

ARTICLE 77

TEXT OF ARTICLE 77

1. The trusteeship system shall apply to such territories in the following categories as may be placed thereunder by means of trusteeship agreements:
 - a. territories now held under mandate;
 - b. territories which may be detached from enemy states as a result of the Second World War; and
 - c. territories voluntarily placed under the system by states responsible for their administration.
2. It will be a matter for subsequent agreement as to which territories in the foregoing categories will be brought under the trusteeship system and upon what terms.

NOTE

1. During the period under review the applicability of the International Trusteeship System to the various categories of territories referred to in Article 77 again arose only in connexion with South West Africa, a mandated territory under the League of Nations which neither became independent nor was placed by the Mandatory Power, South Africa, under the Trusteeship System.

2. It will be recalled that, as explained in the *Repertory* and its *Supplements Nos. 1 and 2*,¹ the Assembly, by resolution 449 A (V) of 13 December 1950, had accepted an advisory opinion of the International Court of Justice² in which it was stated that, while the provisions of Chapter XII of the Charter did not impose on the Union of South Africa a legal obligation to place the Territory under the International Trusteeship System, they were applicable to the Territory in the sense that they provided a means by which it might be brought under the System.

3. During the period under review the General Assembly in resolution 1359 (XIV) of 17 November 1959, reiterated earlier resolutions³ to the effect that the Territory of South West Africa be placed under the International Trusteeship System. It again asserted, as it had from its fifth session when it accepted the advisory opinion of the Court, that, in the present

conditions of political and economic development of South West Africa, the normal way of modifying the international status of the Territory was to place it under the International Trusteeship System by means of a trusteeship agreement in accordance with the provisions of Chapter XII of the Charter.

4. By resolution 1360 (XIV) of 17 November 1959, the Assembly invited the Government of the Union of South Africa to enter into negotiations with the United Nations through the Committee on South West Africa, or through any other committee which the General Assembly might appoint, with a view to placing the Mandated Territory under the International Trusteeship System. It requested the Government of the Union of South Africa to formulate, for its consideration at the fifteenth session, proposals which would enable the Mandated Territory to be administered in accordance with the principles and purposes of the Mandate, the supervisory functions to be exercised by the United Nations according to the terms and intent of the Charter.

5. As the Assembly did not appoint another committee, the Committee on South West Africa at its seventh session, endeavoured to negotiate, an agreement in accordance with resolution 1360 (XIV). The South African Government, however, in effect, refused to negotiate on the terms set forth in the Assembly resolution stating that it "could not see any possibility of fruitful results flowing from negotiations which required the Union to place 'South West Africa under the International Trusteeship System'—terms of reference which prescribed the end result in advance."⁴

6. After that, the Assembly did not again attempt to enter into negotiations with the South African Government with a view to placing South West Africa under

¹ See *Repertory*, vol. IV; *Supplement No. 1*, vol. II and *Supplement No. 2*, vol. III, under Article 77.

² See *International Status of South-West Africa, Advisory Opinion*: ICJ, *Reports 1950*, pp. 143-145.

³ G A resolutions 65 (I) of 14 December 1946; 141 (II) of 1 November 1947; 227 (III) of 26 November 1948; 337 (IV) of 6 December 1949; 449 B (V) of 13 December 1950; 570 B (VI) of 19 January 1952; 749 B (VIII) of 28 November 1953; 852 (IX) of 23 November 1954; 940 (X) of 3 December 1955; 1055 (XI) of 26 February 1957; 1141 (XII) of 25 October 1957; and 1246 (XIII) of 30 October 1958.

⁴ See G A (XV), Suppl. No. 12, A/4464, p. 3.

the International Trusteeship System, nor did it repeat its earlier resolutions that the Territory be placed under the Trusteeship System. At its fifteenth session, in the preambular paragraphs of resolution 1568 (XV) of 18 December 1960, the Assembly recalled that it had repeatedly invited the Government of South Africa to propose a trusteeship agreement for South West Africa and took note with deep regret of the Government's refusal to enter into negotiations with the

Committee on South West Africa. In that and in subsequent resolutions it took a number of decisions which had, as their basic objective, the achievement of independence by South West Africa.⁵

⁵ For a full account of the action taken by the General Assembly with respect to South West Africa during the period under review, see this *Supplement* under Article 80.