

## DISSENTING OPINION OF JUDGE KRYLOV

[*Translation.*]

I share the Court's Opinion on the General Question and on Questions (a) and (c) put by the Assembly. I would observe, however, that the analysis of Article 79, as given by the Court, does not exhaust all the questions which may be raised in this connexion.

But I cannot concur in the second part of the reply given by the Court to Question (b). My reasons are as follows :

In its Opinion, the Court notes that : (a) the Charter contemplated only the Trusteeship System ; (b) the Charter did not contemplate the continuance of the Mandates System in addition to the Trusteeship System. On the other hand, the Court is of the opinion that the Charter does not impose upon the Union of South Africa an obligation to place the Territory under the Trusteeship System.

In its reasoning, the Court stresses the permissive wording of Chapter XII of the Charter, in respect of the conclusion of Trusteeship Agreements. In my opinion, however, this is due to the fact that the Territory under Mandate need not necessarily be placed under the Trusteeship System, because it may be proclaimed independent (and this is the only other possibility).

I think that the letter and the spirit of the Charter alike lead to only one interpretation, namely : that the Union of South Africa is under the legal obligation to negotiate with a view to concluding a Trusteeship Agreement for placing the mandated Territory under the Trusteeship System. In barring expressly the possibility of postponing or delaying the negotiation and the conclusion of Trusteeship Agreements, Article 80, paragraph 2, implies the existence of a legal obligation to negotiate with a view to concluding such agreements. Any other interpretation would deprive Article 80, paragraph 2, of any meaning whatever, which would be contrary to a well-established rule of interpretation of international treaties.

The obligation of the mandatory Power to negotiate with a view to concluding the Trusteeship Agreement is also clearly demonstrated in Article 77, paragraph 1 (c), of the Charter. This article declares that colonial territories may be placed under the Trusteeship System by States responsible for their administration by voluntary procedure only. Thus, the Charter contains different provisions for territories mentioned under (a) and (b) of this paragraph. In particular, territories under Mandate

are to be placed under the Trusteeship System by the method already indicated (negotiation with a view to concluding an agreement).

The Court's answer to the second part of Question (b) may prolong the co-existence of the Mandate System and the Trusteeship System. This would be contrary to the intentions of the authors of the Charter, who expected mandatory States to follow without delay the normal course indicated by the Charter and conclude Trusteeship Agreements.

(Signed) S. KRYLOV.