

UNITED



NATIONS

**SPECIAL REPORT
OF THE COMMITTEE ON
SOUTH WEST AFRICA**

**GENERAL ASSEMBLY
OFFICIAL RECORDS : TWELFTH SESSION
SUPPLEMENT No. 12A (A/3625)**

(12 p.)

NEW YORK, 1957

UNITED NATIONS

**SPECIAL REPORT
OF THE
COMMITTEE ON SOUTH WEST AFRICA**

**A study of legal action to ensure the fulfilment
of the obligations assumed by the Mandatory Power
under the Mandate for South West Africa**



**GENERAL ASSEMBLY
OFFICIAL RECORDS : TWELFTH SESSION
SUPPLEMENT No. 12A (A/3625)**

New York, 1957

NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

TABLE OF CONTENTS

	<i>Page</i>
I. Introduction	1
II. Obligations of the Union of South Africa under the Mandate	1
III. Position adopted by the Union of South Africa	2
IV. Legal action open to organs of the United Nations to ensure that the Union of South Africa fulfils the obligations assumed by it under the Mandate..	3
V. Legal action open to Members of the United Nations, acting either individually or jointly	4
VI. Legal action open to former Members of the League of Nations, acting either individually or jointly	5

ANNEXES

Annex

A. (1) Text of Article 22 of the Covenant of the League of Nations	6
(2) Text of the Mandate for South West Africa	7
B. (1) Members of the United Nations which were Members of the League of Nations at its dissolution	8
(2) Members of the United Nations which ceased to be Members of the League of Nations prior to its dissolution	8
(3) Members of the League of Nations at its dissolution which are not Members of the United Nations or parties to the Statute of the International Court of Justice	8

I. INTRODUCTION

1. By resolution 1060 (XI) of 26 February 1957, the General Assembly requested the Committee on South West Africa to study the following question:

“What legal action is open to the organs of the United Nations, or to the Members of the United Nations, or to the former Members of the League of Nations, acting either individually or jointly, to ensure that the Union of South Africa fulfils the obligations assumed by it under the Mandate, pending the placing of the Territory of South West Africa under the International Trusteeship System?”

2. The Committee was further requested to submit to the General Assembly at its twelfth session a special report containing its conclusions and recommendations on the question.

3. The Committee on South West Africa, at its 73rd meeting on 5 March 1957, appointed a Working Group consisting of the representatives of Brazil, Finland, and the United States of America, to give the question special study and to report back to the Committee.

4. The Working Group prepared an analysis of the question, and submitted it to the Committee to facilitate further consideration of the matter. Accepting this analysis as the basis of its discussion, the Committee continued consideration of the question at its 80th, 83rd, 84th, 85th and 86th meetings on 29 and 31 July and 1 and 2 August 1957. At the last of these meetings it adopted the present special report to the General Assembly.

II. OBLIGATIONS OF THE UNION OF SOUTH AFRICA UNDER THE MANDATE

5. By resolution 338 (IV) of 6 December 1949, the General Assembly submitted the following question to the International Court of Justice with a request for an advisory opinion.

“What is the international status of the Territory of South West Africa and what are the international obligations of the Union of South Africa arising therefrom, in particular:

“(a) Does the Union of South Africa continue to have international obligations under the Mandate for South West Africa and, if so, what are those obligations?”

“(b) Are the provisions of Chapter XII of the Charter applicable and, if so, in what manner, to the Territory of South West Africa?”

“(c) Has the Union of South Africa the competence to modify the international status of the Territory of South West Africa, or, in the event of a negative reply, where does competence rest to determine and modify the international status of the Territory?”

6. According to the advisory opinion of 11 July 1950 of the International Court of Justice given in response to this request, the international obligations of the Union of South Africa under the Mandate were of two kinds. “One kind was directly related to the administration of the Territory, and corresponded to the sacred trust of civilization referred to in Article 22 of the Covenant,” the Court stated. The other “related to the machinery for implementation, and was closely linked to the supervision and control of the League. It corresponded to the ‘securities for the performance of this trust’ referred to in the same article.”¹

7. The obligations relating to administration are contained in Article 22 of the Covenant of the League and in Articles 2 to 5 of the Mandate. The text of these provisions will be found in annex A to the present report.

8. The obligations relating to implementation were contained in Articles 6 and 7 of the Mandate. These Articles provided as follows:

“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 . . .”

9. The International Court, in its advisory opinion, stated that the obligation upon a Mandatory State to accept international supervision was an important part of the Mandates system. It considered that the necessity for supervision continued to exist despite the disappearance of the supervisory organ under that system.² The Court concluded that the General Assembly of the United Nations was legally qualified to exercise the supervisory functions previously exercised by the League of Nations with regard to the administration of the Territory and that the Union of South Africa was under an obligation to submit to the supervision and control of the General Assembly and to render annual reports to it.³ The Court also concluded that the dispatch and examination of petitions formed a part of that supervision.

¹ *ICJ Reports*, 1950, p. 133.

² *ICJ Reports*, 1950, p. 136.

³ *Ibid.*, p. 137.

10. Regarding article 7 of the Mandate, the Court said:

"According to article 7 of the Mandate, disputes between the mandatory State and another Member of the League of Nations relating to the interpretation or the application of the provisions of the Mandate, if not settled by negotiation, should be submitted to the Permanent Court of International Justice. Having regard to Article 37 of the Statute of the International Court of Justice,⁴ and Article 80, paragraph 1, of the Charter,⁵ the Court is of opinion that this

⁴"Whenever a treaty or convention in force provides for reference of a matter to a tribunal to have been instituted by the League of Nations, or to the Permanent Court of International Justice, the matter shall, as between the parties to the present statute, be referred to the International Court of Justice."

⁵"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."

III. POSITION ADOPTED BY THE UNION OF SOUTH AFRICA

12. At the 196th meeting of the Fourth Committee, during the fifth session of the General Assembly, on 4 December 1950, the representative of the Union of South Africa referred to the advisory opinion given by the International Court during the same year.⁷ In the course of his speech he stated: "First, there had been the judicial supervision provided under Article 7 of the Mandate which had been expressly preserved by Article 37 of the Statute of the International Court of Justice reinforced by Article 94 of the Charter;⁸ any State could bring before the Court a dispute relating to the interpretation or application of the provisions of the Mandate. The importance and moral weight of that provision should not be overlooked." He also referred to the parts of the Court's opinion in which the Court advised that the Mandate continued in force and the supervision functions regarding reports and petitions might be exercised by the United Nations. The whole of the statement of the representative of the Union of South Africa, however, was subject to two opening reservations which were made. In the first place he indicated that the Court's opinion, being an advisory opinion, was not binding on the Government of the Union. He also indicated that there were newly discovered facts regarding the adoption of the final resolution of 18 April 1946 by the League of Nations in relation to the Mandates system which in the opinion of the South African representative would have led to a different opinion if they had been known at the time the question was before the Court. The second reserva-

⁷ *Official Records of the General Assembly, Fifth Session, Fourth Committee, 196th meeting, 4 December 1950, paras. 41-52.*

⁸ "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."

clause in the Mandate is still in force and that, therefore, the Union of South Africa is under an obligation to accept the compulsory jurisdiction of the Court according to those provisions."⁶

11. The parts of the advisory opinion of the International Court referred to in the immediately preceding paragraphs dealt with the first part of the question submitted to the Court by the General Assembly. With regard to the other two parts of that question the International Court concluded that the provisions of Chapter XII of the Charter were applicable to the Territory in the sense that they provided a means by which the Territory might be brought under Trusteeship, although those provisions did not impose a legal obligation on the Union of South Africa to place the Territory under the Trusteeship System. Further, the Court concluded that the Union of South Africa acting alone did not have the competence to modify the international status of the Territory, and that the competence to determine and modify its status rested with the Union of South Africa acting with the consent of the United Nations.

⁶ *ICJ Reports, 1950, p. 138.*

tion made by the South African representative was that he could not speak in any detail on a matter in which his Government would have to define its position at a later moment, and also that the decision eventually taken by the Government would be affected to a substantial degree by the nature of the resolution adopted by the General Assembly.

13. Before the *Ad Hoc* Committee on South West Africa, the South African representative made it clear⁹ that in the position of the Union Government the following basic elements were to be emphasized. The Union Government maintained that the Mandate had lapsed and that while it continued to administer the Territory in the spirit thereof, it had no other international commitments as the result of the demise of the League. Secondly, in order to reach a solution it was prepared to enter into an arrangement with the three remaining Allied and Associated Powers containing, *inter alia*, an article analogous to article 7 of the Mandate concerning the jurisdiction of the International Court. In an earlier letter the South African representative had said that he was now authorized to state that the Union Government would be prepared to agree that a complaint to the Court might be made by any two of the remaining three Allied and Associated Powers.¹⁰

14. At the 357th meeting of the Fourth Committee on 6 November 1953 the representative of the Union of South Africa declared:¹¹ "His Government had not . . . been prepared to subscribe to all the findings of the Court or to accept the opinion *in toto* . . . His Government was unable to agree with the view . . . that South Africa continued to have an international

⁹ By a letter dated 4 September 1953; see *Official Records of the General Assembly, Eighth Session, Annexes, agenda item 36, document A/2475, para. 14.*

¹⁰ *Ibid., Sixth Session, Annexes, agenda item 38, document 1901, para. 32.*

¹¹ *Ibid., Eighth Session, Fourth Committee, 357th meeting, 6 November 1953, paras. 3-20.*

responsibility with regard to the sacred trust. In his Government's opinion, since one of the two parties to the original contractual arrangements had disappeared, the Mandate had lapsed and could no longer be regarded as legally binding . . . The South African Government had offered to submit to judicial supervision [in the context of proposals made], . . . no agreement had been reached on that point . . . South Africa could not agree to accept accountability to the United Nations . . ." The various proposals made by the Union of South Africa were not acceptable to the competent

United Nations bodies concerned and the proposals were eventually withdrawn.

15. It would appear from the above that, although representatives of the Union have spoken on occasions with approval concerning the principle of judicial settlement under the Mandate or an alternative agreement, they seem to have done so either in the light of reservations of the kind referred to above or in the context of proposals which were not accepted and have since been withdrawn.

IV. LEGAL ACTION OPEN TO ORGANS OF THE UNITED NATIONS TO ENSURE THAT THE UNION OF SOUTH AFRICA FULFILS THE OBLIGATIONS ASSUMED BY IT UNDER THE MANDATE

16. On the basis of the language of General Assembly resolution 1060 (XI), and in the light of the discussion in the Fourth Committee¹² on the resolution in draft form,¹³ it seems necessary to consider under this heading:

(a) "Legal action" in the form of judicial proceedings that may be instituted by the organ;

(b) Other "legal remedies" that may be available to the organ.

17. Article 34 of the Statute of the International Court of Justice provides that only States may be parties in cases before the Court; consequently, organs of the United Nations may not be parties to nor institute proceedings of a contentious character in which binding judgements can be rendered.¹⁴

18. Organs of the United Nations may, of course, request advisory opinions of the Court in accordance with Article 96 of the Charter. Although an advisory opinion is not binding, *per se*, on any Member of the United Nations, it may be a factor in influencing a State to fulfil its obligations as defined in the advisory opinion. It would therefore appear to be within the scope of the General Assembly resolution to consider "legal action" which may be taken by an organ in the form of a request for an advisory opinion on a legal question relating to South West Africa. It may be pointed out that such legal questions could relate not only to aspects of the supervision procedure such as those put to the Court in 1954 and 1955 (voting procedure and admissibility of hearings of petitioners) but that questions may also be put as to whether specific acts of the Mandatory State are in conformity with the obligations assumed by it under the Mandate, including, for example, whether the status of the Territory has been modified in a manner or to a degree incompatible with the obligations of the Mandate.

19. If an advisory opinion were requested regarding, for example, the status of the Territory or the relationship between clauses of the Mandate and acts of administration of the Territory, there would be the advantage that the Court, in reaching its opinion, would proceed by impartial judicial methods and on the basis of evidence produced to and weighed by the Court.

20. It should be pointed out, however, that the Court might in certain circumstances decline to give its

opinion. Regarding the request for an advisory opinion concerning the status of Eastern Carelia,¹⁵ the Permanent Court of International Justice referred to the fact that one of the States concerned was not a Member of the League of Nations, did not accept the intervention of the League and refused its concurrence in the proceedings. The Court declined to give its opinion in these circumstances, stating first that acceptance of the methods of the Covenant for settling a dispute between a Member State and a non-member required the consent of the latter and, secondly, that the question put to it touched upon "the essential point" in the dispute and that to answer it would amount to deciding this dispute between the parties. It declared: "The Court being a court of justice can not even in giving an advisory opinion depart from the essential rules governing their activity as a court." The present International Court of Justice in its advisory opinion of 30 March 1950 on the interpretation of peace treaties asserted: "There are certain limits, however, to the Court's duty to reply to a request for an opinion. It is not merely an 'organ of the United Nations', it is essentially the 'principal judicial organ of the Organization' (Article 92 of the Charter and Article 1 of the Statute) . . . Article 65 of the Statute is permissive. It gives the Court the power to examine whether the circumstances of the case are of such a character as should lead it to decline to answer the request."¹⁶ However, in that proceeding the Court concluded that it was not prevented from giving its opinion because certain States concerned challenged its power to do so. It declared that in the particular case the answer to the request could not touch on the merits of any dispute under the peace treaties since what was in issue was the procedure for settlement. It noted, moreover, that there was no question of fact raised which required that the objecting parties should be heard, a matter to which the previous Court had referred regarding Eastern Carelia.

21. Apart from judicial proceedings, organs of the United Nations may take other "legal action" directed toward securing the fulfilment of the obligations of the Mandate. While it is not within the scope of this special report to discuss or suggest courses of action which might be the subject of resolutions adopted by competent organs of the United Nations, it seems pertinent to refer to the legal nature and consequences of such resolutions.

22. Judge Lauterpacht pointed out, in his separate opinion in 1955 concerning the voting procedure, that an international organ acting in a supervisory capacity

¹² *Ibid.*, Eleventh Session, Fourth Committee, 578th and 580th meetings.

¹³ *Ibid.*, Annexes, agenda item 38.

¹⁴ According to Article 59 of the Statute, the decision of the Court has no binding force except between the parties to the case and in respect of that particular case.

¹⁵ *PCIJ, Series B*, No. 5.

¹⁶ *ICJ Reports*, 1950, pp. 71-72.

may judge the "legal propriety of the conduct of a State administering an international mandate". The organ may do so "by pronouncing a verdict upon the conformity of the action of the administering State with international obligations".¹⁷ It may also call upon it to adopt or desist from a certain line of action. In referring to the legal effect of resolutions of the General Assembly in this connexion Judge Lauterpacht said:

"A resolution . . . creates *some* legal obligation which, however rudimentary, elastic and imperfect, is nevertheless a legal obligation and constitutes a measure of supervision.¹⁸ The state in question, while not bound to accept the recommendation, is bound to give it due consideration in good faith.¹⁹ Judge Lauterpacht went on to discuss the legal nature of such resolutions of the General Assembly:

"Whatever may be the content of the recommendation and whatever may be the nature and the circumstances of the majority by which it has been reached, it is nevertheless a legal act of the principal organ . . . which Members . . . are under a duty to treat with a degree of respect appropriate to a Resolu-

¹⁷ *ICJ Reports*, 1955, p. 99.

¹⁸ *Ibid.*, 1955, pp. 118-119.

¹⁹ See also separate opinion by Judge Klaestad, *Ibid.*, p. 88.

tion of the General Assembly. . . . [A] State may not be acting illegally by declining to act upon a recommendation or series of recommendations on the same subject. But in doing so it acts at its peril when a point is reached when the cumulative effect of the persistent disregard of the articulate opinion of the Organization is such as to foster the conviction that the State in question has become guilty of disloyalty to the Principles and Purposes of the Charter. [Such a] State . . . may find that it has overstepped the imperceptible line between impropriety and illegality . . . and that it has exposed itself to consequences legitimately following as a legal sanction."²⁰

It would follow from such a view as is quoted above that the General Assembly might recommend to Members of the United Nations that they adopt measures which, in the opinion of the Assembly, would increase the probability that the State in question would fulfil the obligations which were binding upon it. A further implication is that the State in question may in the circumstances envisaged be considered to have violated certain of its obligations in the Charter and, consequently, to have exposed itself to "consequences legitimately following as a legal sanction".

²⁰ *ICJ Reports*, 1955, p. 120.

V. LEGAL ACTION OPEN TO MEMBERS OF THE UNITED NATIONS, ACTING EITHER INDIVIDUALLY OR JOINTLY

23. The type of action dealt with in the present section is the bringing of a contentious case in relation to the Mandate by a Member of the United Nations against the Union of South Africa in the International Court. This involves consideration of two questions. The first is whether any Member of the United Nations has a right to institute contentious proceedings flowing directly from article 7 of the Mandate. The second problem, which has certain similarities, is whether a Member of the United Nations is entitled to institute contentious proceedings in order to enforce a right enjoyed by it as a member of one of the United Nations organs, or in order to enforce a right enjoyed by the organ of which it is a member.

24. The first problem mentioned above depends on the meaning to be given to the advisory opinion of 1950. Article 7 of the Mandate has already been set out in full in this report (para. 8). It provides for the compulsory jurisdiction of the Permanent Court of International Justice in case of a dispute regarding the interpretation or application of the Mandate arising between a Member of the League and the Mandatory. Other questions relating to the effect of this article are dealt with below (section VI) in relation to former Members of the League of Nations. The present paragraph is concerned only with the issue whether the right to employ article 7 of the Mandate is now enjoyed by all Members of the United Nations.

25. The Court in its opinion of 1950 did not deal with this question specifically. It advised that the Mandate continued in force, that supervision functions might now be exercised by the United Nations and that Article 7 continued in effect in relation to the present Court.

26. A number of members of the Committee on South West Africa were of the opinion that the right to employ article 7 of the Mandate was clearly vested in

all Members of the United Nations under and in accordance with the opinion of the Court. They felt that, if the Court had not stated that the right to employ article 7 was to be enjoyed by all Members of the United Nations, it must be remembered that the Court had not been asked to give an opinion on this point. They stressed that international supervision had passed from one organization to another organization, and not from one group of States to another group of States. They considered that as, according to the Court's opinion, "international supervision . . . is an important part of the Mandates System" and as the supervisory functions are, according to that opinion, to be exercised by the United Nations, the system of judicial supervision provided in the Mandate should now be exercisable by Members of the United Nations. They were of the opinion that the system of judicial supervision complemented the reporting procedure of the Mandate and provided for the possibility of binding judgements which organs of the League could not obtain directly. As the United Nations had the right to exercise the supervisory functions and, similarly, could not participate in contentious proceedings before the Court, the right to invoke article 7 of the Mandate was now enjoyed by all Members of the United Nations. Such members of the Committee suggested, as an additional reason, that any conclusion from the opinion of 1950 resulting in a situation where legal rights in respect of judicial supervision were enjoyed only by some Members of the United Nations was contrary to the basic idea of supervision and was not consistent with the Charter of the United Nations.

27. Other members of the Committee, while appreciating the force of the position stated in the preceding paragraph, were of the opinion that the question was not entirely free from doubt. They thought that if a contentious case were brought before the Court under article 7 of the Mandate a number of arguments re-

garding the right of all Members of the United Nations to employ article 7 might be put forward. Without intending to comment on the validity of any of these arguments, they nevertheless felt that the existence of a doubt in this matter should be brought to the attention of the General Assembly. Such members of the Committee thought that any State desiring to put forward contrary arguments might argue that the Court, in giving its opinion, would have stated expressly that article 7 of the Mandate could be employed by all Members of the United Nations if the Court had intended this result. In this connexion, any contrary argument could refer to the separate opinions²¹ of Sir Arnold McNair and Judge Read where it is assumed that the rights under article 7 enjoyed by Members of the League survive. Any reference to these separate opinions could point out that neither Judge had taken the position that rights under article 7 have been transferred to another body of Members. Any state putting forward this contrary argument might also be able to argue that the application of article 7 to all Members of the United Nations amounted to an extension of the Mandate.

28. Any doubt on this matter could be resolved by a further request for an advisory opinion of the Court, but such a course of action might not be thought to be called for at the present juncture.

²¹ *ICJ Reports*, 1950, pp. 158-159, 169.

29. The second possibility referred to above in paragraph 23 would rest on the contention that by virtue of the Mandate a Member of the United Nations enjoyed a legal right, in its capacity as a member of the supervisory organ (*i.e.*, the General Assembly), to receive reports from the Mandatory and that this right was violated by the Union Government's failure to submit such reports. Whether or not there would be compulsory jurisdiction in this case would depend, *inter alia*, on the terms of the acceptance of compulsory jurisdiction by the Union of South Africa under Article 36, paragraph 2, of the Statute of the Court.²² Since that acceptance applies only to "disputes arising after signature with regard to situations or facts subsequent to such signing", and since it was signed on 12 September 1955, it would seem to follow that a dispute of the nature described in this paragraph would not fall within the terms of the acceptance of compulsory jurisdiction by the Union Government.

30. Reference might also be made in this connexion to the possibility suggested at the end of the preceding section of this report that in certain circumstances it may be contended that a State has breached its Charter obligations. In such a situation, a Member of the United Nations may be able to institute contentious proceedings provided that the terms of the relevant acceptances of the "optional clause" were sufficient.

²² *ICJ Year Book* 1955-1956, p. 198.

VI. LEGAL ACTION OPEN TO FORMER MEMBERS OF THE LEAGUE OF NATIONS, ACTING EITHER INDIVIDUALLY OR JOINTLY

31. The type of action dealt with in the present section is the possibility of the institution of contentious proceedings before the Court under article 7 of the Mandate. The substance of this section is limited to the consideration of the position of former Members of the League of Nations. It should be noted that the remarks in this section depend on the questions raised in the preceding section, for, if article 7 of the Mandate now applies to all Members of the United Nations, the investigation of the position of former Members of the League of Nations becomes irrelevant except in very few cases. Although the question of which States may take advantage of article 7 of the Mandate does not seem to have been specifically dealt with by the Court, it would seem that at least some former Members of the League certainly enjoy that right. Former Members which ceased to be Members prior to the final dissolution of the League apparently lost all rights thereunder, including those in relation to article 7 of the Mandate, at the date of the cessation of their membership. In that event there would not appear to be any reason why those rights should revive after the dissolution of the League.²³ Furthermore, there is an additional category²⁴ of some doubt, namely, former Members of the League at the date of dissolution of the League which are not now Members of the United Nations or otherwise parties to the Statute of the Court. This category is not dealt

²³ Separate opinion by Sir Arnold McNair, *ICJ Reports*, 1950, p. 158; see also separate opinion by Judge Read, p. 165.

²⁴ There may be other categories of some doubt, for example the position of any State which might be regarded as having succeeded to the rights and obligations of any former Member of the League. Such categories raise important and extremely complicated questions of law which the Committee does not feel called upon to decide.

with in the 1950 opinion but, in the view of Judge Read,²⁵ the rights under article 7 of those former Members which did not become parties to the Statute of the present Court lapsed. Annex B to the present report contains a list of States Members of the United Nations which were Members of the League at its dissolution, which were Members of the League prior to that date, and Members of the League at its dissolution which are not now Members of the United Nations or parties to the Statute of the Court. The two other States at any time Members of the League, one of them a party to the Statute of the International Court, are indicated in the footnotes to that annex.

32. There would therefore appear to be little doubt that the right to invoke article 7 of the Mandate is enjoyed at any rate by those former Members of the League which were Members at the date of dissolution of the League and which are now Members of the United Nations or are otherwise parties to the Statute of the Court. For the article to apply, there must be a dispute between the Mandatory and such former Members, which cannot be settled by negotiation and which relates to the interpretation or application of the Mandate.

33. The Permanent Court of International Justice defined "dispute" as "a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons".²⁶ For the purposes of article 7 of the Mandate, such a dispute should be one which cannot be settled by negotiation. Where "a deadlock is reached

²⁵ *ICJ Reports*, 1950, p. 169.

²⁶ *PCIJ, Series A*, 1-8, Judgements, Judgement No. 2, p. 11. The criteria adopted in Judgement No. 2 were specifically retained in Judgement No. 10. See *PCIJ, Series A*, II.

or . . . one Party definitely declares himself unable, or refuses, to give way . . . there can be no doubt that the dispute cannot be settled by diplomatic negotiations".²⁷ Whether the proceedings to date in the United Nations indicate the existence of a dispute between the Union and any State intending proceedings under article 7 is a question for that State to answer and to resolve by any further steps which may be deemed necessary. In this connexion, there would appear to be no legal bar to the General Assembly drawing the attention of such former Members of the League to article 7 of the Mandate or of recommending such action relating thereto as the Assembly deemed appropriate.

34. The dispute may be of any nature. Article 7 does not contain any restrictive words in this connexion, but it must in every case relate to the interpretation or application of the Mandate, that is to say, it must relate to one or more clauses of the Mandate or to the effect of the Mandate as a whole, for example, in relation to the present status of the Territory concerned. From this point of view, the opinion of the Court of 1950 would appear to suggest that a dispute concerning the supervision functions themselves could properly exist, as well as a dispute relating to the administration or the status of the Territory.

35. The Court has given its advisory opinion that it has jurisdiction under article 7 of the Mandate. If contentious proceedings were instituted under this article, the jurisdiction of the Court would depend upon Articles 36, paragraph 1, and 37 of the Statute of the Court.²⁸ Article 36, paragraph 1, provides that the jurisdiction of the Court comprises all matters specially provided for in treaties or conventions in force. As Sir Arnold McNair indicated²⁹ "there can be no doubt that the Mandate, which embodies international obligations, belongs to the category of treaty or convention". According to Article 37 of the Statute, a treaty or convention which provides for the reference of a matter to the Permanent Court shall be construed as if it provided for reference to the present Court.

36. In the event of a dispute concerning the Court's jurisdiction over any contentious case brought before

²⁷ *PCIJ, Series A, 1-8, Judgements, Judgement No. 2, p. 13.*

²⁸ No question of acceptances of the "optional clause" would therefore arise.

²⁹ *ICJ Reports, 1950, p. 158.*

it, the Court has under Article 36, paragraph 6, of its Statute the power to settle the issue by its own decision.

37. If a party to a contentious case does not appear or fails to defend its case, the other party may call upon the Court to decide in its favour. If the Court decides to do so it must satisfy itself that it has jurisdiction under Articles 36 and 37 of its Statute and that the claim is well founded in fact and law.³⁰

38. If the Court in a contentious case reaches a decision on the substance, the decision is binding as between the parties to the case. Article 59 of the Statute provides that the decision of the Court has no binding force except between the parties and in respect of that particular case.

39. According to Article 60 of the Statute of the Court the judgement is final and without appeal. There may, however, be an application for a revision of a judgement but, according to the provisions of Article 61 of the Statute, such application may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Court and also to the party claiming revision, provided ignorance was not due to negligence.

40. According to Article 94 of the Charter each Member of the United Nations undertakes to comply with the decision of the International Court in any case to which it is a party. In accordance with paragraph 2 of the same Article, if a party to a case fails to perform the obligations incumbent upon it under the judgement 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 judgement.

41. There is nothing in article 7 of the Mandate or in the Statute of the Court which would prevent former Members of the League acting jointly as well as individually.

42. It also can be pointed out that, according to Article 63 of the Statute, the Registrar is bound to notify all States parties to a Convention the construction of which is in question, and the States notified have a right to intervene. If the right is exercised, the State or States concerned are equally bound by any judgement given.

³⁰ Article 53 of the Statute of the Court.

ANNEX A

(1) Text of Article 22 of the Covenant of the League of Nations

1. 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 civilisation and that securities for the performance of this trust should be embodied in this Covenant.

2. 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.

3. 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.

4. 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. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

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

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

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

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

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

(2) Text of the Mandate of South West Africa

LEAGUE OF NATIONS

MANDATE FOR GERMAN SOUTH-WEST AFRICA

The Council of the League of Nations:

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

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

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

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

Confirming the said Mandate, defines its terms as follows:

Article 1

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

Article 2

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

The Mandatory shall promote to the utmost the material and moral well-being and the social progress of the inhabitants of the territory subject to the present Mandate.

Article 3

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

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

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

Article 4

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

Article 5

Subject to the provisions of any local law for the maintenance of public order and public morals, the Mandatory shall ensure in the territory freedom of conscience and the free exercise of all forms of worship, and shall allow all missionaries, nationals of any State Member of the League of Nations, to enter into, travel and reside in the territory for the purpose of prosecuting their calling.

Article 6

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

Article 7

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

The Mandatory agrees that, if any dispute whatever should arise between the Mandatory and another Mem-

ber 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.

ANNEX B

(1) Members of the United Nations which were Members of the League of Nations at its dissolution^a

Afghanistan	Iraq
Argentina	Ireland
Australia	Liberia
Belgium	Luxembourg
Bolivia	Mexico
Bulgaria	Netherlands
Canada	New Zealand
China	Norway
Colombia	Panama
Cuba	Poland
Czechoslovakia	Portugal
Denmark	Sweden
Dominican Republic	Thailand
Ecuador	Turkey
Egypt	Union of South Africa
Ethiopia	United Kingdom of
Finland	Great Britain and
France	Northern Ireland
Greece	Uruguay
India	Yugoslavia
Iran	

^a Switzerland was also a Member of the League of Nations at its dissolution and it became a party to the Statute of the International Court of Justice on 6 July 1948 under the provisions of Article 93, paragraph 2, of the Charter.

(2) Members of the United Nations which ceased to be Members of the League of Nations prior to its dissolution^b

Albania	Italy
Austria	Japan
Brazil	Nicaragua
Chile	Paraguay
Costa Rica	Peru
El Salvador	Romania
Guatemala	Spain
Haiti	Union of Soviet
Honduras	Socialist Republics
Hungary	Venezuela

(3) Members of the League of Nations at its dissolution which are not Members of the United Nations or parties to the Statute of the International Court

Estonia
Latvia
Lithuania

^b Germany also ceased to be a Member of the League of Nations prior to the dissolution of the League.