

under the Trusteeship System the benefit of 'dual mandate' seemed to have been replaced in the function of ensuring international security.

In sum, security interests of the Allied Powers overshadowed the interests of the inhabitants of trusteeship territories. Black American scholars such as Rayford Logan, who was the former mentor of the Trusteeship Division's Director-General, Ralph Bunche, found the submissiveness to the administering powers' security interests particularly worrying.¹⁶ Now that "Every nation was talking in terms of its own security," one contemporary called the prevailing paradigm of Trusteeship System "security imperialism."¹⁷ On the other hand, Bain argues:

"it is a mistake of considerable proportion to suggest that the Trusteeship System, and the Charter in general, subordinates the well-being of dependent peoples to a narrow argument of security. [...] The Trusteeship System should not be viewed as expressing a narrow set of interests related exclusively to either security or welfare; nor should it be viewed as an isolated arrangement that is separate from the principles and purposes expressed elsewhere in the Charter, the most important of which relate to the problem of war and the conditions of peace."¹⁸

Besides the maintenance of international peace and security, the authors of the Charter spelled out more clearly the specific objectives of the Trusteeship System: to promote the political, economic, social, and educational advancement of the inhabitants, and to promote the progressive development towards self-government or independence. On the one hand, this was a departure from the Covenant's vague formulation to tutelage "peoples not yet able to stand by themselves" towards a clear commitment to political independence. On the other hand, this shifted the emphasis from mere "just treatment" of dependent peoples and prohibition of abuses under the Mandates System to positive aspects of constructive development, which was coined as a sort of 'developmental decolonisation.' In sum: "The architects of the United Nations trusteeship system believed that the welfare of dependent peoples could not be separated from the furtherance of international peace and security."¹⁹

6.1.2 The Instruments of International Supervision

The Trusteeship System introduced several innovations designed to increase oversight over and the accountability of the Administering Authorities. It is largely due to the American delegate Ralph Bunche, later Director-General of the UN Trusteeship Division, "that the International Trusteeship System is no mere prolongation of the mandates system under the League of Nations."²⁰ For his Ph. D. dissertation, which

16 Pedersen, *The guardians*, p. 401.

17 Falcón, *Power interrupted*, p. 55.

18 Bain, *Between anarchy and society*, pp. 125–26.

19 Bain, *Between anarchy and society*, p. 25.

20 TCOR, "1st Session" (1947), p. 4.

was entitled *French Administration in Togoland and Dahomey*,²¹ Bunche carried out field research in West Africa, comparing the League of Nations mandate territory of French Togoland with the adjacent French colony of Dahomey (today: Benin). Although he noted that, because of the Mandates System, Togoland fared a little better than Dahomey, he concluded:

“There is a grave need for some more effective method whereby the Mandates Commission can be made aware of the actual condition of the mandated territories and any abuse of administration which may occur. The natives are inadequately organized to effectively employ the *right of petition* to the Commission through the administration. It would be helpful if the natives were given the right to direct appeal to the League of Nations against any failure of the mandatory to keep its trust.”²²

As a member of the US delegation to the Preparatory Commission that negotiated the content of the Charter in San Francisco and London, Bunche himself had the opportunity to remedy the matter by introducing the triad of annual reports, visiting missions, and petitions. In a manner of speaking, annual reports would represent the official voice of the Administering Authorities, Visiting Missions would represent the eyes and ears of the United Nations, and petitions would represent the collective voice of the inhabitants.²³

Yet, among the three instruments, it was really the *right to petition* that was considered the new “backbone of the system of international supervision.”²⁴ For the first time in international law, the UN Charter established the *right to petition*, giving those governed under the Trusteeship System a voice in the new international organisation and the possibility to draw attention to abuses of Administering Authorities. The Charter formally established the right to petition, stating that the...

“[...] General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may [...] accept petitions and examine them in consultation with the administering authority.”²⁵

The peculiar wording of the article, stating that the United Nations had the right to receive petitions, rather than the inhabitants of the trusteeship territories having the entitlement to have their petitions considered, was likely instigated by the colonial powers. As the Council’s first President, Francis B. Sayre, noted during the Council’s 1st Session “it is for the Trusteeship Council to decide whether it shall consider a petition, and not for the petitioner so to decide.”²⁶ The extent to which one can speak of a “right to petition” on

21 SCRBC (New York). Ralph J. Bunche, b. 12 f. 5, *Doctoral Thesis “French Administration in Togoland and Dahomey”*

22 Emphasis added, SCRBC (New York) Bunche, b. 12 f. 5, *Doctoral Thesis “French Administration in Togoland and Dahomey”*, p. 518.

23 Smith, “The formation and functioning of the Trusteeship Council procedure for examining petitions,” pp. 79–80.

24 TCOR, “1st Session” (1947), p. 4.

25 *Charter*, Article 87.

26 TCOR, “2nd Session” (1947), p. 35.

the part of the petitioner is questionable in this context. In addition, the authors of the Charter thereby excluded an independent examination of the petitions without the participation of the Administering Authorities. The Administering Authorities would limit the *right to petition* by introducing ever more restrictive *rules of procedure*.

But also outside the Trusteeship System, the *right of petition* did not get off to an easy start: in January 1947, even before the first session of the Trusteeship Council, the two superpowers, the US and USSR, expressed at a meeting of the Commission on Human Rights that the UN should have neither the mandate nor the capacity to receive individual complaints about alleged human rights violations.²⁷ The USSR argued that any petition mechanism would be a direct violation of Article 2(7) of the UN Charter (concerning national sovereignty). That this was by no means a matter of principle for the USSR was shown by the quite different attitude it adopted regarding the Trusteeship System, where petitions could be directed primarily against Western powers.

Regardless, neither the Charter nor the Preparatory Commission set up an exact procedure for examining petitions. The Executive Committee's proposal of the Preparatory Commission of the United Nations was based on the League's previous procedure.²⁸ During the negotiations the Chinese delegate expounded "if on the one hand the natives of the Trust Territories were recognized as yet incapable of exercising sovereignty, it seemed only logical on the other hand not to maintain too exacting standards for the excellence of petitions."²⁹ Although the Chinese delegate advocated a liberal petition policy, the trusteeship principle underlying his argument indicated an *illocutionary disabling frame*, that is, silencing dependent peoples in their attempt to speak from a subaltern position.

Limits of Accountability

The United Nations Trusteeship System depended on the deliberate cooperation of the Administering Authorities. While according to Article 25 of the UN Charter resolutions by the Security Council are binding for all UN member states, there is no such provision for the resolutions of the Trusteeship Council. Its resolutions have, so to speak, only the character of recommendations. As such, these instruments of international supervision could only be applied to the extent permitted by the Administering Authorities. The Trusteeship Council was merely empowered to *review* annual reports, *consider* petitions, or *draw attention* to the recommendations of Visiting Missions. The colonial powers deliberately negotiated these limitations in San Francisco and London in the hoped to forestall any interference into the administration of their trusteeship territories. It was neither in the power of the Council nor of the General Assembly to coerce Administering Authorities to take certain action. If a member state felt that an Administering Authority was

27 Marc Limon, *Reform of the UN Human Rights Petitions System: An assessment of the UN human rights communications procedures and proposals for a single integrated system* (2018), p. 9.

28 United Nations, "Report to the Preparatory Commission of the United Nations" PC/EX/113/Rev.1 (1945), available from <https://digitallibrary.un.org/record/703121>, p. 61.

29 UN ARMS (New York), S-0504-0004-0001-00001, *Committee on Rules of Procedure (1–11th Meeting (Conference Papers Nos. 1–10))*, Conference Room Paper No. 6, p. 27

not acting in the spirit of the Charter, it could bring its contention merely to the attention of the General Assembly and, consequently, world opinion. However, world opinion rarely influenced the decision-making process of the Administering Authorities. Respecting the sovereignty of its member states and without any real means of sanctions, the United Nations could do little to prevent the Administering Authorities from treating their trusteeship territories as they pleased.

Thus, already during the negotiation of the Charter, the Administering Authorities were successful in eroding the relevance of the Trusteeship Council, which was ultimately not empowered to take extraordinary decisions. Aware that the Trusteeship System was based on voluntarism, representatives of other member states had to accept this fact. The Administering Authorities would not have allowed United Nations supervision without power to limit it. Without means of sanction, United Nations supervision was limited to observation. Rather than being a prototype of international state-building, trusteeship represented international observation of colonial state-building.

The establishment of *rules of procedure* remained in limbo, so that the negotiators simply delegated in Article 90 of the Charter the responsibility for adopting *rules of procedure* to the Trusteeship Council itself. Once again, this was most likely pressed at the instigation of the future Administering Authorities, as the power to set the *rules of procedure* would empower them to determine how the 'new system of international supervision' would be run.

Beyond the responsibilities of the Trusteeship System, the Fourth Committee of the General Assembly, responsible for decolonisation-related matters, also monitors compliance with the Charter's *Declaration concerning Non-Self-Governing Territories* in which all member states administering Non-Self-Governing Territories (NSGTs), that is, colonies, accepted to grant self-government or independence to its inhabitants. Colonial powers committed themselves to submit regularly annual reports on the social, educational, and economic conditions. These reports were reviewed by the General Assembly in its Fourth Committee. The UN had no authority to make periodic visits or accept petitions from NSGTs. These two functions were the unique features of the Trusteeship System. As such, the Trusteeship System was considered as a window through which the world could see that the interests of dependent people would not be harmed.

Trusteeship Agreements

As negotiated at the Dumbarton Oaks Conference, the Trusteeship Council could only begin its work after Trusteeship Agreements had been concluded between the General Assembly and the "states directly concerned."³⁰ Yet, neither the Charter nor the Preparatory Commission specified 'states directly concerned.' The demand for a definition led to months of delay. Deciding unilaterally for themselves the 'states directly concerned,' the United Kingdom, Belgium, Australia, New Zealand, and France, drew up eight draft Trusteeship Agreements without consultation of the indigenous inhabitants of the ter-

30 Charter, Article 85.

ritories.³¹ The United States and the South African Union did not.³² The subsequent negotiation of the draft Agreements in the Fourth Committee was a long, and challenging task, aggravated by a conflict of ideas and interests. Many anti-colonial nations considered the Charter's Trusteeship chapters already "a dead letter."³³

Indeed, the agreements for French and British Togoland followed the wording of the previous Mandate Agreements. Featured prominently at the beginning of both agreements, the mandate powers were in the first place responsible for the security of the territories: "The Administering Authority shall be responsible (a) for the peace, order, good government, and defense of the Territory and (b) for ensuring that it shall play its part in the maintenance of international peace and security."³⁴ Since neither area was attacked or strategically used during World War II, these prominently placed security provisions of the article, like Article 22 of the Covenant, functioned as a discursive authorization and justification of the quasi-colonial administration. In addition, the mandate powers secured provisions that allowed them to establish military bases and use volunteer forces in the trusteeship territories.

For all intents and purposes, the agreements contained progressive and democratic features, such as limitations on the exploration and tapping of territories' natural resources. Overall, the Trusteeship Agreements for French Togoland guaranteed "freedom of speech, of press, of assembly and of petition[!]," however, the agreement clearly expressed the possibility of restricting these fundamental rights "subject only to the requirements of public order."³⁵ The Trusteeship Agreement for British Togoland included a similar clause as basic freedoms "shall not, however, affect, the right and duty of the Administering Authority to exercise such control as it may consider necessary for the maintenance of peace, order and good government."³⁶

Between the agreements for British and French Togoland, there were small but notable differences. Both agreements provided administrative unions with their adjacent colonies. Hence, the British Agreement considered British Togoland as an "integral part of *his* territory,"³⁷ that is, using the possessive pronoun ("his"), Britain understood British Togoland as part of the Gold Coast, whilst the French wording considered French Togoland "in accordance with French law as an integral part of *French* territory" suggesting that France already considered the territory legally as a part of herself.³⁸

These agreements received sharp criticism from the Soviet Union, on the grounds that the provisions for administrative unions were "equivalent to the annexation of the

31 They concerned Tanganyika, British Togoland, British Cameroon, Rwanda-Urundi, French Togoland, French Cameroon, New Guinea, and Western Samoa.

32 The US State Department and US military did not yet agree on the strategic value of the former Japanese islands. The US' veto power in the Security Council safeguarded them from external intervention. The U.S. military, however, feared that the USSR's veto power might affect the administration of these "strategic areas" in the same way.

33 TCOR, "1st Session" (1947), p. 2.

34 TCOR, "Trusteeship Agreements" T/8 (1947)

35 TCOR, "Trusteeship Agreements" (1947), Agreement for French Togoland, Art 10.

36 TCOR, "Trusteeship Agreements" (1947), Agreement for British Togoland, Art. 5.

37 TCOR, "Trusteeship Agreements" (1947), Agreement for British Togoland, Art. 5.

38 SCRBC (New York). Ralph J. Bunche, b. 45 f. 16, *Proposed Agreement: French Togoland*, [1947]

Trusteeship Territories by the mandatory Powers.”³⁹ During the subcommittee’s negotiations, the Soviet Union proposed to delete the phrase ‘as an integral part of his/French territory’ from the trusteeship agreements. The subcommittee rejected the deletion,⁴⁰ but the Fourth Committee as a whole approved the deletion.⁴¹ The Administering Authorities rejected the Soviet amendment and refused to cooperate if they were forced to agree to amendments that were unacceptable to them. In consequence, the General Assembly approved the Trusteeship Agreements as they were written by the Administering Authorities, including the ‘integral part’ provision.⁴²

Ultimately, the Trusteeship Agreements were a matter of compromise on the part of anti-colonial states, who considered a poor Trusteeship System better than none. The debates on the Trusteeship Agreements reveal much dissatisfaction, but the primary desire of the General Assembly was to get the Trusteeship Council on the way. Therefore, Trusteeship Agreements were adopted, which were to the liking of the Administering Authorities. Thus, within a few weeks, the Fourth Committee negotiated eight separate agreements. In the end, only Liberia and states of the eastern bloc voted against the agreements. The Soviet Union subsequently boycotted the 1st Session of the Trusteeship Council, arguing that the Trusteeship Agreements were not in conformity with the Charter and that equal membership in the Council made it impossible to take constructive resolutions.

Trusteeship as a Communicative Space

In contrast to the League’s Permanent Mandates Commission, which solely comprised *individuals* with ‘expertise’ in colonial matters,⁴³ the Trusteeship Council comprised *state representatives*. While all Administering Authorities and members of the Security Council were permanently represented, several non-Administering states were elected for three-year terms, so that the number of Administering and non-Administering Authorities remained equal. Unlike the General Assembly or the Security Council, the Trusteeship Council had only two official working languages: English and French – a communicative aspect that impressively illuminated the symbolic supremacy of the colonial powers. Administering Authorities, such as Belgium, France, and Britain, were mostly represented by veteran colonial governors.⁴⁴ Indeed, by addressing themselves mutually as ‘gover-

39 GAOR, “1st Session: 62nd Plenary Meeting” A/PV.62 (1946), p. 1277.

40 GAOR, “1st Session (2nd Part): 4th Committee” (1946), p. 123.

41 GAOR, “1st Session (2nd Part): 4th Committee” (1946), p. 141.

42 GAOR, “11th Session: Plenary,” p. 1286.

43 Mandate powers almost exclusively appointed former colonial governors to the Permanent Mandates Commission.

44 During the first decade of the Trusteeship Council, for example, the Belgian permanent representative was Pierre Ryckmans (Governor-General of Belgian Congo, 1934–1946). French permanent representatives were Henri Laurenti (promoted to ‘Governor of the Colonies’ in 1942 and in charge of the organisation of the Brazzaville Conference), Léon Pignon (High Commissioner in Indochina, 1948–1950), Robert Bargues (High Commissioner in Madagascar, 1950–1954), and Jacques Kosciusko-Morizet (cabinet director of Félix Houphouët-Boigny in Côte d’Ivoire, 1956–1957). The British permanent representative was Sir Alan Burns (Governor of Belize, Nigeria, and the Gold Coast, including British Togoland, 1934–1947). Burns was strongly influenced by Sir Frederick (later Lord) Lugard, for whom the former was private secretary during the latter’s gov-

nor', the composition evidenced the continued colonial spirit of the Trusteeship Council rather than a spirit of growing international governance.⁴⁵ Alan Burns, who was Governor of the Gold Coast and British Togoland shortly before his appointment as British representative to the Trusteeship Council, readily displayed his 'professional expertise' to the representatives of non-Administering Authorities:

"As one who had had many years' experience in various parts of the world in the extremely complex task of bringing rapidly forward those peoples who had, through accidents of history and geography, remained over-long in a backward state, he would emphasize that even the best will in the world and the best policies in the world could not always overcome as quickly as might be desired every obstacle and every difficulty."⁴⁶

Furthermore, while petitioners could seek to be heard at oral hearings, they usually did not have the right to speak at the subsequent general discussion unless a state representative called on the petitioners to do so. The right to appeal to statements of the Administering Authorities for example was a prerogative of state representatives.

The composition of the Trusteeship Council was an essential feature, which polarised its deliberations usually along two camps: Administering Authorities and anti- non-Administering Authorities were holding the balance, whereas the United States occasionally sided with one or the other. The balance meant that any rebukes from the Council were defeated by the need for compromise. Thus, although evenly distributed, the Trusteeship Council gave an advantage to the Administering Authorities. Therefore, Groom holds that the Trusteeship Council "was essentially a lowly and docile body since it was dominated by the veto-holding powers and the administering powers. The great debates on colonialism took place elsewhere, chiefly in the General Assembly and in its [Fourth] committee."⁴⁷

The parity of membership was seen as a constitutional protection against an encroachment by the General Assembly. Since the membership of the General Assembly was correspondingly wider than that of the Trusteeship Council, hence, comprising more anti-colonial states, its Fourth Committee tended to press for more rapid implementation of self-government or independence than the Trusteeship Council. Although according to article 85 of the UN Charter, the Trusteeship Council operated under the authority of the General Assembly, during the negotiations in London the colonial powers managed to obtain a safeguard against its interference, namely the requirement of a two-thirds majority for all decisions affecting trusteeship.⁴⁸ This requirement forced moderation in the drafting of resolutions and before voting often led to the deletion of radical passages.

ernorship of Nigeria. Lugard was *the* ideological promoter of British colonialism and a member of the Permanent Mandates Commission of the League of Nations (1923–1936).

45 See for example at TCOR, "2nd Session" (1947), pp. 350–51.

46 GAOR, "7th Session: 4th Committee" (1952), p. 201.

47 Groom, "The Trusteeship Council," p. 161.

48 *Charter*, Art. 18.

As a last resort, the Administering Authority could simply ignore General Assembly resolutions that ran counter to its own judgement and wishes. Yet usually, the Trusteeship Council sought to avert such a crisis by forcing a compromise. There was a limit to how far the administrations were willing to go, and this was recognised by the anti-colonial powers.

6.2 The All-Ewe-Conference & First Petitions under Trusteeship

6.2.1 Formation of the 'Ewe Parties'

Before World War II, the governor of French-mandated Togoland, Michel Montagne, had decreed the creation of the *Comité du l'Unité Togolaise du Nord et du Sud*, as a counterweight to the Nazi loyalists of the *Bund der deutschen Togoländer*. After World War II, during negotiations on the UN Charter in San Francisco, this *Comité* was transformed into a political party, the *Comité du l'Unité Togolaise* (CUT). Under the presidency of the wealthy 'Brazilian' merchant, Augustino de Souza, the CUT campaigned for the 1946 elections of the representative assembly, the *Assemblée Représentative du Togo* (ART), which consisted of two electoral colleges. The first college was composed of 6 citizens of metropolitan France over-representing the French community of only 1,500 voters, while the rest of French Togoland's native male population elected the 24 African representatives of the second college. In the election, the CUT won 14 seats, the pro-French *Parti Togolais du Progrès* (PTP) one seat and the remaining 9 seats went to independent candidates. Sylvanus Olympio was elected President of the Assembly and Jonathan Savi de Tové was elected as the Togolese member for the Council of the French Union.

Whereas before the war, the name, "*Comité du l'Unité Togolaise*", stood programmatically for the cohesion of French Togoland in opposition to the threat posed by the Germanophile elements of the Togobund, it now stood programmatically for the (re)unifying tendencies of an Ewe elite around Sylvanus Olympio, Augustino de Souza, and Jonathon Savi de Tové. For the already Anglophile Olympio, the memory of his internment by the French authorities in 1942 must still have been fresh in his mind and led to an unequal preference to unify the Ewe under British administration.

In British Togoland, Daniel Ahmeling Chapman, another key figure in the early development of the Ewe unification movement, undertook similar efforts. Chapman was an Anlo-Ewe, born in Keta in 1909, that is, a Gold Coast Ewe, but received an early German education at the Bremen Missionary Society in Lomé, which probably resulted in his friendly relationship with the Germanophile ex-Togobundarian Kofi Dumoga.⁴⁹ Much like the other Ewe elites, Chapman was sent to study at anglophone institutions such as Oxford and Columbia University. Upon his return he worked himself up to become a Geography professor at Achimota College in Accra.

In January 1945, Chapman hosted a cocktail party at his home, where many prominent Ewe raised the possibility of assisting the Ewe in French Togoland that suffered

49 ANOM (Aix-en-Provence), 1AFFPOL/3297/1, *Affaires politiques*, Discours de D.A. Chapman devant la conférence Pan – Ewe, 3