

- (e) to transmit regularly to the Secretary General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.

Article 74

Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good neighbourliness, due account being taken of the interests and well-being of the rest of the world, in social, economic, and commercial matters.

CHAPTER XII¹⁶

INTERNATIONAL TRUSTEESHIP SYSTEM

Article 75

The United Nations shall establish under its authority an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements. These territories are hereinafter referred to as Trust Territories.

Article 76

The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

- (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 people concerned, and as may be provided by the terms of each trusteeship agreement;
- (c) to encourage respect for human rights and for fundamental freedoms of 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.

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;

16 In November 1994 the Security Council terminated the UN Trusteeship Agreement for the last of the original 11 Trustee Territories – the Trust Territory of the Pacific islands (Palau), administered by the United States. The Trusteeship Council (made up of the five permanent members of the Security Council) has amended its rules of procedure and will now meet as and when the occasion demands it.

- (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.

Article 78

The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality.

Article 79

The terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the states directly concerned, including the mandatory power in the case of territories held under mandate by a Member of the United Nations, and shall be approved as provided for in Articles 83 and 85.

Article 80

- 1 Except as may be agreed upon individual trusteeship agreements, made under Articles 77, 79, and 81, placing each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Charter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties.
- 2 Paragraph 1 of this article shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system as provided for in Article 77.

Article 81

The trusteeship agreement shall in each case include the terms under which the trust territory will be administered and designate the authority which will exercise the administration of the Trust Territory. Such authority, hereinafter called the administering authority, may be one or more states or the Organisation itself.

Article 82

There may be designated, in any trusteeship agreement, a strategic area or areas which may include part or all of the Trust Territory to which the agreement applies, without prejudice to any special agreement or agreements made under Article 43.

Article 83

- 1 The functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the Security Council.
- 2 The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.
- 3 The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of

the assistance and the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic area.

Article 84

It shall be the duty of the administering authority to ensure that the trust territory shall play its part in the maintenance of international peace and security. To this end the administering authority may make use of volunteer forces, facilities, and assistance from the trust territory in carrying out the obligations towards the Security Council undertaken in this regard by the administering authority, as well as for local defence and the maintenance of law and order within the Trust Territory.

Article 85

- 1 The functions of the United Nations with regard to trusteeship agreements for all areas not designated as strategic, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the General Assembly.
- 2 The Trusteeship Council, operating under the authority of the General Assembly, shall assist the General Assembly in carrying out these functions.

CHAPTER XII
THE TRUSTEESHIP COUNCIL
Composition

Article 86

- 1 The Trusteeship Council shall consist of the following Members of the United Nations:
 - (a) those Members administering trust territories;
 - (b) such of those Members mentioned by name in Article 23 as are not administering Trust Territories; and
 - (c) as many other Members elected for three-year terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those Members of the United Nations which administer trust territories and those which do not.
- 2 Each member of the Trusteeship Council shall designate one specially qualified person to represent it therein.

Functions and Powers

Article 87

The General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may:

- (a) consider reports submitted by the administering authority;
- (b) accept petitions and examine them in consultation with the administration authority;
- (c) provide for periodic visits to the respective trust territories at times agreed upon with the administering authority; and
- (d) take these and other actions in conformity with the terms of the trust agreements.

Article 88

The Trusteeship Council shall formulate a questionnaire on the political, economic, social, and educational advancement of the inhabitants of each trust territory, and the administering authority for each trust territory within the competence of the General Assembly shall make an annual report to the General Assembly upon the basis of such questionnaire.

Voting

Article 89

- 1 Each member of the Trusteeship Council shall have one vote.
- 2 Decisions of the Trusteeship Council shall be made by a majority of the members present and voting.

Procedure

Article 90

- 1 The Trusteeship Council shall adopt its own rules of procedure, including the method of selecting its President.
- 2 The Trusteeship Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

Article 91

The Trusteeship Council shall, when appropriate, avail itself of the assistance of the Economic and Social Council and of the specialised agencies in regard to matters with which they are respectively concerned.

CHAPTER XIV

THE INTERNATIONAL COURT OF JUSTICE

Article 92

The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.

Article 93

- 1 All Members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice.
- 2 A state which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.

Article 94

- 1 Each Member of the United Nations undertakes to comply with the decision of the International Court in any case to which it is a party.
- 2 If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

Article 95

Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

Article 96

- 1 The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.
- 2 Other organs of the United Nations and specialised agencies, which may at any time be so authorised by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.

CHAPTER XV
THE SECRETARIAT

Article 97

The Secretariat shall comprise a Secretary General and such staff as the Organisation may require. The Secretary General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organisation.

Article 98

The Secretary General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council, and shall perform such other functions as are entrusted to him by these organs. The Secretary General shall make an annual report to the General Assembly on the work of the Organisation.

Article 99

The Secretary General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.

Article 100

- 1 In the performance of their duties the Secretary General and the staff shall not seek or receive instructions from any Government or from any other authority external to the Organisation. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organisation.
- 2 Each Member of the United Nations undertakes to respect the exclusively international character or the responsibilities of the Secretary General and the staff and not to seek to influence them in the discharge of their responsibilities.

Article 101

- 1 The staff shall be appointed by the Secretary General under regulations established by the General Assembly.
- 2 Appropriate staffs shall be permanently assigned to the Economic and Social Council, the Trusteeship Council, and, as required, to other organs of the United Nations. These staffs shall form a part of the Secretariat.
- 3 The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing

the highest standard of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

CHAPTER XVI
MISCELLANEOUS PROVISIONS

Article 102

- 1 Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.
- 2 No party to any such treaty or international agreement which has not been registered in accordance with the provision of para 1 of this article may invoke that treaty or agreement before any organ of the United Nations.

Article 103

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

Article 104

The Organisation shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

Article 105

- 1 The Organisation shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.
- 2 Representatives of the Members of the United Nations and officials of the Organisation shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organisation.
- 3 The General Assembly may make recommendations with a view to determining the details of the application of paras 1 and 2 of this article or may propose conventions to the Members of the United Nations for this purpose.

CHAPTER XVII
TRANSITIONAL SECURITY ARRANGEMENTS

Article 106

Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, the parties to the Four-Nation Declaration, signed at Moscow, 30 October 1943, and France shall, in accordance with the provisions of para 5 of that Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organisation as may be necessary for the purpose of maintaining international peace and security.

Article 107

Nothing in the present Charter shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorised as a result of that war by the Governments having responsibility for such action.

CHAPTER XVIII
AMENDMENTS

Article 108

Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two-thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two-thirds of the Members of the United Nations, including all the permanent members of the Security Council.

Article 109

- 1 A General Conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any *nine* [AMENDED TO READ THUS IN 1968] members of the Security Council. Each Member of the United Nations shall have one vote in the conference.
- 2 Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two-thirds of the Members of the United Nations including all the permanent members of the Security Council.
- 3 If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.

CHAPTER XIX
RATIFICATION AND SIGNATURE

Article 110

- 1 The present Charter shall be ratified by the signatory states in accordance with their respective constitutional processes.
- 2 The ratifications shall be deposited with the Government of the United States of America, which shall notify all the signatory states of each deposit as well as the Secretary General of the Organisation when he has been appointed.
- 3 The present Charter shall come into force upon the deposit of ratifications by the Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, and by a majority of the other signatory states. A protocol of the ratifications deposited shall thereupon be drawn up by the Government of the United States of America which shall communicate copies thereof to all the signatory states.

- 4 The states signatory to the present Charter which ratify it after it has come into force will become original Members of the United Nations on the date of the deposit of their respective ratifications.

Article 111

The present Charter, of which the Chinese, French, Russian, English and Spanish texts are equally authentic, shall remain deposited in the archives of the Government of the United States of America. Duly certified copies thereof shall be transmitted by that Government to the Governments of the other signatory states.

IN FAITH WHEREOF the representatives of the Governments of the United Nations have signed the present Charter.

DONE at the City of San Francisco the twenty-sixth day of June, one thousand nine hundred and forty-five.

CHAPTER 14

THE USE OF FORCE

14.1 Introduction

The corollary of the requirement of any effective legal system to provide a fair and adequate means of peacefully settling disputes is a prohibition on the unlawful use of force. The obligation not to use unlawful force can be said to be one of the most fundamental rules of international law and has the status of *jus cogens*. However, the actual use of force remains one of the most contentious areas of international law. While every state agrees that, *prima facie*, the use of force is impermissible, there is considerable disagreement over the precise definition of force and the circumstances in which it may lawfully be used. It is convenient to divide consideration of the international rules governing the use of force into two main areas:

- the unilateral use of force which encompasses the use of force by individual states or groups of states acting on their own initiative;
- the collective use of force which refers to force used by or under the auspices of a competent international organisation.

14.2 The law before 1945

In the early days of international law the question of a state's right to resort to the use of force was judged in terms of the criteria for the *just war*. The 16th century writers asserted that war could only be *just* when used as a defence against attack or for the purpose of righting a great wrong. A state should first try to find a peaceful solution and only if attempts failed could it resort to war, and only then if consideration had been given to whether the war might produce more harm than good. However, with the growth of positivism, international law abandoned efforts to judge right from wrong in this area and in effect accepted the use of force as a legitimate instrument of state policy. The use of force was not *per se* prohibited, although the European states recognised the right of the victors of armed conflict to exact reparations from the state judged by the victor to be responsible for causing the war. The main concern of international law at this time was with the actual conduct of hostilities through the development of the laws of war. The laws of war and other armed conflicts will be discussed in Chapter 15.

A change in the attitude of international law towards the use of force began with the advent of the League of Nations in 1920. Although the Covenant of the League of Nations did not specifically prohibit the use of force it did restrict its use by placing a duty on states to try to reach peaceful settlement first.

COVENANT OF THE LEAGUE OF NATIONS

Article 10

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In the case of any such aggression or in case of any threat or danger of such aggression the Council¹ shall advise upon the means by which this obligation shall be fulfilled.

Article 11

Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise the Secretary General shall on the request of any Member of the League forthwith summon a meeting of the Council.

It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstances whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.

Article 12

The Members of the League agree that, if there should be arise between them any dispute likely to lead to a rupture they will submit the matter either to arbitration or judicial settlement or to enquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the judicial decision, or the report by the Council. In any case under this article the award of the arbitrators or the judicial decision shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.

Article 13

The Members of the League agree that whenever any dispute shall arise between them which they recognised to be suitable for submission to arbitration or judicial settlement and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration or judicial settlement.

Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration or judicial settlement.

For the consideration of any such dispute, the court to which the case is referred shall be the Permanent Court of International Justice, established in accordance with Article 14, or any tribunal agreed on by the parties to the dispute or stipulated in any convention existing between them.

The Members of the League agree that they will carry out in good faith any award or decision that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any

1 The Council was established under the provisions of articles 2 and 4. Article 4 provides that 'The Council shall consist of Representatives of the Principal Allied and Associated Powers, together with representatives of four other Members of the League'.

failure to carry out such an award or decision, the Council shall propose what steps should be taken to give effect thereto.

Article 14

The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

Article 15

If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration or judicial settlement in accordance with Article 13, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary General, who will make all necessary arrangements for a full investigation and consideration thereof.

For this purpose the parties to the dispute will communicate to the Secretary General, as promptly as possible, statements of their case with all relevant facts and papers, and the Council may forthwith direct the publication thereof.

The Council shall endeavour to effect a settlement of the dispute, and if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

If the dispute is not thus settled, the Council either unanimously or by a majority vote shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

If a report by the Council is unanimously agreed to by the members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

The Council may in any case under this article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute, provided that such request be made within fourteen days after the admission of the dispute to the Council.

In any case referred to the Assembly, all the provisions of this article and Article 12 relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if