The Origins of the South West Africa Dispute:
The Versailles Peace Conference
and the Creation of the Mandates System

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I

The roots of the South West Africa dispute relate back to the events that took place at the end of World War I and led to the creation of the League of Nations mandates system. More particularly, the conflict between the United Nations and South Africa cannot be understood except by tracing the manner in which South West Africa became a part of that system. The "great compromise" hammered out by President Wilson and the Dominion ministers at the Paris Peace Conference in 1919 produced a three-tiered system of mandates which reflected in a sliding scale a varied balancing of national and international interests. The result of the compromise was a divergency of interpretation that has endured to this day and in considerable measure has fostered and sustained the dispute in its present-day dimensions.

The historical roots of the mandates system undoubtedly stretch back to the concepts and principles enunciated in such earlier international arrangements as the 1885 Treaty of Berlin and the 1906 Algeciras Act. Nonetheless, it is quite clear that the mandates system came about not as a result of organic development in international relations, but rather as a direct result of the diplomatic events of World War I and the Paris Peace Conference.

From 1914 to 1916 Allied leaders, in anticipation of victory, had concluded a series of secret treaties for dividing up colonial spoils.

severed from Germany and Turkey. Dramatic events in the course of the year 1917, however, caused the Allies to lay increasing emphasis on the moral and liberal goals of their struggle. The Russian Revolution, followed by United States entry into the war, produced a climate that was antagonistic to greedy annexationist schemes such as those formulated in the secret treaties. Now, such progressive ideals as democracy, the right of self-determination of peoples, and protection for minority rights were proclaimed as the true aims of the allied cause. The Bolshevik Revolution confirmed this development and gave cause to the principle of self-determination to be extended to the peoples of Africa and Asia as well as of Europe.

This was the background to the famous Fourteen Points enunciated by President Wilson before a joint session of Congress on January 8, 1918. Point 5 called for "a free, open-minded, and absolutely impartial adjustment of all colonial claims," based on the principle "that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined." In similar vein, Lloyd George, in the course of an


5 Note that this language in Point 5 does not at all refer to mandates. On the contrary, it clearly implies that territories will be annexed, but that the various claims shall be equitably settled, taking into account the interests of the native population as well. Smuts in his initial work on the League of
address before the Trade Unions Congress on January 5, 1918, had acknowledged that peoples under Turkish control were entitled to a “recognition of their separate national condition,” and that the German colonies should be placed “at the disposal of a conference whose decisions must have primary regard to the wishes and interests of the native inhabitants of such colonies,” the principle of self-determination being as “applicable in their cases as in those of occupied European territories.”

By early 1918, then, the Allied leaders were basically committed in their peace programme to the right of self-determination of peoples. At the same time, they also envisioned creation of a permanent world organization to preserve peace. They did not, however, at this point relate a solution for the enemy colonies to any such projected international institution. At this stage, the measure of international involvement was to be limited to the deliberations of the Peace Conference which would seek to apply the basic principle of self-determination. No permanent scheme relating to colonies was yet devised. In short, although the principle of self-determination was already enunciated, the effective means for instituting and confirming this right through the provision of international accountability was not yet conceived of.

II

During the course of the year 1918, the original commitment to the principle of self-determination in the disposition of enemy colonies matured gradually into a full scale conception of a League of Nations mandates system. A consensus gradually developed to the effect that the enemy colonies issue could best be resolved by some permanent tie-in with the projected world organization. A review of certain key elements, which progressively contributed to this development, provide the necessary background for an appreciation of the events at Paris.

The first (and perhaps most significant) contribution was that

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Nations also interpreted Point 5 in this manner. See infra. The Commentary to the Fourteen Points, however, did interpret this passage to refer to mandates; see infra.

6 On the background to Lloyd George's address, see Baker op. cit. supra note 2, Vol. I, at 40; Mayer, op. cit. supra note 3, at 322-28; Tillman, op cit. supra note 4, at 26-28.

7 For text see Scott, op. cit. supra note 4, at 225-33.
of G. L. Beer, a former Columbia University professor, who was a specialist on colonial affairs. At the time of his writing, January 1918, Beer was a member of the Inquiry, that official body of United States experts selected in late 1917 by Colonel House, President Wilson’s advisor, to collect data and offer considered opinions on various questions that could be expected to arise at the Peace Conference.

Beer recommended that the “administration of the derelict territories and peoples freed from German and Turkish rule must in general be entrusted to different states acting as mandatories of the League of Nations.” This could best “be reached by an arrangement like that of the Six Powers Group in China and that of the Algeciras Act of 1906.” Prime attention was to be given to the welfare of native populations; the open door was to be ensured; and provision was to be made for arbitration relating to the mandates’ international obligations.

Beer’s outline is the first clear prototype of the mandates system and in fact bears remarkable resemblance to the scheme ultimately adopted. However, it is not fully clear to what extent Beer’s work was directly instrumental in guiding President Wilson’s thoughts along the path of trusteeship. Nonetheless, before the war was over the President was definitely convinced that some such concept of mandates should be instituted for former enemy territories.

In October 1918, he told Sir William Wiseman, Ambassador of the United Kingdom to the United States, that while he had little faith in international administration for the German colonies and was absolutely opposed to their restoration to Germany, he favoured administration by single states “in trust.” “In trust for whom?” Wiseman asked. “Well for the League of Nations, for instance,” Wilson replied.

The principle of international accountability was more formally


10 Beer, op. cit. supra note 8, at 424-25, 431. Beer, however, recommended that South West Africa and New Guinea be annexed by South Africa and Australia respectively: ibid., 453-58.

11 Cited in Tillman, op. cit. supra note 4, at 87.
expressed in the Official United States Commentary to the Fourteen Points adopted in October 1918. On Point V, the Commentary declared:

It would seem as if the principle involved in this proposition is that a colonial power acts not as owner of its colonies but as trustee for the natives and for the interests of the society of nations, that the terms on which the colonial administration is conducted are a matter of international concern and may legitimately be the subject of international inquiry and that the peace conference may, therefore, write a code of colonial conduct binding upon all colonial powers.12

On November 11, 1918, the war ended, and three weeks later President Wilson set sail for Europe. In the course of a meeting with members of the Inquiry aboard ship, the President stated that "the German colonies should be declared the common property of the League of Nations and administered by small nations." "Nothing," he said, "stabilizes an institution as well as the possession of property."13

In the meantime, the British government was also moving towards acceptance of the mandates idea. In October 1918, Colonel House had met with Lloyd George and had gained British acceptance of the trusteeship principle for all enemy territories, with the exception of South West Africa and the Asiatic islands. These, the British Prime Minister indicated, would have to go to South Africa and Australia respectively, lest he "be confronted by a revolution in those dominions." At this meeting Lloyd George also expressed the hope that the United States would see fit to become trustee for German East African colonies.14

12 President Wilson confirmed his acceptance of the Commentary as "a satisfactory interpretation of the principles involved" on October 30, 1918: ibid., 153.

The reference in the concluding sentence to "a code binding on all colonial powers" relates only to former enemy colonies; it has no relationship to general colonial policy. See the opening paragraph of the Commentary on this Point.

13 Notes taken by Dr. Isaiah Bowman, December 10, 1918. Dr. Bowman's memorandum may be found in James T. Shotwell, At the Paris Peace Conference, 73-78 (1925); Seymour, Intimate Papers, Vol. 4, at 298-303 (1928); David Hunter Miller, The Drafting of the Covenant, Vol. I, at 41^44 (1928).

14 House to Wilson, October 30, 1918, Department of State, Papers Relating to the Foreign Relations of the United States, 1919, The Paris Peace Conference, Vol. 1, at 407 (1942-1947); hereinafter referred to as Foreign Relations. For a review of the attempts to have the United States assume a mandate under the League Covenant, see Wm. Roger Louis, "The United
In early November 1918, a British Foreign Office memorandum on the League dealt with the mandates issue in the following terms:

The treaty should give precision to the idea of the responsibility of the civilized states to the more backward peoples. Trusts, or to speak more precisely, charters, should be drawn up for the various territories for whose future government the signatory Powers have to issue a mandate, and particular areas handed over to individual States who would be responsible to the League for the discharge of that mandate. Arrangements of this kind will require to be made for tropical Africa, for the Pacific Islands and for Western Asia.\(^{15}\)

On November 28, the subject of mandates was fully discussed at a meeting of the Imperial War Cabinet.\(^{16}\) Lloyd George records that two basic facts emerged from this meeting. Firstly, the Dominions were not prepared to give up any of the colonies conquered by them and contiguous to their own territories. Secondly, Great Britain herself was not desirous of annexing any territory and was fully prepared to accept the former German colonies in the form of mandates.

At a subsequent Cabinet meeting (undated), the distinction between the occupation of a territory in a "possessor" and in a "mandatory" capacity was outlined. The definition adopted is of major significance for the scope of power it concedes to the League and for the dedication to the principle of self-determination that it embodies.

"Mandatory occupation," it was agreed, would involve "administration by a single power on certain general lines laid down by the League of Nations." These lines would include guarantees for an open door policy, and prohibitions against militarization and fortification.

There would be a right of appeal from the mandatory power to the League of Nations on the part of anyone who considered himself ill-

\(^{15}\) Quoted in Alfred Zimmern, *The League of Nations and the Rule of Law, 1918-1935*, at 202-03 (1936). For the full text of the memorandum, see *ibid.*, 190-208. This memorandum is particularly important since it was to be the starting point for the Smuts draft. It is to be noted, however, that the memorandum does not envisage a regime for South West Africa and the Pacific Islands different from that of the other colonies: *see ibid.*, 209. See also H. Duncan Hall, *Mandates, Dependencies & Trusteeship* 110, n.13 (1940).

treated or claimed that the conditions laid down by the League of Nations were not being fulfilled. Subject to such appeal, which might involve the League of Nations withdrawing the mandate in the case of deliberate and persistent violation of its conditions, the mandate would be continuous until such time as the inhabitants of the country themselves were fit for self-government.  

The mandates doctrine was unanimously accepted by the Cabinet in respect of all enemy territories except South West Africa and the Pacific Islands.  

On December 16, 1918, General Jan Smuts published a small pamphlet entitled, "The League of Nations: A Practical Suggestion," which was destined to have a profound influence on the formulation of the mandates system. Almost a third of Smuts' tract was devoted to the subject of mandates. The key point was that the collapse of the old Empires should not be made the occasion for "national annexation" of derelict territories. "Europe," he declared, "is being liquidated, and the League of Nations must be the heir to this great estate." The League of Nations must be made the reversionary, in the broadest sense, of the peoples and territories formerly belonging to Russia, Austria-Hungary and Turkey; the League must be clothed with the right of ultimate disposal in accordance with certain fundamental principles. "These principles," he went on to say, "have been summed up in the formula of 'No annexations and the self-determination of nations.'" Since the peoples involved differed in their preparedness for self-government, a scheme of graded mandates was called for. The terms of each mandate would be spelled out in a special charter which would not only reserve ultimate control to the League, but would call for

17 Ibid., 118.
18 Ibid., 123. Smuts appears to have opposed application of the mandates system to any part of Africa, and not just to South West Africa. This would coincide with the viewpoint expressed in his League of Nations pamphlet that Africa was not suited to the institution of mandates. See infra.
20 This reference to the peoples and territories of Russia, Austria-Hungary and Turkey, coupled with exclusion from the plan of the peoples of Africa and the Pacific Islands (as noted below) has been interpreted in some quarters to mean that Smuts' plan, far from being a "plan for the betterment of backward peoples" was rather "something not far removed from a twentieth-century Holy Alliance." Zimmerm, op. cit. supra note 13, at 212. D. H. Miller likewise considers Smuts' ideas on mandates to have been quite opposite to those of President Wilson: "The Origin of the Mandates System," 6 For. Affairs 281 (1928).
21 Smuts, op. cit. supra note 19, at 10.
periodic reports, and even allow for appeal against gross breach of
the mandate by the people of the mandated territory. Provision
would be made for observance of the open door and guarantees
against militarization.

Smuts, however, expressly excluded Africa and the Pacific Islands
from the mandates principle by declaring:

The German colonies in the Pacific and Africa are inhabited by
barbarians who not only cannot possibly govern themselves but to
whom it would be impracticable to apply any idea of political self-
determination in the European sense. . . . The disposal of these colonies
should be decided on the basis of the principles which President Wilson
has laid down in the fifth of his celebrated fourteen points.22

Toward the end of December 1918, President Wilson arrived in
London and met with Lloyd George.23 The British Prime Minister
presented Wilson with a copy of the Smuts pamphlet and raised the
topic of mandates for discussion.24 There was basic agreement on
the principle to be applied. But when Lloyd George presented the
case for South African annexation of South West Africa and Aus-
tralian annexation of the Pacific Islands, the President objected.
His objection regarding South West Africa was not serious; he was
prepared to recognize some merit, based upon contiguity of terri-
tory, in that case. But he was not prepared to accept annexation
of the Pacific islands by Australia on grounds of security. If Aus-
tralian claims were to be conceded, then "a case on similar grounds
might be made for every other captured territory." Furthermore,
reports Lloyd George.

In answer to the argument that we had definitely promised to Japan
the islands in the Northern Pacific, and that it would be impossible to
deny to Australia and New Zealand what was given to Japan, the
President had shown that he was by no means prepared to accept the
Japanese treaty and was doubtful whether Japan could be admitted
there even in the capacity of a mandatory Power.25

Mr. Bonar Law, who was present at that part of the discussion,
said that President Wilson had remarked in that connection that
"he regarded it as his function to act as a buffer to prevent dis-

22 Ibd., 12. Wilson's fifth point as noted above made no reference to man-
dates, and in the words of Hall, "definitely-implied annexation": op. cit.
supra note 15, at 112. This interpretation of Point V, differs of course from
the one presented in the Commentary. See supra.
23 David Lloyd George, op. cit. supra note 16, at 134.
24 Ibid., 190.
25 Ibid., 191.
agreeable things, such as the Japanese retention of the islands, being carried out.” \(^{26}\) The matter was not resolved and Lloyd George indicated to the President that the question would have to be fought out at the Conference, where the Dominions would be able to present their own case.

When Lloyd George reported on his meeting with the President to the Imperial Cabinet, Dominion representatives, and particularly Prime Minister Hughes of Australia, were bitterly critical of the

\(^{26}\) *Ibid.* This strong opposition to Japanese control of the islands north of the equator demonstrates that Wilson, for all his idealism, was not unmindful of American security interests. Further evidence that this consideration engaged his thoughts during the negotiations on the mandate compromise is revealed by the following events:

On January 30, after the Class C agreement had been completed, Wilson remarked to David Hunter Miller that “he did not trust the Japanese; that he had trusted them before—in fact they had broken their agreement about Siberia.” David Hunter Miller, *My Diary at the Conference of Paris*, Vol. 1, at 100 (1924). Referring to the islands to be mandated to Japan, the President “said that these islands lie athwart the path from Hawaii to the Philippines and that they were nearer to Hawaii than the Pacific coast was and they could be fortified and made naval bases by Japan, that indeed they were of little use for anything else and that we had no naval base except at Guam”; *ibid.* See also Miller, *The Drafting of the Covenant*, Vol. 1, at 114. Earlier, when the Smuts compromise resolution on Class C mandates was presented to him, Wilson had penned the following comment: “I could agree to this if the interpretation were in practice to come from General Smuts. My difficulty is with the demands of men like Hughes and the certain difficulties with Japan. The latter is in large, A line of islands in her possession would be very dangerous to the United States”*: cited in Arthur Walworth, *Woodrow Wilson*, Vol. 2, at 250 (1938). American officials, it is clear, had repeatedly stressed the potential danger posed to U.S. interests by Japanese retention of the islands: see Russell H. Fife, *Woodrow Wilson & the Far East: The Diplomacy of the Shantung Question* 120-39 (1952); see also Tillman, op. cit. supra note 4, at 95-100.

Appreciation of this set of circumstances permits speculation as to whether President Wilson would have actually fought as tenaciously as he did to universalize the mandates system had these security considerations not been present. Wilson would apparently have preferred to bar the Japanese completely from the islands; as a minimum he was prepared to accept a system of international control which would prohibit militarization and fortification. If this sort of regime was to be applied to the islands north of the equator, it had to be equally applied both to the islands south of the equator and to South West Africa, since the various territories were basically bracketed together. As a result, no exceptions could be allowed for annexation, even in the case of South West Africa, where Wilson was at first prepared to recognize the contiguity argument, as noted in the text.

It might be noted, incidentally, that such a strategy regarding the regarding the Japanese had been advocated by Beer early in 1918. He had suggested that the smaller South Pacific islands be mandated to Australia and New Zealand, not because this was really necessary, but in order to bind Japan with mandatory commitments with regard to the islands north
President's objections to their plans for annexation. They called upon Lloyd George to "resolutely insist upon such terms of peace as were necessary for the safety of the Empire, through whose sacrifices and efforts victory had been won." Other members of the Cabinet, however, reminded their companions of the over-riding importance of reaching an understanding with the United States.

This dichotomy of interests, as reflected in the Cabinet debates, explains much of the subsequent British conduct towards the mandates issue at the Paris Peace Conference. On the one hand, the British were desirous of co-operating with the United States to the fullest extent possible consistent with their own national interests. Moreover, Great Britain, independently of the United States, had attained a keen appreciation of the responsibilities of mandatory powers, as reflected in the Cabinet discussions and Foreign Ministry memoranda. They were, therefore, fully prepared to accept the mandates system for the territories that had come under their own control. On the other hand, Great Britain, the head of a vast British Empire, found itself committed to supporting Dominion claims for annexation, based upon grounds of security and contiguity of territory. Lloyd George resolved that the matter could best be settled by having the Dominion representatives themselves present the issue directly to the President at a session of the Conference.

of the equator. Japan could only be thus bound if the principle were generalized. See Beer, op. cit. supra note 8, at 453-58; Paul Birdsall, Versailles Twenty Years After 75 (1941). New Guinea and South West Africa as noted earlier would, according to Beer, best be annexed by Australia and South Africa respectively.

Hughes scorned the attempt of the President "to dictate...how the world was to be governed." America, he declared, had entered the war late and had suffered very little, "If the saving of civilization had depended on the United States, it would have been in tears and chains today." Above all, he thought the President was talking of a problem which he did not really understand. See ibid., 194-97.

See particularly the remarks of Lord Reading, ibid., 198, and Lord Robert Cecil, ibid., 200-01.

Ernst B. Haas, in an article entitled, "The Reconciliation of Conflicting Colonial Policy Aims: Acceptance of the League of Nations Mandate System," 6 Int'l Organ. 521 (1952), has argued that the mandates system and particularly the Class C mandates, were conceived partly as a compromise formula to reconcile the clash between Empire elements seeking annexation and those objecting to any further expansion of British territory. Judge Jessup in his dissenting opinion in South West Africa, Second Phase. Judgment, [1966] I.C.J. Rep., 388-99 (hereinafter cited as SWA 1966 Judgment) quotes Haas approvingly and refers to the final "compromise" of
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After his meeting with Lloyd George in London, Wilson returned to Paris and proceeded to draw up a draft Covenant, incorporating therein much of the thought and language of General Smuts. His reliance on Smuts’ draft was particularly evident in regard to the mandates section, which was appended as a supplementary agreement to the body of the draft Covenant. The President’s plan, however, extended the mandates system, with a clear pledge to the principle of self-determination, to all German colonies—including those in Africa and the Pacific—something which Smuts had specifically excluded. Whereas Smuts had envisaged a mandates system purely as a means of resolving the nationality problem of Eastern Europe and the Near East, the President regarded it as a concept of universal applicability and one that could resolve the colonial problem of Africa and the Pacific as well. This official American draft of the Covenant was circulated to the Allied governments on January 10, 1919.

On January 25, 1919, David Hunter Miller, the United States legal adviser in Paris, received a British “Draft Convention regarding Mandates” from Lord Cecil, which went into considerable detail regarding the proposed mandates system. Amongst other things, it

January 30, 1919, as “a domestic matter concerning the internal arrangements of the British Empire.” It is respectfully submitted that the foregoing material demonstrates quite clearly that opposition to extending British colonial territory was not at all related to the question of Dominion annexation of the colonies adjoining their own territories. Domestic opposition may have induced acceptance of the mandates principle for Britain itself. The Dominion drive for annexation was not in issue and was in fact fully supported by the British government both before and during the Conference. The Class C mandates came about not because of internal opposition to the expansion of the British Empire, but solely to accommodate President Wilson’s demands for universal application of the mandates principle. See infra.

The President had been deeply impressed by the Smuts plan which he considered “thoroughly statesmanlike in character...He was struck by the extraordinary resemblance of General Smuts’ views on such subjects as the League of Nations to the American views.” Letter from General T. H. Bliss to Newton D. Baker, January 4, 1919, quoted in George Curry, “Woodrow Wilson, Jan Smuts, and the Versailles Settlement,” 66 Am. Hist. Rev. 968, 976 (1961).


See Quincy Wright, op. cit. supra note 1, at 32.

For the text of this first Paris Draft (which was actually Wilson’s second draft), see David Hunter Miller, The Drafting of the Covenant, Vol. 2, Doc. 7, at 65; and Baker, op. cit. supra note 2, Vol. 3, Doc. 12, at 100.

For the text, see Miller, The Drafting of the Covenant, Vol. 1, at 106-07.
referred to two categories of mandates — "assisted states" for those mandates close to independence, and "vested territories" for those areas requiring direct administration by the mandatory power. The state placed in charge of a "vested territory" would be "invested with all powers and rights of a sovereign government"; such state would hold the territory "upon trust to afford to the . . . inhabitants peace, order and good government." 35 It also provided for annual reports by the mandatory power and included a provision for the creation of a Commission to assist the League in its supervisory role and to receive the annual reports.36

In effect, then, there was basic agreement between the United States and Great Britain on the mandates principle. During the course of 1918, both nations had advanced from a simple commitment to the ideal of self-determination to a recognition that this ideal could best be implemented through the creation of a mandates system integrally linked with the League of Nations. The general features of the system were also agreed upon.37 The main outstanding difference centred on the extent of the mandates system, and particularly the question of exceptions to allow for annexation in certain cases. This issue was to be the chief source of controversy on the topic of mandates at the Paris Peace Conference.

35 Ibid. It is to be noted that the provisions on "vested territories" contained no reference to independence.

36 Ernst B. Haas, op. cit. supra note 29, at 535, maintains that inclusion of the Permanent Mandates Commission clause in Article 22 of the Covenant came about as a result of "the insistent demand of the American delegation." It was instituted solely at the behest of President Wilson. He cites no evidence. Haas apparently overlooked Miller's comment on the subject. "The provision for a Mandates Commission . . . seems to have its origin in Clause 7 of the British Draft Convention": David Hunter Miller, Drafting of the Covenant, Vol. 2, at 111-12. Judge Jessup, in his dissenting opinion in SWA 1966 Judgment, 399, in the course of rejecting South Africa's argument that the compromise worked out on January 30, 1919, was the sum total of obligation to which South Africa had been prepared to subscribe, points out that that compromise had not contained the provision for the Permanent Mandates Commission, which was only added at a later date. It is evident, however, that South Africa and the remaining Dominions were familiar with this provision, since it was part of Cecil's draft, completed on January 24. The provision in fact was re-inserted into the mandates article by General Smuts himself, when he presented the final version of that article to the Commission on the League of Nations on February 8, 1919. See Miller, Drafting of the Covenant, Vol. I, at 185; Vol. II, Doc. 19, at 272-75.

37 The similarity between British and American views was, of course, not due to mere coincidence, but rather to their common derivation from the Smuts plan.
III

The Peace Conference opened in Paris on January 18, 1919. Disposition of colonial territories was the first major issue dealt with by the Conference.38

Lloyd George opened the discussion on Friday, January 24, amid early and general concurrence on not returning the colonies to Germany.39 Great Britain, he declared, was prepared to accept the mandates system for those territories that had come under British control. The mandates system, with its concern for native interest and equality of commercial access was, in essence, already a part of the British colonial system. But the territories conquered by the Dominions, he felt, should be treated differently. South West Africa was a wilderness and could only be developed as an integral part of South Africa upon which it bordered. New Guinea and Samoa likewise could best be administered if they became part of Australia and New Zealand respectively. In these cases, therefore, annexation was advisable.

Each of the Dominion Ministers then stated his case. Hughes argued that control of New Guinea was vital to Australian security. Pointing to a map, he demonstrated that the Pacific islands encompassed Australia like a fortress, and in unfriendly hands constituted a direct menace. Massey of New Zealand likewise emphasized the strategic importance of Samoa for his country; he did not believe the world had seen the last of war. Smuts claimed South West Africa on grounds of contiguity to the Union and the undesirability of a separate administrative system. Borden of Canada endorsed the arguments of his fellow Ministers, pointing out, at the same time, that Canada itself sought no territory. Neither the French, Italians nor Japanese, all of whom were basically opposed to the

38 Wilson actually favoured giving precedence to European territorial questions since these, he felt, were more demanding. Lloyd George, however, pushed for prior consideration of the colonial question. The matter was resolved by allotting ten days for the submission of all territorial claims. Since the Dominion claims were ready the next day, these were taken up first. Baker, in accordance with his conspiratorial interpretation of events at Paris, maintains that this manoeuvre by Lloyd George was deliberately designed to obtain "a division of the spoils before discussion of the League or of the mandatory system could even be begun": see op. cit. supra note 2, Vol. 1 at 251.

mandates system, intervened in the debate. Only the Japanese had a really vital stake in the issue, "and they were content to let the British Empire present the case for annexation." 40

At the second meeting on this issue, on Monday, January 27, President Wilson outlined his concept of the mandatory system. 41 The basis of the idea, he said, was world-wide opposition to further annexation. Since it was agreed that the colonies should not be returned to Germany, mandatories acting on behalf of the League would have to take care of the inhabitants of these territories. This guardianship would operate not only to protect the welfare of the people, but also to promote their political development until such time as they were qualified "to express a wish and to their ultimate relations — perhaps [even] leading] them to desire their union with the mandatory power." In case administration of the mandate became a financial burden "it was clearly proper that the League of Nations should bear a proportion of the expense. 42 The fundamental idea would be that the world was acting as a trustee through a mandatory, and would be in charge of the whole administration until the day when the true wishes of the inhabitants could be ascertained. It was up to the Union of South Africa to make it so attractive that South West Africa would come into the Union of their own free will."

Turning to Australia's security arguments, Wilson charged that they were "based on a fundamental lack of faith in the League of Nations." Any nation attempting to take the mandated territory from the mandatory power would be an "outlaw," subject to the concerted action of the League members who "would be pledged, with the United States in the lead, to take up arms for the mandatory." 43 Australia, because of its contiguity to New Guinea, might very well be appointed mandatory there. But, "if the process of annexation went on, the League of Nations would be discredited from the beginning." Above all, the Peace Conference should not appear as a meeting "to divide up the spoils."

The Dominion Ministers, however, remained firm in their cam-

40 Tillman, op. cit. supra note 4, at 91.
42 On this point, see Wilson's Third Draft, January 20, 1919, in Miller, Drafting of the Covenant, Vol. II, Doc. 9, at 104.
43 On a possible inconsistency in Wilson's views on security, see supra.
paigned to obtain the territories outright, without mandatory obligations. Lloyd George pointed out that the President's suggestion for League assumption of ultimate financial responsibility for the mandates, with the possibility of assessments upon members, invited a host of practical difficulties which required careful consideration. At this point the meeting adjourned.\textsuperscript{44}

The third meeting on Tuesday, January 28, opened with Lloyd George reiterating British acceptance of the mandate principle.\textsuperscript{45} It was, he said, not very different from the principles laid down by the Berlin Conference which had also covered such subjects as the open door and the prohibition on arms and liquor traffic. The only new feature was the provision of external machinery for enforcement. With regard to the Dominion requests, Lloyd George again asked the President to consider them as a special case.

Massey of New Zealand followed through with a dramatic presentation of the case for annexing Samoa. He compared the island in strategic terms to the American West, and inquired whether President Washington, after independence, would have accepted a mandatory system for those western lands.\textsuperscript{46}

Wilson, in reply, ignored the historical analogy, but discounted the strategic value of Samoa by noting that United States control of one of the islands of the Samoan group made it impossible for any Power “to play the part played by Germany without attracting the attention of the United States.”\textsuperscript{47}

\textsuperscript{44} That evening, January 27, Arthur Balfour, British Foreign Minister, presented a memorandum to Lloyd George that seriously questioned the feasibility of the President's proposal regarding finances. The necessity for checking on both expenditures and budget of a mandate, plus the requirement of assessing members, would make for “an almost unworkable fiscal system.” He was also critical of that aspect of the President's plan which would empower the League to dispossess a mandatory power upon application of the inhabitants of the mandated territory. Absence of fixity of tenure would seriously weaken the whole system and could well "supply a perpetual incentive to agitation and intrigue." Finally, independent powers of inspection by the League—which Balfour acknowledged was an essential element in any effective mandate system—raised the constant peril of collision between the League and the mandatory power. Lloyd George, \textit{The Truth About the Peace Treaties}, Vol. 1 at 554-57.


\textsuperscript{46} \textit{Ibid.}, 751-53.

\textsuperscript{47} \textit{Ibid.}, 753-54. Was this a veiled hint that any Japanese threat to New Zealand would automatically involve the United States, and that reliance on American involvement would offer New Zealand far more security than mere procurement of a small Pacific island?
In the fourth meeting that afternoon, M. Simon, the French Minister for Colonies, in a lengthy memorandum, presented his country's case for annexation. It was obvious that Wilson was becoming more and more isolated in his insistence upon universal application of the mandates principle. Matters became very strained as the President observed that the discussions, so far, had been "a negation in detail — one case at a time — of the whole principle of mandatories." "It looked," he said, "as if their roads diverged." There was serious danger that the Conference might reach an impasse before it had hardly begun. At this point, Mr. Balfour, in an attempt to iron things out, sought to explain to the President some of the difficulties which troubled the delegates. One issue was the problem of League financing of mandated territories. Another was the question of permanency of tenure for the mandatory power. Wilson thereupon acknowledged that practical aspects of the system had yet to be worked out, but that unless the "quality of trusteeship was imparted to the League it would be reduced to a 'laughing stock'. The world would say that the Great Powers first portioned out the helpless parts of the world, and then formed a League of Nations." He bade the delegates to agree on the principle and to leave resolution of specific problems to the practical determination of the League.

This passionate plea by the President induced Orlando and Clemenceau to express reserved acceptance of the mandates principle on behalf of their respective countries. Both statesmen, however, acknowledged the merits of the Dominion claims and would allow annexation in those cases. At this point, Clemenceau, in seeking to clarify the role of the League in the mandates system, inquired whether the League's authority over a mandatory power would not really constitute an exercise of legislative-executive power. Lloyd George undertook to define the true nature of the League's authority. Clemenceau's interpretation, he said, was unwarranted. The system merely amounted to "general trusteeship upon defined conditions." Only if conditions were scandalously abused would the League call for an explanation and insist on a remedy of the abuse. Hitherto diplomatic correspondence between the Powers had fulfilled this function. Now it would be the task of

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49 Ibid., 765-67.
50 Ibid., 768-69.
the League to ensure compliance. President Wilson assented to this definition; and the form of the mandates system began to take shape.

Thereupon Lloyd George went a step further and, addressing himself to the President, asked that the selection of mandatories not be delayed. The Council of Ten was practically the League of Nations and acceptance of the principle of trusteeship would resolve the matter now. As the end of the meeting approached, it appeared that a consensus on the mandates principle was being reached. Even Hughes and Massey seemed to be going along on the issue. But Lloyd George's request for immediate designation of the mandatories changed the whole atmosphere, and the previously developing consensus was shattered. President Wilson, as desirous as he was of gaining general acceptance of the mandates principle, was not prepared to settle and finalize the matter there and then; he rejected Lloyd George's request by stating that his difficulty lay in preventing the assignment of mandatories "from appearing to the world as a mere distribution of spoils." Lloyd George's drive to gain immediate confirmation of the mandatories went far beyond the "acceptance in principle" which the President had sought to achieve; in fact, it might have negated that very principle. The mandate territories would be delivered into the hands of the mandatory powers, free of any international obligations or controls. As one writer comments, "it amounted to the thinnest disguise of annexation. There was as yet no constitution for [Wilson's] League of Nations, much less any formal code of mandatory responsibilities."

By the time the League would come into operation it would be confronted with entrenched powers ruling the new territories as fully annexed provinces of their own countries. The President was not prepared to acquiesce in any such arrangement merely on the basis of a vague pledge to the mandates cause. In fact, Wilson was so displeased and agitated over the course of the discussions, that he considered breaking up the negotiations on the colonial question and bringing the whole issue to the attention of the public. Clearly,

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51 Ibid., 769-70.
52 Ibid., 769.
53 Ibid., 770.
54 Ibid., 771.
55 Birdsell, op. cit. supra note 26, at 64.
56 Phone conversation with Colonel House, January 28, 1919: see Seymour, Intimate Papers of Colonel House, Vol. 4, at 297.
he was going to stand firm on the issue. Lloyd George, for one, recognized this only too clearly. His stratagem had failed badly. Apparently he had only been able to persuade the Dominion Ministers to join him in support of the mandates proposal at this session, in the belief that immediate endorsement of the principle would help resolve the whole matter; Wilson would get his mandates system, and the Dominions would still be free to assume full control in their respective territories. But Wilson had foiled the scheme and matters were back where they started.

The next morning, Wednesday, January 29, the Imperial War Cabinet met and “all hell broke loose.”

Hughes, recognizing now that Wilson was unprepared to acquiesce in any vague arrangement which could amount to an immediate grant of title, free of obligation, reverted to his original demand for outright annexation for New Guinea. No matter what mandatory standards were adopted for other areas, he was determined that Australia should receive its Pacific possessions unencumbered by international controls. He was particularly opposed to any open-door regime which might tend to affect Australia’s restrictive immigration policies. And he now wanted Lloyd George to do battle with the President in Australia’s cause. At this, “Lloyd George lost his temper and told Hughes that he had fought Australia’s battles for three days but that he would not quarrel with the United States for [the] Solomon Islands.”

Lloyd George warned his fellow cabinet members of the danger of a deadlock, with the possibility that President Wilson might leave the country before an agreement could be reached, and called upon them to endorse a draft resolution which had been worked out in the interval by General Smuts.

Birdsell, op. cit. supra note 26, at 80; Tillman, op. cit. supra note 2, at 93; Ernest Scott, Australia During the War, in XI The Official History of Australia in the War of 1914-1918, at 781-84 (1936).


General Smuts, after formulating the draft resolution, had consulted with Colonel House who approved of the document as “a fair compromise”: Seymour, Intimate Papers of Colonel House, Vol. IV, at 298. Parenthetically, it is noteworthy that Colonel House intimated in conversation with Lord Cecil (with Wiseman and Miller also present) that, if the Dominions would be willing to accept the colonies as mandates for the meanwhile, they would probably be able to annex them in a short time. In the light of subsequent developments this trend of thought is rather significant, more particularly since the idea is attributed to President Wilson. The accuracy of this House-
The draft resolution was heavily predicated on the earlier British Draft Convention, which in turn had been developed from the original Smuts plan. But in contrast to that plan, no explicit reference was made to the principle of self-determination, nor was the League classified as the ultimate reversionary. The purpose of the Mandates was couched in broad general terms. As a compromise proposal it was designed, on the one hand, to meet the President's demands by defining specific international obligations to be assumed by the mandatory power. On the other hand, it would not impose a uniform set of standards upon all mandates indiscriminately. The degree of obligation would vary in accordance with the type of mandate. Three categories of mandates were designated, depending upon the stage of development attained. The first, covering the

Cecil conversation is confirmed from various sources. In a Wiseman Memo- randum dated January 27, 1919, it is reported as follows: "House argues that the League of Nations must reserve the right to cancel the mandate in cases of gross mismanagement, but says the President would agree that the peoples concerned should be able at any time to vote themselves part of Aus- tralia and South Africa, thereby cancelling the mandate": Seymour, Inti- mate Papers of Colonel House, Vol. IV, at 294. In the House diary the concluding thought is expressed in the following manner: "I convinced him that it was best for Great Britain as a whole to take what we had proposed rather than what the Dominions proposed. The result I thought would be presumably the same and in the end the Mandatory Power would in a short time persuade the colony to annex itself": ibid., 296. Similarly, in David Hunter Miller's diary the entry for January 27, 1919, reads: "Colonel House said . . . that the President's plan was that the Colonies should not go back to Germany but that they should be held by Australia, New Zea- land, South Africa, Great Britain, France, etc., with a provision permitting them to be annexed when the inhabitants so wished. He thought this would result in annexation in a few years of good management." In a footnote, Miller comments: "This reads like a very free translation of the President's ideas": David Hunter Miller, My Diary at the Conference of Paris, Vol. I, at 94, 341. Later in London, during the Milner Commission discussion on the Mandate Agreements, a draft C Mandate agreement was submitted on July 9 (origin not clear), which would have permitted the natives of a mandated territory to express a desire to be united to the mandatory Power and would have permitted incorporation of the Mandate into the territory of the mandatory Power. As a result of French opposition the proposal was not adopted: see Conference de la Paix 1919-1920, Recueil des Actes de la Conference, Partie 4B(1), at 354-56 (1934). The idea for such a proposal arose, no doubt, out of the discussions that had taken place at this stage of the Paris negotiations.

The Smuts resolution, with minor modifications, was ultimately adopted as Article 22 of the Covenant: see Appendix. The text of the Smuts resolution may be found in Miller, The Drafting of the Covenant, Vol. I, at 109-10; Foreign Relations, 1919, The Paris Peace Conference, Vol. 3 at 795-96; Lloyd George, The Truth About the Peace Treaties, Vol. 1, at 539-41.
territories severed from the Turkish Empire, were deemed to have reached a stage of provisional independence, so that the rule of the mandatory power would be limited to "the rendering of administrative advice and assistance" until such time as the mandate would be able to stand alone. The second category, made up of former German colonies in Central Africa, would require the mandatory to be responsible for administration, subject to conditions guaranteeing preservation of the open door as well as prohibition of the slave trade, traffic in arms and liquor, militarization and fortification. The third group, consisting of such territories as Southwest Africa and the islands of the South Pacific were, "owing to the sparseness of their population, or their small size, or their remoteness from the centers of civilization" to be "administered under the laws of the mandatory state as integral portions thereof subject to the safeguards above mentioned in the interests of the indigenous population." 

Despite the fact that the gradations within the mandates system were attributed primarily to the different stages of development attained by the respective territories, it is obvious that they reflected, more significantly, different degrees of national interest in annexing the territories concerned. Thus, an inverse relationship existed between national interest in annexation and the measure of international involvement to be introduced. In the case of the Class C mandates, the Dominions' interest in annexation would result in a minimal measure of obligation to the international community of states and maximal concession to national authority. The principle of international accountability, however, was to be retained throughout.

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60 Clause 6.
61 Clause 8. The principal obligation omitted from the Class C group was the open door requirement. Most writers credit General Smuts with exclusive authorship of this compromise resolution. However Ernest Scott, op. cit. supra note 57, at 781, claims that an Australian officer, Lieut-Commander Latham, in fact originated the concept of a Class C group of mandates. Latham, Scott says, pointed out that the term "open door" was undefined and could mean "whatever the conference said it meant. For example, in the case of the territories that were so important to South Africa and Australia, it could be given a connotation which, so far as their interest was concerned was equivalent to ownership." Latham drafted a paragraph showing what he meant. Colonel Hankey submitted it to Lloyd George and General Smuts. The latter then showed it to Colonel House who found it a satisfactory compromise. Only then did Lloyd George present it to the Cabinet for endorsement: ibid. See also Seymour, Intimate Papers of Colonel House, Vol. 4, at 298; Birdsall, op. cit. supra note 26, at 66-68.
Lloyd George told the Dominion Ministers that "if they persisted in asking for more than this compromise, they must go on without the help of the British government with all that this implied." 62 The Australian Prime Minister was still deeply dissatisfied; he felt that Australia's security was imperiled. Lloyd George devoted considerable efforts to convincing him that a Class C mandate for New Guinea was tantamount to Australian ownership of the island, subject only to certain conditions on behalf of the natives.63 Finally, Mr. Hughes asked: "Is this the equivalent of a 999 years' lease as compared with a freckle?" Assured that it was, Hughes notified Lloyd George in writing of his acceptance of the draft, and the British Prime Minister prepared to present it to the Conference the next morning, Thursday, January 30.64

At this fifth meeting, Lloyd George introduced the Smuts resolution by noting that although it did not represent the "real views" of the Dominions, "they had agreed to this compromise rather than face the catastrophe of a break-up." 65

In reply, President Wilson indicated that he considered it a very gratifying paper. He was prepared to accept it "as a precursor of agreement, [but] it did not constitute a rock foundation, as the League of Nations had not yet been fixed, on which this superstructure should rest. What would [a mandate] involve? No one could ... answer ... In every instance the mandate should fit the case as the glove fits the hand." 66

The President was obviously not going to be pressured. He had defeated Lloyd George's original thrust for distributing mandates free of international commitment. Nor was he now willing to accede to an immediate allotment merely because certain international obligations had been spelled out in the mandates draft. In his eyes, the Smuts plan was rather more in the nature of a working paper than a finalized document. Clearly, in the President's view, neither the

62 Ernest Scott, op. cit. supra note 57, at 784.
63 In the course of the discussion, this dialogue resulted. Lloyd George: "Did Mr. Hughes object to the prohibition of both slavery and the sale of strong drink to the natives?" No, Mr. Hughes did not object. "Are you prepared to receive missionaries?" "Of course," replied Hughes, "the natives are very short of food and for some time past they have not had enough missionaries to eat." See Lord Riddell's Intimate Diary of the Peace Conference and After, 1918-1923, at 17 (1933); Birdsall, op. cit. supra note 26, at 69.
64 Ernest Scott, op. cit. supra note 57, at 784.
66 Council of Ten, op. cit. supra, 788-89.
list of mandatory powers nor the terms upon which they would assume their mandates had been really determined. This spelt particular "danger" for the vague obligations referred to in Clause 8, dealing with Class C mandates.

Mindful of the apprehensions of the Dominion Ministers, Lloyd George remarked that the words of the President "filled him with despair." He candidly admitted that only with the greatest difficulty had the Ministers been prevailed upon to accept the Smuts draft, even provisionally; postponement of the mandates issue until the League was established would signify that no final decision could ever be reached on this or any other question; he strongly appealed for provisional acceptance of the resolution.67

In response, Wilson agreed to accept the Smuts scheme as a provisional arrangement, with the League acting as a final court of appeal on this as on other issues.68 This was a significant concession on the part of the President to meet Lloyd George's wishes.

Hughes, however, was not satisfied. Provisional acceptance did not by any means amount to a definite confirmation of the mandates on the limited terms outlined in the plan. He wanted this Conference — which amounted to a de facto League — to act as an executive and assign the mandates. What settlement was there, he asked, if all they knew was that "the arrangements would be such that the scheme would fit like a glove to the hand?" Hughes and Wilson were fast moving to a showdown.

That afternoon matters came to a head in a sharp clash. Massey of New Zealand was the first to speak. He cited the specific international obligations which related to Class C mandates and called upon the President to confirm that this would be the sum total of obligation. Basically, said Massey, he favoured annexation; but if he were to accept the Smuts plan, he at least awaited a clear word from the President on the finality of Clause 8.69 This statement by Massey provoked the President to anger. He demanded to know whether New Zealand and Australia had presented an ultimatum to the Conference; was he to understand that Clause 8 was the most that they were prepared to concede "and if that was not conceded definitely now, they could not take part in any agreement at all?"

67 Ibid., 789-90.

68 Ibid., 791.

At this peremptory challenge, Massey backed down somewhat and indicated that he had not meant anything in the nature of an ultimatum. Hughes, however, remained quite undismayed. He did not hear the question clearly and the President repeated it to him in the following terms, "And do you mean Mr. Hughes that in certain circumstances Australia would place herself in opposition to the whole civilized world?"; to which Hughes replied, "Very well put, Mr. President, you have guessed it. That's just so!"70

At this critical juncture, Botha of South Africa delivered an eloquent address appealing to both sides to strive toward "the higher ideal." He expressed appreciation of the ideals of President Wilson, which, he said, "were the ideals of the people of the world," and which would succeed.

Personally he felt very strongly about the question of German South West Africa. He thought that it differed entirely from any question they had to decide in this conference, but he would be prepared to say that he was a supporter of the document handed in that morning, because he knew that, if the idea fructified, the League of Nations would consist mainly of the same people who were present there that day, who understood the position and who would not make it impossible for any mandatory to govern the country. That was why he said he would accept it.

He called for a spirit of co-operation and compromise and sincerely hoped that the President would see fit to support Lloyd George's resolution which was the result of long and serious efforts.71 Botha's conciliatory speech made a deep and memorable impression upon the President,72 and the situation eased considerably.

Matters now moved rapidly toward agreement. Massey offered renewed assurances that he had not implied anything in the nature of a threat. Lloyd George then modified his earlier request that the President accept the Smuts resolution at once without qualification, and so commit himself to immediate distribution of the mandates upon the terms specified. Instead, he now proposed that this be taken as a provisional decision "subject to the right of reconsideration if the Covenant of the League as finally drafted did not fit

70 Ernest Scott, op. cit. supra note 57, at 786, n.56.
in.” No formal vote was taken on the resolution, but at the suggestion of President Wilson it was agreed that a communique be issued stating that the Conference had arrived at a satisfactory provisional arrangement with regard to dealing with the German and Turkish territory outside Europe. Implicitly, then, it was agreed that the Dominions would receive the territories in question as Class C mandates upon the terms specified.

At a subsequent meeting early in May, President Wilson confirmed that the tacit arrangement had settled the matter “to all intents and purposes... the mandate for German South-West Africa should be given to South Africa, for New Guinea and the adjacent islands to Australia, for Samoa to New Zealand.” A formal resolution presented by Great Britain confirming these and the other mandates was adopted and published (with minor changes) on May 7, 1919.

IV

Wilson’s acceptance of the Class C compromise in the Council of Ten ensured that the principle of international accountability would have universal application in the post-war colonial settlement. This principle was confirmed for even the most backward areas of the globe, with no exceptions allowed for considerations of contiguity, security, common economic interest or advantages of administrative unity. In this respect the mandates system represented a new creation of a genre previously unknown in international rela-

73 Ibid., 546; Council of Ten, January 30, 1919, 3:30 p.m., Foreign Relations, 1919, The Paris Peace Conference, Vol. 3, at 802; Miller, The Drafting of the Covenant, Vol. 2, at 215. Birdsell, op. cit. supra note 26, at 73. Lloyd George’s interpretation of the provisional nature of the decision was quite different from that which the President had suggested in the morning. According to the President, the whole issue would be open to reconsideration upon creation of the League. Lloyd George, on the other hand, implies that the agreement was the sum total of the matter and would only be modified to the extent that it would be necessary to fit it in with the Covenant of the League. Birdsell, mistakenly, it is submitted, equates the two interpretations.


75 Council of Four, May 5, 1919, 11 a.m., Foreign Relations, 1919, The Paris Peace Conference, Vol. 5, at 472-73. Note omission of any reference to the islands to be mandated to Japan; this omission was probably deliberate; see discussion supra on Wilson’s attitude towards Japan.

76 Council of Four, May 7, 1919, 4:15 p.m., ibid., 527-08.
tions. As Beer records in Temperley, "The experience of the past affords no counterpart to the Mandatory System... What sharply distinguishes the Mandate System from all such international arrangements of the past, is the unqualified right of intervention possessed by the League of Nations." 17 All previous commitments undertaken by states with reference to colonial areas simply amounted to pious declarations of intention. There was no set procedure or form for checking on violations of the commitments, and only other states, parties to the original agreement, were individually entitled under international law to raise the matter with the offending state. The mandates system was unique in that it associated defined standards in international law with a continuing international organization which acted on behalf of the world community to ensure that these standards were faithfully observed.

The compromise agreement firmly established the principle of international accountability, but the question remained to what extent had it actually incorporated the principle of self-determination and how far had it gone in barring future annexation of the respective territories. 26

The compromise document itself did not (in contrast to previous formulations) enunciate the principle of self-determination in any clear or categorical terms. It certainly did not postulate independence as the definite goal of all mandates. Only paragraph 4 contained a reference to independence, by describing the A mandates as having "reached a stage of development where their existence as independent nations can be provisionally recognized." Otherwise, the purpose or design of the mandates system was dealt with in a series of broad rhetorical and imprecise phrases, such as: "peoples not yet able to stand by themselves"; "the well-being and development of such peoples form a sacred trust of civilization"; "securities for the performance of this trust," and so on. Nor was the provision in the Class C mandates allowing administration as "integral portions of [the Mandatory's] territory" clearly defined. It was evident that the draftsman had purposely avoided using any precise legal language for fear that too much or too little might be committed.

17 Temperley, op. cit. supra note 1, Vol. 2, at 236.
26 At a later date, a further question would be posed: what was the content of international accountability? Was it an obligation owed to each and every member-state of the international community individually, or was it owed only to the organs of the League of Nations, as such? But this question only assumed actual significance after the League of Nations had ceased to exist.
The vague phraseology allowed for a variety of different, and even conflicting, interpretations. Whereas to some it represented a pledge to promote self-government for all peoples, black as well as white, to others it merely instituted a more effective device for protecting the native welfare from specific abuses. The latter restricted concept of the mandates system was frequently expressed by Lloyd George during meetings of the Council of Ten. In his view it would not amount to much more than the international obligations already incumbent upon colonial powers as a result of earlier international treaties. He did not consider that involvement of the League would very radically affect the colonial set-up; in fact, he frequently declared that the mandates system was already basically in effect in British colonial practice, with its enlightened outlook regarding native welfare. The final version of Article 22 did nothing to clarify the matter since the ambiguous phraseology was faithfully preserved throughout all discussions.

The compromise document accepted provisionally on January 30, 1919, was taken up on February 8 by the Commission on the League of Nations for insertion in the Covenant.\textsuperscript{79} The draft introduced by General Smuts was identical with the text of the compromise document, except for the elimination of two introductory paragraphs and the addition of two supplementary paragraphs at the end. The latter two were what later became paragraphs 8 and 9 of Article 22. The first of these paragraphs empowered the League Council to define “the degree of authority, control, or administration” of the Mandatory if this was not “previously agreed upon by the High Contracting Parties.”\textsuperscript{80} The second paragraph provided for the establishment of “a Mandatory Commission to receive and examine the annual reports .... and to assist the League in ensuring the observance of the terms of all Mandates.”\textsuperscript{81}

The deliberations in the Commission on the League of Nations


\textsuperscript{80} \textit{Ibid.}, 275. Subsequently, the terms, “High Contracting Parties” was replaced by “Members of the League”; \textit{ibid.}, 680. Whether or not this change signified a substantive change in meaning was an issue of major contention in the subsequent 1962 and 1966 Judgments.

\textsuperscript{81} \textit{Ibid.}, 275. The latter part of this draft provision was retained intact throughout all the readings of the Covenant, but was changed by Hurst and Miller in the text which they presented to the Drafting Committee on March 31, 1919, to read: “and to advise the Council on all matters relating to the observance of the mandates” (the final form): \textit{ibid.}, 685. Although there is no explanation for this change, by its terms it modifies the power of the Commission and tones down the spirit of compulsion in supervision,
reveal that Wilson and the British Empire delegates were primarily concerned with one thing—preserving intact both the substance and form of the compromise agreement concluded in the Council of Ten. When Mr. Orlando and Mr. Bourgeois suggested certain amendments to the text, President Wilson (supported by Lord Cecil) emphasized that General Smuts’s text was based upon a decision of the Conference of the Five Powers. The only significant (if small) changes that were accepted were designed to restore the original compromise to its exact earlier text. The word “yet” which Smuts had now dropped from the phrase “peoples not yet able to stand for themselves” was reinserted. And the word “if” which Smuts had now included into the phrase “as if integral portions” (of the Mandatory’s territory) was dropped from the Class C paragraph, since it was said that it had not figured there in the original agreement and, in effect, modified it. At the same time, an amendment proposed by Mr. Vensitch, the Serbian representative, designed expressly to facilitate the complete emancipation of the mandated peoples and their admission to the League was not accepted.

The Commission was obviously not prepared to accept any changes which would either strengthen or weaken the ideals incorporated in the text or that might even attempt to spell them out. The vague general ideals enunciated in the compromise agreement satisfied all parties and it would be a precarious undertaking to introduce any modifications. As Smuts is reported to have said to Makino, “If you pull out a single plank, the whole edifice, miserable as it is, will come crashing down.” This warning was heeded which the previous version seemed to reflect. This writer has not found any reference to the significance of this modification in any of the opinions in the 1962 or 1966 judgments, but it would seem to lend weight to the view of the 1966 Court that the idea of compulsion was quite alien to the constitution and operation of the mandates system, and would tend to confirm the view of that Court, that the provision for an adjudicatory clause in the Mandates was not designed to impart compulsory supervisory power to the Court.

8a Ibid., Vol. II, at 272.
8b Ibid., 308.
8c Ibid., Vol. I, at 190; Vol. II at 273.
8d Ibid., Vol. I, at 198-90; Vol. II, at 273. The text of the amendment read as follows: “The Mandatory Commission may also, when it shall deem the time proper, suggest that the independence of any such people may be proclaimed and recognized with a view to the eventual admission of such people as a member of the League”; Ibid., Vol. I at 198.
8e Stephen Bonsal, Unfinished Business 36 (1944). Bonsal’s is the only verbatim record of that meeting in existence, since Miller’s record merely
by the Commission and the compromise document was confirmed.

In summary, then, Article 22 of the League of Nations Covenant establishing the mandates system passed through the following stages until it reached its final form in 1919. In early 1918, Wilson and Lloyd George postulated the principle of self-determination in the settlement of the colonial problem. They did not, however, link that principle with the proposed League, and so the concept of international accountability was not yet born. Smuts and Beer did, however, link self-determination with a going world-organization, and proposed a system of mandates to be supervised by the League. Theirs was the first clear enunciation of the principle of international accountability. Smuts, however, (and Beer to an extent,) did not regard the system as one of universal application. Smuts, in fact, expressly excluded the African colonies from the proposed mandates system, since he considered the inhabitants of those territories completely remote from the exercise of self-determination. Wilson adopted the Smuts plan, but universalized it—with confirmation of the principle of self-determination for even the most backward colony. Smuts and the other Dominion ministers then recognized that they could not obtain their respective territories totally free of international obligations. But if the mandates principle was to be universalized, it would have to have a variable content with a graded system of mandates, in which the Class C mandate would be as close to annexation as one can go without formal annexation. Moreover, the goals and purposes would have to be so worded that for the Class A mandates independence would be assured, whilst for the Class C mandates a process of ultimate absorption into the metropolitan country would be envisaged. This meant that the mandates article could no longer postulate the principle of self-determination as a definitive goal. The earlier reference to self-determination would have to be omitted. A skilfully drafted document, which was to imply different things for different situations,

presents the minutes. According to Bonsal, Smuts, in presenting the mandates draft article, apologized for the ambiguity and lack of clarity, saying, "We admit that the original purpose with which we set out upon our task is not easily recognizable, but upon patient scrutiny you will find that it is there and that while it may not be an ideal solution, it is, I can assure you, the best that your delegates will agree to at this juncture in world history": ibid., 35. Bonsal notes that Wilson was quite pleased with Smuts' performance: "He is not so insistent now upon details as he was a few weeks ago. He is pinning his faith to the cooling-off influences of time and the interpretive work of the League": ibid.
was what finally emerged as Article 22. Starting off with self-determination without international accountability, it had finished up as international accountability without self-determination (as an express goal).

Article 22 had gone through a process, aptly described by Hudson, as one in which “it is sometimes less profitable to seek clarity than to arrive at acceptable ambiguity.” The resultant wording could satisfy annexationists and internationalists simultaneously; indeed, this was its purpose. As a result, to Hughes, Australia was obtaining a 999 year lease on New Guinea; and to Smuts, “in effect the relations between the South-West Protectorate and the Union amount to annexation in all but name”, whilst to President Wilson the mandates system represented the universal application of a principle . . . of Colonies [being] lifted into the sphere of complete self-government.” It was this divergency of interpretation that laid the groundwork for the subsequent South West Africa dispute.

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88 See supra 155. In a memorandum dated May 5, 1919 to Colonel House, Hughes, referring to the differences between the various Mandates, said: “Whereas a Mandate under Class 1 looks to the mandated country being ultimately ‘able to stand alone’, the Mandate under Class 3 provides for the mandated territory being administered as an ‘integral portion of the territory’ of the Mandatory, and looks to its ultimate incorporation by the free will of its inhabitants”; see David Hunter Miller, Diary, Dec. 936.
89 P.M.C., Min., Annex 6, at 92 (1922). In similar vein, Lord Balfour subsequently referred to mandates as “self imposed limitations by the conquerors on the sovereignty which they obtained over conquered territory”: cited in Quincy Wright, op. cit. supra note 1, at 62 n. 115.
90 Plenary Sess., February 14, 1919, Foreign Relations, 1919, The Paris Peace Conference, Vol. 3 at 214. See also Miller, Drafting of the Covenant, Vol. II, at 564. At a subsequent meeting of the Council of Four, Wilson said: “The whole theory of mandates is not the theory of permanent subordination. It is the theory of development, of putting upon the mandatory the duty of assisting in the development of the country under mandate, in order that it may be brought to a capacity for self-government and self-dependence, which for the time being it has not reached, and that therefore the countries under mandate are candidates, so to say, for full membership in the family of nations”: Council of Four, May 17, 1919, 4:50 p.m., Foreign Relations, 1919, The Paris Peace Conference, Vol. 5 at 700.