4. OBSERVATIONS OF THE GOVERNMENTS OF ETHIOPIA AND LIBERIA

I

RESUMÉ OF THE PROCEEDINGS

A. On November 4, 1960, the Governments of Ethiopia and Liberia (hereinafter sometimes referred to as "Applicants") filed Applications with the Court to institute proceedings against the Republic of South Africa (hereinafter sometimes referred to as "Respondent") for causes stated therein.

B. Pursuant to Orders of the Court, dated January 13, 1961, fixing April 15, 1961 as the time within which the Memorials were to be filed, Applicants filed their Memorials on April 14, 1961. The Memorials are addressed to the dispute between Applicants, on the one hand, and Respondent, on the other, relating to the interpretation and application of the Mandate for South West Africa (hereinafter sometimes referred to as the "Mandate"). The subject of the dispute, as set forth in the Memorials, concerns the continued existence of the Mandate and the duties and performance of Respondent, as Mandatory, thereunder. Applicants insist that the Mandate is still in force; that Respondent continues to have duties thereunder; that the United Nations is the proper supervisory organ to which annual reports and petitions should be submitted by Respondent; that consent of the United Nations is a legal prerequisite and condition precedent to modification of the terms of the Mandate; and that Respondent has violated and is violating the terms of Article 22 of the Covenant of the League of Nations and Articles 2, 4, 6, and 7 of the Mandate. The Memorials further aver that Respondent disputes, and has disputed the above contentions, and that such dispute has not been and cannot be settled by negotiation.

C. Pursuant to Order of the Court dated January 13, 1961, Respondent was allowed until December 15, 1961 within which to file its Counter-Memorial. On November 30, 1961, Respondent filed Preliminary Objections which aver that Applicants "have no *locus standi* in these contentious proceedings and that the Honourable Court has no jurisdiction to hear, or adjudicate upon, the questions of law and fact raised in the *Applications* and *Memorials*."

D. These Written Observations and Submissions are respectfully submitted by Applicants to the Court, pursuant to Order of the Court dated December 5, 1961. Applicants submit herein, as they have submitted in their Memorials, that in so far as they were Members of the League of Nations at the time of the League's dissolution, are Members of the United Nations and have a dispute with Respondent concerning the interpretation and application

of the Mandate, and inasmuch as such dispute has not been and cannot be settled by negotiation, the Court has jurisdiction pursuant to Article 7 of the Mandate and Article 37 of the Statute of the International Court of Justice, to hear and adjudicate the questions of law and fact raised in the Applications and Memorials.

II

INTRODUCTION

Respondent has included in its Preliminary Objections much introductory and other material which Respondent apparently considers relevant to the question of jurisdiction, which is the subject-matter of its Preliminary Objections.

Applicants' *Observations and Submissions* below deal separately with each of the four Objections to jurisdiction which Respondent lodges, namely: (1) the Mandate as an international treaty or convention is no longer in force; (2) Applicants do not qualify as "another Member of the League of Nations" within the meaning of Article 7 of the Mandate; (3) there is no dispute between Applicants and Respondent concerning the interpretation and application of the Mandate within the meaning of Article 7; and (4) if such a dispute does exist, Respondent denies that it cannot be settled by negotiation.

Before proceeding to an analysis of each of the four Objections, however, Applicants respectfully call to the attention of the Court some general considerations which appear in Respondent's introductory material, and which mark the approach of Respondent to the case as a whole.

A. Suggested Departure from the 1950 Advisory Opinion

Respondent concedes that in certain major respects its Objections call for a reversal by the Court of its 1950 Advisory Opinion, *International status of South-West Africa*.[1] Two of Respondent's Objections were unanimously rejected by the Court in the Advisory Opinion of 1950. The Court held that the Mandate, including Article 7, has not lapsed.[2] The Court furthermore held that it remains open for States to invoke Article 7 in accordance with its terms.[3] Respondent's remaining Objections herein were not in issue before the Court in 1950, and accordingly were not then considered.

Respondent contends, however, that even though it made oral and written submissions to the Court during the Advisory proceedings, nevertheless those proceedings were marred by "lack of presentation, or of adequate presentation, to the Court of material information of vital importance, factual and otherwise."[4]

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[1] Respondent's *Preliminary Objections*, p. 214.

[2] *International status of South-West Africa*, Advisory Opinion: I.C.J. Reports 1950, p. 128 at 143.

[3] *Id.* at 138.

[4] Respondent's *Preliminary Objections*, p. 215.

Respondent, however, advances no valid reason why the Court should depart from its prior unanimous rulings. Indeed, as is more fully shown below, Respondent's basic contention is the same as that submitted to the Court in 1950, and it suffers from the same fundamental defect: the inherently illogical and inequitable thesis that the Mandate lapsed with the dissolution of the League of Nations, relieving Respondent of its obligations under the Mandate instrument, yet at the same time leaving Respondent with all its rights and powers over the mandated territory, free of international accountability.

Chapter IV of Applicants' *Memorials* analyzes the legal consequences of antecedent Advisory Opinions. Nothing in the *Preliminary Objections* refutes Applicants' submission based on that analysis. For the convenience of the Court, the relevant excerpt from the *Upper Silesia* case,[1] quoted in the *Memorials*, is repeated here. The Court said:

> "As regards Article 5 of the Polish Law of July 14th, 1920, Poland claims to have acquired, free from all charges, the property mentioned in Article 256 of the Treaty of Versailles.
>
> *"This question has already been considered by the Court in its Advisory Opinion No. 6* [German Settlers in Poland.] . . . *Nothing has been advanced in the course of the present proceedings calculated to alter the Court's opinion on this point.*" (Italics added.)[2]

Applicants' submission is likewise repeated for the Court's convenience:

> "Judicial and scholarly precedent and the views and practices of States confirm and support the practice of the Permanent Court in *Upper Silesia* wherein the Permanent Court stated that it had already ruled upon an issue in an advisory proceeding and then reaffirmed that ruling when the same issue arose in the contentious proceeding.
>
> "It is respectfully submitted that in the present case, the Court should similarly reaffirm the advisory opinion it delivered in *International status of South West Africa.*"[3]

B. Suggested Distinction between the Mandate as a Real or Objective Institution and the Mandate as a Treaty or Convention

Respondent contends that there is a distinction between the Mandate as a "real" or objective institution and the Mandate as a treaty or convention.[4] Respondent argues that the Mandate as

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[1] *Case Concerning German Interests in Polish Upper Silesia*, P.C.I.J., Ser. A, No. 7, 1926.

[2] *Id.* at 31.

[3] *Memorials*, p. 103.

[4] Respondent's *Preliminary Objections*, p. 214.

a "real" or objective institution may have survived the dissolution of the League, but that the Mandate as a treaty or convention has lapsed.[1] Respondent thus attempts to distinguish between the term "Mandate" and the phrase "lapsing of the Mandate," intimating that Respondent may legitimately continue to administer the mandated territory,[2] without, however, being subject to the enforceable international obligations of the Mandate instrument.

The suggested distinction apparently relies heavily on Sir Arnold McNair's Separate Opinion in *International status of South-West Africa*.[3] Judge McNair in fact employed the concept of a "real" or "objective" status of the Mandate to demonstrate that "the international status created for South-West Africa, namely that of a territory governed by a State in pursuance of a limited title as defined in a Mandate, subsists."[4] Judge McNair concluded that "*the Mandate*, which embodies international obligations, *belongs to the category of treaty or convention* ... and I have endeavoured to show that the agreement between the Mandatory and other Members of the League embodied in the Mandate is still 'in force'." (Italics added.)[4]

Whether the Territory of South West Africa would have a special status in international law even if the Mandate instrument had "lapsed" is not a question before the Court in these cases. The question before the Court is whether Respondent's duties under the Mandate instrument continue to exist, that is to say, whether Respondent's administration of the mandated territory which is based on the Mandate instrument is free of the obligations prescribed in that instrument.

The term "Mandate" must include Respondent's duties as defined in the Mandate instrument, since a fundamental concept underlying "Mandate" is accountability in the manner prescribed in the instrument. The Advisory Opinion of the Court clearly confirms the Court's acceptance of this basic proposition.

C. Respondent's Historical Analysis

Respondent has set forth its own account of the events leading up to the creation of the Mandate and the events which transpired thereafter.

Applicants in their *Memorials* have described *in extenso* what they submit is a fair account of the relevant historical facts. This account has not been materially altered in Respondent's version. One point raised by Respondent may, however, merit reference.

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[1] *Ibid.*

[2] See Respondent's *Preliminary Objections*, p. 317.

[3] Separate Opinion by Sir Arnold McNair, *International status of South-West Africa*, Advisory Opinion: I.C.J. Reports 1950, pp. 146-163.

[4] *Id.* at 158.

Respondent's views concerning the origin and nature of the Mandates System, heavily emphasize statements, such as that of Margalith (quoted by Respondent at p. 10 of its *Preliminary Objections*), that the "C" mandates were in practical effect not far removed from annexation. If Respondent thereby intends to create the impression that it is legally entitled to annex South West Africa, it is in error, and is repudiated by its own representatives and by the very writers whom Respondent quotes to contend that the Mandate was not far removed from annexation. Thus, Margalith, in the work cited by Respondent, states:

> "Do the same principles underlie all the three categories [A, B, and C Mandates], or are these principles different as to each class? This question has already been partly answered, but it is of sufficient importance to need further consideration at this place. *It can hardly be over-emphasized that the concepts of trust, guardianship, and mandate are at the basis of all the mandates, irrespective of what class a territory may belong to. In other words, no matter how limited may be the powers of a Mandatory in a territory of the A group, or how wide they may be in the territory of the C group, they are both applications of one and the same idea.*" (Italics added.) [1]

M. Rappard, whom Respondent also cites at p. 221 of its *Preliminary Objections*, stated in 1925, that it was not for the white minority in a mandated territory to declare when the moment had arrived for the territory to be able to stand alone. It would be contrary to the spirit of the arrangement, he said, if, upon the demand of some ten thousand settlers, a mandated territory were, in fact, to be incorporated with the territory of the mandatory Power. [2] Temperley, who seemingly questioned the wisdom of placing South West Africa under mandate, nevertheless recognizes, in the same quotation offered by Respondent, that "a general application of the [Mandates] system was insisted upon." [3] Finally, Mr. Smit, High Commissioner for the Union of South Africa and its accredited Representative to the Permanent Mandates Commission, stated that "the inclusion of South-West Africa in the Union could only come about as the result of a Treaty between South-West Africa, as an independent Government, and the Government of the Union;" [4] and the South African representative to the San Francisco Conference of 1945 on the United Nations Charter conceded that annexation would be contrary to the principles of the Mandate, so long as the Mandate survived. He stated: "There is no prospect of the territory ever existing as a separate state, and the ultimate objective of the Mandatory principle is therefore impossible of achievement. The

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[1] Margalith, A. M. *The International Mandates*, Johns Hopkins Press, Baltimore, 1930, pp. 95-96.

[2] Permanent Mandates Commission, Minutes of Sixth session, p. 60.

[3] See Respondent's *Preliminary Objections*, p. 222.

[4] Permanent Mandates Commission, Minutes of Sixth session, p. 59.

Delegation of the Union of South Africa therefore claims that the Mandate should be terminated and that the territory should be incorporated as part of the Union of South Africa." [1]

Respondent also stresses the political compromises which occurred in fashioning the Mandates System. Applicants do not conceive it material to the instant cases to argue the extent to which the Mandate arose from compromise. Nearly all agreements arise from compromise. The essential fact is that Respondent agreed to certain terms in accepting the Mandate, and continues to exercise the Mandate.

Respondent's reasoning on pages 216-223 of the *Preliminary Objections* is not susceptible of clear interpretation. On the one hand, Respondent asserts that "Respondent accepted the obligations which the Mandate for South West Africa involved for it; and it has always regarded compliance with those obligations as being a matter of importance—according to their letter and spirit during the lifetime of the League, and according to their spirit thereafter." [2] On the other hand, Respondent asserts that Applicants' comment that "The Mandate System, as ultimately given expression in Article 22 of the Covenant of the League of Nations and in the several Mandate Agreements, represented a victory for the opponents of the principle of annexation," and other statements of a like nature, are mere "attempts at the unilateral imposition upon it of suggested duties which were excluded from those undertaken, and which would amount to a repudiation of the compromise whereby Respondent was induced to agree to the Mandate System being rendered applicable at all to the case of South West Africa." [3]

Either mandatories were permitted to annex mandated territories, or they were not. There was no provision for annexing the mandated territories just a little bit.

The Council of the League, the Permanent Mandates Commission, the United Nations, the International Court of Justice, and scholarly authority all unite in agreeing that the Mandates System does not permit annexation of territories under "C" mandate. Far from bestowing the right of annexation, the Mandate affirmatively imposes the duty to guide the people of the mandated territory toward political maturity which will enable them to determine their own political destiny. Such a duty is the very *raison d'être* of the Mandates System. As the Court stated in the Advisory Opinion, in regard to South West Africa, the principle of non-annexation was one of the two principles considered to be of "paramount importance" in establishing the Mandates System. [4] Hence, it is difficult to evaluate Respondent's motive or reasoning

[1] See Respondent's *Preliminary Objections*, pp. 237-238.
[2] Respondent's *Preliminary Objections*, p. 223.
[3] *Ibid.*
[4] *International status of South-West Africa*, Advisory Opinion: I.C.J. Reports 1950, p. 128 at 131.

in characterizing Applicants' argument as a "unilateral imposition upon it of suggested duties which were excluded from those undertaken." [1]

To repeat Applicants' basic point, if Respondent seeks to imply that it may unilaterally incorporate the mandated territory either at once or piece-meal it is in error. If Respondent's argument on pages 216-223 of the Preliminary Objections is intended to convey a different meaning, the legal consequences of such a meaning have not been spelled out by Respondent, and therefore the argument has no relevance.

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[1] Respondent's *Preliminary Objections*, p. 223.

III

ARTICLE 7 OF THE MANDATE IS A "TREATY OR CONVENTION IN FORCE"

Respondent concedes that Article 7 of the Mandate was a treaty or convention in force while the League of Nations was in existence, but contends that the dissolution of the League caused such treaty or convention to "lapse."[1]

Respondent's contention is directly contrary to the Court's 1950 Advisory Opinion in which the Court ruled:

> "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, and Article 80, paragraph 1, of the Charter, the Court is of opinion that this 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." [2]

Respondent contends that the Court's jurisdiction was not in issue in the 1950 Advisory Opinion,[3] that a *de novo* consideration of Respondent's contention is in any event required, and that such *de novo* consideration would support its theory that Article 7 is not in force.[4]

A. Respondent's Request for Reversal is not well-founded

The question whether Article 7 is in force, as a treaty or convention—the subject of Respondent's First Objection—*was* at issue in the 1950 Advisory proceedings. The Court was requested by the General Assembly to render an opinion on the Question, *inter alia*, "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?"[5] In response to the Question, the Court held that Respondent "is under an obligation to accept the compulsory jurisdiction of the Court according to those provisions

[1] Respondent's *Preliminary Objections*, p. 299.
[2] *International status of South-West Africa*, Advisory Opinion: I.C.J. Reports 1950, p. 128 at 138.
[3] Respondent's *Preliminary Objections*, p. 215.
[4] *Ibid.*
[5] See *International status of South-West Africa*, Advisory Opinion: I.C.J. Reports 1950, p. 128 at 131.

[the provisions of Article 7]," [1] despite argumentation on the point by Respondent. [2]

Respondent's additional contention, mentioned above—that the Court should in any event engage in a *de novo* inquiry and reverse its previously announced decision—likewise is untenable. It implies the existence of newly discovered evidence or newly invented theories sufficient to justify so unprecedented a repudiation by the Court of its prior unanimous holding.

In fact, Respondent asserts no new facts or theory which bear on Article 7. Its contention is exactly that advanced by it in 1950 before the Court, and which the Court rejected, namely, that the dissolution of the League caused its obligations defined in the Mandate instrument to lapse.

In 1950, Respondent advanced the dissolution of the League as the premise of an argument that the Mandate instrument, being essentially a contract similar to "mandate" in private law, went out of existence and all legal rights and obligations under the Mandate were extinguished because one of the two parties to the contract disappeared. [3] Now, in its *Preliminary Objections*, after the verbiage is stripped away, Respondent's argument remains the same:

> "... the substantive obligations lapsed insofar as they were contractual obligations owed to other international persons: they could not be owed to a non-existent League; and insofar as they may have been intended to be owed to States, they were not covenanted to be owed to any States not Members of the League. Moreover, if the League had been a legal *persona* which could have been a party to a treaty or convention, it ceased to be so on its dissolution and its Members ceased to have the qualification in consequence whereof they might have been parties.
>
> *"Consequently there ceased to be 'in force' a 'treaty or convention': the party or parties with whom the agreement had been contracted, fell away, as well as the contractual obligations undertaken vis-à-vis them; and there were no longer 'provisions' to the 'interpretation or application of which a compulsory jurisdiction clause could have reference."* (Italics added.) [4]

Respondent still views the Mandate as a bare contract. Before, only the League was the other contractor in Respondent's argument. Now, the other contractor was either the League or its Members. In Respondent's view, both "have fallen away;" *ergo*, Respondent proceeds, there is no contract. All that Respondent has done in its more modern version has been to add one more possible contractor who could have "fallen away" by virtue of the League's disso-

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[1] *Id.* at 138.

[2] *International status of South-West Africa*, Pleadings, Oral Arguments, Documents p. 273 at 289-291.

[3] *Id.* at 277, 278.

[4] See Respondent's *Preliminary Objections*, pp. 357-358.

lution, in spite of the fact that the Court clearly stated that the Mandate may not be analyzed as a mere contract..[1]

Applicants consider that in the face of a unanimous and explicit ruling by the Court concerning an issue squarely raised and as to which Respondent fully participated, it is an imposition upon the Court for Respondent to present the same basic argument as before, and at the same time propose a *de novo* consideration.

B. Miscellaneous points of Respondent

Respondent's argumentation in its First Objection is presumably directed to the question of whether Article 7 of the Mandate is in force, since it is Article 7 upon which the jurisdiction of the Court in the instant cases may be said to rest. Nevertheless, in its First Objection Respondent discusses numerous other points as well, including: its duty to submit to the supervision of the United Nations,[2] its duty to submit petitions from the inhabitants of the Territory,[3] and the international status of the Territory.[4] Indeed, in its First Objection, and throughout its *Preliminary Objections*, Respondent disputes, under the heading of Preliminary Objections, all the allegations in the *Memorials* except those dealing with certain substantive violations of the Mandate.

It is only the question of whether Article 7 is in force, as is shown below, which, among the numerous matters discussed by Respondent in its First Objection, is relevant to jurisdiction, and Applicants therefore do not propose at this time fully to treat all of those matters. Nevertheless, comment on two subjects raised by Respondent is necessary for purposes of clarity.

1. *Respondent's conclusion that it may continue to administer the territory without any duty to report and account*

First, Respondent erroneously seeks to give the impression that the Majority Opinion distinguished between the Mandate as a "real or objective" institution and the Mandate as a "treaty or convention."[5] Applicants have already adverted to this incorrect analysis of the Opinion.[6] Applicants only wish further at this point to focus upon the self-serving conclusion which Respondent in its First Objection draws for itself from the suggested distinction. Before, in 1950, Respondent tried one tack to arrive at the same conclusion: "The Government of the Union of South Africa would close this statement by expressing their view that the Territory of South-West Africa falls, at present, under no known category in international law ... It is the considered view of the Government of the

[1] *International status of South-West Africa*, Advisory Opinion: I.C.J. Reports 1950, p. 128 at 132.
[2] Respondent's *Preliminary Objections*, pp. 312-350.
[3] *Id.* at 315-316, 321.
[4] *Id.* at 299, 306, 317.
[5] *Id.* at 299, 306.
[6] See pp. 420-421.

Union of South Africa that there is no international legal limitation upon their competence in respect of the territory and that their international obligations, arising from the status of the territory, are to be determined accordingly."[1] The Court was not convinced by this argument. Now, Respondent tries another tack, albeit without the same amount of explicitness or candour:

> "By *nature and content*, too, the obligation [to report and account] and the right correlative thereto were of a purely *contractual* or *'personal'* nature as distinct from 'real' rights and obligations. The obligation was not in any way constitutive of the *status* of the Territory or of the Mandatory's *title* thereto, as might be said of other aspects of the Mandate System." [2]

Respondent thus uses its First Objection not only to argue jurisdiction, but to attempt to convince the Court that it may continue to administer the Territory, and yet be free of all duties to report and account.

2. *Respondent's contentions regarding Article 6 of the Mandate*

Respondent also devotes over one-half of its First Objection to the question of whether Article 6 of the Mandate is in force, and, in so doing, sets forth so-called "new facts" regarding the succession by the United Nations to the supervisory powers of the League. Since no other attempt is made by Respondent in its *Preliminary Objections* to direct the Court's attention to new factual material of "vital importance", and since, as shown above at pages 425-427, Respondent's legal theories are in substance the same as those advanced by it before, presumably the above-mentioned "new facts" constitute the "material information of vital importance" upon which Respondent urges *de novo* consideration by the Court of the jurisdictional issues involved in the instant cases.

Respondent fails to indicate, however, what relevance the question of United Nations supervision has to jurisdiction, which is the *sole* issue in these preliminary proceedings. Respondent does not appear to make the argument that because, in its opinion, Article 6 is not in force, Article 7 is not in force. Indeed, such an argument would be untenable.

The question of whether the United Nations has succeeded to the supervisory powers of the League *vis-à-vis* the Mandate is not dispositive of the question whether there are States competent to invoke Article 7 of the Mandate. This point may be illustrated by referring to the Separate Opinions of Judges McNair and Read. Both Judges found that Article 6 is not in force in the sense that, in their view, performance thereof is not now possible. But both Judge McNair and Judge Read hastened to add and to emphasize

[1] *International status of South-West Africa*, Pleadings, Oral Arguments, Documents, p. 72 at 83-84.

[2] Respondent's *Preliminary Objections*, p. 317.

that the lack of administrative supervision does not leave Respondent free from international accountability, and both held that such accountability may be achieved through the compromissory clause, Article 7, which they explicitly found to be in force.

There *is* a certain interconnection between Articles 6 and 7, but it is not one which Respondent will wish to recognize.

Both the Majority and the Minority in the 1950 Advisory Opinion held that the Mandate instrument did not lapse with the dissolution of the League. They found that the Mandate instrument endures because its purposes have not yet been achieved. They stressed, in this connection, that the Mandate instrument created an international régime, which affords the instrument a vitality greater than that possessed by an ordinary contract between two States. Judge McNair also found an analogy to trust and *tutelle* instructive on the same point. Having achieved this common understanding, the Majority and Minority then divided on one question: succession of the United Nations to the League's supervision of the Mandate. The Majority found that there had been an automatic succession; the Minority did not agree. Although the Minority held that the instrument of Mandate continues in existence, in declining to employ the doctrine of succession, Judges McNair and Read held that Article 6 could not be enforced only for the mechanical reason that there is no Council of the League to which Respondent could report. Both Majority and Minority held, however, that Article 7 is in force. In this connection, Judges McNair and Read found no mechanical problem since Members of the League at the time of its dissolution clearly continue in existence.

The interconnection, then, between Articles 6 and 7, is this: according to the Majority view of Article 6, Applicants have standing to invoke Article 7 by virtue of membership in the United Nations; according to the Minority view of Article 6, Applicants have standing by virtue of membership in the League at the time of the League's dissolution.

The above discussion is developed in full in the next Chapter; mention of it is made here, however, to indicate that although there is an interconnection between Articles 6 and 7, such interconnection is not the one on which Respondent bases its lengthy discussion of Article 6. In fact, as shown above, Respondent does not indicate how Article 6 is relevant to Article 7 at all. Since Respondent has nevertheless devoted more than thirty-five pages to the question of United Nations supervision, Applicants will comment thereon to the extent of clearing the record, reserving for subsequent proceedings a more complete discussion on the merits.

Respondent admits that it is the Mandatory's duty to report and account which distinguishes a mandate from a self-limiting trust. [1]

[1] *Id.* at 314.

Nevertheless, although it continues to administer the Territory, and avers that it has the legitimate right to do so, it contends that it has no duty to report and account. It is this illogical and inequitable proposition which the Court was unwilling to accept when it held that Respondent has the duty to report and account to the United Nations [1]; when it did so, it did no more than apply the principle of giving effect to a basic international instrument which has as its purpose more than mere contractual relations between two entities, but which creates an international institution—a sacred trust. The Court employed the same type of legal reasoning that a municipal court would employ if it were faced by the contention of a trustee or *tuteur* that his duty to account had "lapsed."

The Court furthermore found, for purposes of confirmation, that the League of Nations relied on declarations of Mandatories, including Respondent, that they would continue to honour their obligations as mandatories; and that neither the League nor the United Nations intended the obligations of mandatories to disappear without their being replaced by new obligations under trusteeship agreements. [2]

The Court did not reach its conclusions by a narrow margin. The vote on the question of succession was twelve votes in favor of, and two votes against, the view of the Majority. [3]

Now, Respondent sums up a long exposition by stating that: "It seems quite evident that, with knowledge of certain crucially important facts that were not placed before the Court in 1950, the Court could not possibly have arrived at these conclusions by inference." [4]

Respondent's contention is advanced with little grace or merit.

First, not one of the so-called "new facts" has come into existence since 1950. Respondent had full opportunity to develop at length each and every one of them during the Advisory proceedings.

Second, not one of the so-called "crucial new facts" is in reality either new or crucial. Each one of them was before the Court in 1950, and, obviously, was not deemed crucial. Thus, in regard to the four facts which Respondent deems to be "of particular importance" [4]:

(1) Respondent's statement that it made an "express reservation" at the San Francisco Conference which "rendered quite clear that there was on Respondent's part no tacit agreement to, or acquiescence in, Trusteeship under or supervision by the United Nations" [4] refers [5] to Respondent's statements at the San Francisco Conference that it intended not to enter into a trusteeship agree-

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[1] *International status of South-West Africa*, Advisory Opinion: I.C.J. Reports 1950, p. 128 at 133, 136.

[2] *Id.* at 133-137.

[3] *Id.* at 143.

[4] Respondent's *Preliminary Objections*, p. 345.

[5] By virtue of p. 345, n. 1, of Respondent's *Preliminary Objections*.

ment, but, rather, intended to seek incorporation of the territory. The same point was covered in Respondent's Written Statement presented to the Court during the Advisory proceedings:

> "While still a mandatory Power, the Union of South Africa had, at San Francisco, on May 7, 1945, circulated a document... making known its view 'that the mandate should be terminated and that the territory should be incorporated as part of the Union of South Africa'. That view was repeated in essence at the final meeting of the League of Nations... The Union Government, on both occasions, clearly indicated their policy of incorporation of the territory, if its peoples so desired. Both the United Nations and the League of Nations were aware of this, of the fact that the mandates system would terminate upon the dissolution of the League and that the Union of South Africa did not intend to submit a trusteeship agreement." [1]

(2) Respondent's statement concerning the alleged rejection by the Preparatory Commission of its Executive Committee's proposal for a Temporary Trusteeship Committee [2] was covered in substance by its Written Statement in 1950:

> "15. Nor has the United Nations regarded itself as the legal successor to the League. The Executive Committee which sat in London from 16 August to 24 November, 1945, and which had, as one of its tasks, the drawing up of recommendations to the Preparatory Commission on the transfer of certain functions of the League to the United Nations, had accepted the idea of a total transfer of the League's functions and assets to the United Nations, subject to exceptions and without prejudice to future action. Although such a total transfer was not finally recommended, the language appropriate to a legal succession appeared in the report and recommendations. The report was repudiated by the Soviet Delegation on the ground that it made the United Nations appear to be the successor in law to the League. The proposals finally adopted by the Preparatory Commission avoided the suggestion of a 'transfer' of functions and spoke of the 'assumption' by the United Nations of 'certain activities' previously exercised by the League." [3]

The Court knew that the functions of the League in respect to mandates had not been expressly transferred to the United Nations and was aware of the fact that other transfers from the League to the United Nations had occurred. Neither of these facts was regarded as crucial.

(3) Respondent's statement concerning the original Chinese proposal [2] is also not well taken. The facts concerning the

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[1] Statement Submitted by the Government of the Union of South Africa, *International status of South-West Africa*, Pleadings, Oral Arguments, Documents, p. 72 at 77, 78.

[2] Respondent's *Preliminary Objections*, p. 345.

[3] Statement Submitted by the Government of the Union of South Africa, *International status of South-West Africa*, Pleadings, Oral Arguments, Documents, p. 72 at 75.

Chinese proposal *were* before the Court in 1950, in the Written Statement of the United States of America.[1] Moreover, even if it had been previously unaware of the Chinese proposal, which is doubtful, Respondent was informed thereof by the Written Statement of the United States well in advance of the oral proceedings, but chose not to comment on it explicitly at the proceedings.

The Chinese delegate to the Fourth Committee has placed Respondent's contention in its proper perspective:

> "Mr. Liu (China) observed that the South African representative had stressed the draft resolution submitted to the League of Nations by the Chinese delegation; he feared that that representative's remarks might create a wrong impression in the Fourth Committee. The resolution finally adopted by the League did not, it was true, contain any specific provision for the transfer of supervisory functions, but neither did it forbid such transfer. In view of the importance of that point, he wondered why the South African Government had not considered it earlier but had waited until the advisory opinion of the Court had been discussed in the Fourth Committee. Dr. Steyn, who had represented his Government at the deliberations of the International Court of Justice, could have raised the question at the time.
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> "The Chinese delegation was therefore unable to accept the argument that the Court had been ignorant of the facts[2]."

Now, Respondent claims that the Court could not conceivably have arrived at its conclusions in the Advisory Opinion had it been aware of the Chinese proposal, *inter alia*.[3] As a matter of fact, the Court obviously did not find the facts concerning the Chinese proposal crucial, and had good reason therefor, as is demonstrated by the following section from a League Report which is quoted in the United States Written Statement:

> "Following upon a number of statements in plenary session of the Assembly with regard to the future of the territories now held under mandate, this subject was but briefly discussed by the First Committee. Attention was drawn by the delegate of China to the fact, that although the Charter of the United Nations—in particular by the establishment of an international trusteeship system—embodied principles corresponding to those of the mandate system, it made no provision for assumption by the United Nations of the League's functions under that system as such. The continued application to the mandated territories of the principles laid down in the Covenant of the League was a matter on which the Assembly would wish to be assured. The First Committee took note of the fact that all the Members of the League now administering mandated territories had expressed their intention to continue, notwithstanding

[1] Written Statement of the United States of America, *International status of South-West Africa*, Pleadings, Oral Arguments, Documents, p. 85 at 102.

[2] As paraphrased in the Summary Records of 196th meeting of the Fourth Committee, U.N. Doc. No. A/C.4/SR.196 at 364-365, paras. 63-64 (1950).

[3] Respondent's *Preliminary Objections*, p. 346.

the dissolution of the League, to administer these territories for the well-being and development of the peoples concerned in accordance with their obligations under the respective mandates, until other arrangements were agreed upon with the United Nations." [1]

(4) The fact that Respondent finds the views of States expressed in a Report on Palestine to be *crucial* is surprising in light of Respondent's argument before the Court in 1950:

> "As a corollary, apparently, to the proposition that the mandatories and the Members of the League never intended the mandates to lapse, the Court's attention is also drawn, in the Written Statement of the United States, and also in the oral statements, to the fact that certain Members of the United Nations, and also the United Nations itself in certain resolutions, have accepted the continued existence of the mandates. Now that again, Mr. President, does not seem to take the matter any further. *In fact, I find it difficult to understand why these views are referred to at all in this connexion. At the most, they are mere expressions of opinion. These expressions of opinion cannot change the realities of the legal situation. They cannot make new law." (Italics added.)* [2]

The facts concerning the Palestine Mandate were discussed by Sir Arnold McNair in his Separate Opinion, [3] and, presumably, were known to his colleagues on the Court as well. The Report of the Special Committee on Palestine was also noted in the aforementioned Written Statement of the United States. [4]

Further, if the views of States are now to be considered relevant, due weight will undoubtedly be accorded to the views of the overwhelming number of United Nations Members, which have repeatedly taken the position that Respondent as Mandatory is accountable to the United Nations. [5]

To sum up, the Opinion of the Court regarding Respondent's duties to report and account to the United Nations is not affected by Respondent's so-called "new facts". These facts are neither new nor crucial. The Court considered them, as well as the other pertinent facts, and arrived at its conclusion. Respondent merely disagrees with that conclusion.

C. Article 7 is in force

When the argument in the First Objection relating to jurisdiction is finally distilled it is this: Respondent argues in its First Objection, and reargues in its Second Objection, that Applicants do not hold any rights

[1] Written Statement of the United States of America *International status of South-West Africa*, Pleadings, Oral Arguments, Documents, p. 85 at 102.

[2] Statement of the Union of South Africa, *Id.* at 280.

[3] Separate Opinion by Sir Arnold McNair, *International status of South-West Africa*, Advisory Opinion: I.C.J. Reports 1950, p. 146 at 157.

[4] Page 134 of the Statement.

[5] See, for example, U.N. Gen. Ass. Off. Rec. 5th Sess., Supp. No. 20 at 55 (A/1775) (1950); U.N. Gen. Ass. Off. Rec. 6th Sess., Supp. No. 20 at 63 (A/2119) (1952); U.N. Gen. Ass. Off. Rec. 8th Sess., Supp. No. 17 at 26 (A/2630) (1953).

under Article 7 because with the formal dissolution of the League, they are not, in Respondent's view, "another Member of the League of Nations." Respondent correctly recognizes one crucial point in this contention, which is that it would be quite meaningless to state that Article 7 is still in existence, but that there are no States competent to invoke it.

Respondent's contention that no States, including Applicants, have rights under Article 7 is dealt with by Applicants in the next Chapter. Applicants there cite the Court's unanimous holding that Article 7 is in force and the necessarily logical corollary of that holding, emphasized by Respondent as well, that if Article 7 is in force, there must be States competent to invoke it. Applicants submit respectfully that their citation of the Advisory Opinion and their analysis of the soundness thereof in the next Chapter of these *Observations* refute Respondent's contention, and establish that there is jurisdiction in the instant cases.

Applicants consider, nevertheless, that the effect of the dissolution of the League on the Mandate should be considered in a context broader than that so rigidly and narrowly conceived by Respondent.

In order that Applicants' and Respondent's contentions may be viewed in a suitably broad perspective, Applicants set forth certain general observations believed relevant to a practicable, just and legally inescapable conclusion.

The Mandate is an "international regime;" [1] it is "an international institution with an international object—a sacred trust of civilization." [2]

Treaties or conventions which create an international regime have a permanency and vitality beyond that of the ordinary treaty or convention, which may establish a mere contract right between two States. Such a character of durability applies with special force to Mandate instruments, as was pointed out by the late Judge Lauterpacht in the *Petitioners* case. [3] Judge Lauterpacht wrote:

> "However, this is not a case of a contract or even of an ordinary treaty analogous to a contract. As already pointed out, this is a case of the operation and application of multilateral instruments, as interpreted by the Court in its Opinion of 11 July 1950, creating an international status—an international régime—transcending a mere contractual relation (I.C.J. Reports 1950, p. 132). *The essence of such instruments is that their validity continues notwithstanding changes in the attitudes, or the status, or the very survival of individual parties or persons affected.* Their continued validity implies their continued operation and the resulting legitimacy of the means

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[1] *International status of South-West Africa*, Advisory Opinion: I.C.J. Reports 1950, p. 128 at 131.

[2] *Id.* at 132.

[3] *Admissibility of hearings of petitioners by the Committee on South-West Africa*, Advisory Opinion of June 1st, 1956: I.C.J. Reports 1956, p. 23.

devised for that purpose *by way of judicial interpretation and application of the original instrument.*" (Italics added.) [1]

As discussed herein, Respondent attempts to distinguish between the Mandate as a "real" or objective institution and the Mandate as a treaty or convention. Respondent does not attempt to analyse the difference between the two; nor does it attempt a definition of either. It merely draws its own conclusions from the alleged distinction, as shown above on pages 427-428.

Applicants have pointed out that the instant cases pertain to the duties of Respondent as set forth in the Mandate instrument, and that the Court in its Advisory Opinion found such duties in force. To clear up an ambiguous and vague implication of Respondent that somehow certain undefined duties arising from *status* may have survived the League's dissolution, but none arising from treaty or convention has survived, [2] Applicants respectfully reiterate the point that it is the Mandate instrument—a treaty or convention—which defines Respondent's duties. It is to that instrument that the Court looked, holding that the terms of the Mandate are still in force, including Articles 6 and 7 thereof. The Court did not, as might be inferred from Respondent's ambiguous language, hold that only in an objective or "real" sense did the Mandate survive. The Court found that the Mandate is an international regime, and Judge McNair found that it has acquired a "real" or objective status. But the pertinency of this judicial analysis is lost on Respondent: the Mandate instrument, which created an international regime or a status, survived the dissolution of the League as a treaty or convention because, to repeat the words of Judge Lauterpacht, "the essence of such instruments is that their validity continues notwithstanding changes in the attitudes, or the status, or the very survival of individual parties or persons affected."

Applying the concept of international regime to the Mandate, it is apparent that the terms of the Mandate instrument, without which there is no effective international control and, hence, no Mandate, continue in existence despite the League's dissolution. Since the purposes of the Mandate have not yet been achieved, and since the Mandate has not been legally terminated, the terms of the Mandate continue in force.

Technical difficulties appear in fully applying the analogies of trust and *tutelle* to mandates. Nevertheless, several scholars have found such analogies helpful in analyzing the nature of the Mandates System, [3] and Applicants believe that certain basic and fundamen-

[1] *Id.* at 48.

[2] See Respondent's *Preliminary Objections*, p. 299.

[3] See, e.g., Brierly, J. L., "Trusts and Mandates," *The British Yearbook of International Law*, 1929, pp. 217-219; Margalith, A. M., *The International Mandates*, Johns Hopkins Press, Baltimore, 1930, pp. 36-45; Separate Opinion by Sir Arnold McNair, *International status of South-West Africa*, Advisory Opinion: I.C.J. Reports 1950, p. 146 at 148-149.

tal principles underlying both institutions are relevant to the issue under consideration.

The feature of trust and *tutelle* which Applicants stress is that both rest upon specified duties undertaken by a fiduciary. In a broad sense, agreement on the part of the fiduciary is a necessary element in the structure of both. The trustee agrees to abide by the terms of the trust instrument; the *tuteur* or *curateur* makes a promise and takes an oath to abide by the terms of the law governing his duties. Yet a trust and a *tutelle* are more than mere agreements, and they have a permanency which endures until their purposes have been fulfilled or they have been legally terminated. Their endurance presupposes that the terms of the fiduciary's undertaking endure. To state this elementary principle in another form, a fiduciary's agreement which effectuates a trust or *tutelle* has a permanency and vitality greater than an agreement which forms a mere contractual relation. In respect to both trust and *tutelle* the law is universally applied in such manner as to give effect to the fiduciary's undertaking, express in the case of trust, and implied by law in the case of *tutelle*, whether or not any mere "mechanical problems" present themselves in terms of changed personalities or conditions.

Similarly, duties undertaken by a Mandatory in a Mandate instrument do not simply disappear. International law is applied to give effect to those duties, and the Mandate endures until its purposes have been achieved, or until it is legally terminated, i.e. until the United Nations gives its prior consent to a modification or termination of the Mandate, a proposition fully recognized by Respondent when in 1946 it unsuccessfully sought the consent of the United Nations to incorporate South West Africa.

In conclusion, Applicants submit that Article 7 is a treaty or convention in force, and, as will be developed extensively in the next Chapter, that they are competent to invoke Article 7.

IV

EACH APPLICANT MUST BE CONSIDERED TO BE IN THE CATEGORY OF "ANOTHER MEMBER OF THE LEAGUE OF NATIONS", WITHIN THE MEANING OF ARTICLE 7 OF THE MANDATE

Respondent, in its Second Objection, contends that "because Applicants are not Members of the League of Nations the alleged dispute is not with 'another Member of the League of Nations'." (*Preliminary Objections*, p. 361.) The essence of Respondent's argument appears to be that provisions of the Mandate instruments were "available to Members of the League only," that a State which ceased to be a League member "lost its legal interest in the administration of the Mandates," and that the dissolution of the League having automatically terminated all League memberships, Applicants are no longer entitled to invoke Article 7. (*Preliminary Objections*, pp. 364-367, *passim*.)

The conclusion, which is obviously the key to Respondent's whole argument, is not set forth by Respondent with explicit candour. On the contrary, it is implied by indirection, notably through repeated use of the phrase "termination of membership" (*e.g.*, p. 364).

It is submitted, however, that Respondent's interpretation of the phrase, "another Member of the League of Nations," misconceives the purposes of Article 7, ignores the importance of judicial supervision, and is inconsistent with the prior decisions of this Court, as well as with scholarly authority and the admissions of Respondent itself before the United Nations.

A. Judicial, Scholarly and other Authority

The Majority Opinion in the 1950 Advisory Opinion, as well as the Separate Opinions of Judges Sir Arnold McNair and Read, support the contention of Applicants that each must be considered to be "another Member of the League of Nations" for the purposes, and within the meaning of, Article 7 of the Mandate. If this contention were not sustained, no State would be presently qualified to invoke Article 7, and judicial supervision would be a nullity.

The Majority of the Court in the Advisory Opinion of 1950 ruled that the United Nations has succeeded to the functions of the League, in respect of the Mandate, and that Article 7 is in force.[1]

[1] *International status of South-West Africa*, Advisory Opinion: I.C.J. Reports 1950, p. 128 at 143, 138.

Sir Arnold McNair and Judge Read, differing with the majority view concerning United Nations succession to the League's supervisory powers, expressed the opinion that Article 7 is in force, and that only States which had been Members of the League at the time of the League's dissolution are entitled to invoke Article 7.[1]

It follows from either the majority or minority analysis that Applicants are competent to invoke Article 7, and that Respondent's contention is inconsistent with the view of every member of the Court.

1. *That Respondent's submission is both untenable and illogical is clear from a consideration of this Court's reasoning in its Advisory Opinion of 1950*[2]

(a) The Majority Opinion.

In its Advisory Opinion of July 11, 1950, the Court ruled:

> "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, and Article 80, paragraph 1, of the Charter, the Court is of opinion that this 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."[3]

If Article 7 is in force, there must be States competent to invoke it, or the foregoing holding is rendered meaningless. The Court's references to Article 80, paragraph 1, of the Charter and to Article 37 of the Statute of the International Court of Justice would in particular be irrelevant, except on the premise that the dissolution of the League was not an event which extinguished the rights of States to invoke Article 7.

Applicants have discussed in their *Memorials* extensively,[4] and have summarized herein,[5] the well-settled doctrine, reflected by judicial precedent, scholarly opinion, and the views of States, that an Advisory Opinion of the Court has "great legal value"[6] and is "an authoritative pronouncement of what the law is,"[7] lacking

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[1] Separate Opinions by Sir Arnold McNair and Judge Read, *Id.* at 158, 169.

[2] *International status of South-West Africa*, Advisory Opinion: I.C.J. Reports 1950, p. 128.

[3] *Id.* at 138.

[4] *Memorials*, pp. 95-103.

[5] See p. 420.

[6] Dissenting Opinion by Judge Winiarski, *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, Advisory Opinion: I. C. J. Reports 1950, p. 89 at 91.

[7] Rosenne, S., *The International Court of Justice*, Sijthoff, Leyden, 1957, p. 493.

only the sanction of enforceability.[1] Respondent has failed to set forth any arguments not previously advanced by it in the proceedings leading to the Advisory Opinion of 1950 which should alter the Court's ruling that Article 7 remains in effect and the necessary corollary that to be effective there must exist States with the capacity to invoke it.

(b) The Separate Opinion of Sir Arnold McNair.[2]

Judge McNair explicitly stated that "Every State which was a Member of the League at the time of its dissolution still has a legal interest in the proper exercise of the Mandate."[3] He went on to say:

> ". . . I have endeavoured to show that the agreement between the Mandatory and other Members of the League embodied in the Mandate is still 'in force'. The expression 'Member of the League of Nations' is descriptive, in my opinion, not conditional, and does not mean 'so long as the League exists and they are Members of it'. . . ."[4]

(c) The Separate Opinion of Judge Read.[5]

Judge Read stated:

> ". . . the legal rights and interests of the Members of the League, in respect of the Mandate, survived with one important exception—in the case of Members that did not become parties to the Statute of this Court, their right to implead the Union before the Permanent Court lapsed."[6]
>
> * * *
>
> "In the present instance, the Union, in the case of disputes relating to the interpretation or the application of the provisions of the Mandate, is subject to the compulsory jurisdiction of this Court—under the provisions of Article 7 of the Mandate Agreement and Article 37 of the Statute, reinforced by Article 94 of the Charter."[6]

2. Scholarly Writings and Official Declarations

A former Judge of the Court, the late Sir Hersch Lauterpacht, stated in *Oppenheim-Lauterpacht:*

> ". . . at least those members of the United Nations who were members of the League of Nations are entitled to bring before the Inter-

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[1] Dissenting Opinion by Judge Zoričić, *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, Advisory Opinion: I.C.J. Reports 1950, p. 98 at 101.

[2] Separate Opinion by Sir Arnold McNair, *International status of South-West Africa*, Advisory Opinion: I.C.J. Reports 1950, p. 146.

[3] *Id.* at 158.

[4] *Id.* at 158, 159.

[5] Separate Opinion by Judge Read, *International status of South-West Africa*, Advisory Opinion: I.C.J. Reports 1950, p. 164.

[6] *Id.* at 169.

national Court of Justice any dispute relating to the interpretation or the application of the provisions of the Mandate." [1]

Finally, a Representative of Respondent, itself, Mr. D. B. Sole speaking for Respondent in the General Assembly's Fourth Committee, stated:

> "Now the Mandate, as has been shown, provided two kinds of machinery for its supervision by the League of Nations—firstly, there was the judicial supervision by means of the right of any member of the League under Article 7 to bring the mandatory compulsorily before the Permanent Court. And secondly, the administrative supervision by means of annual reports and their examination by the Permanent Mandates Commission of the League. The judicial supervision provided for in Article 7 of the mandate has been expressly preserved by means of Article 37 of the Statute of the International Court of Justice reinforced by Article 94 of the Charter, and the Court has in fact found that the Union of South Africa is therefore still under an obligation to accept the compulsory jurisdiction of the Court according to the provisions mentioned. *Any State which was a member of the League at its dissolution could therefore still implead the Government of the Union of South Africa before the International Court of Justice in respect of any dispute between such a member state and the Government of the Union of South Africa relating to the interpretation or the application of the provisions of the Mandate.*" (Italics added.) [2]

3. *Summary*

In support of their contention that they are competent to invoke Article 7 Applicants have cited the Majority Opinion of this Court in its 1950 Advisory Opinion, the Separate Opinions of Sir Arnold McNair and Judge Read, the view of the late Sir Hersch Lauterpacht, and a declaration by a representative of the Respondent. The latter admission, "though not conclusive as to [the meaning of Article 7, has] considerable probative value [since it contains] recognition by a party of its own obligations under [Article 7]." [3]

B. Analysis Supporting Applicants' Interpretation of "another Member of the League of Nations"

Respondent's Second Objection so misconceives the purposes of Article 7 and the importance of judicial supervision in the scheme of the Mandates System, that a brief analysis of the significance of Respondent's contention is in order.

Respondent's attempt to deny the continuing capacity and responsibility of States to bring enforcement proceedings in this Court against violations of the Mandate reflects its failure to understand the nature of the interest of Members of the League

[1] Oppenheim, L., *International Law*: A Treatise, Vol. I, Eighth Edition, ed. by H. Lauterpacht, Longmans Green and Co., London, 1955, p. 226, n. 3.

[2] Statement by the Representative of the Union of South Africa in the Fourth Committee, 196th Meeting, 4 December, 1950, U.N. Gen. Ass. Off. Rec. 5th Sess., U.N. Doc. A/C. 4/185, pp. 7-8.

[3] See *International status of South-West Africa*, Advisory Opinion: I.C.J. Reports 1950, p. 128 at 135, 136.

in the proper execution of the Mandate. In Chapter IV, § 4, of its *Preliminary Objections* (at pp. 363-364) Respondent recapitulates its mistaken conception of the nature of this interest, previously set forth by it in Chapter III, § 16, of the *Preliminary Objections* (at pp. 310-312). Respondent argues that:

> "(a) On the basis that the League was *not* a legal *persona*, all the contractual obligations would have been owed to the Members of the League, who would then as Members have had a legal interest in the observance by the Mandatory of all such obligations.
>
> "(b) On the basis, however, that the League *was* a legal *persona* . . . Members of the League would have had a legal interest in such obligations *vis-à-vis* the Mandatory only insofar as the latter's obligations were intended to operate for the *benefit of Members and their nationals* . . ." (*Underscoring* added.)[1]

Respondent understands the "benefit of the Members" to mean material benefits in terms of trade and commerce or specific benefits to their nationals in such terms as rights of entry, freedom of action for missionaries, etc.[2] This is far too narrow and technical a conception of "benefit" or "interest." If these had been indeed the sole interests of the Members of the League, one could understand and possibly even admit a contention that such "legal interests" lapsed with the termination of the League's existence. But the "interests" of the Members of the League in the Mandate, properly understood, encompassed the achievement of the "material and moral well-being and the social progress of the inhabitants" of the Mandated Territory as a "sacred trust of civilization."

The "legal interests" of the Members embraced the fulfilment of their duties as members of the organized international community and were not confined to their possibilities of material advantage in an immediate and narrow sense. The Mandate agreement, like Article 22 of the Covenant of the League upon which it was based, conceived of the "interests" of the Members in terms of the fundamental interests of the international community in the achievement and maintenance of international peace and security and the promotion of human rights and fundamental freedoms.

In this true sense, the legal interests and responsibilities of Applicants could not and did not lapse so long as the Mandate exists and so long as Respondent occupies or administers the affairs of the Mandated Territory. The continuance of their legal interests and responsibilities as Members necessarily imports their capacity (and duty) to invoke the powers of this Court under Article 7 of the Mandate.

Respondent's Second Objection, in addition to ignoring the foregoing principles, would undermine the jural relationship envisaged by the Mandates System as linking the four essential ele-

[1] Respondent's *Preliminary Objections*, p. 363.
[2] See, for example, *Id.* at 311.

ments of that system: the Mandatory, the League of Nations, the Members of the League, and the Permanent Court of International Justice.

Irrespective of the theory upon which rests the inescapable and judicially settled conclusion that the Mandate did not die with the League's dissolution, these four sides of the quadrilateral jural system must survive, if any one of them is held to survive as part of the Mandate. By the working of history, it is a remarkable fact that each of the four elements exists to-day in different form than at the moment the Mandate was confirmed:

(a) The Union of South Africa, upon whose behalf the Mandate was accepted by His Britannic Majesty, to-day is the Republic of South Africa, outside the Commonwealth;

(b) The League of Nations has been replaced by the United Nations;

(c) Members of the League, including Applicants, are to-day Members of the United Nations; and

(d) The Permanent Court of International Justice has been succeeded by this Court.

Respondent's contention with respect to the meaning of the phrase "another Member of the League of Nations" does not, and indeed cannot, distinguish in principle or logic among these four interrelated jural elements of the Mandates System. Respondent has not ventured to show how judicial supervision can be preserved unless there are States in existence qualified to invoke it. It has not shown how administrative supervision, if frustrated as in the case of this Mandate, can be enforced without judicial supervision. It has not shown by what theory it claims rights by reason of an instrument whose survival it denies.

It is only through the continued existence of the Mandate that Respondent can legally justify its presence in the Territory today. All Mandatories, including Respondent, originally derived their authority to administer mandated territories solely by virtue of, and in accordance with, the Mandate instruments which set forth their rights and duties. When the League was dissolved all other Mandatories either ceased to administer the territories entrusted to them, or entered into a trusteeship agreement, deriving their continued authority to administer such territories from such agreements. Respondent, however, failed to adopt either of the above two courses; hence, its authority rests solely upon the continued existence of the Mandate.

The Mandate is a creature of the organized international community, as well as the subject of a legal interest of such community and its Members. Its existence today rests upon the continued vitality of the authority conferred upon Respondent by the organized international community and by the continued vitality of the rights of such community and its Members to ensure that

the Mandate is properly administered. The only question is, which representative of the organized international community does one look to, the League of Nations or the United Nations, the organ in existence when the Mandate was conferred or the organ now in existence? The Majority Opinion applied the doctrine of succession and looked to the United Nations. Judges McNair and Read declined to apply the doctrine and looked to the League. As shown above, both views support Applicants' standing in the case at bar. Insofar as the point of jurisdiction is concerned, therefore, it makes no practical difference which view is adopted. Applicants have urged confirmation of the Majority Opinion,[1] however, since such view appears more responsive to the purposes of the Mandate. Applicants, nevertheless, rest their submission on jurisdiction on either or both bases. They fall within the descriptive specification of "another Member of the League of Nations," either as current Members of the United Nations or as Members of the League of Nations at the time of its dissolution.

1. *Membership in the United Nations*

Administrative and judicial supervision of the Mandatory by the international community, as has been noted by Applicants, is a key feature of the Mandates System. It represents the "securities for the performance of this trust" required under Article 22 of the Covenant of the League of Nations. Necessarily, the framers of the Mandates System entrusted such supervision to the appropriate international institutions created at the time the System itself was devised. Thus administrative supervision was entrusted to the League of Nations and judicial supervision was entrusted to the Permanent Court of International Justice. The judicial supervision was to be accomplished through the invocation of the compromissory clause of the Mandate instruments by States which had become Members of the organized international community by joining the League, having in common their joint and several interests in the proper "interpretation or application of the provisions of the Mandate." (Art. 7.)

It was, of course, hoped and expected that the organs created after World War I to represent the international community would endure. Although they have been succeeded or replaced by other organs, the Court in its 1950 Advisory Opinion ruled that the Mandate survived, and consequently, that international supervision of the Respondent, as Mandatory, endures.

The Court held that the reference in Article 7 of the Mandate to the Permanent Court of International Justice should be replaced by reference to the International Court of Justice. Although stressing Article 37 of the Statute of the Court, which makes specific provision for the substitution, there is excellent authority that even in the absence of Article 37 the Court might well have ruled the same way.

[1] See *Memorials*, pp. 95, 197.

Such authority is reflected in the Report of Committee I of Commission IV on Judicial Organization at the San Francisco Conference, and the comment upon that Report by Judges Sir Hersch Lauterpacht, Wellington Koo and Sir Percy Spender in their joint dissent [1] in the *Aerial Incident Case.* [2]

The Report of Committee I stated, *inter alia:*

> "In a sense . . . the new Court may be looked upon as the successor to the old Court which is replaced. The succession will be explicitly contemplated in some of the provisions of the new Statute, notably in Article 36, paragraph 4 [which subsequently became paragraph 5], and Article 37." [3]

Judges Sir Hersch Lauterpacht, Wellington Koo and Sir Percy Spender commented:

> "The formal and, in effect, insignificant changes in the Statute of the new Court were not to be permitted to stand in the way of the then existing compulsory jurisdiction of the Permanent Court being taken over by the International Court. It was specifically contemplated that the continuity of the two Courts should be given expression by recognizing the continuity of the compulsory jurisdiction at that time existing. It would have been difficult to use more specific terms: 'the succession will be expressly contemplated . . .
>
> "In fact, a study of the records of the Conference shows that the determination to secure the continuity of the two Courts was closely linked with the question of the compulsory jurisdiction of the new Court . . ." [4]

In its Advisory Opinion of 1950 the Court reasoned that administrative supervision must be performed by the United Nations because: "The necessity for supervision continues to exist despite the disappearance of the supervisory organ under the Mandates System. It cannot be admitted that the obligation to submit to supervision has disappeared merely because the supervisory organ has ceased to exist, when the United Nations has another international organ performing similar, though not identical, supervisory functions." [5] In support of this reasoning, the Court pointed out that "The purpose [of Article 80, paragraph 1, of the *Charter*] must have been to provide a real protection for those rights; but

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[1] The point involved here was not the subject of divergence between the Majority and the Dissenting Opinions.

[2] *Case concerning the Aerial Incident of July 27th, 1955 (Israel v. Bulgaria), Preliminary Objections: Judgment of May 26th, 1959: ICJ Reports 1959, p. 127.*

[3] *Documents of the United Nations Conference on International Organizations, San Francisco, 1945,* Vol. 13, U.N. Information Organization, New York, 1945, p. 384.

[4] Joint Dissenting Opinion, *Case Concerning the Aerial Incident of July 27, 1955 (Israel v. Bulgaria), Preliminary Objections, Judgment of May 26th, 1959: I.C.J. Reports 1959,* p. 156 at 159.

[5] *International status of South-West Africa,* Advisory Opinion: I.C.J. Reports 1950, p. 128 at 136.

no such rights of the peoples could be effectively safeguarded without international supervision and a duty to render reports to a supervisory organ" [1] and that "The Assembly of the League of Nations, in its Resolution of April 18th, 1946, gave expression to a corresponding view." [2]

The Court, in determining that the International Court of Justice has replaced the Permanent Court and that the United Nations has replaced the League of Nations for purposes of the Mandate, similarly applied the principle of succession, explicit in one case and implicit in the other, in order to give effect to the purposes of the Mandate.

The Court recognized that the failure of the League of Nations and the Permanent International Court, as such, to endure in their original forms, is irrelevant to the fundamental principle that Respondent as Mandatory remains responsible to the organized international community for the discharge of the "sacred trust of civilization." The rationale of the Court's approach is further confirmed by the carefully reasoned analyses of Sir Gerald Fitzmaurice and Sir Hersch Lauterpacht. Judge Fitzmaurice has pointed out:

> ". . . the position is comparable with that which exists in the realm of state succession when one state takes over territory from one part of the territory of another state. There is then an automatic succession or devolution of all rights and obligations locally or territorially attached to or connected with the area transferred, which pass with it. If, for the concept of territorial area, there is substituted that of functional field, then the position might be stated as follows: that just as a territorial area passing from one state to another carries with it all rights and obligations specifically appertaining to that area in a territorial manner, so a functional field 'passing' from one international organization to another (in the sense that the former is extinguished but the latter is created expressly to fulfil the same general purposes, and the extinction of the former is carried out largely on that basis) carries with it the rights, obligations, and functions connected with that field, and appertaining to the capacity to act in it." (Footnotes deleted.) [3]

And in discussing the Advisory Opinion, on two separate occassions, Judge Lauterpacht stated:

> "While as a rule the devolution of rights and competences is governed either by the constituent instruments of the organisations in question or by special agreements or decisions of their organs, the requirement of continuity of international life demands that succession should be assumed to operate in all cases where that is consistent with or indicated by the reasonably assumed intention of the parties

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[1] *Id.* at 136, 137.

[2] *Id.* at 137.

[3] Fitzmaurice, G., "The Law and Procedure of the International Court of Justice: International Organizations and Tribunals," Vol. 29, *British Yearbook of International Law*, 1952, p. 1 at 9.

as interpreted in the light of the purpose of the organisations in question." (Footnotes deleted.) [1]

* * *

"... such importation ... of the rules of succession in relation to international organizations is no more than an example of legitimate application of the principle of effectiveness to basic international instruments." [2]

In sum, the Mandates System was premised upon effective performance of the sacred trust of civilization by Mandatory Powers. This could be assured only if administration of Mandated territories was subject to the compulsory jurisdiction of an International Court to adjudicate disputes concerning the interpretation or application of the Mandate. Only States may institute judicial proceedings. Hence, the authors of the Covenant endowed the members of the League of Nations, the Organ then representing the international community of civilized nations, with the right to institute the judicial proceedings. Even though "civilization" in the form of an organized international community is no longer embodied in the League, the same powers, objectives and principles are now represented by the United Nations. United Nations Members have the same essential attributes as did Members of the League, namely, membership in the organized international community and, thereby, parties to a Charter, or covenant, the purposes of which include supervision over non-self-governing territories, including trust territories and mandates.

Put in the form of the analysis of Judge Lauterpacht stated above, a holding by the Court that United Nations Members have succeeded to the functions of League Members *vis-à-vis* the Mandate would be "no more than an example of legitimate application of the principle of effectiveness to basic international instruments." [3]

2. *Membership in the League of Nations*

Even if the principle of succession as set forth above were not accepted by the Court in the instant cases, Applicants are nevertheless competent to invoke Article 7 inasmuch as they were Members of the League at the time of the League's dissolution.

There is at the very least a *de facto* carry-over of the League's responsibilities to the extent that an important function of the League continues beyond the League's formal existence. Such a *de facto* carry-over not only justifies the presence of Respondent in the Mandated territory, but it also keeps alive the legal interests of the League and its Members in the Mandate. Hence, States, such as

[1] Oppenheim, L., *International Law:* A Treatise, Vol. I, Eighth Edition, ed. by H. Lauterpacht, Longmans Green and Co., London, 1955, p. 168.

[2] Lauterpacht, H., *The Development of International Law by the International Court*, Stevens and Sons, London, 1958, at 280.

[3] See note 1, this page, *supra*.

Ethiopia and Liberia, which were members of the League at the time of the League's dissolution, remain within the description of "another Member of the League" for purposes of the Mandate.

The concept of the limited *de facto* survival of an entity which has been formally dissolved is a concept familiar to civilized legal systems. Thus, in many states of the United States of America, a dissolved corporation remains *de facto* in existence until it winds up its corporate affairs. [1] Other States of the United States enable persons who were corporate directors at the time of a corporate dissolution to sue as trustees on any claim of the corporation. [2] This is but another way of recognizing the continuing vitality of the rights and obligations created by the corporation prior to its dissolution. The "carry-over" principle of dissolved corporations is implicit in the rule that suit may be brought on behalf of the defunct corporation only by former directors. Civil law countries have similar legislation, [3] which keep alive and carry-over the legal existence of rights and duties of dissolved entities.

An analogous principle of municipal law may be found in the widely held doctrine that legal relationships established under a statute by statutory authority survive the expiration of the statute or statutory authority in the absence of provision to the contrary. Particularly is this so when a saving clause is employed in the legislation repealing the statute or dissolving the statutory authority.

Rights and obligations—according to which property may have been exchanged, or upon which promises may have been made, or by which a fiduciary may have been entrusted with property not his own—are not considered to disappear merely because an entity or authority goes out of existence and is not succeeded by another entity which explicitly assumes its rights and obligations. Modern civilized systems are too sensitive to justice to permit so illogical and inequitable a result.

With respect to the Mandate, the legal relations established by the League continue to exist. In addition to the reasons already set forth to support this conclusion, there is an act of the League of

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[1] *California:* West's Annotated Corporation Code, §§ 5400-5402 (1955). *Maryland:* Annotated Code of Maryland, Article 23, §§ 76(b), 78(b) and 82(a) (1957). *New Jersey:* New Jersey Statutes Annotated, Title 14, § 14 : 13-14 (1939). *New York:* Stock Corporation Law § 105(8) (1951); General Corporation Law § 29 (1943). *Ohio:* Page's Ohio Revised Code, § 1701.88 (Supp. 1960).

[2] Uniform Business Corporation Law §§ 49-60 [9 Uniform Laws Annotated pp. 204-213 (1957)]—In effect in *Louisiana:* West's Louisiana Statutes Annotated, Title 12, §§ 53-62 (1951); *Minnesota:* Minnesota Statutes Annotated, Vol. 20, Chap. 301, §§ 301.46-301.54 (1947); *Washington:* Revised Code of Washington, Title 23, §§ 23.01.520-23.01.650 (1958).

[3] *France:* See *Traité Général des Sociétés*, Librairie de la Société du Recueil Sirey, Vol. I, pp. 303-304, para. 276 ("Survival of the Moral Entity") and Vol. II, p. 587, §§ 1454 *et seq* on the same subject (1929). *Spain:* Corporation Law of Spain of July 17, 1951, Articles 154 and 159. *Argentina:* Code of Commerce, Article 435. *Ecuador:* Code of Commerce, Articles 357 and 361. *Venezuela:* Code of Commerce, Articles 350 and 351.

Nations which in effect constitutes a "saving clause" of the kind referred to above. This act of the League is the adoption of its Resolution of April 18, 1946 and particularly paragraphs 3 and 4 thereof:

> ". . .
>
> "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 that Chapters XI, XII and XIII of the Charter of the United Nations embody principles corresponding to those declared in Article 22 of the Covenant of the League;
>
> "4. Takes note of the expressed intentions of the Members of the League now administering territories under mandate to continue to administer them for the well-being and development of the peoples concerned in accordance with the obligations contained in the respective Mandates *until other arrangements have been agreed between the United Nations and the respective mandatory Powers.*" (Italics added). [1]

States which were Members of the League when the League was dissolved continue to have the competence to invoke Article 7. For purposes of the Mandate, the responsibilities and authority of the League carry over at least to an extent which qualifies the Applicants to institute these proceedings.

C. Respondent's Contentions

Respondent proceeds from the premises that the United Nations did not succeed to the supervisory powers of the League nor has there been a *de facto* carry-over of the League's existence for purposes of the Mandate. Hence, Respondent assumes that it is not accountable to the organized international community either as it existed when the Mandate was conferred or in its contemporary existence. Respondent elaborates an argument in which a State which had withdrawn, or had been expelled from, the League attempted to exercise rights it had formerly possessed as a League member. [2] What Respondent has done is to assume that the League formally exists and that Applicants are not Members of the League. And why in Respondent's argument are they not Members of the League? Because the League no longer exists.

Respondent's argument misses the central point. If the League still existed as such, and a State withdrew from membership, there would still remain a corporate body and a membership thereof which could assure compliance with the Mandate.

D. Conclusion

Applicants' legal conclusion—that they are competent to invoke Article 7—is supported by the authority of all the Opinions

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[1] League of Nations Off. J., 21st Ass., 32-33 (plenary, 1946).

[2] See Respondent's *Preliminary Objections*, pp. 355-356, 365-366.

delivered in the 1950 Advisory Proceedings, whatever rationale may be adopted from those Opinions.

Apart from the authority of these Opinions, it is submitted that their fundamental soundness is incontestable in the light of the terms of the Mandate and its purposes. To deny the competence of Applicants to proceed under Article 7 would be to reject the conclusions embodied in these Opinions and to reject the logic of the terms, purposes and entire frame of reference of the Mandate. It would nullify the judicial machinery designed to assure that Respondent shall faithfully discharge its duties under the Mandate.

V

THERE HAS ARISEN AND NOW EXISTS BETWEEN APPLICANTS AND RESPONDENT A DISPUTE RELATING TO THE INTERPRETATION AND THE APPLICATION OF THE PROVISIONS OF THE MANDATE AND SUCH DISPUTE CANNOT BE SETTLED BY NEGOTIATION

Applicants submit that the case at bar fulfils the requirements of Article 7, Paragraph 2, of the Mandate, in that

1. There is a "dispute;"
2. The dispute relates to the "interpretation or the application of the provisions of the Mandate;" and
3. The dispute "cannot be settled by negotiation."

Each of the requirements is discussed *seriatim*.

It should be noted that Respondent devotes its Third Objection to an attempt to insert into Article 7 a requirement which does not exist. Respondent argues, in defiance of the purpose and plain text of the Article, that no "dispute" can exist unless the subject matter of the dispute affects a "material interest" of the Applicant States or their nationals, and it asserts that no such "material interest" is shown in the instant cases. [1]

Applicants submit that Respondent's contention is not only erroneous in substance, but also misconceived in logic. If relevant at all, Respondent's contention relates not to whether a "dispute" exists, but to whether or not the dispute relates to the "interpretation or the application" of the Mandate. Applicant accordingly will discuss the contention under that heading in this Chapter.

A. There is a "Dispute"

"A dispute," said the Permanent Court of International Justice in interpreting the counterpart of Article 7 in the Mandate for Palestine, "is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons." [2]

This definition, which Respondent also adopts in its *Preliminary Objections*, [3] is in complete accord with a number of subsequent definitions of the term "dispute," rendered by the Permanent Court as well as by this Court. [4] The only disagreement appears

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[1] See, for example, pages 376, 394 of Respondent's *Preliminary Objections*.

[2] *The Mavrommatis Palestine Concessions*, P.C.I.J., Ser. A, No. 2, 1924, at 11.

[3] Respondent's *Preliminary Objections*, p. 377.

[4] *Case concerning Certain German Interests in Polish Upper Silesia*, P.C.I.J., Ser. A, No. 6, 1925, at 14; *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, Advisory Opinion: I.C.J. Reports 1950, p. 65 at 74.

to have centred upon the question of when a disagreement or conflict must have been manifested. No matter what view one accepts on this question, there is a "dispute" in the case at bar, inasmuch as for more than ten years Applicants and Respondent have been expounding and urging conflicting points of view concerning issues of law and fact. For more than ten years, Applicants have insisted, but Respondent has denied, that the Mandate is in force; Applicants have maintained, but Respondent has denied, that the United Nations has supervisory powers over the Mandatory; Applicants have asserted, but Respondent has denied, a legal interest in, and a right to object to, the administration of the mandated territory; Applicants have charged, but Respondent has denied, that the provisions of the Mandate have been violated. (See *Memorials*, Chaps. II, V, VI, VII, VIII, and IX.) It is manifest that there exists between Applicants and Respondent a "dispute," as that term was defined by the Permanent Court.

Indeed, Respondent does not question the existence of a dispute between it and Applicants concerning *points of law* raised in Applicants' *Memorials*, as is shown by the following statement in the *Preliminary Objections*:

> "Respondent does not dispute that Applicants, in participating in debates in and resolutions of Organs and Agencies of the United Nations, have contended that the Mandate is in force, that the United Nations has supervisory powers over Respondent as Mandatory and that they have a legal interest in, and right to object to, the manner in which Respondent administers the Territory. Neither does Respondent dispute that it has, in debates in the Organs and Agencies of the United Nations and in correspondence with the United Nations, made clear its stand in rejecting the aforesaid contentions. Respondent, however, denies that the dispute concerning the aforesaid points of law is one which cannot be settled by negotiation." [1]

Respondent appears to deny, however, that there is a dispute regarding the alleged substantive violations of the Mandate, although Respondent's position on this point is far from clear. Respondent admits that Applicants have made known their views: "Again, in this respect, Applicants did not avail themselves of the ordinary diplomatic channels to bring complaints and raise disputes concerning Respondent's administration of South West Africa, but participated with other Members of the United Nations in debates and resolutions concerning such administration." [2] Respondent also admits that it has denied Applicants' contentions: "Respondent, however, *throughout denied* that it had violated the

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[1] Respondent's *Preliminary Objections*, p. 399.
[2] *Id.* at 403.

provisions of the Mandate and *repeatedly* stated that, in conformity with its expressed intention, the Territory was being administered in the spirit of the Mandate." (Italics added.)[1] Nevertheless, contends Respondent, "whatever differences may, from debates in the United Nations, appear to exist between Respondent and the Members of the United Nations, including Applicants, as to certain aspects of the administration of the Territory, those differences are not so defined as to constitute a dispute cognisable by the Court in terms of Article 7 of the Mandate."[1] What is meant by "cognisable" is not clear. Inasmuch as Respondent assumes for the purpose of its Fourth Objection that the dispute need not concern what it conceives to be a "material interest," it apparently does not argue that the dispute is not "cognisable" for that reason. Furthermore, Respondent presumably does not contend that the dispute is not "cognisable" due to the negotiations requirement, since that element is treated separately by Respondent: "In any event, even if the said differences can at all be regarded as constituting a dispute in terms of Article 7, it cannot be said that that dispute is one which cannot be settled by negotiation."[1] Nor apparently does Respondent consider the dispute not "cognisable" because it was not manifested in a timely manner, since Respondent states that "*throughout*" it has "*denied*" the allegations and has "*repeatedly stated*" its views on the subject.[1] Possibly Respondent seeks to imply that there is no "dispute" because it has not joined issue with every one of Applicants' contentions, although, as it admits, Respondent has denied the general allegations. If indeed this is Respondent's position, it is erroneously conceived.

First of all, it is sufficient, by way of illustration, that Applicants allege that *apartheid* violates Article 2 of the Mandate, and that Respondent categorically denies the allegation. It is not a necessary characteristic of a "dispute" that antagonists engage each other in direct debate on each and every factual point constituting their differences.

Moreover, prior to their filing of the *Applications* and *Memorials*, Applicants did in fact announce their position on all points comprising their side of the dispute. They have consistently voted to approve and adopt the Annual Reports of the Committee on South West Africa which, since 1954, have set forth detailed criticisms of Respondent's exercise of the Mandate. Indeed, one Applicant, Ethiopia, has been a member of that Committee. If during all the time since 1954 Respondent has not seen fit to respond to these contentions, but has continued to exercise the Mandate without regard to the criticisms supported and adopted by the overwhelming number of the members of the international community, it would appear that Respondent disagrees with the criti-

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[1] *Id.* at 404.

cisms. In the circumstances, Respondent's deeds have been its words.

As a matter of fact, Respondent has stated its position and voiced its contentions strenuously and often in the United Nations. At the 78th meeting of the General Assembly's Fourth Committee, Minister for External Affairs, Mr. Eric Louw, defended by name the application of *apartheid* in South West Africa, defended the agricultural policy of Respondent in the Territory, and defended Respondent's policy of "closer association" between the Territory and South Africa. [1] At the 900th meeting of the Fourth Committee, Mr. Louw denied that Respondent has established military bases or fortifications in the Territory. [2] At the 407th meeting of the Fourth Committee, Mr. D. B. Sole, Respondent's Representative, denied that the educational system is inadequate, defended the pass laws and other restrictions on movement in force in the Territory, defended the housing policy and land allocation in effect in the Territory, denied that "Natives" are restricted to being laborers, and denied any unlawful incorporation or annexation. [3] At the 914th meeting of the Fourth Committee Mr. Van Der Wath, Representative of Respondent, denied that the Territory was being economically developed for the benefit of the "Europeans" at the expense of the "Natives." [4] At the 915th meeting, Mr. Van Der Wath denied a discriminatory land policy in the Territory. [5] At the 916th meeting, Mr. Van Der Wath denied that the educational system in the Territory is inadequate, and defended the labor regulations in force therein. [6]

Respondent correctly sums up the differences between Applicants and Respondent, then, when it states the following in its *Preliminary Objections* (at pages 270 and 271): "The statement that 'repeated debates and resolutions have failed to bring about the Union's compliance with the Mandate' also involves an assumption *consistently disputed by Respondent. Respondent maintains* that it faithfully honours the spirit of the Mandate in the administration of the Territory . . ." (Italics added.)

One further point needs to be considered in respect of the question, what is a "dispute?" It is a point also relevant to the question, what is "negotiation?"

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[1] U.N. Gen. Ass. Off. Rec. 3rd Sess., 1st Part., 4th Comm. (U.N. Doc. A/603) at 307-310 (1948).

[2] U.N. Gen. Ass. Off. Rec. 14th Sess., 4th Comm. (U.N. Doc. A/C.4/SR. 900) at 86 (1959).

[3] U.N. Gen. Ass. Off. Rec., 9th Sess., 4th Comm. (U.N. Doc. A/C.4/SR. 407) at 66-70 (1954).

[4] U.N. Gen. Ass. Off. Rec. 14th Sess., 4th Comm. (U.N. Doc. A/C.4/SR.914) at 165-166 (1959).

[5] U.N. Gen. Ass. Off. Rec. 14th Sess., 4th Comm. (U.N. Doc. A/C.4/SR. 915) at 167-170 (1959).

[6] U.N. Gen. Ass. Off. Rec. 14th Sess., 4th Comm. (U.N. Doc. A/C.4/SR. 916) at 175-176 (1959).

Respondent does not deny that disputes may be generated, or negotiations conducted, in the United Nations. Indeed, as has been shown above, Respondent concedes that a dispute does exist between itself and Applicants, which dispute has been generated in the United Nations, at least on issues of law. But Respondent does appear to base an argument upon its contention that "Applicants did not avail themselves of the ordinary diplomatic channels to bring complaints and raise disputes." [1] It may be assumed that the reference to undefined "ordinary diplomatic channels" covers such traditional practices as exchanges of notes or direct confrontations of high officials. It is difficult to conceive that Respondent would seriously contend, as in fact it has not explicitly sought to do, that in the contemporary world, "negotiations" cannot take place in a multilateral forum. Indeed, the subject-matter of the dispute in the instant cases is so particularly appropriate for discussion and consideration in the United Nations that unilateral attempts to deal with the dispute through channels unrelated to that body would engender confusion and undermine the very purposes of the Mandate and United Nations' supervision thereof.

The essence of the United Nations and its role in international affairs are well described in the words of Goodrich and Simons:

> "The United Nations is fundamentally a voluntary association of states, with a set of organs and procedures through which its Member states have agreed to co-operate, under stated conditions, for common purposes. Like the League of Nations before it, *the essence of the United Nations is that techniques previously used in international relations—the concert of powers, the international conference, peaceful methods of settling disputes—have been institutionalized and made part of the established and recognized process of conducting international affairs.*" (Italics added.) [2]

Indeed, if the above description is not accurate, one wonders what the United Nations is all about.

The United Nations exists for the public and private exchange and expression of official governmental viewpoints on all matters in which Member states have an interest. The essence of such exchange and expression is to permit the statement of opposing viewpoints and to seek to reconcile divergences which mark disputes. Fact-finding committees are established to elucidate and compose differences; permanent and temporary committees are empowered to negotiate on behalf of the United Nations. Moreover, and equally important, Member states may entrust their interests to these committees, acting through them or participating directly in their activities. Under the Charter, such agencies perform their duties in a representative and derivative character, acting for the

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[1] Respondent's *Preliminary Objections*, p. 403.

[2] Goodrich, L. M. and Simons, A. P., *The United Nations and the Maintenance of International Peace and Security*, Brookings Institution, Washington, 1955, p. 597.

community of Member states as a whole, and protecting the interests of each Member state in promoting the United Nations Charter.

In disputing and negotiating with Respondent, Applicants have set forth their views in the General Assembly and in its Committees, and have likewise acted through the Organs established by the United Nations to deal with the dispute and negotiate with Respondent.

The dispute in issue is especially suited for consideration in the United Nations.

The subject-matter is directly concerned with many of the central purposes for which the United Nations was established, namely,

> "to develop friendly relations among nations based on respect for the principle of equal rights and *self-determination of peoples* ...;
>
> "to achieve international co-operation 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
>
> "*to be a centre for harmonizing* the actions of nations in the attainment of these common ends." (Italics added.) (Article 1 of the *Charter*.)

Moreover, the subject matter of the dispute covers one of the major undertakings of United Nations Members "which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government [to] recognize the principle that the interests of the inhabitants of these territories are paramount, and [to] accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the ... Charter, the well-being of the inhabitants of these territories ..." (Article 73 of the *Charter*.)

Further, the dispute concerns the United Nations itself as an institution, inasmuch as Respondent disputes that the Organization is vested with supervisory powers over the Mandate.

Finally, and most important, the dispute concerns a "sacred trust of civilization". While it affects the interests of Applicants in assuring compliance with international undertakings, in furthering the principles of the Charter, and in promoting the welfare and human rights of the inhabitants of the Mandated Territory, it is not a matter of *sole* or *exclusive* interest to Applicants and Respondent. The dispute is of concern and interest to all States, at least those which are Members of the United Nations. This is manifest from the above-quoted portions of the United Nations Charter, as well as the history of proceedings regarding the Mandate in the United Nations. It would have been inappropriate, therefore, for Applicants to attempt solely through their own diplomatic channels

or unilateral offices to determine with Respondent the future course of the Mandate, "an international institution with an international object," especially in view of the fact that the United Nations had established Organs and procedures through which Member states could act to express their views, make their contentions known, and seek to resolve points at issue between themselves and Respondent.

In disputing and negotiating with Respondent in the United Nations during the past several years, Applicants, therefore, have been upholding their own legal interests in the proper exercise of the Mandate; but they have been doing more than that. They have also been upholding the collective legal interest of the Members of the United Nations and the interests of the Organization itself. In instituting these proceedings, Applicants have moved to protect not only their own legal interests but the legal interests of the United Nations (which, itself, may not be a party to a contentious proceeding), as well as the legal interests of every other Member state similarly situated.

* * *

To reiterate the definition of "dispute" given in the *Mavrommatis* case, "A dispute is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons." [1]

As demonstrated above, a disagreement on points of law and fact and a conflict of legal views and interests manifestly exist in the instant cases.

B. The Dispute Relates to the Interpretation and the Application of the Provisions of the Mandate

As the majority of the Court stated in the *Mavrommatis* Case, a dispute covered by Article 7 of the Mandate (*i.e.*, a typical compromissory clause)—

> "may be of any nature; the language of the article in this respect is as comprehensive as possible *(any dispute whatever—tout différend, quel qu'il soit)*; but in every case it must relate to the interpretation or the application of the provisions of the Mandate." [2]

The dispute between Applicants and Respondent relates both to the interpretation and the application of the provisions of the Mandate.

(a) With respect to the interpretation of Article 2 of the Mandate, Applicants and Respondent disagree:

(i) Whether the practice of *apartheid* constitutes a violation of said Article;

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[1] *The Mavrommatis Palestine Concessions*, P.C.I.J., Ser. A., No. 2, 1924, at 11.
[2] *Id.* at 15, 16.

(ii) Whether the economic, political, social and educational policies applied in the Territory constitute a violation of said Article;

(iii) Whether Respondent has treated the Territory in a manner inconsistent with the international status thereof, and if so, whether that constitutes a violation of said Article;

(b) With respect to Article 4 of the Mandate, Applicants disagree with Respondent whether it has established military bases within the Territory, and if so, whether that action constitutes a violation of said Article;

(c) With respect to Article 6, Applicants disagree with Respondent whether its failure and refusal to render reports to the General Assembly of the United Nations constitute a violation of said Article;

(d) Applicants and Respondent disagree whether the failure of Respondent to transmit to the General Assembly of the United Nations petitions from the Territory's inhabitants constitutes a violation of any of the provisions of the Mandate;

(e) Applicants and Respondent disagree whether Respondent has unilaterally attempted to modify substantially the terms of the Mandate, and if so, whether such attempt constitutes a violation of Article 7 of the Mandate.

Accordingly, the interpretation of Articles 2, 4, 6, and 7 of the Mandate clearly is in dispute. The Court is called upon to resolve the dispute and to determine whether Respondent has faithfully applied these Articles in accordance with their spirit and purpose.

Having quoted the applicable language, and having demonstrated that the dispute comes within such language, Applicants would rest their case on the point at issue.

Respondent, however, contends that no "dispute" is envisaged by Article 7 unless the subject-matter affects a material interest of an Applicant State or of its national. [1] In support of its position, Respondent cites the *Mavrommatis* case, [2] the case of *Jerusalem-Jaffa District Governor and another* v. *Suleiman Murra and others*, [3] and the views of four writers, Feinberg, Judge McNair, Wessels, and Schwarzenberger. [4] Respondent also asserts general principles, including its view that the framers of the Mandates System did not intend that a dispute of the sort involved here would be covered by Article 7.

It is submitted that (1) the opinions in the *Mavrommatis* case and the *Jerusalem* case do not, in fact, support Respondent's view; (2) two of the scholarly authorities cited by Respondent do not support Respondent's contention, and a large number of

[1] Respondent's *Preliminary Objections*, pp. 376, 394.
[2] *The Mavrommatis Palestine Concessions*, P.C.I.J., Ser. A, No. 2, 1924.
[3] 1926 A.C. 321, cited in Respondent's *Preliminary Objections*, p. 387, n. 1.
[4] See Respondent's *Preliminary Objections*, p. 390, n. 1.

other scholars, expert in the Mandates System, support Applicants' view; (3) the framers of the Mandates System intended that the type of dispute involved in the instant cases should be covered by Article 7 of the Mandate; (4) finally, even if Article 7 were interpreted as requiring a so-called "material interest," such an interest is present in these cases.

1. *The Purpose and History of the Compromissory Clause in the Mandates System*

The announced intention of the founders of the Mandates System, the circumstances surrounding the creation of the System, and the nature of the structure they created, demonstrate that the Permanent Court of International Justice was designed to be an integral part of the supervisory machinery of the system. It was intended to adjudicate, at the instance of any Member of the League, disputes affecting the interpretation and application of the Mandate with respect to the well-being of the inhabitants of the mandated territories.

An important factor in interpreting the compromissory clause is the overriding concern demonstrated by the founders of the Mandates System for the well-being and development of the inhabitants of the territories to be placed under Mandate. President Wilson expressed to the Council of Ten his view that "the purpose [of the Mandates System] was to serve the people in undeveloped parts, to safeguard them against abuses such as had occurred under German Administration *and such as might be found under other administrations*." (Italics added.)[1] The concept of "the sacred trust," the explicit norms and standards imposed on the Mandatory, and the unprecedented machinery of international supervision, all had their animating principle in the desire of advanced nations to protect and assist peoples not yet able to stand for themselves. This Court confirmed the record of history when it said in 1950 that "the Mandate was created, in the interest of the inhabitants of the territory, and of humanity in general, as an international institution with an international object—a sacred trust of civilization."[2] Inasmuch as the well-being of the inhabitants of mandated territories constitutes the essential purpose of the Mandates System, it is impossible to accept Respondent's contention that the Court may not entertain disputes which are primarily concerned with the well-being of such inhabitants.

To implement the design, machinery was created to supervise the Mandatories. The Council of the League was to receive every year a report of the Mandatory's stewardship; a Commission was

[1] Quoted by Wright, Q., *Mandates Under the League of Nations*, The University of Chicago Press, Chicago, 1930, pp. 35, 36.

[2] *International status of South-West Africa*, Advisory Opinion: I.C.J. Reports 1950, p. 128 at 132.

constituted to receive and examine the annual reports and to advise the Council on "all matters relating to the observance of the mandates." It is significant that the authors of the Mandates System included a supreme judicial power within the organic structure of that System. Mandatories were required to agree when a Mandate was conferred that disputes concerning the Mandate between themselves and another Member of the Organization to which they belonged would be submitted to the Permanent Court of International Justice. The Court, itself, was, like the Mandates System, a creation of the Covenant. Far from objecting to the establishment of a supreme judicial authority, the Council not only accepted it as an ancillary of the Mandates System by "confirming" the instrument in which it appeared, but also amended the original draft so that the Mandatory, and only the Mandatory, would be subject to compulsory jurisdiction at the instance of another Member of the League [1] Consistent with their fiduciary role, Mandatories were required to consent to the Court's jurisdiction in advance.

Compulsory jurisdiction in Mandate matters was instituted, then, for the same reason that the Mandatory was required to submit annual reports to the Council. When the League of Nations conferred mandates it was not content to depend solely upon the conscience, or, indeed, the competence of the Mandatory for the proper exercise of the Mandate. Rather, it devised a system whereby the Mandatory's administration of the mandated territory was made subject to the authority of the League and its Members to require the Mandatory to report, account, and, if necessary, submit to adjudication. The Permanent Court was intended as an integral part of the System's supervisory machinery protecting the inhabitants, and the authorities so classify and regard it. [2] Each Member of the League, under the defined circumstances, was empowered to invoke the jurisdiction of the Court to insure that the basic purpose of the Mandates system—the well-being and development of the inhabitants—would be fulfilled.

Explicit indication of the intention of the authors of the Mandate is found in the circumstances surrounding the compromissory clause for the British Mandate for East Africa (Tanganyika Territory). Two Judges of the Permanent Court considered that these circumstances furnished definitive evidence that Members of the League were not empowered, under compromissory clauses lacking the additional paragraph contained in the East Africa Mandate, to protect the rights of their own nationals before the Court, but could protect only interests of a general nature. [3]

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[1] See Report to the Council of the League of Nations submitted by Viscount Ishii, February 20, 1922, League of Nations Off. J., No. 7 (1922) p. 849 at 854.

[2] See pp. 466-471.

[3] Dissenting Opinions by Judges de Bustamante and Oda, *Case of the Mavrommatis Palestine Concessions*, P.C.I.J., Ser. A, No. 2, 1924, at 76, 85.

As originally drafted, the compromissory clauses of the Mandates comprised two paragraphs. The first of these was substantially in the same form as Article 7 of the Mandate for South-West Africa and other Mandates. A second paragraph, however, provided:

> "States Members of the League of Nations may likewise bring any claims on behalf of their nationals for infractions of their rights under this mandate before the said Court for decision." [1]

It is not clearly established whether this second paragraph was excised by the Milner Commission, by the Powers which approved the draft before submitting it to the Council, or by the Council itself. The fact remains that it was in fact excised from all Mandate instruments, except that for East Africa. For the rest, only the one-paragraph text found in Article 7 of the Mandate for South-West Africa remained. This history creates profound difficulty for Respondent's contention that a "material interest" of a State, or its nationals, must be affected before the compromissory clause may be invoked since it demonstrates that there was at least some original thought that the general paragraph did not provide for the claims of nationals at all.

Respondent has submitted that the interpretation of Article 7 advanced by Applicants could not have been intended because if effected it would prove unnecessary, impracticable, and would require the Court to deal with political questions.

Respondent contends that to assume a "need for judicial supervision" would be tantamount to anticipating the "probable failure" of the Council to perform its own supervisory functions. [2] Respondent also argues, in the same context, that if Member states could invoke judicial process, they would "stand in the position of a custodian of the rights of the inhabitants of the Mandated territories." [2]

Applicants submit that neither argument is tenable. Judicial recourse implies no distrust of administrative supervision. On the contrary, its purpose in the Mandates System is to enforce the Mandate through contentious proceedings, a power not vested in the administrative or executive organs. Furthermore, Member states are not "custodians," nor is their right to institute judicial proceedings an "interference ... with the policies adopted by the Mandatories," in Respondent's language. No other method of initiating contentious proceedings is available, for only States may be parties to such proceedings before the Court. The State does not supervise; the State, rather, requests the Court to adjudicate a dispute. In doing so, it may act as the instrumentality by which the Supervisory Organization as a whole may obtain a binding decision by a contentious proceeding.

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[1] Article 13 of the British Mandate for East Africa (Tanganyika Territory), League of Nations Off. J., No. 8 (Part II) (1922) at 868.

[2] Respondent's *Preliminary Objections*, p. 384.

Respondent expresses concern that hypothetically a Mandatory might "satisfy" the Mandates Commission, yet be attacked judicially on the same point. This argument merely underlines the importance of judicial jurisdiction in order to obviate unresolved disputes between the Mandatory, on the one hand, and Member states on the other. If the Mandatory's position in such a dispute were to be based upon decisions or policies of the Council and Commission, the Court would no doubt give due weight to such a record.

So far as concerns Respondent's implied criticism that the Court might be induced "to act as an independent supervisory authority,"[1] the fact is that only one contentious case, prior to the instant cases, was instituted under the compromissory clauses of the several mandates, and that the instant cases were brought only after years of unavailing negotiations with Respondent.

Respondent's fear that the Court would be improperly used, or that the threat of proceedings would be used, minimizes the importance of the requirement that under Article 7 the Court may entertain only disputes that "cannot be settled by negotiations." This is an explicit bar to improper or excessive use of the compromissory clause. The functioning of the entire system has properly placed primary emphasis on the administrative organs, judicial recourse being supplemental, though vital. Each organ had its proper sphere, as Quincy Wright maintains:

> "These [League] organs are not all eventually responsible to a supreme authority. They are mutually independent. The League's organization exemplifies the American theory of separation of powers rather than the European practice of unified responsibility. The Assembly, the Council, the Mandates Commission, the Secretariat, and the Court all enjoy certain independent powers under the Covenant, the mandates, and other constitutional documents."[2]

The principal role of the Court is to adjudicate disputes brought to it, within the terms of the compromissory clauses, by Members of the League when administrative resources have been fully, and, as in the instant cases, exhaustively employed.

Neither the Council, which approved both the Statute of the Court and the Mandate, nor the Court itself, seem to have been concerned that "political" cases might be presented for adjudication. Article 7 empowers the Court to adjudicate cases relating to the interpretation and application of *all* of the provisions of the Mandate; it makes no distinction between Article 2 and other Articles. While Article 2 is broad in scope, it must be remembered that in interpreting and applying it the Court would have the advantage of the particular standards set forth in other Articles of

[1] Respondent's *Preliminary Objections*, pp. 384-385.

[2] Wright, Q., *Mandates Under the League of Nations*, The University of Chicago Press, Chicago, 1930, p. 87.

the Mandate and in the Covenant. These standards were the distillation of a century or more of experience in colonial administration and were included in the constitutional documents of the Mandates System because the ideals they expressed were being put into practice by the System itself. The Court, therefore, would have in interpreting and applying the Mandate, a framework of law, doctrine, and practice upon which to rely

The words used in Article 2—"material and moral well-being," "social progress"—are akin to other words such as "due process" and "equal protection" which national Courts are frequently called upon to interpret. Such words are broad in scope, but in the context of the society to which they pertain they embody meaningful norms. In the international society, the norms applicable to "the administration of territories whose peoples have not yet attained a full measure of self-government" reflect the consensus of all the Members of the United Nations. They include the following principle and doctrine:

> ". . . to promote to the utmost . . . the well-being of the inhabitants of these territories, and, to this end:
>
> "a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;
>
> "b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement; . . ." (Article 73 of the United Nations *Charter*.)

And in the exercise of Trusteeships which in essence reflect the same international concern as Mandates, Members of the United Nations have agreed that Trust Territories shall be administered so as "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." (Article 76 of the *Charter*.)

It cannot be said, therefore, that the Court in interpreting Article 2 of the Mandate would be engaged in an essentially "political activity," whatever Respondent may intend to connote by use of that undefined phrase.

In the light of its refusal to accept and implement this Court's Advisory Opinion of 1950, Respondent's argument that compulsory jurisdiction is not needed for disputes involving the welfare of the inhabitants because the Council of the League "could itself request an advisory opinion from the Court,"[1] has a somewhat ironic ring. The cases at bar are perhaps the strongest vindication of the foresight of the founders of the Mandates System in providing for contentious proceedings against a Mandatory to enforce the pro-

[1] Respondent's *Preliminary Objections*, p. 284.

visions of the Mandates for the benefit of inhabitants of mandated territories.

The purpose of the Mandates System, its organizational structure, and its experience support the judgment of Norman Bentwich to the effect that the Court—

> ". . . stands there, behind, as it were, the Mandates Commission and the Council of the League, as the *supreme guardian* of the rights of nations in the fulfilment of the international trust which is conferred on the Mandatory, and as the embodiment of international justice. It is the Palladium of justice in the development of the mandated countries, just as the Mandates Commission is the Areopagus." (Italics added.) [1]

To conclude in the language of Respondent, it was indeed the intention of the founders of the Mandates System to grant to each Member of the League a "legal interest" in the observance by the Mandatory of its obligations for the benefit of the inhabitants of the Mandated territories.

2. *The Weight of Authority*

(a) Judicial Authority

(1) The Mavrommatis Case[2].

In the *Mavrommatis* Case, one of the key issues before the Permanent Court was whether jurisdiction was defeated because the Applicant was espousing the claim of one of its nationals against the Mandatory. This issue was divided into two parts: (1) whether there was in fact a dispute between the Mandatory and another Member of the League, or only between the Mandatory and a private party; and (2) whether a dispute between the Mandatory and a Member of the League concerning the private interests of a Member's national was covered by the compromissory clause. The Court held that the dispute was subject to the compromissory clause of the Palestine Mandate, emphasizing that

> "The dispute may be of any nature; the language of the article in this respect is as comprehensive as possible *(any dispute whatever—tout différend, quel qu'il soit)*; but in every case it must relate to the interpretation or the application of the provisions of the Mandate." [3]

The significance of the Court's holding is not that the right of Greece to espouse the claim of her national was recognized, so much as that the right of espousal was strongly resisted and the Permanent Court was divided on the question. In other words, there was doubt

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[1] Bentwich, N., *The Mandates System*, Longmans, Green and Co., London, 1930, p. 134.

[2] *The Mavrommatis Palestine Concessions*, P.C.I.J., Ser. A, No. 2, 1924.

[3] *Id.* at 15, 16.

on the part of certain members of the Court that the compromissory clause was applicable at all to disputes concerning nationals of Member states. Respondent, on the contrary, contends that this is one of the two *major* purposes for the clause. Although the Majority Opinion of the Court in *Mavrommatis* did not set forth explicitly the actual major purposes of the clause, and was not called upon to do so, it remains obvious that the *Mavrommatis* case is not authority for Respondent's contention that only the material benefits of the Member states and their nationals were included within the compromissory clause. Indeed, from a reading of the Minority Opinions and the broad scope of the Majority Opinion, Applicants submit that it was taken as axiomatic by the Court that Article 26 of the Palestine Mandate (the counterpart to Article 7) embraced disputes pertaining to the welfare of the inhabitants of mandated territories.

The Majority did not explicitly advert to this point, but the Minority did. Judge Oda described the function of the Court as one of "indirect supervision of the Mandatory," and added that "an application by such a Member [of the League] must be made exclusively with a view to the protection of general interests..." The relevant excerpt is as follows:

> "Under the Mandate, in addition to the direct supervision of the Council of the League of Nations... provision is made for indirect supervision by the Court; but the latter may only be exercised at the request of a Member of the League of Nations (Article 26). It is therefore to be supposed that an application by such a Member *must be made exclusively with a view to the protection of general interests* and that it is not admissible for a State simply to substitute itself for a private person in order to assert his private claims." (Italics added.) [1]

The Opinion of Judge de Bustamante in the same case contains the following language:

> "Whenever Great Britain as Mandatory performs in Palestine under the Mandate *acts of a general nature affecting the public interest*, the Members of the League—from which she holds the Mandate—are entitled, provided that all other conditions are fulfilled, to have recourse to the Permanent Court. On the other hand, when Great Britain takes action affecting private interests and in respect of individuals and private companies in her capacity as the Administration of Palestine, there is no question of juridical relations between the Mandatory and the Members of the League from which she holds the Mandate, but of legal relations between third Parties who have nothing to do with the Mandate itself from the standpoint of public law." (Italics added.) [2]

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[1] Dissenting Opinion by Judge Oda, *The Mavrommatis Palestine Concessions*, P.C.I.J., Ser. A, No. 2, 1924, p. 85 at 86.

[2] Dissenting Opinion by Judge de Bustamante, *The Mavrommatis Palestine Concessions*, P.C.I.J., Ser. A, No. 2, 1924, p. 76 at 81, 82.

Speaking in the third *Mavrommatis* decision, Judge Nyholm emphasized that the Court's supervisory jurisdiction constitutes a form of "guarantee" that Mandatories would "act in accordance with the principles adopted in the interests of the community of nations by the Covenant."[1] He said:

> "Mandatories were not to infringe the rights either of States or of individuals. Each State therefore has a right of control which it may exercise by applying to the Court." [1]

(2) The case of *Jerusalem-Jaffa District Governor and another* v. *Suleiman Murra and others.*[2]

Respondent cites the above case to support the contention that it was never intended that the Court entertain a suit based on Articles of the Mandate such as Article 2, which are primarily for the benefit of inhabitants of mandated territories, since "This would then mean that the Court ... [would be] required to pronounce on all matters of policy affecting the material and moral well-being and the social progress of the inhabitants, which would ... [involve] decisions of a purely political nature,"[3] and "where a legislature or an administrative body acts within the scope of powers conferred upon it, it is not the function of Courts of Law to inquire into the policy or soundness of its acts."[4]

Respondent has not read the *Jerusalem* decision correctly. In fact, the case stands for the opposite of the proposition advanced by Respondent. The question before the Court was whether a legislative act of the Administration of Palestine was permissible under Article 2 of the Mandate. Far from declining to interpret Article 2 of the Palestine Mandate (under which the Mandatory was responsible for "safeguarding the civil and religious rights of all the inhabitants of Palestine irrespective of race and religion"), the Court conceived it to be its duty to interpret the Mandate. It had to decide whether Article 2 permitted expropriation without full compensation. In rendering its decision, the Court not only interpreted Article 2 of the Palestine Mandate, but passed upon an administrative act of the Mandatory as well.

In the language of the Court:

> "In their Lordships' opinion the Supreme Court was fully justified in entertaining an argument as to the validity of the Ordinance. The Ordinance was made under the authority of the Order in Council of May 4, 1923, and if and so far as it infringed the conditions of that Order in Council the local Court was entitled and indeed bound to

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[1] Dissenting Opinion by Judge Nyholm, *Case of the Readaptation of the Mavrommatis Jerusalem Concessions* (Jurisdiction) P.C.I.J., Ser. A, No. 11, 1927, p. 25 at 26.
[2] 1926 A.C. 321.
[3] Respondent's *Preliminary Objections*, p. 386.
[4] *Id.* at 386, 387.

treat it as void. Among those conditions was the stipulation that no Ordinance should be promulgated which was repugnant to or inconsistent with the provisions of the Mandate, and in view of this stipulation it was the right and duty of the Court to examine the terms of the Mandate and to consider whether the Ordinance was in any way repugnant to those terms.

"But it appears to their Lordships that the construction put by the Supreme Court upon art. 2 of the Mandate is not justified by its terms. The article stipulated that the Mandatory shall be responsible for (among other things) 'safeguarding the civil and religious rights of all the inhabitants of Palestine irrespective of race and religion.' . . . Nor does it, in their Lordships' opinion, mean that in every case of expropriation for public purposes full compensation shall be paid." [1]

Only after finding that there was no statutory basis for reversing the administrative act did the Court employ the language quoted by Respondent.[2] That language has no special significance; it is the expression of a policy followed by all courts, namely, that courts of law do not legislate. But where legislation exists—as in the Mandate—courts will examine challenged administrative acts to determine whether such acts violate the legislation.

(b) Scholarly Authority

Respondent cites four writers to support its limited view of "interest" as a basis for invoking judicial supervision: Feinberg, Judge McNair, Wessels, and Schwarzenberger.[3] Two of these writers do not, in fact, agree with Respondent.

M. Feinberg takes the position that a Member state can invoke the compromissory clause against the Mandatory only when the "interest" of a Member state or its national has been harmed by a violation of the terms of the mandate. The learned author thereupon inquires into what is meant by the word "interest" and quotes with approval M. Salvioli to the effect that it is not possible to determine *a priori* and in a precise manner the nature of an interest sufficient to justify proceedings before the Court, and that the sufficiency of "interest" must be decided in each case.[4] M. Salvioli also is quoted with approval for discussing and underlining the case of *The S.S. Wimbledon*.[5] In this connection, Feinberg says:

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[1] *Jerusalem-Jaffa District Governor and Another* v. *Suleiman Murra and Others*, 1926 A.C. 321 at 327, 328.

[2] Respondent's *Preliminary Objections*, p. 387.

[3] Feinberg, N., *La Juridiction de la Cour Permanente de Justice Internationale dans le Système des Mandats*, Librairie Arthur Rousseau, Paris, 1930; McNair, A. D., "Mandates," *C.L.J.*, Vol. 3, No. 2, 1928; Wessels, L. H., *Die Mandaat vir Suidwes-Afrika* (1938); Schwarzenberger, G., *International Law*, Vol. 1, Third Edition, Stevens and Sons, London, 1957.

[4] Feinberg, N., *La Juridiction de la Cour Permanente de Justice Internationale dans le Système des Mandats*, Librairie Arthur Rousseau, Paris, 1930, at 205.

[5] *The S.S. Wimbledon*, P.C.I.J., Ser. A, No. 1, 1923.

"La Cour y a admis qu'il n'est point nécessaire, pour la recevabilité d'une requête, que l'État demandeur invoque un intérêt de nature pécuniaire, *mais qu'un intérêt moral peut aussi être suffisant.*

"La Cour s'est donc prononcée pour une interprétation assez large de la notion d'"intérêt"; c'est au même point de vue libéral qu'il faut se placer dans le domaine des mandats, pour l'application de la clause judiciaire." (Italics added.) [1]

Feinberg concludes this section as follows:

"Et à ce propos, un problème intéressant se pose. Un Etat pourrait-il, en invoquant soit l'intérêt tant matériel que moral de ses citoyens juifs, *soit un intérêt politique propre,* citer devant la Cour la puissance mandataire pour la Palestine à raison de la violation par celle-ci de l'une des clauses concernant l'établissement de Foyer National Juif. Nous pensons que oui, et il peut être intéressant de rappeler à ce propos que tout récemment le représentant de la Pologne M. Zaleski, prenant la parole au sein du Conseil de la S. d. N. au sujet des troubles de Palestine, a souligné qu'il parlait comme le «représentant d'un pays qui compte trois millions de Juifs.» N'est-il pas permis de déduire de cette déclaration que ce n'est pas uniquement en qualité de membre du Conseil, c'est-à-dire de l'organe de contrôle, *que la Pologne entendait prendre position à l'égard de événements de Palestine,* mais aussi en tant qu'Etat ayant la garde des intérêts vitaux des masses juives de sa population *et intéressé lui-même, du reste, à la solution du problème juif.*" (Italics added.) [2]

It is obvious that M. Feinberg has a broader concept of "interest" than Respondent.

Judge McNair is cited by Respondent on the basis of a question he raised in 1928, whether a Member state of the League was entitled to invoke a compromissory clause, "merely seeking the faithful observance of the terms of a Mandate."[3] Any doubt Judge McNair might have entertained in 1928 on this score obviously had been resolved in his mind when he rendered his Separate Opinion in the 1950 Advisory Proceeding. Judge McNair stressed that "Every State which was a Member of the League at the time of its dissolution still has a *legal interest in the proper exercise of the Mandate.*" (Italics added.)[4] This legal interest may be invoked, Judge McNair stated, to effectuate the judicial supervision of the Mandate.

Only two writers may be said, then, to support Respondent. Arrayed against them on the point at issue are an impressive number of other writers.

Norman Bentwich, jurist and Attorney General of Palestine during the British Mandate for Palestine, has written:

[1] Feinberg, N., *La Juridiction de la Cour Permanente de Justice Internationale dans le Système des Mandats,* Librairie Arthur Rousseau, Paris, 1930, p. 205.

[2] *Id.* at 205, 206.

[3] McNair, A. D., "Mandates", *C.L.J.,* Vol. 3, No. 2, 1928, p. 157, n. 8.

[4] Separate Opinion by Sir Arnold McNair, *International status of South-West Africa,* Advisory Opinion: I.C.J. Reports 1950, p. 146 at 158.

"The International Court has not yet been called upon to deal with the application or interpretation of any of the other Articles concerning public rights, the principle of the open door, or any of the international obligations undertaken by the Mandatory. But it stands there, behind, as it were, the Mandates Commission and the Council of the League, as the *supreme guardian* of the rights of nations in the fulfilment of the international trust which is conferred on the Mandatory, and as the embodiment of international justice. It is the Palladium of justice in the development of the mandated countries, just as the Mandates Commission is the Areopagus." (Italics added.) [1]

Quincy Wright, the American scholar and expert on the Mandates System, has written in *Mandates under the League of Nations:*

"Every Member of the League can regard its rights as infringed by every violation by the mandatory of its duties under the mandate, even those primarily for the benefit of natives, and can make representations which if not effective will precipitate a dispute referable to the Permanent Court of International Justice if negotiation fails to settle it." [2]

Hales, a British scholar and student of the Mandates System, has written:

"The aim of the general provision in the [Mandates] Statutes, in my view, is to encourage States Members of the League to keep a close watch on the activities of the Mandatory Power and to challenge any interpretation or application of the provisions of the Statutes which would be contrary to those provisions, whether they relate to the welfare of the natives, the rights of foreigners, the open-door policy or otherwise. It would appear, therefore, that a State Member of the League need not have any interest in the dispute, except that of wanting to see a proper application of the provisions of the Statutes." (Italics added.) [3]

The late Judge Lauterpacht, in referring to the Court's 1950 Advisory Opinion, characterized the Court's holding that Article 7 remained in force in these words: "... the Court was unanimous in holding that the *judicial* supervision continued..."[4]

Miss Van Maanen-Helmer, another student of the Mandates System, has written:

"The fact that a case involving the interpretation of a mandate has been brought before the Court is an important precedent in

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[1] Bentwich, N., *The Mandates System*, Longmans, Green and Co., London, 1930, p. 134.

[2] Wright, Q., *Mandates Under the League of Nations*, University of Chicago Press, Chicago, 1930, p. 475.

[3] Hales, James C., "The Creation and Application of the Mandate System," *Transactions of the Grotius Society*, Vol. 25, Sweet and Maxwell, Limited, London, 1940, p. 256.

[4] Oppenheim, L., *International Law:* A Treatise, Vol. I, Eighth Edition, ed. by H. Lauterpacht, Longmans, Green and Co., London, 1955, p. 226, n. 3.

that it shows that *the status of a mandated territory is safeguarded by international law as well as by the supervision of the political institutions* of the League of Nations." (Italics added.) [1]

Chowdhuri, in his analysis of the Mandates System writes:

"Another common feature of both the Trusteeship and the Mandates Systems is the express provision for indirect international judicial supervision over the Administering Authorities." [2]

Respondent in its *Preliminary Objections* refers to the term "judicial supervision" as a "colloquialism," [3] despite the use of that term by Judges Lauterpacht, McNair, and Read and some of the other writers mentioned above. Elsewhere in its *Preliminary Objections*, Respondent refers to the "so-called supervision of the Court." [4] Before the United Nations forum, however, Respondent has demonstrated a broader appreciation of the need for, and significance of, judicial supervision.

Ambassador Jooste, then Respondent's Representative to the Fourth Committee of the General Assembly, in explaining why negotiations with the General Assembly's *Ad Hoc* Committee had failed, is reported to have stated:

"Since his Government had every intention of continuing to carry out the spirit of the sacred trust, it had decided to agree to assume a new international obligation in that respect. It had therefore proposed that a new international instrument should be concluded, reviving articles 2 to 5 of the original Mandate, with minor amendments, and also reviving South Africa's international commitment to carry out the sacred trust. It had felt that that would finally place the legal relationship between the Union of South Africa and the Territory of South West Africa beyond all further doubt.

"That solution had appeared to commend itself to the *Ad Hoc* Committee, *which had, however, also desired that some provisions should be made for international supervision. The South African Government had offered to submit to judicial supervision and to accept in that connexion the compulsory jurisdiction of the International Court of Justice.* That proposal, however, had not been regarded as adequate by the *Ad Hoc* Committee and no agreement had therefore been reached on that point." (Italics added.) [5]

By equating "judicial supervision" with "international supervision" Respondent displayed an understanding of what "judicial supervision" means in the context of mandates or analogous institutions.

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[1] Van Maanen-Helmer, E., *The Mandates System in Relation to Africa & the Pacific Islands*, P. S. King & Son, Ltd., London, 1929, p. 158.

[2] Chowdhuri, R. N., *International Mandates and Trusteeship Systems:* A Comparative Study, Martinus Nijhoff, The Hague, 1955, p. 168.

[3] Respondent's *Preliminary Objections*, p. 394.

[4] *Id.* at 372.

[5] U.N. Gen. Ass. Off. Rec. 8th Sess., Fourth Comm., 357th Meeting, p. 266 (U.N. Doc. A/C.4/SR. 357) (1953).

In connection with Respondent's own understanding of judicial supervision, Applicants again respectfully direct the Court's attention to Respondent's Statement in the 1950 Advisory Proceedings, which, in Applicants' view, clearly demonstrates that Respondent "has nonetheless conceded that Article 7, if in force, entitled League members to institute proceedings to uphold the rights of inhabitants of the Territory." [1]

Respondent now claims that its statement referred only to the right of League Members "to participate in the proceedings of the League as the supervisory body in respect of Mandates, and not to their right to institute judicial proceedings under Article 7." [2] In support thereof, Respondent then quotes a further passage from its 1950 Statement, [2] but all that passage says is that no State may invoke Article 7 because the League has been dissolved, which is a different proposition than that of whether, if Article 7 is in force, it may be invoked to uphold the rights of inhabitants of the Territory.

In fact, Dr. Steyn, Respondent's Representative in the 1950 Proceedings, displayed no ambiguity at all in his statement. This is what he said:

> "*Rights of the peoples of South-West Africa*
>
> "57. It may also be argued, as the representative of the Secretary-General has pointed out, that even though the Mandate has lapsed as between the Union of South Africa and the League of Nations, it nevertheless continues to exist as between the Union and the peoples of South-West Africa.
>
> "With your permission, I shall now deal with that argument." [3]
>
> * * *
>
> [Dr. Steyn then contends that the inhabitants of the Territory were not a party to Article 22 of the Covenant or to the Mandate itself; nor was there a stipulation in favour of the inhabitants as a third party; nor did the inhabitants acquire any rights as a legally competent community.]

Under the same heading, "*Rights of the peoples of South-West Africa,*" Dr. Steyn then proceeds to discuss whether other parties could uphold the rights of inhabitants. He states:

> "62. While the League of Nations was in existence, third States, if they were Members of the League, had legal rights in respect of mandated territories. The procedure envisaged in Articles 11 (2) and 19 of the Covenant could be invoked in case a mandatory failed to implement its obligations. *Moreover, any dispute between a mandatory and another Member of the League relating to the interpretation*

[1] *Memorials*, p. 93.
[2] Respondent's *Preliminary Objections*, p. 392.
[3] *International status of South-West Africa*, Pleadings, Oral Arguments, Documents, p. 273 at 288.

or the application of the provisions of the Mandate could be submitted to the Permanent Court of International Justice. The League of Nations itself, as an organization, had supervisory powers in respect of the administration of mandated territories and granted to the inhabitants the right to petition in a prescribed manner." [1] (Italics added.)

* * *

[Dr. Steyn then proceeds on the question of the rights of inhabitants, and makes the statements which are quoted on page 64 of the *Memorials*.]

If Dr. Steyn did not consider that Article 7 was for the benefit of the inhabitants, why did he discuss it under the heading: "*Rights of the Peoples of South-West Africa*?" If all that he meant was that League Members could participate in League proceedings to uphold the inhabitants' rights, as Respondent now contends, why did Dr. Steyn mention Article 7 at all? And why did he mention Article 7 right after mentioning Articles 11 (2) and 19 of the Covenant, which provide for participation in League proceedings, and begin the reference to Article 7 with the word "moreover?"

Applicants reaffirm the statement made in their *Memorials*: "Moreover, although the Union has denied that Article 7 is in force, the Union has nonetheless conceded that Article 7, if in force, entitled League Members to institute proceedings to uphold the rights of inhabitants of the Territory." [2]

(c) Summary

Although Article 7 is clear in stating "any dispute whatever concerning the interpretation and application of the Mandate," Respondent has now attempted to import into Article 7 a further unstated requirement, that the "material interests" of the Applicant State or its nationals must be involved. The contention ignores the crucial reason why the Mandates System endowed Member States with a legal interest in the proper exercise of the Mandate, and would effectively eradicate judicial supervision as a means of enforcing compliance with the obligations of the Mandatory.

The proposition that Article 7, or any other Article, should be read as embodying qualifications not stated therein can be sustained only by authority of the highest standing. Yet Respondent has cited only two writers who in fact support its contention. In square disagreement with the two writers are Judges Oda, Bustamante, Nyholm, McNair and Read, all of whom considered the point in judicial proceedings relating to Mandates, the numerous other writers mentioned above, and Respondent's own previous position.

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[1] *Id.*, 289-290.

[2] *Memorials*, p. 93.

3. Applicants Have a "Material Interest" in the Instant Cases

Respondent devotes much attention to "material interest" and "legal interest" in its *Preliminary Objections*, but does not define or analyze those terms.

"Legal interest" does not require extensive discussion. As Applicants have demonstrated herein, they come within the descriptive category of States entitled to invoke Article 7 in accordance with its terms. Thus they have a legal interest because Article 7, to which Respondent agreed to be bound, endowed them with such an interest.

In regard to "material interest," Applicants submit that Respondent advances far too narrow a definition of the term. States in the contemporary world do not regard their highest national interests as limited to actions by other States which directly and immediately affect them or their nationals.[1] The reasons underlying national interest may be many, including strategic, humanitarian, moral, ideological, political, economic—or any combination thereof.

With respect to "peoples not yet able to stand by themselves," in the words of the Covenant, or "peoples who have not yet attained a full measure of self-government," in the words of the Charter, it is obvious that States have considered their interests involved in the welfare of the inhabitants of such areas. How else explain their adoption of Article 22 of the Covenant and their creation of the Mandates System? How else explain Chapters XI and XII of the United Nations Charter and the creation of the Trusteeship System? Indeed, the Covenant, the Charter, the Mandates System, and the Trusteeship System all are witness to the fact that States have considered their aforementioned interest to be of the highest order—"a sacred trust."

The proceedings in the United Nations are further evidence of the interest of States. For more than ten years, State after State has disputed with Respondent in regard to the Mandate, both in the General Assembly itself and in its Fourth Committee. These States have obviously considered it their interest to assure that Respondent abide by its undertakings in the Mandate and in Chapter XI of the Charter.

Respondent is not entitled unilaterally to define the permissible scope of interests of other States. Contrary to Respondent's position, most States, in the increasingly inter-related community of nations, today regard the problems of less developed areas as a matter of great importance to their own welfare.

Applicants believe that their interest in the proper exercise of the Mandate, and the interests of all other States similarly situated, reflect the highest international concern, and have, therefore, instituted these proceedings in accordance with the terms of

[1] See Respondent's contention at p. 379, *Preliminary Objections*.

Article 7 of the Mandate. In any meaningful sense of the term, interests of such scope and nature must be regarded as "material interests."

C. The Dispute Cannot Be Settled By Negotiation

Chapter II of Applicants' *Memorials* and Chapter II of Respondent's *Preliminary Objections* set forth lengthy accounts of more than ten years' negotiations between Respondent and Members of the United Nations, including Applicants, in which each side has offered its views and has heard the views of the other.

Such negotiations have been variously and successively attempted through an *Ad Hoc* Committee, a Good Offices Committee, the Fourth Committee of the General Assembly, and the Committee on South West Africa. After more than ten years of frustrated efforts at negotiation, the General Assembly concluded in a Resolution adopted in 1960, that "the dispute which has arisen between Ethiopia, Liberia and other Member States on the one hand, and the Union of South Africa on the other, relating to the interpretation and application of the Mandate *has not and cannot be settled by negotiation.*" (Italics added.) [1] This is a finding of fact by the highest administrative organ of the United Nations. It embodies a conclusion amply warranted by an exceptionally full record.

Despite the foregoing record, Respondent professes the view that the dispute *can* be settled by negotiation. It omits to state, however, the unspoken qualification shown by the lengthy record: negotiation can succeed only upon acceptance of Respondent's conditions and interpretations.

Respondent, itself, has frequently avowed the failure of negotiations. The following are illustrative examples:

> "As the terms of reference of your Committee appear to be even more inflexible than those of the *Ad Hoc* Committee *the Union Government are doubtful whether there is any hope that new negotiations within the scope of your Committee's terms of reference will lead to any positive results.*" (Italics added.) [2]
>
> * * *
>
> "It is also mentioned in your letter that the Committee on South West Africa is ready to continue negotiations with the Union in order to implement fully the advisory opinion of the International Court of Justice regarding the question of South West Africa and the Committee invites the Union Government to nominate a representative to confer with it.
>
> "*The Union Government have consistently maintained that the*

[1] Resolution 1565 (XV) of 18 December 1960, U.N. Gen. Ass. Off. Rec. 15th Sess., Supp. No. 16 at 32 (A/4684) (1960).

[2] Letter dated 25 March 1954 from the Permanent Representative of the Union of South Africa to the United Nations, addressed to the Chairman of the Committee on South West Africa, *Report of the Committee on South West Africa*, U.N. Gen. Ass. Off. Rec. 9th Sess., Supp. No. 14, Annex I (c), p. 6 at 7 (A/2666) (1954).

Mandate in respect of South West Africa has lapsed and that they have no other international commitments as a result of the demise of the League of Nations. Nevertheless, in order to find a solution which would remove the question from the United Nations, they offered to enter into an arrangement with the three remaining Principal Allied and Associated Powers. This offer was repeatedly rejected by the United Nations on the grounds that it did not provide means whereby the advisory opinion of the International Court of Justice could be implemented. In the circumstances that offer has now lapsed. As there has been no material change in the position as outlined in my communication of 25 March 1954, the Union Government have come to the same conclusion as they did last year, namely, that *they cannot see that further negotiations would lead to any positive results.*" (Italics added.) [1]

* * *

"You also state that the Committee remains ready to continue negotiations with the Union of South Africa in order to implement fully the advisory opinion of the International Court of Justice regarding the question of South West Africa and therefore invites the Union Government to designate a representative to confer with it.

"In my communications sent to you on 25 March 1954 and 21 May 1955, I conveyed to you the views of my Government concerning the submission of reports and petitions as well as the renewal of negotiations with your Committee. *As there has in the meantime been no material change in the position outlined in my previous communications the attitude of the Union Government remains unchanged.*" (Italics added.) [2]

As the General Assembly has repeatedly found in Resolutions adopted by overwhelming majorities, Respondent has refused, and continues to refuse, to act on the basis of its international responsibilities under the Mandate, in the teeth of the Advisory Opinion of this Court. This remains the centre and core of the dispute between Applicants and Respondent. The very contentions advanced by Respondent in its *Preliminary Objections* clearly demonstrate that its continuous, historic position persists. By its own contentions it proves, if proof is needed, that the dispute cannot be settled by negotiation.

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[1] Letter dated 21 May 1955 from the Deputy Permanent Representative of the Union of South Africa to the United Nations, addressed to the Chairman of the Committee on South West Africa, *Report of the Committee on South West Africa*, U.N. Gen. Ass. Off. Rec. 10th Sess., Supp. No. 12, Annex I (c), p. 7 (A/2913) (1955).

[2] Letter dated 21 April 1956 from the Deputy Representative of the Union of South Africa to the United Nations, addressed to the Chairman of the Committee on South West Africa, *Report of the Committee on South West Africa*, Gen. Ass. Off. Rec. 11th Sess., Supp. No. 12, Annex I (b), p. 4 (A/3151) (1956).

VI

THE HUMANITARIAN OBJECTIVES OF THE MANDATE CALL FOR AN INTERPRETATION WHICH WILL MAKE THE MANDATE EFFECTIVE TO SERVE ITS PURPOSES

Applicants respectfully submit that on the basis of the strictest reasonable interpretation of the Mandate instrument all jurisdictional prerequisites of Article 7 are satisfied in the cases at bar. Nevertheless it would merely ignore the destiny of a multitude of human beings whose welfare is a charge upon the conscience of civilization, if Applicants were to pass over in silence the overriding humanitarian importance of these cases and their similarity to certain other cases before this Court and its predecessor, the Permanent Court.

Precedent, reason and elemental principles of justice support the proposition that the issues presented to the Court in these cases are not of a kind to be handled within narrow and rigid bounds.

Article 7 of the Mandate for German South West Africa must be interpreted in the context and spirit of the Mandate itself and Article 22 of the Covenant of the League of Nations.[1] It is in this manner, and this manner alone, that the Mandate will be able to serve the humanitarian objects for which it was created. "That interpretation is to be favoured which will make the instrument effective to serve its purpose. No rules of interpretation, therefore, can be of universal validity, applicable in the same way to all international instruments."[2]

Article 22 of the Covenant of the League of Nations clearly sets forth the purpose of the Mandates System—to create a "sacred trust of civilization" for the "well-being and development" of the inhabitants of the mandated territories. To accomplish this goal the Mandate for German South West Africa was created as an international institution embodying specifically certain international obligations. As pointed out by the Court in *International status of South-West Africa*,[3] these international obligations were of two kinds. The first, embodied in Articles 2 to 5 of the Mandate, corresponded to the "sacred trust of civilization," while the second, set out in Articles 6 and 7, "related to the machinery for implementation."[3]

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[1] See Oppenheim, L., *International Law*: A Treatise, Vol. 1, Fourth Edition, ed. by A. D. McNair, Longmans, Green and Co., London, 1928, Section 554(4), p. 761 at 765.

[2] Hudson, M. O., *The Permanent Court of International Justice*: A Treatise, The Macmillan Company, New York, 1943, p. 651.

[3] Advisory Opinion: I.C.J. Reports 1950, p. 128 at 133.

> "These obligations [the first above mentioned] represent the very essence of the sacred trust of civilization. Their *raison d'être* and original object remain. Since their fulfilment did not depend on the existence of the League of Nations, they could not be brought to an end merely because this supervisory organ ceased to exist. Nor could the right of the population to have the Territory administered in accordance with these rules depend thereon." [1]

Since Article 7, as Article 6, is a vital provision, necessary for the implementation of this "sacred trust of civilization," it should be interpreted liberally so as to give effect to the humanitarian objects of the Mandate. [2]

For the Court to interpret liberally a treaty provision such as Article 7 of the Mandate, which is embodied in a humanitarian instrument, will be in accord with a long line of cases decided by the International Court of Justice and its predecessor, the Permanent Court of International Justice. As pointed out by Sir Hersch Lauterpacht in *The Development of International Law by the International Court,*

> ". . . in a considerable number of cases the Court, in interpreting international law, has been in fact confronted with a choice between the principle of the minimum of restrictions upon the sovereignty of States and the attribution of full effect to what appears to be the purpose of the obligations binding upon or undertaken by them. We have seen that the result of that choice has been such that the jurisprudence of the Court in this sphere can to a large extent be conceived in terms of a restrictive interpretation of claims of State sovereignty. It is sufficient to recall the rejection of the rule of absolute unanimity in the interpretation of the Covenant of the League of Nations; the cases of affirmation of the competence of the Court through a bold interpretation of jurisdictional clauses; the assumption of an implied submission by the parties and the disregard of requirements of form; the interpretation of Minorities Treaties in favour not of States but of the system of protection of minorities, and, generally, the construction of clauses providing for equality of treatment in a manner calculated to secure their observance not only in law, but also in fact; the wide interpretation of the scope of the competence of the International Labour Organization and of other international organs such as the International River Commissions; the recognition of the prohibition of abuse of rights; the pronouncements confining within its proper scope the exception of domestic jurisdiction both under Article 15 of the Covenant of the League of Nations and elsewhere; and the emphasis upon the superiority of international obligations over municipal law." [3]

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[1] *Ibid.*

[2] See Woolsey, T. D., *Introduction to the Study of International Law,* Fifth Edition, *Charles Scribner's Sons, New York,* 1879, Section 113(5) p. 181; Vattel, *The Law of Nations or the Principles of the Laws of Nature,* ed. by J. Chitty, Johnson & Co., Philadelph a 1858, Chapter 17, Section 290, p. 257.

[3] Lauterpacht, H., *The Development of International Law by the International Court,* Stevens and Sons, London, 1958, p. 297.

One of the prime examples of the foregoing principle is the Permanent Court's interpretations of the Minorities Treaties which were enacted after World War I for the protection of racial, religious and linguistic minorities against discrimination. To give effect to the purpose of these treaties the Court continually looked to the probable consequences of laws which on their face appeared to be non-discriminatory. In each case the question was whether there was discrimination in fact as well as in law. In every one of these cases it was argued that the Court should interpret the provisions of the Treaty restrictively because it represented an international regime restrictive upon national sovereignty. The Court, however, rejected these contentions and interpreted the Treaty provisions liberally so as to implement the prohibitions against discrimination. A representative example is the Advisory Opinion, *Minority Schools in Albania.* [1] In the consideration of the problem before it, the Court received the views of the two States most immediately interested, Albania and Greece. The Court referred to:

> "The contention of the Albanian Government ... that the above-mentioned clause imposed no other obligation upon it, in educational matters, than to grant to its nationals belonging to racial, religious or linguistic minorities a right equal to that possessed by other Albanian nationals. Once the latter have ceased to be entitled to have private schools, the former cannot claim to have them either ... On the other hand, it is argued, any interpretation which would compel Albania to respect the private minority schools would create a privilege in favour of the minority and run counter to the essential idea of the law governing minorities. Moreover, as the minority régime is *an extraordinary régime, constituting a derogation from the ordinary law, the text in question should, in case of doubt, be construed in the manner most favourable to the sovereignty of the Albanian State.*" (Italics added.) [2]

The Court, stressing the importance of the purpose of protecting minorities, reiterated a statement made in an earlier case, of the need to assure that the minorities enjoyed "equality in fact as well as ostensible legal equality in the sense of the absence of discrimination in the words of the law," [3] and concluded that the plea of the Albanian Government was not well founded. [4] The same principle was enunciated by the Court in *Treatment of Polish Nationals in the Danzig Territory:*

> "It should be remarked in this connection that the prohibition against discrimination, in order to be effective, must ensure the absence of discrimination in fact as well as in law ... Whether a measure is or is not in fact directed against these persons is a

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[1] Advisory Opinion, P.C.I.J., Ser. A/B, No. 64, 1935.
[2] *Id.* at 15.
[3] *Id.* at 19.
[4] *Id.* at 23.

question to be decided on the merits of each particular case. No hard and fast rule can be laid down."[1]

In the Advisory Opinion, *German Settlers in Poland*,[2] the Court considered whether the competence of the Council of the League of Nations under a Minorities Treaty extended to the interpretation of another treaty under which Poland sought to justify her treatment of a German minority in Poland. Before handing down its opinion, the Court heard statements on behalf of the Polish and German Governments. The competence of the Council of the League of Nations was based upon Poland's consent as embodied in the Minorities Treaty, and an expansive interpretation of that provision would be attended by a corresponding degree of restriction upon Poland's sovereign freedom of action. Poland argued that her actions were pursuant to rights conferred upon her by Article 256 of the Treaty of Versailles and that the interpretation of that Treaty was beyond the jurisdiction of the Council of the League acting under the Minority Treaty. Had the Court been persuaded by Poland's restrictive interpretation argument, it could have easily construed the provision in question in accordance with the Polish contention. Instead, the Court rejected the Polish contention, as follows:

"... The Court is unable to share this view. The main object of the Minorities Treaty is to assure respect for the rights of Minorities and to prevent discrimination against them by any act whatsoever of the Polish State. It does not matter whether the rights the infraction of which is alleged are derived from a legislative, judicial or administrative act, or from an international engagement. If the Council ceased to be competent whenever the subject before it involved the interpretation of such an international engagement, the Minorities Treaty would to a great extent be deprived of value. The reasons urged by Poland for a restrictive interpretation of the Treaty do not justify the Court in thus construing it ... *In order that the pledged protection* [under the Minorities Treaty] *may be certain and effective*, it is essential that the Council, when acting under the Minorities Treaty, should be competent, incidentally, to consider and interpret the laws or treaties on which the rights claimed to be infringed are dependent." (Italics added.)[3]

In short, the Court preferred a liberal interpretation of the provision in question to one which would have denied effective enforcement of the Treaty, the humanitarian object of which was the protection of minorities. The Court also pointed out that to satisfy a treaty requirement of non-discrimination,

"There must be equality in fact as well as ostensible legal equality in the sense of the absence of discrimination in the words of the law."[4]

Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory, Advisory Opinion, P.C.I.J., Ser. A/B, No. 44, 1932, at 28.

[2] P.C.I.J., Ser. B, No. 6, 1923.

[3] *Id.* at 25.

[4] *Id.* at 24.

In a similar vein, the Court in *Acquisition of Polish Nationality*,[1] stated:

> "... Poland, by consenting, in Article 12 of the Treaty, to the preceding Articles being placed under the guaranty of the League of Nations in so far as they concern persons belonging to racial or linguistic minorities, also consents to the extension of this protection to the application of Articles 3 to 6.
> "... an interpretation which would deprive the Minorities Treaty of a great part of its value is inadmissible." [2]

Further support for the contention that international instruments which have as their object the betterment of humanity should be interpreted liberally so as to give full effect to their purpose can be found in the Permanent Court's interpretation of the scope of international organizations. In the *Case Relating to The Territorial Jurisdiction of the International Commission of the River Oder*,[3] brought by the United Kingdom, Czechoslovakia, Denmark, France, Germany and Sweden against Poland, the Court was faced with the question of whether the Commission's jurisdiction extended to tributaries of the Oder within Poland. In reaching its conclusion that the Treaty of Versailles, in contradistinction to most previous treaties, provided for complete internationalization of the waterways in question and their free use for all States, the Court disposed of a contention by Poland concerning principles of interpretation:

> "Nor can the Court, on the other hand, accept the Polish Government's contention that, the text being doubtful, the solution should be adopted which imposes the least restriction on the freedom of States. This argument, though sound in itself, must be employed only with the greatest caution. To rely upon it, it is not sufficient that the purely grammatical analysis of a text should not lead to definite results; there are many other methods of interpretation, in particular, reference is properly had to the principles underlying the matter to which the text refers; it will be only when, in spite of all pertinent considerations, the intention of the Parties still remains doubtful, that the interpretation should be adopted which is most favourable to the freedom of States."[4]

In *Employment of Women During the Night*,[5] the Court held that a prohibition against women's working at night adopted by the International Labor Conference in 1919 applied to women who held management and supervisory positions and were not ordinarily engaged in manual work. The Court reached this conclusion even after it admitted that the authors of Part XIII of the Treaty of

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[1] Advisory Opinion, P.C.I.J., Ser. B, No. 7, 1923.
[2] *Id.* at 16-17.
[3] P.C.I.J., Ser. A, No. 23, 1929.
[4] *Id.* at 26.
[5] *Interpretation of the Convention of 1919 concerning Employment of Women During the Night*, Advisory Opinion, P.C.I.J., Ser. A/B, No. 50, 1932.

Versailles, providing for the creation of the International Labour Organisation, had as their main preoccupation the amelioration of manual workers. It was the view of the Court that the Organisation need not circumscribe the scope of its activity so closely. The humanitarian purpose of the Organisation acted as an affirmative force in the Court's expansive interpretation of its scope.

In the case of the *Competence of the International Labour Organisation to Regulate, Incidentally, the Personal Work of the Employer,* [1] and *The Regulation of the Conditions of Persons Employed in Agriculture,* [2] the Court was asked whether the competence of the International Labour Organisation extended into areas concerning which Part XIII of the Treaty of Versailles was silent. A restrictive interpretation in either case would clearly have led to a negative answer, but the Court preferred to imply the competence of the Organisation in both areas because to do so would be consistent with the purposes and object of the Organisation. Thus, in *The Regulation of the Conditions of Persons Employed in Agriculture,* the Court said:

> "It was much urged in argument that the establishment of the International Labour Organisation involved an abandonment of rights derived from national sovereignty, and that the competence of the Organisation therefore should not be extended by interpretation. There may be some force in this argument, but the question in every case must resolve itself into what the terms of the Treaty actually mean, and it is from this point of view that the Court proposes to examine the question.
>
> "As Part XIII expressly declares, the design of the Contracting Parties was to establish a *permanent labour organisation.* This in itself strongly militates against the argument that agriculture, which is, beyond all question, the most ancient and the greatest industry in the world, employing more than half of the world's wage earners, is to be considered as left outside the scope of the International Labour Organisation because it is not expressly mentioned by name." [3]

This Court has followed the same approach in interpreting international instruments which have as their predominant purpose the betterment of mankind. In both *Effect of awards of compensation made by the U. N. Administrative Tribunal,* [4] and *Reparation for injuries suffered in the service of the United Nations,* [5] the Court was faced with questions concerning powers of the United Nations. In neither case was there a specific grant of power over the matter in question in the Charter of the United Nations. In both cases, however, the Court found the requisite

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[1] Advisory Opinion, P.C.I.J., Ser. B, No. 13, 1926.
[2] P.C.I.J., Advisory Opinion, Ser. B, No. 2, 1922.
[3] *Id.* at 23-25.
[4] Advisory Opinion, I.C.J. Reports 1954, p. 47.
[5] I.C.J. Reports 1949, p. 174.

power arising by necessary implication out of the Charter itself after investigating the character and aims of the Organization.

In *Reservations to the Convention on Genocide,*[1] the Court was asked to decide whether reservations to the Convention could be made, and if so, what were their validity and effect in the absence of any specific provision. Even though the factual situation is not in point, to be noted is the manner in which the Court used the humanitarian objectives of the Convention as a guide to its decision. The Court stated:

> "The objects of such a convention must also be considered. The Convention was manifestly adopted for a purely humanitarian and civilizing purpose. It is indeed difficult to imagine a convention that might have this dual character to a greater degree, since its object on the one hand is to safeguard the very existence of certain human groups and on the other to confirm and endorse the most elementary principles of morality. In such a convention the contracting States do not have any interest of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the *raison d'être* of the convention. Consequently, in a convention of this type one cannot speak of individual advantages or disadvantages to States, or of the maintenance of a perfect contractual balance between rights and duties. The high ideals which inspired the Convention provide, by virtue of the common will of the parties, the foundation and measure of all its provisions." [2]

As the Court pointed out, when interpreting international obligations such as are embodied in the Mandate, the purposes of which are essentially humanitarian, the high ideals which underlie the agreement, rather than the individual advantages or disadvantages to any State, should provide the measure of all the provisions. The implementing provisions of such agreements, being of such paramount importance, should, therefore, be interpreted liberally, in the spirit of the whole agreement.

This mode of interpretation has already been accepted by the Court in interpreting Article 6 of the Mandate.[3] In the Advisory Opinion the Court concluded that Respondent is required to submit to the supervision of the General Assembly of the United Nations and render annual reports thereto. In reaching its conclusion, the Court interpreted Article 6 of the Mandate so as to accomplish its purposes. The Court thus established the effectiveness of one of the implements for the enforcement of this "sacred trust of civilization." Applicants respectfully submit that a restrictive interpretation of Article 7 of the Mandate would be inconsistent specifically with the Advisory Opinion and in general with all the

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[1] I.C.J. Reports 1951, p. 15.

[2] *Id.* at 23.

[3] See *International status of South-West Africa,* Advisory Opinion: I.C.J. Reports 1950, p. 128.

cases set forth above. As Applicants have pointed out herein, the jurisprudence both of the Permanent Court and of this Court and the writings of distinguished commentators have uniformly underscored the need to interpret the provisions of Article 7 in the spirit of the Mandate as a whole, so as to give complete effect to the humanitarian objectives of the Mandate instrument.

VII

SUBMISSIONS

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT to dismiss the Preliminary Objections raised by the Government of the Republic of South Africa in the *South West Africa Cases*, and to adjudge and declare that the Court has jurisdiction to hear and adjudicate the questions of law and fact raised in the *Applications* and *Memorials* of the Governments of Ethiopia and Liberia in these Cases.

Agents for the Government of Ethiopia

(Signed) TESFAYE GEBRE-EGZY

(Signed) ERNEST A. GROSS

Agents for the Government of Liberia

(Signed) JOSEPH CHESSON

(Signed) ERNEST A. GROSS

The Hague, March 1, 1962

Annexes to the Observations of the Governments of Ethiopia and Liberia

Annex A

COVENANT OF THE LEAGUE OF NATIONS

ARTICLE 22

[See Annex A to the Memorial, p. 200, supra*]*

Annex B

MANDATE FOR GERMAN SOUTH WEST AFRICA

[See Annex B to the Memorial, p. 201, supra*]*

LIST OF THE RELEVANT DOCUMENTS

Article 22 of the Covenant of the League of Nations and the Mandate for South-West Africa are printed herein as Annexes A and B, respectively.

The remainder of the documents listed below were filed with the Registrar of the Court, either at the time of the filing of Applicants' *Memorials*, or incidental to the filing of these *Observations*, in accordance with Article 43 of the Rules of the Court.

I. Documents of the United Nations

A. *Resolutions of the General Assembly*

1. U.N. Gen. Ass. Off. Rec. 5th Sess., Supp. No. 20 (A/1775) (1950).
2. U.N. Gen. Ass. Off. Rec. 6th Sess., Supp. No. 20 (A/2119) (1952).
3. U.N. Gen. Ass. Off. Rec. 8th Sess., Supp. No. 17 (A/2630) (1953).
4. U.N. Gen. Ass. Off. Rec. 15th Sess., Supp. No. 16 (A/4684) (1960).

B. *Records of the Fourth Committee*

1. U.N. Gen. Ass. Off. Rec. 3rd Sess., 1st Part, Fourth Comm. (U.N. Doc. No. A/603) (1948).
2. U.N. Doc. No. A/C.4/185 (1950).
3. U.N. Gen. Ass. Off. Rec. 5th Sess., Fourth Comm. (U.N. Doc. No. A/C.4/S.R.196 (1950).
4. U.N. Gen. Ass. Off. Rec. 8th Sess., Fourth Comm. (U.N. Doc. No. A/C.4/SR.357) (1953).
5. U.N. Gen. Ass. Off. Rec. 9th Sess., Fourth Comm. (U.N. Doc. A/C.4/SR.407) (1954).
6. U.N. Gen. Ass. Off. Rec. 14th Sess., Fourth Comm. (U.N. Doc. No. A/C.4/SR.900) (1959).
7. U.N. Gen. Ass. Off. Rec. 14th Sess., Fourth Comm. (U.N. Doc. No. A/C.4/SR.914) (1959).
8. U.N. Gen. Ass. Off. Rec. 14th Sess., Fourth Comm. (U.N. Doc. A/C.4/SR.915) (1959).
9. U.N. Gen. Ass. Off. Rec. 14th Sess., Fourth Comm. (U.N. Doc. A/C.4/SR.916) (1959).

C. *Documents of the Committee on South West Africa*

1. U.N. Gen. Ass. Off. Rec. 9th Sess., Supp. No. 14, Annex I (c) (A/2666) (1954).
2. U.N. Gen. Ass. Off. Rec. 10th Sess., Supp. No. 12, Annex I (c) (A/2913) (1955).
3. U.N. Gen. Ass. Off. Rec. 11th Sess., Supp. No. 12, Annex I (b) (A/3151) (1956).

D. *Related Documents*

1. *Documents of the United Nations Conference on International Organization, San Francisco, 1945*, U.N. Information Organization, New York, 1945, Vol. 13.
2. Charter of the United Nations

II. Documents of the League of Nations

A. *Minutes of the Permanent Mandates Commission*

1. PMC (Min. 6th Sess.) (1925).

B. *League of Nations Official Journal*

1. League of Nations Off. J., pp. 854, 868 (1922).
2. League of Nations Off. J., 21st Ass. p. 58 (plenary) (1946).

C. *Related Documents of the League of Nations*

1. Article 22 of the Covenant of the League of Nations.
2. The Mandate for German South West Africa.

III. Miscellaneous

A. *Books*

1. Bentwich, N., *The Mandates System*, Longmans, Green and Co., London, 1930.
2. Chowdhuri, R. N., *International Mandates and Trusteeship Systems*, Martinus Nijhoff, The Hague, 1955.
3. Feinberg, N., *La Juridiction de la Cour Permanente de Justice Internationale dans le Système des Mandats*, Librarie Arthur Rousseau, Paris, 1930.
4. Goodrich, L. M. and Simons, A.P., *The United Nations and the Maintenance of International Peace and Security*, Brookings Institution, Washington, 1955.
5. Houpin, C. and Bosvieux, H., *Traité Général des Sociétés*, Librairie de la Société du Recueil Sirey, 1929.
6. Hudson M. O., *The Permanent Court of International Justice: 1920-1942*, A Treatise, The Macmillan Company, New York, 1943.
7. Margalith, A. M., *The International Mandates*, Johns Hopkins Press, Baltimore, 1930.
8. Lauterpacht, H., *The Development of International Law By The International Court*, Frederick A. Praeger, New York, 1958.
9. Oppenheim, L., *International Law:* A Treatise, Vol. 1, Fourth Edition, ed. by A. D. McNair, Longmans, Green and Co., London, 1928.
10. Oppenheim, L., *International Law:* A Treatise, Vol. 1, Eighth Edition, ed. by H. Lauterpacht, Longmans, Green and Co., London, 1955.
11. Rosenne, S., *The International Court of Justice*, Sijthoff, Leyden, 1957.

12. Stoyanovsky, J., *The Mandate for Palestine—A Contribution to the Theory and Practice of International Mandates*, Longmans, Green and Co., London, 1928.
13. Van Maanen-Helmer, E., *The Mandates System In Relation to Africa & the Pacific Islands*, P. S. King & Son, Ltd., London, 1929.
14. Vattel, *The Law of Nations or the Principles of the Law of Nature*, ed. by J. Chitty, T. & J. W. Johnson and Co., Philadelphia, 1858.
15. Woolsey, T. D., *Introduction to the Study of International Law*, Fifth Edition, Charles Scribner's Sons, New York, 1879.
16. Wright, Q., *Mandates Under the League of Nations*, The University of Chicago Press, Chicago, 1930.

B. *Articles*

1. Brierly, J. L., "Trusts and Mandates," *The British Yearbook of International Law*, 1929.
2. Fitzmaurice, G., "The Law and Procedure of the International Court of Justice: International Organizations and Tribunals," *The British Yearbook of International Law*, 1953.
3. Hales, J. C., "The Creation and Application of the Mandate System," *Transactions of the Grotius Society*, Vol. 25, 1940.
4. McNair, A. D., "Mandates," Vol. 3, No. 2, *Cambridge Law Journal*, 1928.

TABLE OF AUTHORITIES

I. List of Cases Cited

A. INTERNATIONAL COURT OF JUSTICE

1. *Case concerning the Aerial Incident of July 27th, 1955* (Israel *v.* Bulgaria) Preliminary Objections, Judgment of May 26, 1959: I.C.J. Reports 1959, p. 127.
2. *Admissibility of hearings of petitioners by the Committee on South West Africa*, Advisory Opinion of June 1st, 1956: I.C.J. Reports 1956, p. 23.
3. *Effect of awards of compensation made by the U.N. Administrative Tribunal*, Advisory Opinion of July 13th, 1954: I.C.J. Reports 1954, p. 47.
4. *Reservations to the Convention on Genocide*, Advisory Opinion: I.C.J. Reports 1951, p. 15.
5. *International status of South-West Africa*, Advisory Opinion: I.C.J. Reports 1950, p. 128.
6. *International status of South-West Africa*, Pleadings, Oral Arguments, Documents.
7. *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, Advisory Opinion: I.C.J. Reports 1950, p. 65.
8. *Reparation for injuries suffered in the service of the United Nations*, Advisory Opinion: I.C.J. Reports 1949, p. 174.

B. PERMANENT COURT OF INTERNATIONAL JUSTICE

1. *Minority Schools in Albania*, Advisory Opinion: P.C.I.J. Ser. A/B, No. 64, 1935.
2. *Interpretation of the Convention of 1919 Concerning the Employment of Women During the Night*, Advisory Opinion: P.C.I.J. Ser. A/B, No. 50, 1932.
3. *Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory*, Advisory Opinion, P.C.I.J. Ser. A/B, No. 44, 1932.
4. *Case Relating to the Territorial Jurisdiction of the International Commission of the River Oder*, P.C.I.J. Ser. A, No. 23, 1929.
5. *Competence of the International Labour Organization to Regulate, Incidentally, the Personal Work of the Employer*, Advisory Opinion P.C.I.J. Ser. B, No. 13, 1926.
6. *Case Concerning Certain German Interests in Polish Upper Silesia* (The Merits), P.C.I.J. Ser. A, No. 7, 1926.
7. *Case Concerning Certain German Interests in Polish Upper Silesia*, P.C.I.J. Ser. A, No. 6, 1925.
8. *Case of the Readaptation of the Mavrommatis Palestine Concessions* (Jurisdiction), P.C.I.J. Ser. A, No. 11, 1927.

9. *The Mavrommatis Palestine Concessions*, P.C.I.J. Ser. A, No. 2, 1924.
10. *Acquisition of Polish Nationality*, Advisory Opinion: P.C.I.J. Ser. B, No. 7, 1923.
11. *German Settlers in Poland*, Advisory Opinion: P.C.I.J. Ser. B, No. 6, 1923.
12. *The S. S. Wimbledon*, P.C.I.J. Ser. A., No. 1, 1923.
13. *The Regulation of the Conditions of Persons Employed in Agriculture*, P.C.I.J. Ser. B, No. 2, 1922.

C. MISCELLANEOUS

1. *Jerusalem-Jaffa District Governor and Another* v. *Suleiman Murra and Others*, 1926 A.C. 321.

II. List of Statutes Cited

A. UNITED STATES:

1. *California: West's Annotated Corporation Code*, Vol. 24, §§ 5400-5402 (1955).
2. *Louisiana: West's Louisiana Statutes Annotated*, Title 12, §§ 53-62 (1951).
3. *Maryland: Annotated Code of Maryland*, Vol. 2, Article 23, §§ 76(b), 78(b) and 82(a) (1957).
4. *Minnesota: Minnesota Statutes Annotated*, Vol. 20, Chap. 301, §§ 301.46-301.54.
5. *New Jersey: New Jersey Statutes Annotated*, Title 14, §§ 14:13-14, 14:13-15 (1939).
6. *New York:* Stock Corporation Law § 105(8) (1951); General Corporation Law § 29 (1943).
7. *Ohio: Page's Ohio Revised Code*, § 1701.88 (Supp. 1960).
8. Uniform Business Corporation Law §§ 49-60 [9 *Uniform Laws Annotated* 204-213 (1957)].
9. *Washington:* Revised Code of Washington, Title 23, §§ 23.01.520-23.01.650 (1958).

B. ARGENTINA:

Code of Commerce, Article 435.

C. ECUADOR:

Code of Commerce, Articles 357 and 361.

D. SPAIN:

Corporation Law of Spain of July 17, 1951, Articles 154 and 159.

E. VENEZUELA:

Code of Commerce, Articles 350 and 351.