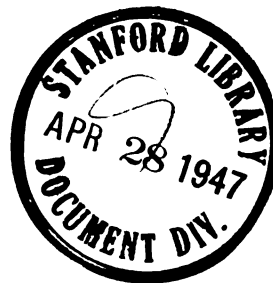

THE INAUGURATION OF THE

Trusteeship

System

OF THE UNITED NATIONS

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THE INAUGURATION OF THE TRUSTEESHIP SYSTEM OF THE UNITED NATIONS

by Elizabeth H. Armstrong

and

William I. Cargo

The Trusteeship Council of the United Nations has come into operation through action of the recent General Assembly in approving trusteeship agreements for eight trust territories. The following article summarizes developments in the trusteeship field since the San Francisco Conference, discusses the principal issues which were involved in the approval of the trusteeship agreements, and indicates the organizational problems immediately faced by the Trusteeship Council.

Through the actions taken at the recent session of the General Assembly of the United Nations in New York the international trusteeship system provided for in chapters XII and XIII of the Charter of the United Nations has been established as a going concern. Trusteeship agreements for eight trust territories, administered by five members of the United Nations, were approved. The General Assembly completed the present membership of the Trusteeship Council by electing Iraq and Mexico to the Council for three-year terms. The first session of the Trusteeship Council, called for March 26, is about to convene. In view of these developments it seems useful to survey at this time the events leading to the establishment of the Trusteeship Council, to give an account of the principal issues which were involved, and to point out the prospects for the immediate future in the field of trusteeship.

As background for considering the principal substantive trusteeship matters and the difficult procedural question of "states directly concerned", it may be useful to refer briefly to the nature of the trusteeship system set forth in the Charter and to recapitulate the development of trusteeship questions since the San Francisco Conference.

THE TRUSTEESHIP SYSTEM OF THE UNITED NATIONS

The international trusteeship system established by the Charter of the United Nations at the San Francisco Conference of 1945 provides for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements.

Objectives

Article 76 of the Charter states that the basic objectives of the trusteeship system shall be:

(a) the furtherance of international peace and security;

(b) the promotion of the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence;

(c) the encouragement of respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

(d) the ensuring of equal treatment in social, economic, and commercial matters for all members

of the United Nations, and also equal treatment for the latter in the administration of justice.

Scope and Implementation

The Charter further provides (article 77) that the trusteeship system should apply to such territories in the following three categories as might be placed thereunder by means of trusteeship agreements:

- “(a) territories now held under mandate;
- “(b) territories which may be detached from enemy states as a result of the Second World War; and
- “(c) territories voluntarily placed under the system by states responsible for their administration.”

The somewhat ambiguous and later much disputed article 79 states that the terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment of such terms, 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. The General Assembly approves the trusteeship agreements for areas not designated as strategic (article 85).

Article 81 of the Charter provides that in each case the trusteeship agreements shall include the terms under which the trust territory shall be administered and shall designate the authority which will exercise the administration over it. An administering authority may be one or more states or the organization itself.

Strategic Areas

Any trusteeship agreement may designate a strategic area or areas to include part or all of the trust territory to which the agreement applies (article 82). All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and their alteration or amendment, shall be exercised by the Security Council (article 83) rather than by the General Assembly. It is also specifically provided by article 83 that the basic objectives of the trusteeship system shall be applicable to the people of each strategic area. The Security Council shall, subject to the provisions of the agreements and without prejudice to security considerations, avail itself of the assistance of the

Trusteeship Council in carrying out the trusteeship functions of the United Nations relating to political, economic, social, and educational matters in strategic areas.

International Peace and Security

Under the Charter the administering authority is required to insure that the trust territory shall play its part in the maintenance of international peace and security (article 84). To this end the administering authority may make use of volunteer forces, facilities, and assistance from the trust territory in carrying out obligations towards the Security Council as well as for local defense and the maintenance of law and order within the trust territory.

Trusteeship Council

The Trusteeship Council, operating under the authority of the General Assembly, is established to assist in carrying out the functions of the United Nations with regard to trusteeship agreements for all non-strategic areas (articles 85, 86). The Trusteeship Council is to consist of:

- (a) those members administering trust territories;
- (b) such of the permanent members of the Security Council 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 insure that the total number of members of the Trusteeship Council should be equally divided between those which administer trust territories and those which do not.

The Trusteeship Council, under the authority of the General Assembly, may (article 87):

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

The Trusteeship Council, under article 88 of the Charter, is also charged with formulating a questionnaire on the political, economic, social, and educational advancement of the inhabitants of each trust territory, and the administering authority is obliged to make an annual report to the Gen-

eral Assembly upon the basis of such questionnaire. Article 91 provides that the Trusteeship Council shall avail itself, when appropriate, of the assistance of the Economic and Social Council and of the specialized agencies in regard to matters with which they are respectively concerned.

EARLY DEVELOPMENT OF TRUSTEESHIP¹

Plans for the establishment of a trusteeship system had been considered in the Department of State and the subject had been discussed with the other governments concerned even before the Dumbarton Oaks conversations of 1944. However, it was not until the Yalta Conference held in February 1945 that it was decided to include this item on the agenda of the proposed San Francisco Conference on International Organization.²

The Yalta Conference decided that the five governments with permanent seats on the Security Council should consult each other prior to the San Francisco Conference on providing machinery in the proposed Charter for dealing with territorial trusteeships which would apply only to (a) existing mandates of the League of Nations; (b) territory to be detached from the enemy as a result of World War II; and (c) any other territory that may voluntarily be placed under trusteeship. It was further agreed that no discussions of specific territories were to take place during the preliminary discussions on trusteeship and that only the principles of trusteeship should be formulated for inclusion in the Charter. The question of which territories within the categories specified above would actually be placed under trusteeship would be a matter for subsequent agreement.³

In the course of preliminary consultations held by the Five Powers at San Francisco, proposals advanced by other delegations were also considered. After long weeks of consultations, which were held concurrently with the sessions of the Conference committee on trusteeship, a final draft was completed and approved by the Conference.⁴ The implementation of the trusteeship system, however, was left for later action.

TRUSTEESHIP DEVELOPMENTS FROM SAN FRANCISCO TO LONDON

The San Francisco Conference decided to set up a Preparatory Commission composed of all the members of the United Nations in order to implement the Charter and set the machinery of the

United Nations in motion in preparation for the first meetings of the United Nations General Assembly. Before the meeting of the Preparatory Commission its Executive Committee, composed of 14 states, commenced sessions in London in August 1945.

On October 18, 1945 the Executive Committee adopted a proposal to set up a temporary trusteeship committee as an "interim subsidiary organ" under article 22 of the Charter until a sufficient number of trusteeship agreements should be concluded. It was further recommended by the Executive Committee that the Trusteeship Council should be established as soon as the necessary conditions could be fulfilled.⁵

When the Preparatory Commission itself met on November 24, 1945 there was considerable objection to the proposal for a temporary trusteeship committee. After much debate the Preparatory Commission adopted a draft resolution which, while omitting any mention of any interim trusteeship organ, recommended that the General Assembly should adopt a resolution calling on the states administering territories under League of Nations mandate to undertake practical steps, in concert with the other states directly concerned, for the implementation of article 79 of the Charter in order to submit trusteeship agreements for approval preferably not later than during the second part of the first session of the General Assembly. In addition the Preparatory Commission revised the provisional rules of procedure for the Trusteeship Council which had been prepared by the Executive Committee.⁶

FIRST PART OF FIRST SESSION OF GENERAL ASSEMBLY

When the General Assembly met for the first part of the first session in London from January

¹ Ralph J. Bunche, "Trusteeship and Non-Self-Governing Territories in the Charter of the United Nations", *BULLETIN* of Dec. 30, 1945, p. 1037.

² *Report to the President on the Results of the San Francisco Conference*, p. 26. Washington, D.C., June 26, 1945. Department of State publication 2349.

³ *Ibid.*, pp. 128-129.

⁴ *Ibid.*, p. 132.

⁵ *Report by the Executive Committee to the Preparatory Commission of the United Nations* (PC/EX/113/Rev. 1), Nov. 12, 1945, pp. 55-56, 63.

⁶ *Report of the Preparatory Commission of the United Nations* (PC/20), Dec. 23, 1945, pp. 49-56.

10 to February 14, 1946, it considered the problems relating to the establishment of the trusteeship system. Among the most important developments were the statements by the powers holding mandates concerning the disposition of these territories. On January 17, 1946 Foreign Minister Bevin announced for the United Kingdom that preliminary negotiations to place Tanganyika, the Cameroons, and Togoland under the trusteeship system had already commenced. Mr. Bevin further declared that steps would be taken to establish Trans-Jordan as an independent state, but that proposals concerning Palestine must await the report of the Anglo-American Committee of Inquiry. The Governments of Belgium, New Zealand, and Australia also announced their intention to transfer Ruanda-Urundi, Western Samoa, and New Guinea respectively to the trusteeship system. Australia, with the concurrence of the United Kingdom and New Zealand, announced a similar course of procedure regarding Nauru. The French Government announced that it was prepared to study the terms by which Togoland and the Cameroons might be placed under trusteeship. However, a note of opposition was sounded by the Government of the Union of South Africa whose representatives stated in the General Assembly on January 17, 1946 that South-West Africa occupied a special position with respect to the Union which differentiated that territory from any other "C" mandate. Pending consultations with the people of South-West Africa regarding the form of their future government, the South African Government would reserve its position concerning the future of the mandate. In the meanwhile the Union would continue to administer the territory in accordance with the obligations and responsibilities of the mandate.

The General Assembly in its London session concluded its consideration of trusteeship problems by the adoption of a resolution on February 9, 1946 welcoming the declarations made by the Mandatory Powers and expressing the expectation that the realization of the objectives of the Charter referring to the trusteeship system, the Trusteeship

¹ *The United States and the United Nations*. Report of the United States Delegation to the First Part of the First Session of the General Assembly of the United Nations, London, England, Jan. 10-Feb. 14, 1946, p. 10. Submitted to the President of the United States by the Secretary of State in Washington, D.C., Mar. 1, 1946. Department of State publication 2484.

² League of Nations Resolution adopted Apr. 18, 1946.

Council, and non-self-governing territories would make possible the attainment of the aspirations of non-self-governing peoples as a whole. The resolution also invited states administering mandated territories to undertake practical steps, together with the other states directly concerned, for the negotiation of trusteeship agreements.⁷

The final meeting of the Assembly of the League of Nations at Geneva in April 1946 passed a resolution concerning mandates which, after expressing satisfaction with the manner in which the League organs concerned with mandates had performed their functions, welcomed the termination of the mandated status of Syria, the Lebanon, and Trans-Jordan.⁸

The resolution further noted the expressed intention of the members of the League now administering territories under mandate to continue to administer them for the well-being and development of the peoples concerned. It also stated that this intention of the League members would be in accord with the obligations contained in the respective mandates and would be continued until other arrangements between the United Nations and the respective Mandatory Powers had been agreed upon.

CONSULTATIONS WITH THE MANDATORY POWERS

In the intervals between the London and New York meetings of the General Assembly, trusteeship drafts were prepared by the Mandatory Powers and submitted to certain other interested powers for information. Early in 1946 the United States Government received copies of proposed trusteeship agreements for Tanganyika, Togoland, and the Cameroons from the United Kingdom; for Ruanda-Urundi from Belgium; and later for Togoland and the Cameroons from France; for Western Samoa from New Zealand; and for New Guinea from Australia. The United States Government communicated to each of these Mandatory Powers its comments on their proposed terms of trusteeship.

In the course of the summer of 1946 consultations concerning a number of provisions of the draft trusteeship agreements took place between experts of this Government and of the governments of the Mandatory Powers. In conversations with the United Kingdom Government the United States was represented by Benjamin Gerig, Chief of the

Division of Dependent Area Affairs, and Edwin L. Smith of the Division of African Affairs; and in conversations with the Belgian Government the United States was represented by Henry S. Villard, Deputy Director of the Office of Near Eastern and African Affairs.

In its comments on the draft trusteeship proposals and in its consultations with the Mandatory Powers with regard to them, the United States particularly sought the addition of provisions which would enlarge upon the rights of the inhabitants of trust territories and specify in greater detail the obligations of the administering authority under article 76 of the Charter to insure their political, economic, social, and educational advancement. Agreement was reached with the Mandatory Powers to add a significant number of such provisions to the original draft agreements. Two of the proposals put forward by the United States were designed especially to guarantee the fundamental freedoms of the inhabitants of the territories and to set forth the obligations of the administering authority to promote the educational advancement of the inhabitants. In the trusteeship agreement for Tanganyika they are stated in the following terms:

"Subject only to the requirements of public order, the Administering Authority shall guarantee to the inhabitants of Tanganyika freedom of speech, of the press, of assembly, and of petition.

"The Administering Authority shall, as may be appropriate to the circumstances of Tanganyika, continue and extend a general system of elementary education designed to abolish illiteracy and to facilitate the vocational and cultural advancement of the population, child and adult, and shall similarly provide such facilities as may prove desirable and practicable in the interests of the inhabitants for qualified students to receive secondary and higher education, including professional training."

Such provisions appear in one form or another in each of the eight trusteeship agreements approved by the Assembly.

In many cases agreement was readily reached with the Mandatory Powers to include further provisions relating to the welfare of the inhabitants in the trusteeship drafts which they would present to the General Assembly. In some cases, however, the Mandatory Powers expressed the view that the inclusion of such clauses was unnecessary, either because the administering author-

ity was already bound by international agreements to these ends, or because it was felt that the Charter obligations automatically assumed by any administering authority were sufficiently broad to cover such matters.

Thus the process of alteration of the draft trusteeship proposals was begun well in advance of the General Assembly session in New York. Although this process was continued by the General Assembly itself, the extent of the alterations made in the draft trusteeship agreements at the Assembly stage was, except in the case of the New Guinea agreement, relatively small. That the pre-Assembly consultations between the Mandatory Powers and the United States were regarded as constructive and helpful is suggested in the comment made by Ivor Thomas, the British Representative on the Trusteeship Committee at the General Assembly in New York. As reported in the Summary Record of the 26th meeting of Committee 4 (Dec. 11, 1946), Mr. Thomas stated that "when the texts had been circulated in January, the Government of the United States had been the only one to suggest any amendments. Those had been discussed fully, with the result that some were adopted as they stood, others adopted in modified form, others were withdrawn by mutual agreement and one left over to be raised before the General Assembly. Only two articles of the original draft remained unchanged."

Two outstanding questions remained, so far as the United States Delegation was concerned, when the draft trusteeship agreements were submitted to the General Assembly in New York. The first was the thorny procedural question regarding the problem of "states directly concerned", arising from the provisions of article 79 of the Charter, and the second concerned the monopolies clauses of the draft agreements for the African mandates of the United Kingdom, France, and Belgium.

TRUSTEESHIP ISSUES AT THE SECOND PART OF THE FIRST SESSION OF THE GENERAL ASSEMBLY'

The Question of South-West Africa

The General Assembly considered a statement presented by the Delegation of the Union of South Africa to the effect that the majority of the in-

¹ *The United States and the United Nations*. Report by the President to the Congress for the year 1946, p. 64. Department of State publication 2735.

habitants of South-West Africa favored its annexation by the Union. After a full discussion the General Assembly approved a resolution proposed by Denmark, India, and the United States. The resolution pointed out that the General Assembly did not accept as conclusive the South African Government's report on the opinion of the African inhabitants of South-West Africa regarding their future government, because the inhabitants had not yet secured political autonomy or reached a stage of political development which would enable them to express a considered opinion which the Assembly could recognize on such an important question as the incorporation of their territory. Further, the General Assembly, while noting with satisfaction that the Union Government recognized the interest and concern of the United Nations in the matter of the future status of mandated territories, rejected the proposal for annexation and recommended that South-West Africa be placed under the international trusteeship system, and invited the Government of the Union of South Africa to propose a trusteeship agreement for South-West Africa for the consideration of the General Assembly.

Issues Relating to the Content of the Trusteeship Agreements

The General Assembly referred the eight draft trusteeship agreements which it received to its Fourth Committee, which in turn appointed a subcommittee of 17 member nations¹⁰ to consider the agreements and the 229 proposed amendments.¹¹ The consideration of the trusteeship proposals involved questions both of the content of the agreements themselves and of the procedure by which the agreements were to be drawn up and approved.

Monopolies

The initial trusteeship drafts put forward by France, the United Kingdom, and Belgium for the "B" mandates in Africa authorized the administering authority to establish private monopolies under conditions of proper public control when this was in the interests of the economic advance-

ment of the inhabitants of the trust territory. Under the provisions of the mandates it was possible for the Mandatory Powers to organize essential public works and services and to create monopolies of a purely fiscal character. There was no general authority, however, to create private monopolies. The United States Government did not challenge the premise that, in certain special circumstances, a private monopoly could be in the interests of the economic advancement of the inhabitants of the territory. However, the United States took the position that a definitive step such as the granting of a private monopoly, involving considerations both as to its possible effect on the inhabitants of the territory and on the equal-treatment provisions of the Charter, should be open to consideration by the Trusteeship Council or an appropriate United Nations agency at a stage where the recommendations of such a body might be effective. At the General Assembly in New York, the United States Delegation proposed a specific amendment to the trusteeship agreements in question which incorporated this idea.¹²

Although this United States proposal was defeated in the Trusteeship Subcommittee, the detailed discussion of the question resulted in significant alterations in the original monopoly clauses proposed by the Mandatory Powers and in interpretative declarations by these powers. The Delegations of the United Kingdom and Belgium included in the trusteeship agreements a provision to insure that any private monopoly contracts would be granted without discrimination on grounds of nationality against members of the United Nations or their nationals. The French Delegation stated that under French law private monopolies were not permitted at all in the trust territories which it would administer. Moreover, the United Kingdom and Belgian Delegations made the following declarations which form a part of the rapporteur's report to the General Assembly on the trusteeship agreements:

"(a) The Governments of Belgium and the United Kingdom have no intention of using the grant of private monopolies in Trust Territories as a normal instrument of policy;

"(b) Such private monopolies would be granted only when this was essential in order to enable a particular type of desirable economic development to be undertaken in the interest of the inhabitants;

"(c) In those special cases where such private

¹⁰ This subcommittee consisted of representatives of Australia, Belgium, Canada, China, Czechoslovakia, France, India, Iraq, Mexico, the Netherlands, New Zealand, Union of South Africa, Union of Soviet Socialist Republics, United Kingdom, United States, Uruguay and Yugoslavia.

¹¹ General Assembly doc. A/C.4/Sub. 1/70, Nov. 29, 1946.

¹² *Ibid.*, pp. 62-64.

monopolies were granted they would be granted for limited periods, and would be promptly reported to the Trusteeship Council.”¹³

“Integral Part”

With the exception of the draft trusteeship agreements for Tanganyika and New Guinea, all the draft agreements submitted to the General Assembly for approval contained a provision empowering the administering authority to administer the trust territory as an “integral part” of its territory. The New Guinea draft used the expression “as if it were an integral part”. The Tanganyika draft had no such provision. It was pointed out by the states submitting the draft trusteeship agreements that the phrase “integral part” was contained in the mandate agreements and that its continuance in the trusteeship agreements would have no new significance. They further stated that the phrase carried no implication of sovereignty and that it was proposed solely for administrative convenience. Nevertheless, certain delegations regarded the use of the expression “integral part” as contrary to the spirit of the trusteeship system and felt that it revealed “annexationist tendencies”. The Soviet Union and India proposed the deletion of the phrase from each of the trusteeship agreements in which it was used. The Trusteeship Subcommittee recommended to New Zealand, whose draft for Western Samoa was considered first, that the phrase be deleted. Similar recommendations were made by Committee 4 with regard to the other trusteeship drafts which used the phrase. The New Zealand Government accepted the recommendation, but the other Mandatory Powers found themselves unable to agree to delete the phrase from their drafts and made to the Fourth Committee formal statements of the reasons underlying their refusal. Thus, in the eight agreements finally approved by the General Assembly the phrase “integral part” appears in all of the agreements except those for Tanganyika and Western Samoa.

The Soviet Delegation carried its opposition to the phrase “integral part” to the floor of the General Assembly. Before the final vote of the General Assembly approving the terms of trusteeship, the Soviet Delegation proposed a resolution advocating rejection of the trusteeship drafts partly on the grounds that they still contained the phrase “integral part”. This resolution was rejected by a vote of 34 to 6 with 11 abstentions.

The discussion in the General Assembly and its committees on the “integral part” issue served the useful purpose of clarifying the meaning to be given to this phrase. In addition to general statements made by various representatives of the Mandatory Powers that they did not understand this phrase to connote sovereignty over the trust territories, the following declarations regarding the phrase were made by France, Belgium, and the United Kingdom and inserted in the report of the rapporteur on trusteeship agreements:

“With regard to the proposed deletion of the words ‘as an integral part’ of the French and Belgian territory, as indicated by the modifications submitted to the Belgian agreement for Ruanda-Urundi and the French agreements for the Cameroons and Togoland by the Delegations of the Soviet Union and India, the Delegates for Belgium and France stated that it was the interpretation of their Governments that the words ‘as an integral part’ were necessary as a matter of administrative convenience and were not considered as granting to the Governments of Belgium and France the power to diminish the political individuality of the Trust Territories.

“The Delegate for the United Kingdom informed the Sub-Committee that the retention of the words ‘as an integral part’ in the Trusteeship agreement for Togoland and Cameroons under British administration did not involve administration as an integral part of the United Kingdom itself and did not imply British sovereignty in these areas.”¹⁴

Military Establishments

The powers of administering authorities with respect to the establishment of bases and the use of armed forces in trust territories emerged as one of the most serious issues confronting the General Assembly in its consideration of the eight draft trusteeship agreements.

All eight of the draft trusteeship agreements contained similar military clauses entitling the administering authority to establish bases and to station armed forces in the trust territory. The debate in the General Assembly was, therefore, a general one, based on Soviet, Indian, and Chinese amendments proposed to article X of the New Zealand agreement, article 5(c) of the three Brit-

¹³ General Assembly doc. A/258, Dec. 12, 1946, p. 6.

¹⁴ *Loc. cit.*

ish agreements, article 5 of the Belgian agreement, and article 4(b) of the French agreements.

The position taken by these delegations opposing the military clauses was that article 84 of the Charter does not empower the administering authority, in the interest of international peace and security, to establish military bases or station armed forces in a trust territory. Such powers, it was contended, would be an extension of article 84 under which administering authorities were restricted to the use of "volunteer forces, facilities, and assistance", and further restricted by their obligations toward the Security Council. They asserted that the use of volunteer forces, facilities, and assistance would be possible only with the agreement of the Security Council. If the administering authority found it necessary to establish bases and employ forces in a trust territory the territory would, thereby, become a strategic area; its administration and the approval of the trusteeship agreement would therefore fall within the jurisdiction of the Security Council under articles 82 and 83 of the Charter. It was also contended that obligations undertaken toward the Security Council would have to be governed by article 43 of the Charter and that no bases could be established in trust territories, or troops employed, until the special agreements, negotiated on the initiative of the Security Council under article 43, had been concluded. In this connection it was pointed out that the terms of the mandates did not permit fortification of the mandated territories.

The Mandatory Powers, supported by the United States, Canada, the Netherlands, and Uruguay, held that the Soviet, Indian, and Chinese proposed amendments were unacceptable and that article 84 made it not only the right but the duty of an administering authority to insure that the trust territory play its part in the maintenance of international peace and security. This duty, it was pointed out, was inserted in the Charter deliberately for the benefit of the inhabitants of the trust territories. They should not, in the future, be left unprotected as they had been under the mandates system and must be encouraged to play their part in the system of international peace and security. Among the means by which this could be accomplished might be the use of volunteer forces, facilities, and assistance from the trust territories, in accordance with articles 84 and 43 of the Charter. However, the administering authority

would still have the specific duty to ensure the territory's participation in the maintenance of international peace and security, notwithstanding any delay in the conclusion of the special agreements contemplated in article 43. Since the administering authority has this specific obligation, it has a corresponding right to the means of discharging it. The Mandatory Powers were unanimous in their view that the proposed military clauses were consistent with the Charter and that the establishment of military bases would have to be left to the discretion of the administering authority.

After lengthy debate of the military clauses of the trusteeship agreements, both the Trusteeship Subcommittee and Committee 4 sustained the original language of the draft trusteeship proposals.

The Soviet and Indian Delegations carried their opposition to the floor of the Assembly during the final consideration of the draft agreements. The Indian Representative, explaining the reason for his Delegation's abstention from voting on the agreements, reiterated his objection to the creation of military fortifications without the approval of the Security Council.

The Soviet resolution calling on the General Assembly to reject the draft trusteeship agreements as having been drafted contrary to the fundamental requirements of the Charter contained, as one of the three principal Soviet objections to the agreements, the statement that " . . . the proposed draft agreements provide as one of the terms the establishment in Trust Territories of military, naval and air bases, without the Security Council's consent, which is contrary to Article 83 of the Charter, which requires the consent of the Security Council for the establishment of military, naval and air bases in Trust Territories". The Soviet resolution was rejected by the Assembly by a vote of 6 for and 34 against, with 11 abstentions.

The Procedural Issue: "States Directly Concerned"

The language of article 79 of the Charter led to the principal procedural issue involved in drawing up and approving the trusteeship agreements. Article 79 provides, in part, that "The terms of trusteeship for each territory to be placed under the trusteeship system . . . 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 Na-

tions. . . ." The importance of the "states directly concerned" in this procedural conception is readily apparent. Although this matter was clearly of less importance with respect to the operation of the trusteeship system than the terms of the trusteeship agreements themselves, it was an important hurdle which had to be surmounted if chapters XII and XIII of the Charter were to be given effect and the Trusteeship Council brought into operation.

The San Francisco Conference established in articles 79, 83, and 85 of the Charter the procedure by which territories may be placed under the trusteeship system of the United Nations. Article 83 relates to strategic trusteeship agreements and was therefore not applicable to the eight draft agreements considered by the recent General Assembly. Article 85 provides in clear terms that the General Assembly shall approve trusteeship agreements which are non-strategic in character. The interpretation of this article presented no difficulties. It was article 79 which contained the crux of the procedural problem.

No clear indication is offered either by the Charter itself or by the records of the San Francisco Conference, which drew up the Charter, as to the meaning of the phrase or the method by which the "states directly concerned" mentioned in article 79 should be determined. The great difficulties which would attend any effort to define the "states directly concerned", either concretely in any given case or abstractly by means of criteria, became apparent as early as the meetings of the Preparatory Commission of the United Nations in November and December 1945. The diverse opinions which were expressed on "states directly concerned" during the Preparatory Commission and the first part of the first session of the General Assembly drew attention to the possibility, indeed danger, that the trusteeship provisions of the Charter could not be implemented at an early date, perhaps not at all, if it should be considered necessary to identify the "states directly concerned" with respect to each trust territory for which a trusteeship agreement might be put forward. So far as the United States was concerned, this feeling was confirmed by its exchanges of communications and consultations with the Mandatory Powers early in 1946. Accordingly, the United States, which at the San Francisco Conference had understood that the "states directly concerned" would be

determined by diplomatic negotiation and that these states might conclude prior agreements, came to favor a simplified procedure.

Speaking on behalf of the United States Delegation to the General Assembly, John Foster Dulles on November 7, 1946 placed the whole procedural problem relating to "states directly concerned" before the Trusteeship Committee of the Assembly. After pointing out the numerous possible interpretations of the phrase "states directly concerned" and the great difficulty of arriving at any agreed interpretation, Mr. Dulles put forward the following proposal:

"In the light of these considerations the United States Delegation urges that the Assembly, and this Committee on its behalf, should not become involved in all these questions. We prefer a practical procedure which, in harmony with the letter and spirit of the Charter, will, as quickly as possible, permit the establishment of the trusteeship system and the giving to the inhabitants of the trust territories the benefit of that system. Concretely, we propose:

"1. That a small subcommittee of this Committee should be established to consider the draft trusteeship agreements before us and to negotiate on our behalf in relation to them;

"2. That all states which are interested be given the opportunity promptly to submit to this subcommittee and to the mandatory power involved their suggestions regarding these proposed trusteeship agreements;

"3. That after hearing such suggestions and after consultation with the subcommittee, the mandatory power concerned shall promptly advise the subcommittee as to the acceptability of those suggestions;

"4. That the agreements reflecting any such modifications shall then be considered by this Committee and referred by it to the General Assembly with the recommendation of this Committee, in each case, as to approval or disapproval.

"Under this procedure every state which is interested, whether or not technically a state 'directly concerned', whether it be large or small, whether it be near or far, will have an equal opportunity to present its views. All would, however, without prejudice to any rights they may possess, now forego formal classification as being, or not being, states 'directly concerned', and would forego formal signature of the preliminary agreement,

accepting the verdict of a two-thirds vote of the Assembly.”¹⁵

The Trusteeship Committee followed the suggestion put forward by the United States Delegation and selected a subcommittee which undertook the initial consideration of the eight draft trusteeship agreements. Moreover, the solution which was ultimately reached regarding the procedure to be followed with respect to “states directly concerned” was along the lines suggested in the final paragraph of the proposal quoted above.

In the subcommittee’s consideration of the draft trusteeship agreements the question of “states directly concerned” was raised owing to the fact that the preambles of the draft agreements stated that the provisions of article 79 had been complied with. Certain delegations, including principally the Soviet Delegation, contended that the Charter provisions had not been fulfilled, and called for an attempt to define the “states directly concerned”. At the request of the Chairman of the subcommittee the Delegates from the Soviet Union and the United States undertook consultations in an attempt to find an agreed solution to the problem. Following the announcement that these consultations had been unsuccessful the subcommittee, on the initiative of the United States Delegation, approved the following proposal regarding “states directly concerned”:

“Approval of any terms of Trusteeship by this session of the General Assembly should be on the following understanding with respect to ‘states directly concerned’:

“All Members of the United Nations have had an opportunity to present their views with reference to the terms of Trusteeship now proposed to the General Assembly for approval. There has, however, been no specification by the General Assembly of ‘states directly concerned’ in relation to the proposed Trust Territories. Accordingly, the General Assembly in approving the terms of Trusteeship does not prejudice the question of what states are or are not ‘directly concerned’ within the meaning of Article 79. It recognizes that no state has waived or prejudiced its right hereafter to claim to be such a ‘state directly concerned’ in relation to approval of subsequently proposed Trusteeship agreements and any alteration or amendment

of those now approved, and that the procedure to be followed in the future with reference to such matters may be subject to later determination.”¹⁶

This statement was approved by an overwhelming majority of the full Trusteeship Committee of the General Assembly and constitutes, therefore, the understanding on which the Assembly approved the eight trusteeship agreements.

APPROVAL OF THE TRUSTEESHIP AGREEMENTS BY THE GENERAL ASSEMBLY

After long weeks of discussion the subcommittee approved the eight draft agreements and referred them to the Fourth Committee where they were approved by a vote of 35 for, 8 against, with no abstentions.

At the sixty-third plenary meeting of the General Assembly on December 13, 1946 the Soviet Delegation moved a resolution calling on the Assembly to reject the draft trusteeship agreements as having been drafted contrary to the fundamental requirements of the Charter. The three principal grounds asserted were: (1) that the states directly concerned had never been specified; (2) that the agreements made the trust territories an integral part of the administering power; and (3) that the agreements did not provide for approval by the Security Council of military arrangements in the trust territories. This resolution was defeated by a vote of 34 against, 6 for, with 8 abstentions. The eight trusteeship agreements were then approved by the General Assembly by more than the required two-thirds vote. The United States Delegation voted in favor of all eight agreements. Opposing votes were cast by the Delegations of the Soviet Union, Byelorussia, Ukraine, Yugoslavia, and Liberia. The Polish Delegation also voted in the negative except in the case of the French agreements on which it abstained from voting.

The territories thus placed under the trusteeship system, with their administering authorities, are as follows:

<i>Trust territory</i>	<i>Administering authority</i>
Cameroons (British).....	United Kingdom
Cameroons (French).....	France
New Guinea.....	Australia
Ruanda-Urundi.....	Belgium
Tanganyika.....	United Kingdom
Togoland (British).....	United Kingdom
Togoland (French).....	France
Western Samoa.....	New Zealand

¹⁵ BULLETIN of Dec. 1, 1946, p. 993.

¹⁶ General Assembly doc. A/258, Dec. 12, 1946, p. 13.

THE ORGANIZATION OF THE TRUSTEESHIP COUNCIL

By approving the eight trusteeship agreements the General Assembly made possible the establishment of the Trusteeship Council, the last major organ of the United Nations to be set up. On December 14, 1946 the General Assembly elected Mexico and Iraq to the Trusteeship Council in order to balance the number of non-administering states with the number of administering states as required by the Charter. The Soviet Delegation again stated the view that the trusteeship agreements were contrary to the Charter, and contended that they could not be used as a basis for the creation of the Trusteeship Council. Accordingly, the Soviet Delegation did not participate in these elections.

The 10 members of the Trusteeship Council are:

<i>Administering states</i>	<i>Non-administering states</i>
Australia	China
Belgium	Iraq
France	Mexico
New Zealand	United States
United Kingdom	Union of Soviet Socialist Republics

The first meeting of the Trusteeship Council is scheduled for March 26, 1947. Francis B. Sayre, former Assistant Secretary of State and former High Commissioner to the Philippines, has been appointed as the United States Representative on the Council. The provisional agenda for this meeting, communicated to the 10 members of the Council by the Secretary-General, is largely composed of items relating to the essential business of organizing the Council and its trusteeship activities. It includes the adoption of rules of procedure; the formulation of questionnaires on the political, economic, social, and educational advancement of the inhabitants of each trust territory; the consideration of such petitions concerning trust territories as may have been presented; and the consideration of the relations between the Trusteeship Council on the one hand and the Economic and Social Council and the specialized agencies on the other. The Council will also consider items falling within its competence proposed by any member of the United Nations and will schedule its future work and sessions.

FORMER JAPANESE MANDATED ISLANDS: STRATEGIC TRUSTEESHIP

A further significant development in the trusteeship field was the announcement by President Truman on November 6, 1946 that the United States was prepared to place under trusteeship, with the United States as administering authority, the Japanese Mandated Islands and any Japanese islands for which it assumes responsibility as the result of the second World War. Copies of a draft trusteeship agreement for the former Japanese Mandated Islands were transmitted on the same date for information to the other members of the Security Council and to New Zealand and the Republic of the Philippines. On February 26, 1947 Warren R. Austin, United States Representative at the seat of the United Nations, formally submitted the United States trusteeship proposals to the Security Council together with an article-by-article commentary on the draft agreement.¹⁷ The Security Council on March 7 began the consideration of the United States draft proposals.¹⁸ This draft trusteeship agreement was submitted for approval by the Security Council rather than by the General Assembly, because under its terms the territory is designated as strategic. This is in accordance with articles 82 and 83 of the Charter.

CONCLUSION

As a result of intensive planning and cooperative action among members of the United Nations extending over a period of several years, the United Nations has put into operation its international trusteeship system. The effectiveness with which the Trusteeship Council will operate toward the achievement of the objectives of the trusteeship system as set forth in the Charter can be judged and tested only by time and experience. Meanwhile, the dependent peoples of the world and the members of the United Nations, who recognize the relationship between the advancement of non-self-governing peoples everywhere and the maintenance of international peace and security, will carefully observe the manner in which the international trusteeship system functions.

¹⁷ For the text of Mr. Austin's statement and the commentary on the draft agreement, see BULLETIN, Mar. 9, 1947, p. 416.

¹⁸ A survey of developments concerning the former Japanese Mandated Islands will appear in a subsequent issue of the BULLETIN.