, Consul General, New York and representative at the Interim Committee of the General Assembly.

**Mexico - Member until 1950**

**Representative**

H. E. Dr. Luis Padilla Nervo, Ambassador Extraordinary and Plenipotentiary. He is also permanent representative to the United Nations and is now serving as chairman of the Interim Committee of the General Assembly.

**Alternate Representative**

Dr. Haul Noriega, Envoy Extraordinary and Minister Plenipotentiary. He was listed only as an adviser at the first session. He is also serving as alternate representative to the Interim Committee of the General Assembly.

**Advisers**

Sr. Octavio Barreda, Counselor and in addition is serving as adviser on the General Assembly Interim Committee.

Sr. Alfonso Castro Valle<sup>2</sup>, Second Secretary and adviser at General Assembly Interim Committee.

Costa Rica<sup>1</sup> \* Member until 1951

**Representative**

Dr. Ricardo Fournier, Under-Secretary for Foreign Affairs, permanent representative to the United Nations, and representative on the Interim Committee of the General Assembly.

**Alternate Representative**

Dr. Arturo Morales is serving as alternate representative on the Interim Committee of the General Assembly.

Robert E. Woodbridge, is currently serving on the visiting mission to Tanganyika and Ruanda-Urundi.

The Philippines \* Member until 1951

**Representative**

M. E. Brigadier General Carlos P. Romulo<sup>3</sup>, Ambassador Extraordinary and Plenipotentiary, and permanent representative to the United Nations. He is also chief of the Philippine Mission to the United Nations thus being a representative on the Interim Committee of the General Assembly.

**Alternate Representative and Adviser**

Judge Jose Inglés, serves as alternate representative on the Interim Committee of the General Assembly.

**Representatives of the Specialized Agencies****International Labor Organization**

Mr. E. J. Riches

United Nations

United Nations Educational, Scientific, and Cultural Organization

Mr. Solomon V. Arnaldo

1 Costa Rica and the Philippines were not present at the first session of the Council which was held in March and April of 1947 because at that time there was already a balance between the administering and non-administering powers as Iraq and Mexico were elected in December, 1946, to make it possible for the Council to hold its first session. Need for two additional members on the Council did not arise until July 8, 1947, when the United States approved by due constitutional process the stra-

(cont. p. 410)

## Food and Agricultural Organization

Mr. F. L. McBougall  
Mrs. Sherleigh Fowler  
Mr. Karl Olson

## Observers at the First Session

## Brazil

## Observer

M. Enrico Penteado

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(Footnote n. 1, p. 409 cont.)

agic trusteeship agreement for the Territory of the Pacific Islands, but it was not necessary to elect them until November, 1947, just prior to the beginning of the second session of the Council. See supra, Chap. II, pp. 80-85.

APPENDIX E

Distribution of Mandates and Trusteeship  
Territories



## APPENDIX E

1  
Distribution of Mandates and Trusteeship Territories

<u>Territory</u>	<u>Mandatory Power (Administering Authority)</u>	<u>Area Sq. Mi.<sup>2</sup></u>	<u>Population</u>
Iraq	Britain	Declared independent	1932
Palestine (Israel)	Britain	Declared independent	1948
Trans-Jordan	Britain	Declared independent	1946
Syria	France	Declared independent	1945
Lebanon	France	Declared independent	1945
Tanganyika	Britain	373,493	5,257,929
Ruanda-Urundi	Belgium	21,429	5,752,742
Togoland (Br.)	British	13,240	370,327
Togoland (Fr.)	French	20,077	780,699
Cameroons (Br.)	British	34,236	857,675
Cameroons (Fr.)	French	164,094	2,609,508
Southwest Africa	South Africa	Being administered as if it were a mandate.	
Western Samoa	New Zealand	1,333	57,759
Nauru	Australia	9	3,400
New Guinea	Australia	91,300	587,625
Caroline, Mariana & Marshall Islands	Japan (Replaced by United States)	830	48,000 <sup>3</sup>

1 Figures for area and population are taken from The Mandates System: Origin - Principles - Application, Geneva: League of Nations, 1945.

2 The reversion figure of 1 square kilometer = 0.3861 of a square mile was used in order to convert from kilometers to miles.

3 The population figure given by the United States representative to the Security Council on February 26, 1947, was 48,000 native inhabitants. See Draft Trusteeship Agreement for the Japanese Mandates Islands, U. S. Department of State Publication No. 2784, Far Eastern Series No. 20, Washington: United States Government Printing Office, 1947. Japanese nationals are being repatriated to Japan.

Typed by Hildegard E. Wagner