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INTERNATIONAL LAW—TRUSTEESHIP COMPARED WITH MANDATE
—At the termination of World War I there was a feeling that some new mode of dealing with nonself-governing territories should be evolved to take the place of the time-honored method of annexation by the victorious states. General Smuts of South Africa conceived of the mandate system and his proposals were embodied in article 22 of the Covenant of the League of Nations.¹ The system outlined in article 22 classified mandate territories into one of three classes dependent upon the stage of development of the particular territory.² The Treaty of

¹ 2 MILLER, *THE DRAFTING OF THE COVENANT* 23-60 (1928).

² ["A" Mandates.] Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. . . . ["B" Mandates] 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. . . . ["C" Mandates] There are territories, such as South West Africa and certain of the South Pacific Islands, which . . . can be best admin-

Versailles, which included the Covenant of the League, provided for the selection of the mandatories by the Allied and Associated Powers.³ (Additional provisions of the Covenant will be discussed more at length in a subsequent portion of this comment.)

The mandate system represented an attempt to cope with the problem of nonself-governing territories as an international responsibility and, for the most part, was an advancement over former methods of treatment. The system was not perfect and its operation pointed up a number of its defects. The framers of the United Nations Charter formulated the trusteeship system to take the place of the mandate system, correcting its defects and adding certain innovations. The purpose of this comment is to present a brief comparison of the two systems and to consider a few of the major problems presented.

I. Relationship of Mandates to the United Nations

The provisions of the Charter relating to nonself-governing territories are contained in chapters XI, XII, and XIII. Chapter XI relates to nonself-governing territories in general, chapter XII to trusteeship territories and chapter XIII to the Trusteeship Council.

Since the provisions of chapter XI apply to all nonself-governing territories they also apply to those held, or formerly held, under a Mandate from the League of Nations as well as trusteeship territories. The members of the United Nations have recognized their responsibilities to the inhabitants of territories which do not possess self-government⁴ and, in order to implement this recognition, have agreed, *inter alia*, to submit regular reports to the Secretary-General of the United Nations, for informational purposes, containing "statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply."⁵ For the first time, states have agreed to submit a report to an international organization, with the consequence of publicity, on territory over which they exercise sovereignty or exclusive control. This is

istered under the laws of the Mandatory as integral portions of its [own] territory, subject to the safeguards above mentioned in the interests of the indigenous population." HALL, *THE LEAGUE MANDATE SYSTEM AND PROBLEMS OF DEPENDENCIES*, Appendix I, 71 (1945).

³ League of Nations, *Responsibilities of the League Arising out of Art. 22 (Mandates)*, Report of Mr. Hymans, Rapporteur of the Council of the League, (20/48/161) 2 and Annex 4 adopted by Council August 5, 1920.

⁴ Charter of the United Nations, Art. 73.

⁵ *Id.*, Art. 73(e).

a product of the growing realization that the administration of nonself-governing territories is not a matter of national concern only.

In a discussion of mandates and mandated territory we are primarily concerned with chapters XII and XIII. It is clear from the preliminary work and the final text of article 77 of chapter XII that the trusteeship system was set up primarily to deal with territories held under Mandates from the League.⁶ In addition there are provisions for the application of the system to territories detached from enemy states as a result of World War II and territories voluntarily placed under it by states responsible for their administration.⁷

The trusteeship system only applies to such "territories as may be placed thereunder by means of trusteeship agreements."⁸ From this language it is clear that territories held under a Mandate, or other territories, are not automatically placed under the trusteeship system.⁹ The only mandatory which has not placed mandated territory under a trusteeship arrangement, or which is not in the process of so doing, is the Union of South Africa which held a "C" Mandate over the Territory of South-West Africa.¹⁰ The refusal of the Union to place the Territory under a trusteeship has raised a good deal of controversy as to whether there is a legal duty on the part of the Union to do so. The General Assembly of the United Nations, after a failure to reach any satisfactory solution to the problem, referred the problem to the International Court of Justice for an advisory opinion.¹¹ The court, by a vote of eight to six, was of the opinion that there was no legal duty on the part of the Union to place South-West Africa under a trusteeship although it might

⁶ Report of the Preparatory Commission of the United Nations (PC/20-23 December, 1945), Chapter IV--The Trusteeship System, 49 et seq. "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. . . ." Charter of the United Nations, Art. 77(1).

⁷ Charter of the United Nations, Art. 77(1)(b) and (c).

⁸ *Id.*, Art. 77(1). See also Art. 75, Art. 77(2) and Art. 80.

⁹ Great Britain Colonial Office (hereinafter cited as Gr. Br. Col. Off.), Trusteeship Territories in Africa under United Kingdom Mandate 4, (June, 1946); Hall, "The Trusteeship System," 24 BRITISH YEARBOOK OF INTERNATIONAL LAW (hereinafter cited as BRIT. Y.B. INT. L.) 50 (1947).

¹⁰ Sayre, "The Advancement of Dependent Peoples," INT. CONC. No. 435, 720 (1947). As to the refusal of the Union of South Africa to place South West Africa under a trusteeship, see Official Records of the second part of the first session of the General Assembly, Fourth Committee, Trusteeship, Part I, Summary Record of Meetings, Annex 13, 199 et seq. and Annex 13(a) 238-239; Oral Statement of Ivan S. Kerno, Representative of the Secretary-General of the United Nations, on the International Status of South West Africa before the International Court of Justice, May 16-17, 1950, 3-30.

¹¹ Official Records of the Fourth Session of the General Assembly--Resolutions, 338(IV) (1949), Doc. No. A/1251.

utilize the provisions of chapter XII to do so.¹² The Union continues to have, according to the court, the international obligations imposed upon it by article 22 of the Covenant with the United Nations exercising the supervisory functions formerly residing in the League.¹³ In view of the further holding by the court that the status of South-West Africa could be modified by the Union only if it acted with the consent of the United Nations,¹⁴ the international status of the Territory is uncertain. The Union, prior to the Opinion, had stated that it was administering, and would continue to administer, the territory in accordance with the principles laid down in article 22, the Mandate, and chapter XI of the Charter.¹⁵ The Union has submitted a report upon the territory as required by article 75 of chapter XI.¹⁶

A further question arises out of article 79 which says that "the terms of trusteeship for each territory to be placed under the trusteeship systems 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

¹² The members of the court were unanimously of the opinion that the provisions of chapter XII might be used to bring the territory under the trusteeship system, but six members dissented on the question of the legal duty to do so on the ground that the proper interpretation of arts. 75, 77, 79 and 80 imposed such a duty. *International Status of South West Africa, Advisory Opinion, I.C.J. Reports, 1950, 138-141 and 174-192, 44 AM. J. INT. L. 757 (1950).*

¹³ The court felt that the obligations assumed by the Union under the Covenant and the Mandate with respect to the Territory did not vanish with the dissolution of the supervisory organ, the League, basing its conclusion partly upon the nature of the obligations and partly upon the actions of the various mandatories, including the Union, and the League at the time of and after the dissolution of the League. The United Nations was to exercise the supervisory functions formerly exercised by the League because it was contemplated that there should be international supervision over the mandates in order to safeguard the rights of peoples of mandated territories until trusteeship agreements should be concluded as provided in article 80; and its competence is derived from article 10 which authorizes the General Assembly to discuss matters within the scope of the Charter and make recommendations to members. Two members of the court dissented on the latter point, basing their view on the ground that there was no express or implied succession of the United Nations to the supervisory functions from the actions of the Union or the League or under the Charter. *International Status of South West Africa, Advisory Opinion, I.C.J. Reports, 1950, 131-138 and 146-173, 44 AM. J. INT. L. 757 (1950).*

¹⁴ The unanimous opinion was that, since the Mandate required the consent of the Council of the League of Nations, the supervisory organ, for the modification of its terms, the consent of the United Nations was required for any modification of the international status of South West Africa. The court pointed out that the actions of the United Nations and the Union were consistent with this view. *International Status of South West Africa, Advisory Opinion, I.C.J. Reports, 1950, 141-143, 44 AM. J. INT. L. 757 (1950).*

¹⁵ League of Nations, *Official Journal, Spec. Supp. No. 194, Records of the Twentieth (conclusion) and Twenty-first Ordinary Sessions of the Assembly, Annex 24(c) (1946); Official Records of the Second Part of the First Session of the General Assembly, Fourth Committee, Trusteeship, Part I, Summary Record of Meetings, Annex 13, 199 et seq. and Annex 13(a) 238-9; Official Records of the Second Session of the General Assembly, Fourth Committee, Trusteeship, Summary Records of Meetings, Annex 3(a) 133.*

¹⁶ Sayre, "The Advancement of Dependent Peoples," *INT. CONC. NO. 435, 721 (1947).*

Nations.”¹⁷ The difficulty has arisen out of the use of the term “states directly concerned.” No clue as to the meaning is furnished by the preparatory work on the Charter. Perhaps the sovereignty over mandated territory might furnish the meaning of the term but, as will be discussed later, there is no concurrence as to where sovereignty resides. The term might be interpreted in many different ways, e.g., directly concerned economically, defensively, territorially, racially, etc. Britain, in placing Tanganyika, Togoland and the Cameroons under trusteeships, simply decided that the Union of South Africa and Belgium were the “states directly concerned” with respect to the first and the Union and France with respect to the latter two.¹⁸ The United States determined that New Zealand and the Phillipines were the “states directly concerned” when it placed the former Japanese Mandated Pacific Islands under a strategic trusteeship.¹⁹ No basis for the determination was given in either instance. The General Assembly has declined to interpret the term and, as a *modus vivendi*, has said that agreements submitted by the mandatory, and approved by the General Assembly under article 85 or the Security Council under article 83 in the case of strategic trusteeships, would “provisionally” be held valid subject to a later determination of the “states directly concerned.”²⁰ Practice, at least, says that the determination of “states directly concerned” lies in the hands of the mandatory in the case of mandated territories but furnishes no basis in the case of other territories.²¹

Another problem, related to the foregoing, has arisen in connection with the setting-up of the Trusteeship Council. The Council was to consist of members of the United Nations administering trust territories, such members of the Security Council as are not administering trust territories, and enough other members of the United Nations to insure an equal division of administering and non-administering mem-

¹⁷ Charter of the United Nations, Chapter XII.

¹⁸ Gr. Br. Col. Off., Trusteeship—Territories in Africa under United Kingdom Mandate 2-3 (June, 1946); Gr. Br. Col. Off., Trusteeship—Togoland and the Cameroons under United Kingdom Mandate 2-3 (June, 1946).

¹⁹ United Nations Security Council, Trusteeship Agreement for the Territory of the Pacific Islands; Message from the President of the United States, H.R. Doc. No. 378, 80th Cong., 1st sess. (1947). “Two Aspects of Trusteeship,” Dept. of State, U.S.-U.N. Information Series No. 21 (1947); “The Trusteeship System and Nonself-governing Territories,” INT. CONC. No. 426, 565-72 (1946). For an interesting discussion of problems raised by the change of administering authority from Japan to the United States see Hall, “The Trusteeship System,” 24 BARR. Y.B. INT. L. 33 at 52 et seq. (1947).

²⁰ Armstrong, “The Inauguration of the Trusteeship System of the United Nations,” U.S.-U.N. INFORMATION SERIES No. 16 (1947).

²¹ *Accord*. Sayre, “The Advancement of Dependent Peoples,” INT. CONC. No. 435, 718 (1947).

bers.²² Again the problem of "states directly concerned" arose since the Council could not be constituted until trusteeship agreements were concluded. The General Assembly resolved the difficulty by adopting the expedient heretofore mentioned²³ and the Trusteeship Council was organized and is functioning at the present time. It has considered reports submitted by the administering authorities, accepted petitions, provided for periodic visits, formulated a questionnaire on the political, social, economic, and educational advancement of each trust territory and otherwise exercised its powers under chapter XIII.²⁴ It is too early now to survey the work of the Trusteeship Council in order to determine its effectiveness and the same might be said with reference to the trusteeship system as a whole.

II. *Sovereignty over Mandated and Trust Territories*

The refusal of the Union of South Africa to put South-West Africa under a trusteeship has again brought to the forefront a question which has puzzled the courts and legal theorists since the inception of the mandate system and which will arise in connection with trust territories. No definitive answer has ever been given to the question of sovereignty over mandated territories²⁵ but a survey of the various theories advanced will be helpful in determining sovereignty over trust territory. No answer is provided either in the Covenant or in the Charter. Four main theories as to sovereignty over mandated territory have been advanced, namely, that it resides in the Allied and Associated Powers, in the League of Nations, in the native inhabitants, or in the mandatory subject to the provisions of the mandate.

The United States was the primary proponent of the view that sovereignty resided in the Allied and Associated Powers since it felt that it still had some vestigial interest in the nonself-governing territories despite the fact that it was not a member of the League of Nations. Reliance was placed upon various provisions of the Treaty of Versailles concerning renunciation by Germany of sovereignty and selection of mandatories by the Allied and Associated Powers.²⁶ This position was

²² Charter of the United Nations, Art. 86.

²³ See note 20 *supra*.

²⁴ Sayre, "The Advancement of Dependent Peoples," INT. CONG. NO. 435, 722-25 (1947).

²⁵ See, for example, HALL, THE LEAGUE MANDATE SYSTEM AND PROBLEMS OF DEPENDENCIES 54 (1945); LINDLEY, THE ACQUISITION AND GOVERNMENT OF BACKWARD TERRITORY 263-68 (1926); Wright, "Sovereignty of the Mandates," 17 AM. J. INT. L. 691-703 (1923).

²⁶ Royal Institute of International Affairs, Information Dept. Papers, No. 23 (1938); LINDLEY, THE ACQUISITION AND GOVERNMENT OF BACKWARD TERRITORY 264-5 (1926).

denied by the commentators,²⁷ the courts,²⁸ and the Permanent Mandates Commission,²⁹ and it was argued that even if it was admitted that the Allied and Associated Powers did have sovereignty at one time it was subsequently surrendered by the placing of the territories under the mandate system.³⁰ In the face of such militant opposition the United States had not insisted on its position. All doubts as to the invalidity of this theory have been removed by the attitude of the formulators of the Charter and those who have applied for trusteeships.³¹

A second line of authorities took the position that sovereignty resided in the League of Nations with the mandatories merely acting as agents of the League for the purposes of administration³² and pointed to the wording of the Covenant and the theory of *mandatum* found in Roman Law as supporting it.³³ The League declined to determine where sovereignty did lie but it is significant that it did not claim sovereignty for itself.³⁴ Further doubts were raised as to the validity of this position by the resolution winding up the affairs of the League wherein it was recognized that the League had no interest in mandated

²⁷ I OPPENHEIM, *INTERNATIONAL LAW*, 4th ed., 213 (1928); Wright, "Sovereignty of the Mandates," 17 *AM. J. INT. L.* 695 (1923); JOSEPH, *BRITISH RULE IN PALESTINE* 46-47 (1948); EVATT, *THE BRITISH DOMINIONS AS MANDATORIES* 9-10 (1935); LINDLEY, *THE ACQUISITION AND GOVERNMENT OF BACKWARD TERRITORY* 264 (1926). Cf. Potter, "Origin of the System of Mandates under the League of Nations," 16 *AM. POL. SCI. REV.*, November, 1922, 563-583; League of Nations, *Official Journal*, 547, June, 1922.

²⁸ Leading case is *Rex v. Christian*, [1924] *S. Af. L.R. (App. Div.)* 101. See also *In re Tamasese*, [1929] *N.Z.L.R.* 209; *Tagalao v. Inspector of Police*, [1927] *N.Z.L.R.* 883; *Nelson v. Braisby*, [1934] *N.Z.L.R.* 559; *State Succession (Windhuk in South West Africa)* Case No. 55, [1925-26] *Annual Digest of Public International Law Cases* (hereinafter cited as *ANN. DIG.*) 75.

²⁹ Report of Mr. Hymans, Belgian Representative to the Permanent Mandates Commission, adopted by the League, League of Nations, *Official Journal*, 334, September, 1920; Report of Mr. van Blokland, Netherlands Representative to the Permanent Mandates Commission, League of Nations, *Official Journal*, 1119, October, 1927.

³⁰ LINDLEY, *THE ACQUISITION AND GOVERNMENT OF BACKWARD TERRITORY* 264 (1926).

³¹ Hall, "The Trusteeship System," 34 *BRIT. Y.B. INT. L.* 54 (1947).

³² Keith, "Mandates," 4 *JOURNAL OF COMPARATIVE LEGISLATION AND INTERNATIONAL LAW* 71, 79 (1922); LAUTERPACHT, *PRIVATE LAW SOURCES AND ANALOGIES OF INTERNATIONAL LAW* 191-202 (1927); *In re Tamasese*, [1929] *N.Z.L.R.* 209; *Nelson v. Braisby*, [1934] *N.Z.L.R.* 559. Cf. *Tagalao v. Inspector of Police*, [1927] *N.Z.L.R.* 883. *Contra*, LINDLEY, *THE ACQUISITION AND GOVERNMENT OF BACKWARD TERRITORY* 265 (1926); Corbett, "What is the League of Nations?" 5 *BRIT. Y.B. INT. L.* 134 (1924); Wright, "Sovereignty of the Mandates," 17 *AM. J. INT. L.* 697 (1923); EAGLETON, *THE RESPONSIBILITY OF STATES IN INTERNATIONAL LAW* 38 (1928); *Rex v. Christian*, [1924] *S. Af. L.R. (App. Div.)* 101.

³³ Hales, "The Creation and Application of the Mandate System," 25 *TRANSACTIONS OF THE GROTIUS SOCIETY* 193 (1939); Wright, "Sovereignty of the Mandates," 27 *AM. J. INT. L.* 697 (1923).

³⁴ Hall, "The Trusteeship System," 24 *BRIT. Y.B. INT. L.* 36 (1947); Report of Mr. Hymans, Belgian Representative to the Permanent Mandates Commission, adopted by the League, League of Nations, *Official Journal*, 334, September, 1920; League of Nations, *Permanent Mandates Commission Minutes*, 1st Session, 41-42 (1921).

territories,³⁵ and when the assets of the League were listed by United Nations officials no rights of the League in mandated territories were included.³⁶ It is obvious that if the League had no sovereignty over mandated territories, then the United Nations has none. It has not been claimed that the United Nations has any sovereignty over trusteeship territories.³⁷

A third theory put forth was that sovereignty over mandated territory rested in the native inhabitants of the territories in view of the primary objective of the mandate system to prepare such territories for self-government.³⁸ There is a legitimate basis for argument when applying this to "A" mandates since the mandatory has no direct powers of administration,³⁹ but it is rather difficult to apply it to "B" and "C" mandated territories because the inhabitants of such territories had little or no voice in the government.⁴⁰ The basic objectives of the trusteeship system appear to bolster the validity of this theory in its application to trust territories.⁴¹

Another position taken was that sovereignty resides in the mandatory subject only to the provisions of the mandate.⁴² Various provisions

³⁵ League of Nations, Official Journal, Spec. Supp. No. 194, Records of the Twentieth (conclusion) and Twenty-first Ordinary Sessions of the Assembly, Annex 24(c) (1946).

³⁶ Hall, "The Trusteeship System," 24 BRIT. Y.B. INT. L. 50 (1947).

³⁷ *Id.* at 50-1.

³⁸ STOYANOVSKY, *LA THEORIE GENERALE DES MANDATS INTERNATIONAUX* (1925). The theory is only applicable in the case of "A" mandates. Wright, "Sovereignty of the Mandates," 27 AM. J. INT. L. 691 (1923); Antoine Bey Sabbagh v. Mohammed Pacha Ahmed, (1927-28) ANN. DIG. No. 28, 48; Ottoman Debt Arbitration, (1925-26) ANN. DIG. No. 29, 42. The theory is applicable only in the case of Iraq which is unique among the mandated territories. LINDLEY, *THE ACQUISITION AND GOVERNMENT OF BACKWARD TERRITORY* 264 (1926). The theory has no validity at all. JOSEPH, *BRITISH RULE IN PALESTINE* 46 (1948); LOGAN, *THE OPERATION OF THE MANDATE SYSTEM IN AFRICA* (1919-1927) 9 (1942).

³⁹ See note 38.

⁴⁰ See note 38 and *Rex v. Christian*, [1924] S. Af. L.R. (App. Div.) 101; *Frost v. Stevenson*, 58 Commonwealth L.R. 528 (1937).

⁴¹ Hall, "The Trusteeship System," 24 BRIT. Y.B. INT. L. 54 (1947).

⁴² *Id.* at 54-55; KEITH, *THE GOVERNMENTS OF THE BRITISH EMPIRE* 18 (1935); KENNEDY AND SCHLOSBERG, *THE LAW AND CUSTOM OF THE SOUTH AFRICAN CONSTITUTION* 516 (1935); Rolin, "*Le Système des Mandats coloniaux*," 1 REVUE DE DROIT INTERNATIONAL ET DE LEGISLATION COMPAREE, TROISIEME SERIE 351 (1920); LOGAN, *THE OPERATION OF THE MANDATE SYSTEM IN AFRICA* (1919-27) 11 (1942); *Rex v. Christian*, [1924] S. Af. L.R. (App. Div.) 101; *Tagaloa v. Inspector of Police*, [1927] N.Z.L.R. 883; *Nelson v. Braisby*, [1934] N.Z.L.R. 559; *Jerusalem-Jaffa District Governor v. Suleiman Muira*, [1926] A. C. (Privy Council) 321; *Pablo Nájera (of the Lebanon) Case*, (1927-28) ANN. DIG. No. 30, 52; *Rex v. Offen*, [1935] S. Af. L.R. (App. Div.) 4; *Cape Law Society v. Van Aardt*, (1925-26) ANN. DIG. No. 30, 43; *State Succession (Windhuk in South West Africa) Case No. 55*, (1925-26) ANN. DIG. 75. *Contra*, HOLCOMBE, *DEPENDENT AREAS IN THE POST-WAR WORLD* 63 (1941); JOSEPH, *BRITISH RULE IN PALESTINE* 47-48 (1948); ÉVATY, *THE BRITISH DOMINIONS AS MANDATORIES* 10 (1935); Hales, "The Creation and Application of the Mandate System," 25 TRANSACTIONS OF THE GROTIUS SOCIETY 191 (1939); Wright, "Sovereignty of the Mandates," 17 AM. J. INT.

of the Covenant and the Mandates are cited in support of this proposition.⁴³ It has been held, however, in a number of cases, that the natives of mandated territories do not become citizens of the mandatories⁴⁴ and all of the mandatories, with the exception of the Union of South Africa, have expressly disclaimed sovereignty over mandated territory.⁴⁵ The International Court of Justice expressly negated the existence of any sovereignty of the Union over the Territory of South-West Africa even though the League had passed out of existence.⁴⁶ From the status of the question of "states directly concerned," and the express inclusion of mandatories, it appears that the mandatory does have the paramount interest even though sovereignty may not be attributed to it.⁴⁷

Various combinations of the main theories as well as other minor positions have been advocated by various authorities. One is that sovereignty is divided between the League and the mandatory, the two holding the total sovereignty.⁴⁸ Another is that the mandatory can exercise the attributes of sovereignty, subject to the terms of the mandate, but sovereignty itself is in suspense during the period of the mandate.⁴⁹ It has even been held by some German courts that Germany retained sovereignty over the territories taken from it and placed under mandates.⁵⁰ Several authorities have taken the position that the concept of sovereignty is inapplicable to mandated territories.⁵¹

There seems to be no limit as to the theories which could be evolved as to the location of sovereignty over mandated territories. The same

L. 698 (1923); 3 MONTHLY SUMMARY OF THE LEAGUE OF NATIONS 82 (1923); *Alta Corte de Justicia de Uruguay*, (1927-28) ANN. DIG. No. 27, 47; *Frost v. Stevenson*, 58 Commonwealth L.R. 528 (1937).

⁴³ See note 42.

⁴⁴ For a summary of ten cases see Hales, "The Creation and Application of the Mandate System," 25 TRANSACTIONS OF THE GROTIUS SOCIETY 191 (1939); *Attorney-General v. Goralschwili*, (1925-26) ANN. DIG. No. 33, 47; *Saikaly v. Saikaly*, (1925-26) ANN. DIG. No. 34, 48. *Contra*. *Antoine Bèy Sabbagh v. Mohamed Pacha Ahmed*, (1927-28) ANN. DIG. No. 28, 48.

⁴⁵ Hall, "The Trusteeship System," 24 BRIT. Y.B. INT. L. 54 (1947).

⁴⁶ *International Status of South West Africa*, Advisory Opinion, I.C.J. Reports, 1950, 128 at 132, 44 AM. J. INT. L. 757 (1950).

⁴⁷ *Accord*. Hall, "The Trusteeship System," 24 BRIT. Y.B. INT. L. 54 (1947).

⁴⁸ Corbett, "What is the League of Nations?" 5 BRIT. Y.B. INT. L. 134 (1924); *Wright*, "Sovereignty of the Mandates," 17 AM. J. INT. L. 698 (1923).

⁴⁹ LEE, *THE MANDATE FOR MESOPOTAMIA* 19 (1921).

⁵⁰ Cases cited and discussed in Hales, "The Creation and Application of the Mandate System," 25 TRANSACTIONS OF THE GROTIUS SOCIETY 185 et seq. (1939).

⁵¹ JOSEPH, *BRITISH RULE IN PALESTINE* 48 (1948); EVATT, *THE BRITISH DOMINIONS AS MANDATORIES* 10 (1935); *Mr. van Blokland*, Netherlands Representative to the Permanent Mandates Commission, League of Nations, Official Journal, 1119, October, 1927; *Frost v. Stevenson*, 58 Commonwealth L.R. 528 (1937).

problem is inherent in the case of trusteeship territories under the Charter. In this day of increased awareness of the international responsibility of states the best solution to the sovereignty problem is to say that the old concept of sovereignty, which is rather elusive at best, does not apply to the new forms of administration of nonself-governing territories.

III. *Comparison of the Mandate and Trusteeship Systems*⁵²

It would be premature to draw any conclusions as to the effectiveness of changes or new innovations in the trusteeship system as outlined in the Charter, but a brief comparison of the mandate and trusteeship systems will point up the main points of difference.

The Charter provides for the administration of trust territories by several states or the organization itself⁵³ while the Covenant of the League provided for administration of mandated territories by one state only.⁵⁴

In some respects the Charter provides for greater freedom on the part of administering authorities than did the Covenant or the Mandates. The administering authority is permitted to provide in trusteeship agreements for the cooperation of trust territories in regional advisory commissions or technical organizations.⁵⁵ There is no rigid classification of territories as in the case of mandates but rather they are classified in general groups based upon the character and circumstances of the particular territory involved.⁵⁶ A radical change incorporated in the trusteeship system is that which places a duty upon the administering authority to see that the trust territory plays its part in the maintenance of international peace and security.⁵⁷

The powers of the United Nations are relatively much greater than those possessed by the League under the mandates system. The Trusteeship Council is made up of members of the United Nations while the

⁵² For more extensive treatment see GR. BR. COL. OFF., *THE COLONIAL EMPIRE (1939-1947)* 110 et seq. (1947); Sayre, "The Advancement of Dependent Peoples," *INT. CONC. NO. 435*, 703 et seq. (1947); Hall, "The Trusteeship System," 24 *BRIT. Y.B. INT. L.* 33 et seq. (1947).

⁵³ Charter of the United Nations, Art. 81.

⁵⁴ HALL, *THE LEAGUE MANDATE SYSTEM AND PROBLEMS OF DEPENDENCIES*, Appendix I, 71 (1945).

⁵⁵ Charter of the United Nations, Art. 73.

⁵⁶ The distinction is drawn between those territories which are designated as strategic and those which are not with the degree of administrative control by the trustee depending upon the provisions of the trusteeship agreement. Charter of the United Nations, Art. 77(2), Art. 79 and Art. 82.

⁵⁷ *Id.*, Art. 76 and Art. 84.

Permanent Mandates Commission of the League was made up of experts in the field,⁵⁸ and the former has the power of direct action while the latter only had the power to counsel and advise the League.⁵⁹ The Council may accept petitions of the inhabitants of trusteeship territories.⁶⁰ According to article 87(c) the Trusteeship Council may provide for periodic visits to trust territories.⁶¹ A consideration of the various procedural changes embodied in the trusteeship system falls outside the scope of this comment.

The goals of the trusteeship system are somewhat broader and more practical than in the case of the mandates system. Under the Covenant the main purpose was to secure independence for the peoples of the mandated territories, but the Charter has adopted, in article 76, a much more comprehensive and constructive goal.⁶² The "open door" policy contained in "A" and "B" mandates under the League was subordinated in the Charter to the best interest of the inhabitants of the trusteeship territories.⁶³ The provisions for the use of trust territories in the furtherance of international peace and security is clearly a departure from the policy of the Covenant.⁶⁴

IV. Conclusion

The first attempt to cope with the problem of nonself-governing territories as an international responsibility was represented by the mandates system under the League of Nations. Further steps in the same direction are embodied in chapters XI, XII, XIII. The trusteeship sys-

⁵⁸ *Id.*, Art. 86.

⁵⁹ *Id.*, Art. 87 and particularly subsection (d).

⁶⁰ *Id.*, Art. 87(b). The Council may also hear oral petitions from the inhabitants of the trusteeship territories which is a departure from the practice of the League. Official Records of the Fourth Session of the General Assembly, Fourth Committee, Trusteeship, Annex to the Summary Records of Meetings, (Doc. No. A/C 4/L 57) 13.

⁶¹ Art. 22 of the Covenant contained no such provision.

⁶² "The basic objectives of the trusteeship system . . . 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."

⁶³ See subsection d of Art. 76 in note 62.

⁶⁴ See note 57.

tem was set up primarily for the purpose of dealing with territories formerly held under mandates from the League and most of the territories have been placed under trusteeship arrangements. The one notable exception is the Territory of South-West Africa which was the subject of a "C" Mandate held by the Union of South Africa. The legal status of the Territory is a point of controversy at the present time although it is subject to some degree of supervision by the United Nations under chapter XI as are all nonself-governing territories.

The question of sovereignty over mandated territory has caused much discussion and the same problem will arise in connection with trusteeship territories. Numerous theories as to the location of sovereignty were developed but none was accepted generally. Only two of the major theories appear to have withstood the test of time. The first is that sovereignty resides in the native inhabitants of the territory, and the other is that it resides in the mandatory power. In view of the unique character of the mandate and trusteeship systems in international law perhaps the best approach is to say that the concept of sovereignty is inapplicable to the new order of things.

The mandate system was the basis for the trusteeship system although a number of changes and innovations were embodied in the latter. In some respects the administering powers under the trusteeship system are given greater freedom of action than was possessed by the mandatories. In others the United Nations is given a relatively greater degree of supervisory control than was possessed by the League of Nations. The goals of the trusteeship system under the Charter are more comprehensive and practical than were those of the mandates system. The system is in operation at the present time, but any conclusions as to its effectiveness will have to be left until a later time when it has reached its maturity.

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