

Est.
1841

YORK
ST JOHN
UNIVERSITY

Forji Amin, George (2026) From Colonizers to Guardians: International Law and the African Mandates under the League of Nations (1919–1945). *JUS GENTIUM Journal of International Legal History*, 11 (1). pp. 65-95.

Downloaded from: <https://ray.yorks.ac.uk/id/eprint/14657/>

The version presented here may differ from the published version or version of record. If you intend to cite from the work you are advised to consult the publisher's version: https://www.lawbookexchange.com/jus-gentium.php?srsId=AfmBOor__fjKLhogam-rCIC9NJ-dmcLcdB3XhIBpFcUEbV9fBQyB3Xns

Research at York St John (RaY) is an institutional repository. It supports the principles of open access by making the research outputs of the University available in digital form. Copyright of the items stored in RaY reside with the authors and/or other copyright owners. Users may access full text items free of charge, and may download a copy for private study or non-commercial research. For further reuse terms, see licence terms governing individual outputs. [Institutional Repositories Policy Statement](#)

RaY

Research at the University of York St John

For more information please contact RaY at
ray@yorks.ac.uk

Vol. 11, No. 1 • JANUARY 2026

Jus Gentium

Journal of
International
Legal
History

TALBOT
PUBLISHING

FROM COLONIZERS TO GUARDIANS: INTERNATIONAL LAW AND THE AFRICAN MANDATES UNDER THE LEAGUE OF NATIONS (1919-1945)

GEORGE FORJI AMIN*

The period between 1919 and 1945 is remarkable for its complete reordering of international relations and colonialism, especially within the context of the evolving role of international law. In the aftermath of the First World War, diplomatic negotiations among the victorious powers at the 1919 Paris Peace Conference, heavily influenced by President Woodrow Wilson's Fourteen Points, culminated in the birth of the League of Nations. This development not only heralded global geopolitical reconfigurations but also a reconceptualisation of colonial governance within international legal discourse. The League was variously conceived as the harbinger for global collective security and the primary institutional mechanism to henceforth adjudicate global disputes as well as foster cooperation among all the sovereign States of the international society.¹

Central to the League's vision was the creation of a legal framework deemed appropriate for the administration of former colonies and territories of the defeated powers, to wit: German and Ottoman. Drawing on the principles of collective security, peace, and justice, the league projected its vision as a "sacred trust of civilization" – cloaked in the idea of humanitarianism. Concerned with the fate of non-sovereign populations in the former German

* Dr. of Law, Senior Lecturer in Law/LLM Programme Leader, School of Law, York St John University.

¹ Margaret MacMillan, *Paris 1919: Six Months that Changed the World* (2007), pp. 93-95; Malcolm N. Shaw, *International Law* (2008), pp. 1170-1172.

and Ottoman colonies, the League qualified the situation as an international concern, and proceeded to develop an international administrative framework called the “Mandate System”, enshrined in Article 22 of the League Covenant.²

The main purpose of the mandate regime was to guide and oversee the transition of the affected non-self-governing territories towards eventual self-determination. Nowhere was this more apparent than in Africa, where former German possessions: Tanganyika, Rwanda-Urundi (Rwanda-Burundi), Kamerun (Cameroon), German South West Africa (Namibia), and Togoland were assigned to Allied powers as mandates. Perceived as not yet having reached the infamous “standard of civilization”,³ these territories were assigned to mandate powers to govern them on behalf of the international community, as well as lead them towards eventual self-rule.

This novel development marked the first time that an international organization was assuming (or rather commissioning) a supervisory role over territories deemed as not yet ready for self-governance, with an ostensible mission to lead the latter towards eventual transition to independence.⁴ Not only was it a marked departure from colonial practices, whereupon the invading power seized and maintained territories solely by might, but the new mandate system was showcased as a benevolent arrangement with legal obligations imposed on the administering countries.

The Mandates regime represented a rhetorical shift in the approach of international law to empire. Although the League did not outrightly condemn colonization, it nonetheless distinguished it from Mandates, projecting the latter as “a sacred trust of civilization”.⁵ Unlike colonies, mandates were described as temporary guardianship with the primary intent of preparing subjected peoples for self-government. The Mandatory Powers were expected to be confined to promoting the welfare and

² Article 22, Covenant of the League of Nations (available online).

³ Taina Tuori, “From League of Nations Mandates to Decolonization: A Brief History of Rights”, in Pamela Slotte and Miia Halme-Tuomisaari (eds.), *Revisiting the Origins of Human Rights* (2015), pp. 267-292; Nele Matz, “Civilization and the Mandate System under the League of Nations as Origin of Trusteeship”, *Max Planck Yearbook of United Nations Law*, IX (2005), pp. 47-95.

⁴ MacMillan, note 1 above, pp. 210-234.

⁵ Article 22, Covenant of the League of Nations.

eventual self-determination of the governed populations.⁶ This was a *sui generis* form of legalized imperialism whereupon mandatory powers were commissioned to implement a transition from classical colonial governance as a consequence of conquest to governance as a matter of international responsibility. Put differently, the sacred trust of civilization required that the task of the mandatory powers was justified by not might, but rather by their international moral obligation to “develop” territories and peoples lagging behind on the ladder of progress.

In spite of the theoretical distinction between colonies and mandates, both systems were driven by the politics of the civilizing mission that dominated Western thought in the nineteenth and twentieth centuries, especially the practice of mandating the governance of so-called “backward” non-European territories to become “advanced” European States. The League, by arrogating the “Sacred Trust of Civilization” for mandated territories, not only validated colonial administration as a function of international law, but also transformed it into a formalized system of trusteeship and paternalism. According to Anthony Anghie, “the mandate system universalized the civilizing mission as a legal doctrine and gave it a permanent place within the fabric of international law”.⁷

Put differently, international law was effectively playing a double-edge sword – projecting imperialism not as domination but rather as stewardship. Although framed as a humanitarian mission for promoting the welfare and development of the inhabitants in the concerned territories under the guise of international oversight, in practice the Mandate System was nonetheless a mechanism par excellence for perpetuating colonial exploitation, paternalism, and dependency.⁸ These factors were cumulatively detrimental to self-determination and aspirations for independence – that is, the very mission of the Mandate regime. In Africa, the implementation of the Mandate System showed a clear contradiction between the rhetoric of self-determination and the realities of stringent colonial

⁶ Mark Mazower, *Dark Continent: Europe's Twentieth Century* (2009), pp. 95-112.

⁷ Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (2005), p. 117.

⁸ *Ibid.*, p. 115.

control, thereby raising the question of the role of international law in legitimizing or challenging colonial practices and excesses.⁹

Background: The Mission to “Civilize” Africa, the Advent of the League of Nations, and the Mandates System

Despite the seemingly exceptional notion behind the League of Nations Mandate system – namely, entrusting the so-called “advanced” members of the international community with the task of “civilizing” their allegedly backward counterparts – Africa nonetheless was not unfamiliar with the politics of international tutelage. At the dawn of the nineteenth century, the fierce European scramble for Africa culminated in the Berlin Conference (1884-1885) that legally formalized the division of the African continent among European powers. Convened to address mounting tensions over territorial claims in the European scramble for Africa, the Conference exemplified shared greed and the partition of spoils from the scramble under the guise of international legality, thereby becoming one of the most defining episodes in the history of European colonialism and, by analogy, international law. The Conference averted war among Europeans by producing the General Act of Berlin, which not only set out uniform rules for claiming territories across Africa but further emphasized the so-called mission to “civilize” the peoples of the continent.¹⁰

Under the guise of expanding the benefits of civilization, international law played a pivotal role in legitimizing colonial expansion – framing such intrusions not as unlawful uses of force, but rather as a legal entitlement through which the so-called “advanced” nations could undertake the “civilizing” of the world’s so-called backward regions. European colonization of Africa in the nineteenth century was accordingly qualified as a civilizing mission.

A new professional association of international lawyers, the Institut de Droit International, was founded in 1873 to advance international law and played a significant role in stimulating and

⁹ Susan Pedersen, *The Guardians: The League of Nations and the Crisis of Empire* (2015), p. 23.

¹⁰ Anghie, note 7 above, p. 112.

crafting uniform rules for the partition of Africa among European powers, as well as legalizing the outcomes of the Berlin Conference. Dominated by European jurists who largely shared the colonial mindset of the era, the Institut de Droit International during its early sessions developed doctrines around occupation, sovereignty, and the “effective control” principle – arguing that in order for claims over new territories (Africa) to be valid under international law, they had to be based on actual, effective occupation, not merely symbolic acts such as planting flags, which was the prevailing practice at the time.¹¹ This principle of effective occupation was formally incorporated into the General Act of the Berlin Conference in Articles 34 and 35, thereby legally requiring colonizing countries to legitimize claims over African territories by demonstrating practical administrative control over their territories, including the maintenance of law and order and the notification of other European powers.¹² While the doctrine was ostensibly aimed at limiting unchecked territorial claims, its mere legalization provided the tool for justifying European colonial expansion.¹³ It is germane to state that the intervention of the Institut de Droit International was vital for transforming European colonial conquest into a legally rationalized activity under international law, as it presented colonial acquisitions as an orderly, rule-governed process, rather than naked aggression. Despite the rhetorical appeal, the outcome of the civilizing mission in Africa was the legitimization of territorial conquest and economic exploitation.

Although the Berlin Conference helped defuse rising tensions in the nineteenth century and averted a catastrophic war amongst European powers scrambling for territories in Africa, the first half of the 20th century ultimately brought to life Europe’s long-standing fear: namely, direct confrontation between the great powers. In spite of necessary precautions, the brutal assassination of Archduke Franz Ferdinand (1863-1914) – the presumptive heir to the Austro-Hungarian throne – at Sarajevo in June 1914 proved to be that last straw to break the metaphorical camel’s back, as all

¹¹ Charles Henry Alexandrowicz, *The Law of Nations in Global History*, ed. David Armitage and Jennifer Pitts (2017), pp. 236-240.

¹² Articles 34 and 35, General Act of the Berlin Conference, 26 February 1885; Alexandrowicz, note 11 above 237-238.

¹³ Pedersen, note 9 above, p. 48.

the world's major military and economic powers steadily ruptured diplomatic ties and fought perceived enemies in an unprecedented large-scale conflict that spread to virtually every continent as the First World War. In Africa, the war was principally fought in German controlled colonies. France and Great Britain led the way to dispossess Germany of extraterritorial treasures, thereby limiting its sources of funding and ability to escalate the war.¹⁴

Lasting until November 1918, the belligerents battled along two opposite alliances of Allied versus Central forces.¹⁵ It is estimated that over 23 million people (some ten million combatants and over thirteen million civilians) lost their lives on both sides in the course of the First World War.¹⁶ The War ended with the defeat of the Central forces and the signing of the 1919 Treaty of Versailles (also known as the Paris Peace Treaty). The treaty, *inter alia*, created the League of Nations as the first intergovernmental organization with a mandate to preserve world peace and settle international disputes. The treaty also imposed heavy reparations on the defeated Central forces, formally seized their colonial possessions, and bestowed these unto chosen mandatory powers to administer in trust as "Mandates" on behalf of the League. Along with other former German and Ottoman colonies across the globe, the affected territories in Africa were effectively treated as spoils of war, redistributed among the victorious powers following World War I. Although framed under the language of international trusteeship through the Mandate System, in practice, these territories were subject to the political interests and strategic ambitions of the Allied powers.

In spite of earlier obligations contained in the General Act of the Berlin Conference supposedly with regard to the protection and

¹⁴ African battlegrounds included Kamerun, East Africa, South West Africa, and Togoland. See Hew Strachan, *The First World War in Africa* (2004).

¹⁵ The Allies were comprised of: Britain, France, Russia, United States, Belgium, Italy, Japan, Serbia, Montenegro, Greece, Portugal, Romania, Siam, and Hejaz. The Central forces were comprised of: Austria-Hungary, Germany, Bulgaria, and the Ottoman Empire. Colonies are not mentioned in any of the alliances; they were not recognized as sovereigns by international law, but rather as extraterritorial possessions of the metropolitan powers.

¹⁶ Stewart Ross, *Causes and Consequences of the First World War* (1997), pp. 45-48.

promotion of “native” welfare in Africa, enforcement thereof was primarily left to the colonizing powers – thus the reason why there were many administrative discrepancies in different European colonial protectorates. Reminiscent of the General Act of the Berlin Conference, the spirit of the League of Nations was correspondingly exemplified in the League Covenant. But in contrast to the Act of the Berlin Conference, the League Covenant, in principle, provided for follow-up mechanisms in an effort to ensure that “native” interests were efficiently promoted and protected in mandated territories. The Mandatory Power authority in the mandated territories was not only supposed to be “a sacred trust of civilization” for international society; the Mandatory Powers were legally bound to exercise governance strictly for the benefit of peoples perceived as not yet “able to stand by themselves under the strenuous conditions of the modern world”.¹⁷ To that effect, a Permanent Mandates Commission (PMC) was set up by the League and given the function of collecting and examining annual reports from the mandates, as well as evaluating the performance of the trusts. The PMC was expected to immediately alert the League whenever there was any cause for concern with any of the mandates.

Significance of Article 22 of the League Covenant

Article 22 of the League Covenant explicitly identified as falling under the mandates system:

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant.¹⁸

Being the foundational text in the development of the international legal doctrine on how to deal with the so-called non-self-governing

¹⁷ Article 22, Covenant of the League of Nations.

¹⁸ Article 22(1), League of Nations Covenant.

territories, the Article created a *sui generis* form of international trusteeship. Most importantly, Article 22 introduced the mandates system – a legal mechanism that placed the affected territories under the administration of advanced nations, to act as mandatory powers on behalf of the League. The mandate over the concerned regions involved ensuring the “well-being” and “development” of its peoples and territory in general, which seemed to establish a legal obligation akin to fiduciary duty. To Crawford, this created a limited international personality for these territories, thereby prohibiting the mandatory powers from annexing or exploiting the lands.¹⁹

This article will nevertheless illustrate that these terms, while sounding noble goals, were nevertheless often not just subject to divergent interpretations, but also to the whims and caprices of the mandatory powers. By qualifying the affected mandated territories and its peoples as “not yet able to stand by themselves under the strenuous conditions of the modern world”, the League was in some sense effectively justifying the continuation of foreign rule under the veneer of legal legitimacy.²⁰ Mišič and Jeran have further contended that the Versailles Treaty ultimately arrogated international legal discourse to entrench prevailing global racial hierarchies of the time.²¹

Be that as it may, the terms “well-being” and “development” enshrined in Article 22 had normative and functional significance, thereby contributing to the development of international law. Regarding legal normativity, Article 22 went beyond the colonial regime and imposed positive obligations on Mandatory Powers. Not only were they expected to maintain law and order in their assigned territories, they were to ensure the advancement of such economic development imperatives as education, health, and infrastructure. The mandates, in other words, were to be administered “not for the benefit of the Mandatory Power, but for the benefit of the

¹⁹ James Crawford, *Brownlie's Principles of Public International Law* (2012), pp. 566-567.

²⁰ Article 22, Covenant of the League of Nations. See J. J. Mišič and M. Jeran. “Winner Takes it All or How Did Arena of International Law Fail to Decolonize the World In Versailles”, *Proceedings of Socratic Lectures*, IX (2024), pp. 34-39.

²¹ Mišič and Jeran., note 20 above, pp. 34-35.

inhabitants”.²² Regarding functional (practical) significance, the Mandatory Powers broadly interpreted the notion of “development” from the paternalistic saviour mindset that characterized European colonization in the nineteenth century. For the Mandatory Powers, the corollary assignment of “sacred trust of civilization” was in fact an invitation to spread their prevailing colonial vision of the civilizing mission. While these caveats theoretically provided an early international law rationale for transitioning from outright colonial rule (at least in mandate territories), it nonetheless had the effect of legitimizing colonial governance. The League was mindful of this, and instituted a supervisory organ – the PMC, to oversee the implementation of “well-being” and “development” the mandated powers on the ground.²³

The Versailles Statesmen and Advent of the Mandates Regime

The devastation of the First World War and the disintegration of the German and Ottoman Empire colonies following their defeat created an unprecedented problem for global governance: how was international society to deal with the so-called “backward territories” formerly under their control? The League mandate system thus traces its origin to the contention amongst Allied powers about the fate of colonies of the defeated forces. These colonies had been taken over in the course of the war by various Allied countries, but not yet legitimated by international law. While European powers and South Africa (which had taken German South West Africa) naturally wanted to continue holding these territories as colonies, Woodrow Wilson (1856-1924), President of the United States at the time and fretful of public opinion, favored the progressive attainment of self-rule for these “former” colonies. He contended that it was imperative for advanced nations to assist the freed colonies with economic and technical assistance, rather than pursuing further imperial goals.²⁴ Inspired by Jan Christiaan Smuts (1870-1950) – the South African military statesman, Boer Leader

²² Gerry Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (2004), pp. 122-124.

²³ Pedersen, note 9 above, pp. 143-145.

²⁴ Matz, note 3 above, p. 52.

and former Prime Minister of the Union of South Africa, who recommended the formation of a League of Nations in a well-crafted scheme to the drafting committee of the Versailles Treaty wherein he called on the said organization to empower some member States in charge over territories belonging to Russia, Austria-Hungary and the Ottoman Empire. Smuts played a pivotal role in shaping the early vision of the Mandate System. In his pamphlet *The League of Nations: A Practical Suggestion*, published on 16 December 1918, he outlined tangible proposals for its design, arguing that territories formerly under the control of the Russian, Ottoman, and Austro-Hungarian Empires should be placed under international mandates. According to Smuts, these regions were “incapable of or deficient in the power of self-government” and therefore required a period of “nursing towards political and economic independence” under the stewardship of more “advanced” nations.²⁵

Woodrow Wilson on his part followed-up by delivering a *statement of principles for world peace* before the United States Congress on 8 January 1918 wherein he endorsed the scheme and set out Fourteen Points to function as universal doctrines for international society.²⁶ While Smuts excluded German colonies on the basis that their inhabitants were “barbarians and incapable of self-rule”, Wilson differed and perceived German colonies rather than Russian and Austria-Hungarian territories as most deserving of mandates, rather than colonization.²⁷ The highlight of Wilson’s speech was Point VI, which provided for peoples’ right to “independent determination of ... own political development and national policy and [assurance of] a sincere welcome into the society of free nations under institutions of her own choosing...”²⁸ This vision has ever since evolved into the illustrious principle of self-determination, now recognized in international law.

²⁵ Jan Smuts, “*The League of Nations: A Practical Suggestion* (1918)”, in David Hunter Miller, *The Drafting of the Covenant* (1928) II, p. 23; Carsten Stahn, *The Law and Practice of International Territorial Administration Versailles to Iraq and Beyond* (2008), p. 75.

²⁶ Alexander L. George and Juliette L. George, *Woodrow Wilson and Colonel House: A Personality Study* (1964), pp. 172-173

²⁷ Smuts, note 25 above, p. 28.

²⁸ Arthur Richmond Marsh, *The Economic World* (1919) p. 509. (emphasis added).

It is worth noting that the concept of self-determination was neither an unprecedented idea nor unique to the advent of the League. The principle of self-determination was first prominently advanced by Vladimir Lenin (1870-1924) in 1917, in the immediate aftermath of the Bolshevik Revolution. As leader of the new Soviet state, Lenin championed the idea that the various nationalities within the former Russian Empire should be granted the right to freely determine their own political future. To him, these “satellite nations” ought to have the choice as a matter of right whether to remain united with the Russian people or to establish independent nation-states. For Lenin, self-determination was not merely a moral ideal but a practical strategy to dismantle imperial domination, undermine rival nationalist movements, and secure support for the nascent Soviet regime among non-Russian peoples.²⁹ To that end, Finland, Estonia, and Lithuania exercised the right and became independent States.³⁰ At the time of the creation of the League of Nations, the concept of a right to self-determination was still marginal and not yet ingrained in mainstream intellectual discourse. The concept in fact lacked general recognition, which is why Wilson had to make a more elaborate explanation of its imperativeness. Nowadays, the doctrine of self-determination in international law is understood to refer to the fundamental right of peoples to freely determine their own political status, destiny, and to freely pursue their economic, social, and cultural development.³¹ The doctrine gained full recognition in the United Nations Charter under Article 1(2), as well as United Nations General Assembly Resolution 1514 (XV) of 1960, which declared “the necessity of bringing colonialism to a speedy and unconditional end,”³²

The principle is now foundational in international legal discourse and has significantly evolved over the last century, especially within the context of decolonization and international human rights law. The origin of this development can be traced to the Wilsonian

²⁹ Stanley W. Page, “Lenin and Self-Determination”, *Slavonic and East European Review* (1950), p. 342.

³⁰ *Ibid.*, p. 342.

³¹ Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (1995), pp. 31-33.

³² United Nations General Assembly. *Declaration on the Granting of Independence to Colonial Countries and Peoples*, Res. 1514 (XV), 1960; Simpson, note 22 above, pp. 260-262.

conception of self-determination, which apparently foreshadowed and heralded an era of decolonization for the Mandate territories – a marked departure from earlier legal frameworks that variously treated colonized peoples as mere objects of administration and their territories as provinces of the colonizing metropolitan countries.

As a result of the disagreement amongst the Versailles statesmen between annexation and self-rule, what eventually became the mandate system was in effect a consensus that somewhat accommodated all the varying propositions. In effect, the Mandate System as articulated in Article 22 of the League Covenant epitomized a compromise between the ideals of self-determination, on one hand, and the realpolitik of empire on the other.³³ By so doing, the powers at Versailles instituted three different categories of mandates, classed as A, B, and C, with their different levels of progress supposedly used as the determinant in drawing the distinctions. The distinction further served as a pointer to each class readiness for self rule.³⁴

Category A mandates were comprised of the former Ottoman Empire territories of Iraq, Lebanon, Palestine, Syria, and Transjordan. They were perceived as quasi-civilized and significantly advanced politically and economically, thus eligible for provisional independence and eventually self-rule in the near future.³⁵

Category B mandates were former German colonies in West, Central, and East Africa, deemed as necessitating greater control from the mandatory authorities. Mandatory Powers were bound to set up administrations in the territories “under conditions [that would] guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic, and the liquor traffic ...”, and unlike in colonial protectorates, refrain from any “military training of the natives”.³⁶ The territories in question were assigned to Great Britain, France, and Belgium. Kamerun was split into British Cameroons and French Cameroun, Tanganyika was to be administered by Britain, Ruanda and Urundi – formerly two separate

³³ Pedersen, note 9 above, p. 15.

³⁴ Anghie, note 7 above, p. 125.

³⁵ Article 22(4), League of Nations Covenant.

³⁶ Article 22(6), League of Nations Covenant.

German protectorates were merged into one territory (Ruanda-Urundi) and assigned to Belgium. Like Kamerun, Togoland was split into French Togoland and British Togoland (British Togoland, however, only lasted until December 1956 when it merged with Ghana).

Category C mandates were island colonies. Such territories were generally considered as remote, sparsely populated, and incapable of constituting an independent territory (State). They were situated on two continents stretching from Southern Africa to the Pacific Islands. South Africa was assigned South West Africa (what is today known as Namibia), Australia took New Guinea, New Zealand was granted West Samoa, and Japan was to govern all other islands north of the equator in The Pacific.³⁷ Unlike Categories A and B, Mandatory Powers over Category C territories were allowed to govern their mandates as an integral part of the metropolitan power.

Mandates and the Progressive Evolution of International Law

Given the series of progressive measures initiated by the League through the Mandates regime following the First World War purportedly aimed at safeguarding the wellbeing of peoples in the mandated territories, it is necessary and appropriate to address certain questions: *how different were mandates from colonies? What difference did they make? And what was their impact on the development of international law?*

As for how mandates differed from other colonies, especially in Africa, it is worth noting that mandate status represented a mark improvement in rhetorical terms over the colonial designation. While colonies lacked international personality or oversight, and had no legal standing to contest their treatment by the colonizing power, the Mandates System by contrast conferred international recognition on the administered territories and established mechanisms for their supervision. Beside the outlined underpinnings, the two in practical terms were in many respects basically a difference without a distinction; in other words, mandates just as colonial protectorates were more often than not colonies in everything but name. In spite of the fundamental difference set out

³⁷ Pedersen, note 9 above, p. 68.

in Article 22 of the League Covenant pertaining to international administration over mandates, the League nevertheless did not create a truly international administration over the mandates. The mandated territories were not governed by an international body but by individual mandatory States, which were entrusted with tutelage on behalf of the League, and merely obligated to promote the well-being and development of the territories assigned to them. While the League exercised a degree of oversight primarily through annual reports submitted to the Permanent Mandates Commission (PMC) and general information provided by the administering States, its ability to demand genuine accountability was minimal. Neither the Covenant nor the mandates authorized inspection visits to the territories. Furthermore, in cases of alleged violations of the mandates, the Mandatory Powers could effectively block any action by exercising a veto under the League's unanimity rule.³⁸

The main difference thus rested in the spirit and promise of what mandates represented: stimulating innovative norms of behavior in international society, rather than practical variation. Britain generally merged and governed its mandates together with adjacent protectorates using the same norms of administration (indirect rule) as a way of saving costs. It merged British Cameroons with the East federation in Nigeria, did the same for British Togoland and Ghana, and integrated Tanganyika into the common British customs union of Kenya, Uganda, and Tanganyika. It relied on its colonial technique of "indirect rule" as formulated by Lord Frederick John Lugard (1858-1945), which was already in application in its Africa colonies, in order to govern its mandated territories, by developing "resources through the agency of the natives under European guidance, and not by direct ownership of those tropical lands".³⁹

France enforced the same system of assimilation in its mandated territories of Cameroun and Togo as it did in its protectorates. The notorious atrocious reign of Leopold-Belgium in the Congo State were equally reminiscing in Ruanda-Urundi as Belgium enforced a racially-tinged caste-like system whereupon an artificial minority

³⁸ Carsten Stahn, "International Territorial Administration in the Former Yugoslavia: Origins, Developments and Challenges Ahead", *ZaöRV*, LXI (2001), p. 116.

³⁹ Frederic D. Lugard, *The Dual Mandate in British Tropical Africa* (1922), p. 506. See Stahn, note 25 above, p. 80.

group of tall light skin Africans called Tutsis was created, classified as superior to other “natives”, and used to abusively control the majority Hutu population. The animosity from these atrocities became the main stimulant of the tragic Rwanda and Burundi genocides in the 1990s, which saw the massacre of over one million people.⁴⁰

Given the indifference between governance in the colonies and the Mandates, Mandatory Powers justified their actions by invoking the rhetoric and imperativeness of development and civilization, thereby making a case that there were no better ways to protect and promote the welfare of those under their tutelage. Both regimes were marred by economic extraction and racial hierarchies. In the words of Susan Pedersen, “the rhetoric of the mandate often clashed with the realities of administrative practice”.⁴¹

In direct contradistinction to the spirit of the mandates system, South Africa extended its apartheid laws to South West Africa as it established a white oligarchy structure over the territory, oppressing the “native” population and denying them basic political, economic and social rights.

The mandate system afforded a revitalized legal link in international society between imperialism, socio-political progress, and economic development. Given that mandates were held as trusts on behalf of the League, the system by so doing had effectively legitimated international institutions as authentic hegemonic actors for the realization of global governance. International law accordingly acquired a more robust apparatus as a regime of international administration. Furthermore, the formation of the League and the international trust on its behalf implied two things at the very least: first, it was a clear indication that cosmopolitanism – the idea of a common global federation as once envisaged by Immanuel Kant (1724-1804) was beginning to take shape.⁴² Moreover, thanks to the oversight of mandated sovereignty, the purposes of global governance were once more fulfilled as no region of the world was allowed to descend into anarchy or lawlessness

⁴⁰ Edward R. Kantowicz, *Coming Apart, Coming Together* (2000), p. 435.

⁴¹ Pedersen, note 9 above, p. 6.

⁴² Joseph Preston Baratta, *The Politics of World Federation: From World Federalism to Global Governance* (2002), pp. 598-599, 674.

but rather tightly preserved within a system of international law and order.

By its very nomenclature, the mandate system was a tacit recognition by the League of the right of peoples in former German and Ottoman Empire regions to be granted sovereignty whenever they attained political maturity or reached an advanced stage of self-reliant economic growth. But considering the disagreements in the built-up to reaching a consensus, the League Covenant was, however, silent on expressly compelling mandatory powers to prepare the mandates in their trusts for self-determination.

The mandate system, moreover, slowly began a process of gradually shifting the moral, political, and bureaucratic burden of administration from colonizers to the colonized. It has been observed that many post-Second World War conceptions in international law (self-determination, development, human rights, and others) owe their origins, albeit indirectly, to the mandate system.⁴³

International Oversight: The Permanent Mandates Commission

To ensure that the Mandatory Powers governed mandates assigned to them in the interests of their inhabitants, and not solely for their own benefit, the League established the PMC to oversee the effective administration of territories. The establishment of the PMC to monitor the conduct of States over non-sovereign territories marked a major moment in the architecture of global governance and the development of international law by validating the principle that colonial powers held mandate territories in trust for indigenous populations rather than as sovereign possessions.⁴⁴ The PMC was further required to monitor and formulate policies necessary for the economic development of indigenous peoples, safeguard their rights, and advance the goal of self-government for them.⁴⁵ It followed that the authority of the colonial administrations

⁴³ See Balakrishnan Rajagopal, *International Law From Below: Development, Social Movements and Third World Resistance* (2003), p. 50.

⁴⁴ Quincy Wright, *Mandates under the League of Nations* (1930), p. 203.

⁴⁵ Article 22(9), Covenant of the League of Nations.

over assigned mandates was strictly subject to international scrutiny rather than a matter of their own sovereign discretions.⁴⁶

Composed of independent experts rather than representatives of States, the PMC reviewed annual reports submitted by Mandatory Powers and assessed whether the administration was in conformity with the obligations contained in Article 22 of the League Covenant.⁴⁷ In spite of the limitation in scope, this model was unique for its unprecedented conception of international accountability. The PMC mainly functioned as an advisory body, focusing on reviewing annual reports from Mandatory Powers and issuing recommendations. The authority of the PMC was largely constrained by the political dominance of Mandatory States. It lacked enforcement mechanisms and had to depend on the cooperation and feedback of the colonial administrators it was tasked to monitor.⁴⁸ Its influence was mostly moral and persuasive. In one historian's view, the PMC was less a watchdog and more of a discussion club.⁴⁹

In spite of its limitations, the PMC functioned as one of the few platforms for indigenous populations to make petitions and express their grievances. For instance, groups from Cameroon and South-West Africa submitted petitions before the PMC, highlighting complaints and abuses such as land dispossession and labour exploitation.⁵⁰ Although the PMC lacked the necessary power to compel action, the mere threat of international embarrassment sometimes served to restrain the most egregious abuses. To Anghie, the PMC in spite of its shortcomings played an invaluable role of precursor to modern international monitoring mechanisms: "the PMC was the first international body established to supervise the administration of territories, laying the foundation for later institutions under the United Nations and, more broadly, for systems of international accountability".⁵¹ Although the oversight mechanism of the PMC was weak in enforcement, it nonetheless inspired the building blocks for the United Nations Trusteeship

⁴⁶ Glenda Sluga, *Internationalism in the Age of Nationalism* (2013), p. 92.

⁴⁷ *The Covenant of the League of Nations* (1920), p. 8.

⁴⁸ Many reports were self-reported data from the Mandatory Powers.

⁴⁹ Pedersen, note 9 above, p. 115.

⁵⁰ *Ibid.*, pp. 212-216.

⁵¹ Anghie, note 7 above, p. 136.

Council and modern-day institutions dealing with international justice and global governance.

A Glimpse of the British and French Mandates in Africa

British Mandates: Strategic Administration and Indirect Rule

The establishment of the League of Nations ushered in a new phase of colonial territorial administration under the Mandate System. Britain was one of the main beneficiaries, accorded tutelage over several foreign territories under this scheme by the League. While governance over mandates was in principle strictly supposed to be tailored towards self-rule, in practice, Britain exercised governance over its newly acquired Class B mandates in Africa by closely integrating them with its pre-existing colonial holdings. Rather than establishing entirely separate administrative structures or distinct governance systems, Britain chose to merge these mandated territories with adjacent colonies and protectorates, applying the same administrative policies – most notably, the system of indirect rule – as a means of minimizing financial and logistical burdens.

Perceiving the policy of indirect rule as a pragmatic strategy, Britain implemented the doctrine as follows in its African mandates: British Cameroons was administratively amalgamated with the Eastern Region of Nigeria; British Togoland was similarly incorporated into the Gold Coast colony (modern-day Ghana); and Tanganyika was brought into a customs union alongside Kenya and Uganda, thereby facilitating economic integration as well as standardizing administrative practices across the concerned territories. By applying these measures, Britain effectively blurred the distinction between mandated territories and its sovereign colonial possessions, thereby raising important legal and political questions about the nature of mandatory tutelage vis-à-vis international oversight and the true character of imperial governance under the League Mandate System.

The PMC may have afforded just a thin legal veneer of trusteeship to the mandatory powers, but Britain was able to appropriate its fluidity to pursue its imperial interests under international legitimacy, which were almost indistinguishable from its prevailing colonial practices. Britain was concerned about the necessity of saving cost. In Tanganyika, its administrators largely

ruled “through existing indigenous institutions”, thereby curtailing administrative costs while preserving the appearance of respecting local authority.⁵²

Although Britain failed to make a clear governance distinction between its Class B mandates and classical colonies, the cost-saving nature of indirect rule nonetheless inadvertently enabled Britain to fulfil the League requirement of preparing the inhabitants for self-rule, as most policy initiatives were delegated to local leaders to execute on their subjects. Britain was able conserve resources while also aligning with the League expectations that native institutions be respected and developed.⁵³ This had the advantage of securing broad collaboration, developing their welfare, and ensuring effective control maintenance. Though co-opted into colonial governance structures, local rulers nonetheless remained subordinate to British district officers who held ultimate authority.⁵⁴

Viewing the British doctrine of indirect rule as applied to its African mandates from a Third World Approach to International Law (TWAAIL) perspective, the integration of mandates into British prevailing colonies is clear testament to how the framework of international law under the League was a springboard for legitimating the continuation of imperial domination under a new juridical vernacular. TWAAIL scholars have long contended that while the Mandate System theoretically prided itself as a distinct humane trusteeship where advanced nations guided the “less civilized” peoples of the world toward self-rule, in practice, it only distinguished itself by cleverly masking colonial control in the language of civilization, development, progress, and tutelage, that is, internationalizing colonialism rather than dismantling it.⁵⁵ While Britain’s administrative practices heralded legal commitments to prepare African populations for self-rule, the enforcement of the doctrine of indirect rule in British mandates evidenced a moral façade for continued subjugation.

⁵² Michael Callahan, *Mandates and Empire: The League of Nations and Africa, 1914–1931* (2004), p. 52.

⁵³ League of Nations Permanent Mandates Commission. *Minutes of the Ninth Session*, Geneva, June 1926, p. 14.

⁵⁴ Wright, note 44 above, p. 44.

⁵⁵ Siba N. Grovogui, *Sovereigns, Quasi Sovereigns, and Africans: Race and Self-Determination in International Law* (1996), pp. 179-180; Anghie, note 7 above, pp. 116-118.

Tanganyika

While the British government reports to the PMC highlighted ample educational and infrastructural development initiatives, the practical concentration of governance was in cash crops and the integration of Tanganyika's economy into global commodity markets, especially for products such as sisal, tea, and coffee.⁵⁶ These cash crops were vital for British Gross National Product (GNP) and national consumption. Although the League mandates framework theoretically restricted economic exploitation, Britain justified its economic policies under the imperative rubric of "development", a term that it invoked to explain other economic projects from road construction, poll taxes, to the forced cultivation of cash crops.⁵⁷

The concept of "development" has been a cliché among policy-makers since the close of the First World War. Its invocation by Britain and European colonizing counterparts reflected a broader international technique according to which empire builders legitimized their extraterritorial actions by emphasizing the imperativeness of progress in order to foster economic exploitation. TWAIL scholars have argued that the rhetoric of development was invoked especially in Africa as an excuse for the expansion of capitalist extraction, accumulation, and domination.⁵⁸

British Cameroons

Upon assuming its mandate over the Cameroons, Britain implemented a cost-efficient administrative strategy by partitioning the territory into Northern and Southern Cameroons. Each section was affiliated with neighboring regions of its Nigerian colony: Northern Cameroons with Northern Nigeria and Southern Cameroons with Eastern Nigeria. This structural arrangement served both practical and political purposes. Administratively, it

⁵⁶ John Iliffe, *A Modern History of Tanganyika* (1979), p. 253.

⁵⁷ Pedersen, note 9 above, pp. 212-216.

⁵⁸ B. S. Chimni, "Third World Approaches to International Law: A Manifesto", *International Community Law Review*, VIII (2006), pp. 3-27 and 22-24.

allowed Britain to manage the new mandated territory using existing colonial structures, thereby reducing the costs of establishing new bureaucratic systems. Culturally, it reflected Britain's perception that the peoples of Southern Cameroons shared linguistic and cultural affinities with those in Eastern Nigeria, whereas Northern Cameroons was predominantly inhabited by ethnic groups closely related to those in Northern Nigeria.⁵⁹ These considerations made the partition an expedient means for advancing Britain's policy of indirect rule, as well as promoting economic integration and administrative efficiency within the broader colonial governance framework.⁶⁰ It has, however, been observed that the downside of this approach was the marginalization of the distinct identity of the Cameroonian peoples.⁶¹

Consistent with its indirect rule policy (and motivated by cost-saving measures), colonial initiatives were implemented mainly by traditional authorities under the supervision of colonial officers, thereby embedding the doctrine within a framework that prioritized genuine local self-governance. Notwithstanding, cash crop production, especially cocoa, palm oil, rubber, and tea was expanded, but with minimal reinvestment into local infrastructure.⁶²

Britain was generally wanting in terms of economic development. Despite the League mandate provisions, balance sheet reports showed that Britain generally neglected education and political development in all its Cameroon mandates, factors which later contributed to post-Second World War demands for greater autonomy.⁶³

⁵⁹ Victor Julius Ngoh, *History of Cameroon Since 1800* (1996), p. 45; Joseph Lon Nfi, *The Reunification Debate in British Southern Cameroons: The Role of French Cameroon Immigrants* (2014), pp. 12-14.

⁶⁰ Lilian Lem Atanga, *Gender, Language and Power in African Contexts: The Cameroon Example* (2011), p. 61.

⁶¹ Ngoh, note 59 above. P. 29.

⁶² Martin Atangana, *The End of French Rule in Cameroon* (2009), p. 74.

⁶³ Victor T. Le Vine, *The Cameroons: From Mandate to Independence* (1964), p. 58.

French Mandates in Africa: Assimilation and League of Nations

France made little distinction between its prevailing colonial possessions and newly acquired League of Nations mandates regarding governing philosophy. In both categories, the dominant doctrine was the *mission civilisatrice*, more concretely expressed through the policy of assimilation. This doctrine was premised on the assumption that colonial subjects could become French citizens – *citoyens* in the full legal and political sense – if they adopted the French language, culture, legal norms, and values. In theory, the policy of assimilation afforded concerned inhabitants a pathway to equality within the French empire. In practice, however, the policy set benchmarks that were often daunting for the masses – the *sujets*. The unrealistic benchmarks caused the policy to be unevenly applied, highly racialized, while at the same time maintaining French hegemony under the veneer of *mission civilisatrice*.⁶⁴ In spite of the humane intentions, assimilation failed to dismantle the core racial hierarchies of the colonial State.

Reading the assimilation policy through a TWAIL lens, France's assimilation policy, in seeking to transform Africans into French citizens under the guise of *mission civilisatrice*, ultimately entrenched racial and cultural subordination. As Siba Grovogui has noted, while the policy boasted of offering inclusion into the colonial polity, the practical reality was stringent and operated as a racialized gatekeeping mechanism for the reproduction of European hegemony.⁶⁵ By so doing, France deviated from its commissioned responsibility to facilitate self-determination under Article 22 of the League Covenant.

France effectively operated a dual legal regime in its Class B mandates. The introduction of a new legal and social distinction between the *citoyens* (citizens) and the *sujets* (subjects) only reinforced class differentiation in the French mandates, with the *sujets* being deprived of many fundamental rights. Inhabitants deemed as having evolved into *citoyens* enjoyed full civil and

⁶⁴ Alice L. Conklin, *A Mission to Civilize: The Republican Idea of Empire in France and West Africa, 1895–1930* (1997), pp. 3-5.

⁶⁵ Grovogui, note 55 above. pp. 83-85. See also Pedersen, note 9 above, p. 243.

political rights (and were considered to be equal in status with natural born French people), including access to legal protections, education, and political participation. The *sujets* (who comprised the masses), in contrast, were governed under a parallel legal regime known as the *indigénat*, which effectively denied them full rights and further subjected them to arbitrary rule, forced labor, and summary justice.⁶⁶

The maintenance of the *indigénat* – which compelled a separate, inferior system of law, and allowed for corporal punishment, forced labor, fines, and imprisonment without due process – seemed to be in clear violation of League obligations which prohibited colonization of mandated territories and necessitated indigenous populations to be accorded guidance toward self-government and eventual independence. The two-tiered legal system did not serve the best interests of the inhabitants in the mandates, contrary to Article 22 of the League Covenant. The French application of the *indigénat* mirrors the contention that the Mandatory Powers barely distinguished themselves from their colonial convictions, as they instituted imperial global States under the thin veneer of internationality.⁶⁷

While a small segment of the population, most of whom were educated in the few colonial schools and resident in urban centers, eventually achieved the status of *citoyen*, the vast majority of peoples in the French mandates remained *sujets* throughout French rule, thereby being deprived of the legal benefits that were promised by assimilation. The policy of assimilation may have been at odds with the exigencies of the mandate system emphasis for Mandatory Powers to prepare territories assigned to them for self-rule. By design, assimilation was intended to create new French peoples rather than new independent peoples. In fact, French administrators generally perceived the Class B mandates as extensions and an integral part of the French empire.⁶⁸ The altruistic intentions notwithstanding, one scholar has observed that on balance, French

⁶⁶ Gregory Mann, *From Empires to NGOs in the West African Sahel: The Road to Non-governmentality* (2014), pp. 29-33.

⁶⁷ B. S. Chimni, “International Institutions Today: An Imperial Global State in the Making”, *European Journal of International Law*, XV (2004), pp. 9-14.

⁶⁸ Raymond F. Betts, *Assimilation and Association in French Colonial Theory, 1890–1914* (2005), pp. 122-123.

policies did little to efficiently integrate the subjects in the mandate into the “universal” legal order, but rather functioned to preserve and entrench a racialized imperial international system, where most Africans under their governance were perpetually positioned as inferior.⁶⁹

Overall, French legal and administrative practices in the African mandated territories left much to be undesired. In their drive to create African Frenchmen, their policies ended up projecting indigenous structures as stumbling blocs to progress rather than legitimate expressions of African political communities. By so doing, the French policies seemingly betrayed the League’s stated objectives.

French Administration in Togo

Following the defeat of Germany in the First World War, German Togoland (similar to German Kamerun) was divided and assigned to Britain and France as separate League of Nations mandates. France received the larger eastern portion, and Britain received the smaller western portion (which it merged with Ghana for easier administration). Upon assuming functions as the new Mandatory Power over the territory, France, true to form, re-enacted its colonial policy of assimilation, already commonplace in all its African colonies, to culturally transform the local population into French “citizens”. Not only was French imposed as the sole *lingua franca* for administration and education, African customs were correspondingly undermined as a drawback to progress.⁷⁰ Indigenous institutions and local leaders that formerly worked for the Germans were sidelined, while French civil administrators assumed direct centralized control over the entire territory, assigning only a thin layer of marginal functions to locally appointed chiefs.

France introduced cash-crop agriculture, especially cocoa and cotton, into the territory, with output being realized through State planning and forced labor schemes. Although Article 22 of the League Covenant discouraged forced labor, France nevertheless variously justified the policy on the imperativeness of “public

⁶⁹ Makau Mutua, “What is TWAIL?”, *American Society of International Law Proceedings*, XCIV (2000), pp. 35-37.

⁷⁰ Betts, note 68 above, pp. 122-123.

works” and “development”.⁷¹ Access to education and healthcare was uneven and primarily available to the elites or those who had accepted French cultural norms. While the French administration reports to the PMC presented a narrative of gradual improvement and civilization across the territory, these accounts often masked the most coercive aspects of French governance, especially forced labor abuses and several restrictions on freedom of assembly.⁷²

French Administration in Cameroon

Similar to governance in French Togo, French Cameroon (Cameroun) was ruled via direct French administration with bureaucrats and technocrats from the French colonial office. Local rulers who previously worked for the Germans were dethroned, and new “warrant chiefs” who had no legitimacy in indigenous systems were appointed to replace them, although with severely weakened powers.⁷³ At the onset of their governance, the French faced more resistance in Cameroon than in Togo. As a result, it pursued the implementation of the policy of assimilation with more aggressive rigor. Slowly, a new elite cadre of interpreters, clerks, and teachers loyal to French values were accorded full privileges due to *citoyens*. French steadily became the language of the elites and power.⁷⁴

France largely continued economic activities started by the Germans on export agriculture, especially cocoa, bananas, and palm oil. The same was true for infrastructure projects such as railways and roads were expanded from where the Germans left things, though with less investment. These projects were largely realized using forced labor, apparently contrary to the requirements of Article 22 of the League Covenant. French reports to the PMC framed their development initiatives in Cameroon as “modernization”, while omitting the human costs involved in their realization.⁷⁵

⁷¹ Atangana, note 60 above, p. 89.

⁷² Pedersen, note 9 above, p. 96.

⁷³ Atangana, note 60 above, pp. 76-77.

⁷⁴ Tony Chafer, *The End of Empire in French West Africa: France's Successful Decolonization?* (2002), pp. 51-53.

⁷⁵ Conklin, note 64 above, pp. 24-26.

From Mandate to Trusteeship: The United Nations Role in Decolonization and the Struggle for Self- Determination

The mandate system effectively came to an end in 1947, after the newly created United Nations, which replaced the League, substituted the mandate system with a more robust trusteeship arrangement. The United Nations provided for a Trusteeship Council in Chapter XII of its Charter to perform the duties formerly assigned to the defunct PMC of the League. All the provisions governing the trusteeship system were contained under Chapters XII and XIII of the Charter.⁷⁶

Article 77 identified the following as falling under the jurisdiction of the council: “(1) (a) territories now held under mandate; (b) territories which may be detached from enemy states as a result of the Second World War; and (c) territories voluntarily placed under the system by states responsible for their administration”.⁷⁷ Japan as a result lost both its mandatory power and mandated islands in The Pacific, while Italy lost its control in Italian Somaliland.

Given that all the countries in Category A with the exception of Palestine had already become independent sovereign States, only eleven territories were commissioned under the trusteeship. Beside the seven regions in Africa that formerly constituted Category B of the PMC, the United Nations took control of Italian Somaliland because Italy fought on the losing side during Second World War and placed it under its trusteeship regime, with a British Military Administration (BMA) commissioned with trust authority.⁷⁸ All regions in Category C naturally came under the trusteeship system, with United Nations assigning the United States to manage the trust over former Japanese mandates because Japan, just as Italy, had fought on the losing side during the Second World War.

The recognition of rights for trust territories were more expressive and encompassing in the trusteeship system than the mandates. Article 76 outlined the following as the objectives of the Trusteeship Council:

⁷⁶ Chapters XII and XIII, Charter of the United Nations.

⁷⁷ Article 77(1), Charter of the United Nations.

⁷⁸ Abdullah A. Mohamoud, *State Collapse and Post-conflict Development in Africa: The Case of Somalia (1960-2001)* (2006), pp. 73-74.

- (a) to further international peace and security;
- (b) to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;
- (c) to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and
- (d) to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.⁷⁹

Overall, the United Nations trusteeship had two key related impacts on the development of international law; namely: it foreshadowed the advent of nationalism and independence across the Third World, compelling international law to enforce the long heralded but docile right of self-determination. The task assigned to trusteeship power was in principle no longer a sacred trust of civilization but rather a sacred trust of obligation to prepare peoples under their rule for self-governance pursuant to Article 73 of the United Nations Charter. The trusteeship system also marked the beginning of the end of colonialization as a system of global governance, thus triggering the process of decolonization for all parts of the world still under colonial rule. As a result, the community of sovereign States quadrupled from 35 in 1946 to 127 in 1970.⁸⁰

All Mandatory Powers with the exception of South Africa complied with the United Nations Charter and placed their

⁷⁹ Article 76, Charter of the United Nations.

⁸⁰ US Department of State, Office of the Historian, *Milestones: Decolonization of Asia and Africa, 1945–1960* (available online).

mandated territories under the Trusteeship Council. South Africa's refusal to submit South West Africa under the Trusteeship Council as expected provoked a series of contested claims before the International Court of Justice (ICJ), thereby paving the way for an avalanche of rulings by the tribunal, many of which were both self-contradictory and controversial. The key question revolved around who actually had sovereignty over the territory. Although Article 77 gave the impression that any such unwillingness by an entrusted power to effectuate a trust in accordance with the prescribed standard was naturally going to translate into the revocation of the trust and the inhabitants of such a territory able to freely decide on self-governance by virtue of the right of self-determination, the International Court of Justice nevertheless afforded a somewhat surprising Advisory Opinion in 1950 in support of South Africa's position to the effect that obligations bestowed unto Mandatory Powers were not terminated with the dissolution of the League of Nations.⁸¹ This implied that South Africa was only nominally bound to the United Nations Trusteeship Council, if at all, as there had been no official transfer between the PMC and Trusteeship Council.

In another controversial ruling, the ICJ deliberated on another case pertaining to South West Africa brought by Ethiopia and Liberia – two African members of the League of Nations (Egypt was the only other African country in the League, having joined in 1937). The plaintiffs detailed racist apartheid practices enforced in South West Africa and argued that these blatant abuses proved that South Africa was not merely in breach of its mandate, but was wholly unfit to exercise it and that the Court should revoke it. The ICJ refused to entertain the matter on grounds that Ethiopia and Liberia lacked capacity and legal interest in the subject matter.⁸²

As the apartheid oppressions worsened, the United Nations General Assembly overwhelmingly adopted a Resolution in 1966 declaring that South Africa had grossly failed in its obligations under the trust; its mandate as a result was effectively terminated. The Resolution further demanded that the territory in question be immediately transferred to the direct responsibility of the United

⁸¹ ICJ Advisory Opinion on the *International Status of South West Africa*, ICJ Reports (1950), p. 128.

⁸² *Ethiopia & Liberia Vs. South Africa*, ICJ Reports (1962), pp. 141-143.

Nations.⁸³ The United Nations Security Council followed in the footsteps of the General Assembly and once more petitioned the ICJ. The Court delivered an Advisory Opinion: *Legal Consequences for States of the Continued Presence of South Africa in Namibia*, in which it reversed its earlier stance by upholding the General Assembly Resolution and declaring for the first time that South Africa had long been in material breach of the trust mandate; its continuous presence in Namibia⁸⁴ was illegal as a result.⁸⁵ Namibia did not obtain its independence until 23 April 1990, becoming the last African country to be liberated from physical colonial rule. What was intended to be a humanitarian system focused on protecting fundamental human rights and promoting the welfare of mandated populations, rather than advancing imperial rule, ultimately evolved into one of the worst forms of colonial abuse, leaving local inhabitants deprived of the most basic rights.

Concluding Remarks

The League of Nations Mandate System, as conceived under Article 22 of its Covenant, was a legal and ideological experiment that marked a pivotal progressive shift in international law discourse on empire, following its reconsideration of colonialism as a new vehicle for sovereignty, self-rule, and independence for supposedly “backward” territories that were non-self-governing but had been placed under humanitarian trusteeship called mandates. In spite of the rhetorical pronouncements, mandates were almost indistinguishable from traditional colonies in practice, especially in Africa, as Mandatory Powers largely merged them with pre-existing colonies for convenience and governed them by using the

⁸³ United Nations General Assembly Resolutions 2145 (XXI) revoking South Africa’s mandate in South West Africa & 2248 (XXII) establishing a United Nations Council for South West Africa and a United Nations Commissioner for South-West Africa.

⁸⁴ Effective with Resolution 2372 (XXII) of 12 June 1968, the name Namibia replaced the name: South West Africa.

⁸⁵ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, ICJ Reports, 21 June 1971, pp. 15-16. See also: *49 International Law Reports*, XLIX (1971), p. 3.

same colonial doctrines that they were applying in their classical colonies.

The core Mandatory Powers in Africa: Britain, France, and Belgium, tactically integrated mandated territories assigned to them into their imperial systems, respectively using familiar techniques of indirect rule, assimilation, and economic extraction. Accordingly, the distinction between colony and mandate was more semantic than substantive, as the reality on the ground reflected a continuation, if not intensification, of longstanding colonial logic under the canopy of international legitimacy.⁸⁶ With similar colonial hierarchies, economic dependencies, and administrative paternalism being reproduced, the mandates central promise of self-determination and development were never fully realized in the African context throughout the League's twenty-six years of existence.

While the League successfully introduced a novel mechanism for international oversight, to wit, the Permanent Mandates Commission, the oversight was largely advisory and devoid of veritable enforcement powers.

All things considered, the legacy of the mandate system in Africa is twofold. On one hand, it evidenced the potential of international law to establish mechanisms of accountability and normativity beyond State sovereignty, albeit without robust enforcement mechanisms. On the other hand, it exposed the inherent limitations of that same legal order when faced with the hegemonic interests of powerful nations. African mandates afforded colonial powers with the perfect laboratories to validate their vision of the civilizing mission. The results were full of inconsistencies. While the rhetoric came across as a noble goal, in practice the mission was invoked to justify exploitative and discriminatory governance.⁸⁷

The mandates system, in spite of its shortcomings, nonetheless contributed immensely to the progressive development of international law. It is thanks to the mandate system that the doctrine of self-determination evolved from political rhetoric to a

⁸⁶ Pedersen, note 9 above, pp. 232-236; Anghie, note 7 above, pp. 122-126.

⁸⁷ S. I. Slonim, "South West Africa and the International Court of Justice: The Role of the U.N. General Assembly", *American Journal of International Law*, LXVII (1973), pp. 456-459.

mainstream norm of international law. The system further laid the building blocks for international accountability, and international human rights, all of which subsequently gained normative strength under the United Nations trusteeship system in the post-1945 period.⁸⁸

The doctrine that indigenous populations should be accorded fundamental rights, even if mostly mediated through a system of guardianship, nevertheless gradually began to challenge orthodox notions of sovereignty and foreshadowed a broader principle of sovereignty, as well as doctrines that could be invoked to promote and safeguard human rights and minority protections. As Pedersen has noted, “the mandates system represented a recognition, albeit a limited one, that colonial rule needed to be justified not just to European publics but to an international community increasingly aware of the claims of subject peoples”.⁸⁹

It also advanced the idea that sovereignty could be conditional, and that peoples, however racially othered, were legitimate subjects of international concern. As such, the mandate system was not simply a failed project of empire, but a constitutive moment in the transformation of international law.

⁸⁸ Simpson, note 22 above, pp. 259-264.

⁸⁹ Pedersen, note 9 above, p. 23.

Contents

ARTICLES

Principal Stages in the Formation and Development of the
Historiography of International Law and the
Science Thereof

*O. Havrylenko
A. Stashchak*

A Union of Sovereigns: The German Bund as a Proto-International
Organization

James Garrett

NOTE

From Colonizers to Guardians: International Law and the African
Mandates under the League of Nations (1919-1945)

George Forji Amin

DOCUMENTS AND OTHER EVIDENCE OF STATE PRACTICE

A Brief Calendar of State Practice for Shandong: 1897-1924:
Part Ten (1920): League of Nations

*Peter Macalister-Smith
Joachim Schwietzke*

REVIEW ARTICLES

Comparative International Law in Disciplinary Perspective

William E. Butler

A Critique of the Right to War

Jakob Zollmann

FROM THE LITERATURE

ISSN: 2381-0254 (Print)
ISSN: 2381-0262 (Online)

SKU: 2370002187930



2 370002 187930

TALBOT
PUBLISHING

www.lawbookexchange.com

Cover design by Peter Lo Ricco