The question of trusteeship was placed on the agenda of Dumbarton Oaks Conference but no provision was included. The question was left for subsequent study on the agenda of the United Nations Conference. At Yalta the matter was discussed and agreement was reached on the following policy:

1) Five Governments with permanent seats in Security Council to consult each other prior to the United Nations Conference on providing machinery for dealing with territorial trusteeship. This would apply to (a) mandated territories (b) territory to be detached from the enemy (c) any other territory that may voluntarily be placed under trusteeship.

2) The machinery and principles of trusteeship would be formulated thereafter.

In the U.N. Conference at San Francisco no agreement was reached among the sponsoring Governments on the proposals concerning the establishment of the trusteeship to be submitted to the Conference. The Governments of Australia, China, U.S.S.R., France, U.K., and U.S.A. submitted proposals. There were differences of opinions among the sponsoring Governments with regard to the objectives, the scope of application, the method of bringing the territories within the trusteeship system and the nature of administering authority and so on.


2. (UNIDO Vol.3 Doc.2 G/26/1, May 6, 1945, Doc. 2 G/26/e, May 10, 1945, Doc.2 G/26(f) May 11, 1945, Doc.2 G/26(c) May 5,1945, Doc.2 G/26/(a) May 6, 1945, Doc. 2 G/26/(c) May 5, 1945.)
The delegate of Netherlands observed that "the concept of trusteeship did not originate in the Covenant of the League of Nations, but had long been recognised by democratic states in their dealing with dependent peoples. In 1914, although the proposal had been made to broaden the mandate system, it had been drafted, adopted only as a solution for the problem of enemy territories. The super-imposition of such a system would be a backward step from the point of view of the more advanced colonial territories. He could not agree to its universal application. The value of trusteeship was recognised by the French delegate; but he "remarked that it was not the only way of promoting the development of dependent peoples." The U.S. draft insisted on the voluntary character of the trusteeship system. Most of the drafts incorporated the principle of the well-being of the backward peoples as the major objective and in order to make it effective made provisions for the political, social, economic and educational developments. The Chinese draft included independence as well as self-government. The policy of non-discrimination to all nationals of the member states was mentioned as one of the purposes of the trusteeship system in French and U.S. drafts. "His Majesty's Government in the U.K. approach the problem of trusteeship from the standpoint that the primary objective of any trusteeship system is the well-being of the inhabitants of territories which are not yet able to stand by themselves." The U.K. draft avoided

3. UNCG Vo. 10 Doc. 260 11/416 May 12, 1945 P.433
4. Ibid P 433
5. In an explanatory note it was stated "In framing any trusteeship system H.M.'s Government in U.K. think it desirable to avoid so far
to lay down any rigid rules with regard to its mechanism and principles.

However, on the basis of a number of proposals submitted by the sponsoring Governments, the Committee II/4 of San Francisco conference was assigned the task of drafting provisions on the principles and mechanism of a system of International Trusteeship.

The delegate of the United States made the following motion with reference to Doc.323 II/4/12, which had been circulated to the Committee.

"In accordance with the request of our distinguished Chairman and in order to expedite our urgent work and in view of the well-known fact that we do not have a chapter of the Dumbarton Oaks Proposals on this subject to work from, I present to you herewith a proposed working paper on the subject of International Trusteeship. It should be clearly understood that the acceptance of this working paper by this does not constitute an approval by the committee of the substance of the paper and does not constitute a withdrawal by any Government of its paper or its position. This working paper has been prepared for convenience in a form that will facilitate the proposing of amendments by any Government and for the convenience of the committee. It has been prepared with careful study and consultation on the general foundation of the various proposals advanced and on the basis of the general discussion in this committee."

as possible the laying down of rigid or detailed lines of policy in the charter of the U.N.O. The reason for this is that times change and a policy which may have been considered enlightened and satisfactory in 1945 may prove in later years, with changing world circumstances, to be operating to the disadvantage of the inhabitants of the territories or contrary to their wishes as they became more capable of political self-expression. Any system drawn up should therefore be capable of easy amendment from time to time as circumstances may require. If policy directions are included in the charter of the organization, it will be impossible to bring these directions up to date without an amendment of the charter itself. The charter, therefore, should be framed in the broadest general terms and any details of policy which may be thought necessary should be contained in the mandates or other similar documents which should be capable of revision by some less complicated process than that required for an amendment of the
"On this clear understanding, which I have submitted to the Rapporteur in writing, I move the acceptance of the working paper by the committee, without prejudice to the position of any Government."

The working paper was moved for discussion in the San Francisco Conference. An extensive general discussion took place which modified the principles and mechanism of the trusteeship system.

"The scheme of trusteeship before us is some what difficult and involved. The subject breaks new ground. There is nothing in the original Dumbarton Oaks draft to guide us. Practically all that the committee had before it was a section in the old covenant of the League of Nations which dealt with the subject of mandates. The treatment which has been given to this subject by the committee expands it far beyond the old mandate conception and makes the principle of trusteeship of very general application today. The old mandate, the old mandate system, was applied to the ex-German \\nex-Jewish colonics which the Paris Peace Conference had to dispose of. The subject therefore was a very limited one." (Field Marshal Smuts - UNCTD Vol. 8, June 20, 1945 p. 2)

"It is something that nations that have mandated territories express a willingness to frame this new means of administering that trust or at least supervising the administration in the name of the world of that trust." (Mr. Stam - UNCTD Vol. 8)
Declaration on Non-self Governing Territories.

The scheme for the administration of the colonial territories was divided into two parts, A and B. The Section "A" is a declaration of the principles upon which the responsible states members will discharge their administration of non-self-governing peoples. They jointly and publicly recognise in this document that it is their sacred trust to promote the well-being and advancement of these peoples. This is the most important and far-reaching joint declaration of colonial policy in history."

"We felt there would be a conspicuous gap in the charter if it did not contain a declaration applying to all non-self-governing territories. We recognise their administration to be a trust to be carried out in the interests not only of the inhabitants but also of the world at large." 1

This section does not provide for the international supervision as in the case of section B.

When the working paper was placed for discussion, the question arose what were the territories that would fall within this category? The working paper contained the language "peoples not yet able to stand by themselves under the strenuous condition of the modern world." 2

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1 (Mr. Forde - The Australian delegate - UNRCA Vol.2 p.11)
2 "It was said that these words did not clearly indicate what peoples were referred to. The words were outdated having been first drafted in the light of conditions prevailing twenty five years ago. From the military point of view, very few countries, if any were then, now able to stand alone in protecting themselves. Similarly very few countries were economically self-sufficient. The words, moreover, might be objectionable to certain peoples. It was pointed out that among dependent peoples there were peoples that were undeveloped and peoples with a long heritage of civilization."
This phrasology was borrowed from Art 22 of the covenant. The charter does not indicate clearly what peoples are referred to. Opinions differed on the precise meaning of the "peoples". During the first session of the General Assembly, the delegate of U. S., said that it would include any territories administered by a member of the U. N. which did not enjoy the same measure of self-govt. The delegate of U. S. S. R. on the other hand proposed to include all possessions, protectorates and territories, the people of which had not yet attained self-govt. and did not possess the right to elect local governing bodies or to take part in the legislative bodies of the governing country on the same terms as the people of the governing country. By a resolution the general Assembly made a list of the territories.

These two categories should be differentiated. On the other it was argued that the words in question had to come to have a special and generally recognised meaning through their embodiment in Art 22 of the covenant and that the working out of an appropriate and generally acceptable substitute had proved to be a matter of great difficulty.

In connection with this phrase the question was raised whether the intention was to include among peoples not yet able to stand by themselves peoples within metropolitan areas. Some delegates felt the wording of para A 2 made it clear that such was not the intention. The difficulties which would result if the principle of self-govt. were to be applied to minority groups in metropolitan areas were pointed out. On the other hand, attention was called to the incorporation within the metropolitan area by constitutional provision of areas which actually were separate from the metropolitan area. Several delegates agreed that metropolitan areas were not intended to be included but that the wording was ambiguous.

The delegate for the Netherlands suggested that the words 'people not yet able to stand by themselves' in line 3 of para A 1, be replaced by the words peoples which have not yet had sufficient training and experience to stand by themselves'. That for the first two words of para A 1(ll) the words 'to give these peoples the training and experience needed for rapidly and experience needed for rapidly developing' be substituted and that after the words "world community in lines 7 and 8 of para A 1 the words on the basis of paramountcy of their interest' be inserted.
This section "puts countries, especially colonial powers who have colonies to look after under certain obligations. . . . . . They are quite serious obligations and if these obligations are carried out we shall see a general levelling up of colonial administration all over the world. The system is not abolished, it is not touched, but the application of these principles to colonies of a large number of powers will mean a general improvement of administration and the setting up of quite new ideals for many of the dependent peoples in these colonies. That is covered by Sec. A of this report."

The obligations are stated in general terms in the above statement. The states members accept more specific commitments.

The members shall pay "due respect for the culture" of the people of the territory. This is an obligation on the members administering the territory. The purpose is to safeguard the native culture of the people. The Syrian representative laid emphasis on the obligations of the administering authority to promote the native cultures of the peoples of the Non-self governing territories and their self-govt.

"The chairman suggested that the matter of improving the wording of para A 1 might be referred to the drafting sub-committee with power to interpret the mind of the committee in the light of the discussion at the meeting, it being understood that since the amendment with regard to the question of independence had been withdrawn, that question was not before the sub-committee. After the sub-committee had reported, the committee might discuss any of the relevant matters raised at the meeting but could not raise new issues. If after a consideration of the whole paper a member wished to move the recommittal of para A 1 such a motion would be in order".

Decision "The committee by a vote of 34 in favour to 1 against adopted para A 1 subject to the understanding set forth by the delegate of U.S. and subject to the further understanding that the text would be referred to the drafting sub-committee on the basis set forth by the Chairman".

Mr. Smuts - UNCTIO Vol. 8 June 1945 P.2.
There is a provision for the just treatment of the people of the territory. "We believed that there should be an undertaking similar to that in Articles 22 and 23 of the League of Nations Covenant to secure the just treatment of the dependent peoples and to protect them against various abuses". For B class mandates there were specifications of such abuses like the slave trade, the arms traffic and the liquor traffic. But no such specification is mentioned in the charter.

"I propose to speak about the general principle of colonial policy which are incorporated in the part section A. . . . . we have a long experience of colonial Govt. It has been our privilege - sometimes rather on onerous one - to administer colonial territories of every kind of description in every part of the world. We have made no doubt many mistakes but out of our experience and that of other colonial powers, there have gradually been evolved certain principles of colonial govt. We believed that the time had come when these principles could be codified in a general declaration for the evidence of ourselves and other colonial powers and for the information of the world. This seemed a golden opportunity for such a declaration. These particular principles have been incorporated in the first part Sec. A of the charter which is now before us".

"The conclusion will note that these principles are of a very general character. That is inevitable. It is sometimes imagined by those who have not studied colonial policy that all colonies are alike. That is very far from the truth. They differ as much as metropolitan institutions do. They range from the primitive areas in the Pacific and Central Africa to such highly civilised countries as Ceylon, Egypt & Java. They are inhabited by the peoples of different races, peoples of different religions and peoples at different stages of civilization. Each must be administered differently and account must be taken of the varying traditions, culture and capacity of the indigenous people. You must not go too slow, and there are dangers in going too fast. To attempt to impose on primitive peoples at one full sweep all the elaborate machinery of Western Civilization would be to court disaster. But one general principle can be laid down. In every area whether backward or advanced, there must be a duty on colonial powers to train and educate the indigenous peoples to govern themselves. That is the main purpose of colonial govt.

(U.K. delegate - UNCIO Vol.3 P.20-21)."

19. Mr. Forde - UNCIO Vol.3 P.22.

"In accordance with the ruling of the Chairman, the committee began its consideration of the working document (Doc 323 11/4/22) with section A para 1. The Chairman ruled that the committee should consider first the wording of the para and second its proper placing in the charter."
The obligation mentioned in (b) was the subject of much discussions in the committee. The question arose whether "independence" could be postulated in the declaration as the desirable goal for the colonial peoples. In the final draft, the word "independence" was excluded. This exclusion was not favoured by many. On the other hand, some delegates held that independence should be dependent on certain conditions such as a minimum of education and a relatively well-established economic system. The delegate of U.K. drew attention to the fact that independence was not ruled out by the wording of the Sec. A of para (b), "Independence is the actual spirit of the formula.... It is here in the deed, if not in the word..."

Further, with regard to the sub section (b) of section 7, there is no redundancy play here on fine words, but a simple iron-clad promise of good will. The word as these are written in the statement of the declaration "states nations.....accept as a sacred trust the obligation to promote in the utmost the well-being of the inhabitants of such territories", the sovereign nations are not evading issues, they are accepting the full responsibility of their obligations to that is indeed a sacred trust".

Decision: The committee decided to insert the word "political before economic and social" in para A 1(1).

There was also a discussion of the possible addition of the word "educational" in para A 1(1). The chairman ruled that notice could be taken of this suggested in the final draft. (UFCIO Vol.10 Doc.404 11/4/17, May 12, 1949)

"The U.S. proposed to add to the previous para 'the words 'their just treatment and their protection against abuse'.

Decision: sub-para (a) in its amended form was adopted unanimously. (UFCIO Vol.10 Doc.1090 11/4/43 June 19, 1943)."

12. The committee considered an amendment to substitute for para A1(11) the following language,

"To promote development towards independence or self-rule as may be appropriate to the particular circumstances of each territory and its people."
"And when in subsection (b) of this declaration they enlarge upon the nature of this pledge of acceptance and in the simplest of terms promise not only to develop self-govt., but also to take due account of the political aspirations of the peoples and what is more important, to assist them in the progressive development of their political institutions, there is no possible way to under-estimate the importance of this pledge. Here is the promise of independence.

Thus it appears to be the intention of the administering authority to promote independence although this word is not included in the Art. Instead of independence, self-govt. is postulated as the desirable goal for the new self-governing territories. The self-govt. denotes that the administration that will prevail will be democratic, in other words, it will provide for all the facilities for political development conducive to the growth of self-governing institutions on which the inhabitants will have the largest share and ultimately this will enable them to attain independence if they so desire.

*In favour of this proposal it was argued that the change did not imply that all dependent territories would necessarily attain independent status, but independence was an aim of many dependent peoples and its attainment should not be excluded by the terms of the charter. The suggested phraseology, through its effects on dependent peoples, would lighten the task of administering authorities and conducive to international peace and security. Independence might in many cases be a distant prospect but the conference was trying to build a durable organisation and must take a long view. Not only had the word "independence" appeared in Art.22 of the covenant of the League of Nations but certain territories placed under League mandate had actually become independent states. The hopes of dependent peoples could be disappointed if a step backward were taken now. Furthermore, it would provide materials for the propaganda which was being carried on by Japan in South-Eastern Asia. Nothing in the charter should contravene the principle of the equality of all races; and their right to self determination, whether it resulted in independence or not, should be recognised."
Besides the obligation mentioned in (b), the administering authority is obligated to promote international peace and security, to promote constructive work for research and to transmit regularly the information to the general Assembly with regard to its administration. The obligations mentioned in (c) and (e) are important because they provide the positive safeguards for the all round development in the political, social and educational and economic progress and for the international co-operation. As the Australian delegate said "we considered that there was a need not only for negative safeguard but for positive measures for economic and social development and for International co-operation directed to these ends. We therefore proposed important additions to part A. These included undertakings to encourage research in the economic and social problems of dependent peoples, to promote positive measures for economic development and the raising of standards of living." 

"Against the motion, it was argued that human rights were being dealt with in a separate chapter of the charter, and the proposed amendment went beyond the scope of the trusteeship question. It was also suggested that since section A of the working paper applied to all dependent territories and not merely to those placed under trusteeship, the amendment under consideration should more properly be made in para 3 of Sec B. The word self-govt did not exclude the possibility of independence and represented a broad measure of agreement which it would be inexpedient to impair by the substitution of a more controversial wording. Furthermore the word "independence" meant different things to different peoples and its use might lead to conflict. The use of the word "independence" would cause political uncertainty which would tend to prevent capital development and to dissuade governments from spending money on strategic works. The ultimate result would be the creation of numerous small states at a time when the interdependence of all peoples was becoming increasingly desirable." (UNDOC Vol.10 Doc.464 11/4/17, May 18, 1945 Pgs 748) 

"The U.S. moved sub-para (b) as redrafted. 

To develop self-govt to take due account of the political aspirations of the peoples and to assist them in the progressive development of their free political institutions according to the particular circumstances of each territory and its peoples and their varying stages of advancement."
The second obligation constitutes in transmitting regularly the information of a technical nature to the International organ. The Australian Govt. proposed that the administering authority should furnish annual reports on the political, economic and social development of the peoples in all non-self governing territories. This proposal to include an obligation to report to the U. N. on administration in colonial territories was not agreed to. An alternative

"The delegate for the Philippines in expressing his acceptance of the para in its revised form said that selfgovt. might express the ultimate happiness for some peoples. Other peoples, however, might find the ultimate happiness in independence and the charter should not be a nuisance to happiness for such peoples. He interpreted the words 'to assist them in the progressive development of their free, political institutions' to mean independence. Peoples all over the world had been given new hope of freedom by this war and his hope should not be disappointed."

"The delegate of U. K. said that his Govt. had never ruled out independence as a possible goal for dependent territories in appropriate cases. His Govt. had objected, however, to putting forward independence as a universal co-equal alternative goal for all territories."

"The delegate for Iraq urged the importance of including in the text some provision for the protection of independence in dependent territories. He moved that the word 'and culture' be inserted after the word 'political' in line 6 of sub-para (b) while there was general agreement with the substance of the motion, it was pointed out that the amendment might be inserted to better advantage in another para. The Iraqi delegate accepted the suggestion."

Decision: Sub-para (b) as redrafted was adopted unanimously. (UCIO Vol.10 Doc.1090 June 13, 1948)

"I honour General Romulo's sincerity and eloquence with which he pleaded the cause of independence, but I do not believe that the situation is so simple as it appears. Many of those territories are small, poor and defenceless and could not stand on their own feet. Many of them are extremely backward. Many need a helping hand to build roads and communication to set up modern health system, to introduce scientific methods of agriculture and to encourage the spread of education, which is fundamental to all progress. With such help the territories would gradually advance into civilisation. That we can give them is liberty and free institutions. We can gradually train them in the management of their own affairs so that independence ultimately will come. They will be ready for it."
been adopted namely an obligation to transmit regularly to the organisation statistics and other information of a technical nature relating to the economic and social advancement of the inhabitants of non-self-governing territories. This information will be of a technical nature.

The delegate of U. S. S. R. proposed that it should include political information. But this proposal was not accepted and by a resolution it was decided that members would submit such information voluntarily. Due to the variations of administrative practice, it was difficult for administering authority to submit reports covering identical periods of time and hence no period was specified for such information.

A resolution of general Assembly, December 14, 1945, said "Members transmitting information will send to the Secretary-General by 30 June of each year the most recent information which is at their disposal."

That is the essence of the provisions in the first part of this chapter. It does not rule out independence. It leaves it to the processes of natural evolution in cases where it is appropriate. Do not let us rule out independence as the ultimate destiny of some of these territories. It is not ruled out by the wording of section of this chapter. But to have included it as the universal goal of colonial policy, would be unreasonable and prejudicial to peace and security. It is not in the minds or the desires of the great majority of colonial peoples. What do these peoples want? They want liberty. We can give them liberty. They want justice. We can give them justice. They want all that we comprehend in the term 'free institutions'. We can give them that. Let us train them and give them the benefits of our resources and our experience. Let us help them to climb the rungs of the ladder of self-govt. That is the purpose of this chapter so that ultimately, dependent or independent that, they can play their full part in a peaceful, prosperous and interdependent world."


14. "The delegate for U. S. moved a new para (d). Following some discussion on the meaning of the word 'agencies' in this context the committee decided to substitute the word 'bodies'.

Decision Sub-para (f) was carried out without objection (UNCTSO Vol. 10. Doc. 1086. 11/2/1945; June 19, 1945 P. 4).
Although no action can be taken on the information submitted under 73e, the transmission of such information is very important. As the Australian delegate said "I regard the furnishing of statistical information as of great value. From that source we can obtain the facts as to the health, nutrition and labour conditions of the native populations and we shall be able to ascertain therefore what has been achieved in their interest from time to time: this should result in a healthy competition between colonial powers for the achievement of better conditions for all the peoples under their care. We believe that many practical achievement will flow from this part of the charter and that the potentialities of the dependent peoples will have a much wider scope for development." 17.

15. Mr. Forde - UNGO Vol.9, P-12.


On the proposal of the delegate for Greece, the committee agreed to insert the word "territories" after "these".


"The delegate for the Netherlands drew attention to these grievances which were acutely felt by dependent peoples:

(1) Failure to protect their land particularly arable land (2) forced labour (3) the humiliation caused by the assertion of racial superiority. He asked the delegate of U. S. to give an assurance that the text under discussion implied an obligation on states administering dependent territory to make provisions concerning these matters."

"The delegate for U. S. replied in the affirmative. There was he said, a moral obligation to endeavour to overcome these three evils and that moral obligation was plain in black."

"The delegate for the Netherlands was assured that these questions and the answer would be recorded in the report of the Rapporteur. (Ibid).

17. Mr. Farde - UNGO Vol.9, P-12."
The concept of "trustee" involved a different meaning from its ordinary legal connotation. As Kelsen writes, "The charter does not define the concept of "trustee, although the term is not used in its original meaning, a person holding property in trust, that is to say, for the benefit of another. An institution of public, especially of international not of private law is intended. The term itself indicates merely a certain analogy to private trusteeship. The difference is that the trustee of the system established under the authority of U.N. is not a private person but a state or an international organisation, and that what it is holding in trust is not property but the power of administering a territory. This administration must be exercised for the benefit of the population. For this purpose the administration is to be placed by the trusteeship agreement under the supervision of the United Nations.\[19\]

According to the same writer the trusteeship system involves three different elements: 1) territory placed under the trusteeship called trust territory 2) an administering authority competent to exercise the administration of the trust territory, such authority may be one or more states 3) the organisation not as administering but as supervisory.


"We believe that humanity and human communities at the present stage of civilisation should be able to understand that the trustee territory can no longer be considered as an investment or as a business affair". (Prof. Awad of Egypt-UNCIO Vol.VIII P-143) "We have accepted a mandate as a sacred trust, not as part of our sovereign territory. The mandate does not belong to my country or any other country. It is held in trust for the world". (Mr. Stassen, Ibid P-154).
This establishment of international trusteeship system is provided in Art 75 which reads as follows:

"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".

This Art. is comparable to the mandate system under Art 22 of the League of Nations.

"To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the states which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this covenant".

"The best method of giving practical effect to this principle is that the tutelage of such people should be entrusted to advanced nations who by reasons of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it and that this tutelage should be exercised by them as Mandatories on behalf of the League".
The territories are to be brought under the trusteeship system "by subsequent individual agreements". These words imply that the area of application of the system and the detailed implementation of the obligation arising under the system will be left to individual agreements, which are to be made by the "states directly concerned". When this Article was placed for discussion at the San Francisco conference in the year 1945, objection was raised by the Egyptian delegate for the inclusion of the words "by subsequent individual agreements". However the charter by leaving the detailed implementation of the system to individual agreements follows closely to the practice of the mandatory system under the League covenant.

22 The delegate for Egypt proposed to delete the words "by subsequent individual agreements" from para B1 and agreed to the suggestion of the delegate for Greece that the word "duly" should be inserted before the words "placed thereunder". He argued that the reference to individual agreements was a matter of detail which did not properly fall within a clause dealing with general principles; furthermore its meaning was absence. In opposition to this, it was argued that the words it was proposed to delete were an essential element in the decision to establish a trusteeship system and could not be removed without creating confusion. The existing mandates had been brought under the mandates system of the League of Nations by individual agreements and the three types of territory which it was proposed to bring under this system by means of similar agreement. The words in dispute conveyed that no territory could be placed under the trusteeship system by any form of unilateral action. (Discussion of working paper at the 7th meeting of San Francisco conference. Doc. 448 11/4/18, May 19, 1945 Vol. X P-460. Decision amendment defeated and para B1 adopted by 31 votes to 1).
Objectives and purposes.

The objectives are laid down in Art. 76 which reads as follows:

"The basic objectives of the trusteeship system in accordance with the purposes of the United Nations laid down in Art. 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 circumstance of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;
(c) to encourage respect for human rights and for fundamental freedoms for 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 U.N. 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 Art 80".

The charter generalizes the objectives in one place which the League Mandate system did not. Art. 22 of the League covenant laid down the general principle of the mandate system namely, the well-being and development of peoples not yet able to stand by themselves under the strenuous conditions of modern world. Three different categories of mandates were made...
under the mandate system. The objectives were different in the three different mandates. The mandates belonging to the category of A were "subject to the rendering of administering advice and assistances by a mandate until such time as they are able to stand alone". The objectives set forth for the B class mandates were the guarantee of "freedom of conscience and religion subject to the maintenance of public order and morals", "the prohibition of abuses such as slave trade, the arms traffic and the liquor traffic", "the prevention of the establishment of fortifications of military and naval bases and of military training of the natives for other than police purposes and the defence of territory" and "securing equal opportunities for the trade and commerce of other members of the League." For C mandates, only those purposes relating to the interests of the indigenous populations are recognized.

In comparison to the League the charter is more comprehensive and "definite of the basic purposes of the trusteeship system".

The Art 73 states that the basic objectives of the trusteeship system will be in accordance with the purposes of U.N. laid down in Art 1 of the present charter. This implies that the trusteeship system will be a part of the U.N. charter, because the basic objectives are in accordance with the purposes laid down in Art 1 of the present charter. Any objective (shown) Art 1 of the charter will constitute its violation and of the trusteeship system. In original draft
the words* in accordance with the purposes of U.N. laid down in Art 1 of the present charter were not there. These words were subsequently added by the U.S. delegate.  

It may be now asked whether the charter imposes the obligations of Ch XI upon the administering authority in a trust territory. As Mr. Kelsen says" there is no provision in charter for their mutual relationship. In its report of the General Assembly of Dec. 12, 1946, the fourth committee included the following statements made in the deliberation of the sub-committee to examine the trusteeship agreement submitted to the Assembly for approval. The sub-committee was in unanimous agreement with the view expressed by the delegation of the Netherlands that the principle set forth in Art 73 of the charter of the U.N. that the interests of the inhabitants of the Non-self governing Territories are paramount and the general obligations accepted in Arts 73 and 74 of the charter apply also to the Trusteeship territory due account being given to the terms of the Trusteeship agreement and the different states of the two categories of Non-self governing territories. The delegate of U.S. stated:"In preparing this draft agreement the govt of U.S.bore constantly in mind Art 73 of the charter.*

Thus it is to be noted that the obligations of Art 73 and 74 are applicable to the trust territory although"their mutual relationship" has not been laid down in the charter in specific terms.

*21 - Official records of the Security council 2nd year No. 20 P416.
All the objectives mentioned in Art 76 are not specific. The objectives mentioned in (a) is an extension of the purpose of U.N. in Art 1 para 1. This obligation is also repeated in Art 84. The clause (e) is in close conformity with the principle laid down in Art 1 para 3. The working paper in its original draft did not contain this clause. It was added subsequently by the U.S. delegation. The addition of this para goes far beyond Art 22 of the covenant.

The clause (c) is applicable to three categories of territories coming under the trusteeship system without any exception, whereas the guarantee of freedom of conscience and religion under Art 22 of the covenant was given to territories falling under B and C mandates.

The clause (b) is a specific objective which is divided into two parts. (1) to promote the political, economic, social and educational advancement of the inhabitants and (2) to promote their progressive development towards self-governance.

The second is the specification of the first since promoting "the political development" implies promoting "progressive development". The Art 73(b) imposes the obligation on the members "to develop self-govern" and "to assist them in ...

The objective was included in the French, U.S., and the Chinese drafts (see Art 2, their respective drafts, UNCIO Vol.3 Doc 2 g/25(a) May 5, 1945, Doc 2 g/26(c) May 5, 1945, Doc 2 g/26(e) May 10, 1945.

The delegate for U.S. moved to add a new para. This reads:

"(c) to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, language, religion or sex and recognition of the independence of the peoples of the world. (UNCIO Vol.4 Doc 877 II/4/45, June 9, 1945, p 513."
progressive development of their free political institution".
The word "independence" is not mentioned in it and it may be presumed that "this is not an obligation to give independence to those peoples at some future time". In Art 76(b) the word independence is mentioned in addition to "self-govt". In the Original working paper this alternative objective was not mentioned. The Chinese proposal contained this word and in that respect it differed from other proposals. The inclusion of this word was objected to by U.K. and some expressed a reserved view on it at the third meeting of the general discussion preceding the deliberation on the working paper. However, the U.S. Govt. took note of the Chinese suggestion* and later incorporated it in an amended form in Art 76(b). The obligation in the second part, "independence is limited to two things: (1) "as may be provided by the particular circumstances of each territory" (2) "as may be provided by the terms of each trusteeship agreement". The last four sentences were not originally in the working paper. The addition was made by the delegate of U.S. Govt. The objective mentioned in clause (b) will be thus determined by the "particular circumstances of each territory and by "each trusteeship agreement".

* Art 2 of the Chinese drafts UNCT Vol.3 Doc 12 g l26(c).

He warned the committee against confusing independence with liberty. What the dependent peoples wanted was an increasing measure of self-govt; independence would come, if at all by national development"(UNCT Vol.10, Doc 260 11/4/8 May 12, 1945 P 434).
The representative of Mexico said "that independence should be conceded whenever a self-governing people had unmistakably expressed its wish for complete liberation"(Ibid P 434). The delegate of U.S.S.R. did not agree that self-govt alone would be an adequate objective but emphasised the importance of independence and reminded the committee that the amendments to the Dumbarton Oaks draft proposed by the 4 sponsoring govt.s included self determination of peoples' among the aims of U.N., this principle could hardly be omitted from the trusteeship chapter"(Ibid P 434)."It should be clearly stated, maintained the Indian representative that the first objective of trusteeship was the autonomy of trust territory". (Weekly bulletin U.N. Vol.1 No.6 Nov.18, 1945 P 19). The representative of New Zealand said "that they should work in the interest of the inhabitants of the territory leading them towards self-govt". (Ibid P 10).
Who will determine the particular circumstances? Since nothing is here mentioned, evidently it will be decided by the administering authority which is to enter into individual trusteeship agreement.

The clause (d) emphasizes the principle of "open door" policy for all members of U.N. and their nationals. This non-discriminatory policy was incorporated in the French and U.S. drafts with some additions in the latter. The open door policy was not favored by U.K. As a matter of fact, this open door policy refers more closely to the interests of other nations than to the inhabitants of the trust territory. Under this Art. 76 Clause (c) the principle of equality of "treatment in social, economic and commercial matters" and in the administration of justice is extended to all members of U.N. and their nationals. The principle of economic equality extends far more in scope under the charter than under the former mandate system which recognized this principle only in such territories as were placed under B mandates. A report to the fourth committee contains "with regard to the provision in the draft trusteeship agreement concerning equality for members of the U.N. in economic matters, it was the view of the sub-committee that the Trusteeship Council should watch year by year the grant..." (Prof Awad of Egypt UNICEF Vol. 8 P. 148)

We believe that it is the duty of the administering authority to go to no end of sacrifice in order to enable the people of these territories to achieve the greatest measure of independence and happiness possible. That is not only good for the trust territories themselves but it is a noble achievement for the trustee power itself, and the latter cannot possibly feel fully happy until it has fulfilled this particular obligation. (Prof Awad of Egypt UNICEF Vol. 8 P. 148)

The delegate for the U.S. said that the proposed amendment took account of certain proposals previously put forward by the Chinese, Soviet and Australian delegation of ideas expressed in meetings of the committee by the Chairman and by delegates for Mexico, Iraq and Egypt, among others and that an adjustment of language had been made to meet certain French suggestions. Egypt moved that the words at the end of subpara (b) "and as... arrangement" be deleted. In favor of the motion it was said that retention of the words in question would detract from the value of the inaction of the word "independence" and that the decision whether a given territory should be eligible for self-govt only or for independence should be determined not at the time of the conclusion of the trusteeship agreement but at a later period in accordance with the development of the territory. Against the matter...
of any monopolies other than those controlled by the govt. or in which the govt. participates with a view to ensuring their capability with Art 76 and if necessary, in the light of changing circumstances and practical experience should formulate its views on the condition under which such rights should be granted "34."

The U.S. undertakes to accord nationals of each member treatment no less favourable than is accorded to nationals of other members except the administering authority. The delegate of U.K. suggested, at the 124th meeting of the Security Council, the omission of the last words "except the administering authority". These words would seem to give a preferential position to the U.S. which does not seem to be in strict accordance with Arts 83, para 2 and 76(d) of the charter. From these two Arts, taken in conjunction, it is clear that, according to the charter, there should be equal treatment in social, economic and commercial matters for all members of the U.N. and their nationals in the strategic area as in any other territory under trusteeship. Art 76 enumerates the basic objectives of the trusteeship system and para d thereof says "to ensure equal treatment in social, economic and commercial matters for all members of the U.N. and their nationals", This suggestion was rejected by the U.S. delegate who referred to the phrase of Art 76 (d) "without prejudice to the attainment of the foregoing objectives." These words are apparently intended to

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35. This would have the effect of assimilating the status of C mandates to that of B
make at possible for discriminatory policies to be pursued as, for example, liberal trade arrangements providing for the entrance of the goods of one member into the Trust Territory on more favourable terms than those of another in return for special favours granted in such arrangements seem to be necessary to the economic development of the country".

mandates, thus altering the terms of the contracts under which the states responsible for C mandates had agreed to accept them. It would also perpetuate in B mandates the existing non-discriminatory clause which had not always operated to the advantage of the dependent peoples concerned. (Delegat of U.K. UNCTIO Vol. 10 Doc 260 11/4/3 May 12, 1945 P 434) The representative of Union of South Africa pointed out that the "open door" had not previously been applied to C mandates. It might be detrimental to the native populations and his govt could not contemplate its application to their mandated territory. (Ibid P 434). The delegate of Netherlands said that despite the merits of "open door" this principle should not be applied in such a way as to impair the interests of dependent populations which must always be paramount. (Ibid, P 435). The Mexico delegate urged that the principle of open door may be applied subject to reciprocitv. (Ibid P 435)

36 - Doc A/258 P 6.
36* - Off records of Security Council 2nd yr No.31 PP 644.
Categories of territories.

The Charter envisages the three categories of territories that may be placed under the trusteeship system. This is stipulated in Art 77 which runs as follows:

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,
   (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.

When the working paper was placed for discussion, the Guatemala moved an amendment. "It suggests that the following text be inserted after the enumeration of categories of territories which might be placed under the system:

"The Trusteeship system shall not be applied to territories in dispute, concerning which there is pending any question, claim, controversy or litigations between states members of the international organisation". The reasons given are the following:

The delegation of Guatemala submits to the consideration of the committee this amendment, which is inspired by the principle of justice that the rights of third parties should be safeguarded in the face of any situations which might derive from the application of the trusteeship system.

"Thus, in so far as concerned, the Republic of Guatemala which maintains a controversy with Great Britain in relation to Guatemalan sovereignty over Belize (British Honduras), it could in no case admit that such territory be placed under the trusteeship system because this would imply a change in the status of Belize in such a manner that it might complicate Guatemala's action towards regaining this territory". (Discussion of working paper at the 7th meeting at San Francisco conference, Vol. X Doc. 405 1/4/15(1), May 18, 1945, P-460). "Its opponents maintained that this protection was already afforded by para B4 and B5. This amendment would also if adopted, the way open for the removal from the trusteeship system of any territory over which a dispute might arise in the future". The delegate of U. K. declared that his Govt. could not accept the assumption and implication contained in its second para". To this the representative of Guatemala said under para 3(c) there was no provision concerning possible claims to a territory on the part of a country other than the country administering or possessing the territory. Para 4 and 5 also did not cover the point raised in the Guatemalan reservation, for no indication was there given to the procedure for determining what states were concerned in a particular territory. The principle which Guatemala was now
2. "It will be a matter for subsequent agreements as to which territories in the foregoing categories will be brought under the trusteeship system and upon what terms.

No obligation to place certain territories under the trusteeship system is imposed upon the members by the charter. The word "may" mentioned in Art 75 & 77 does not imply any sense of compulsion. On the contrary, the whole trusteeship system has a voluntary character. The word "voluntarily" mentioned in clause (c) is therefore, confusing.

The first category deals with the territories that were placed under the mandate system, in other words it means the mandatory territories. The question that arose whether the mandatory powers would be under the obligation to place their mandates under the trusteeship. Since the whole trusteeship has a voluntary character as mentioned above, the voluntary consent of the states which have the right to dispose of the mandated territories is necessary. This view was contended by many. The delegate of China at the 105th meeting of the General Assembly said, "under Article 77 of the charter, the trusteeship system is applicable to three categories of territories the first of which comprises territories now held under mandate. The requirement of a voluntary act is mentioned only in connection with the third category of territories and can hardly be held applicable to territories under mandate.

Decision: amendment rejected by 13 in favour and 18 against (At the 9th meeting, Vol. X Doc 552 11/4/23 May 24, 1945, P.470 and P.476)

3% The enumeration of this category was mentioned in the drafts of U.S., U.K., China. (See Articles respectively of their drafts Vol. III P.

39 Official records of 2nd session of the general Assembly, Plenary meeting Vol. I P.600.)
The mention of the word "voluntarily" in the third category conveys the sense of compulsion in regard to the other categories, particularly the mandated territories which are specifically referred to and emphasised in Art 80, para 2 of the charter, which does not condone any delay or postponement of the negotiations and conclusions of agreements for placing mandated territories under the trusteeship system.

At the 5th meeting of the 4th committee of the General Assembly the delegate of Brazil, at the 7th meeting the delegate of India, at the 18th meeting the delegate of U. S. S. R. and at the 19th meeting the delegate of Byelorussian Republic maintained, that the members would be under obligation to place the mandated territories which are under their jurisdiction to the trusteeship system.

An amendment proposed by Egypt and Iraq.

"To delete from para B3 the word "only" in line 1 the words from "such" in line 1 to "arrangements" in line 3 inclusive, and the whole of the last sentence but on in the para and to insert the word "all" after (a) in line 3.

In support of this motion, it was pointed out that there were two references in para 3 in different term to subsequent agreement and these references were ambiguous. In connection with sub para (a) (existing mandates) no private title to a mandated territory could lie with a mandatory power. It was for the League itself to pass title to such territories perhaps by a general agreement with the new organisation and not for the mandatory power to undertake to do so by individual agreements. Questions concerning the protection of vested financial interests could be taken care of perhaps by an article in the agreement but in any case financial interests were of secondary welfare of peoples. It would be evidently impossible by two parallel systems - the League system and the New trusteeship system - to continue to exist side by side. In connection with sub-para (b) (ex-enemy territories) an ex-enemy state could certainly not be allowed to be party to an agreement for the placing of its territory under a mandate. The surrender of enemy powers would not extend to details of the disposition of their territory.
This opinion does not seem to be correct in view of the fact that it is by voluntary agreement that all territories, including those falling under the first two categories are brought under the trusteeship system. As the delegate of South Africa said "the committee should bear in mind, in drawing up general principles that the terms of existing mandates could not be altered without the consent of mandatory power." The delegate of the United States of America pointed out that his Govt. did not seek to change the relations existing between a mandatory and a mandated territory without the former's consent and it purported the principle of voluntary submission of territories to the system.

In connection with sub para (c) (voluntary transfer) agreements were not called for. Consequently, reference to individual agreements was altogether superfluous in para 7.

Objection was taken to the proposed amendment on the ground that it would have the effect of creating a compulsory system and thus of legislating beyond the competence of the present conference. It would also prejudice decisions which ought to be left to subsequent meetings of the U.N. The proposed trusteeship system would differ appreciably from the League system of mandates and the simple terms of dissolution suggested by Egyptian delegate was, therefore, not practicable. No power now holding a mandate should be expected to continue to accept responsibility under a new system, if it had, share deciding upon the revised terms of its trust.

Decision: Proposed deletion rejected by 22 votes to 5 and the addition by 20 votes (UNC10 Vol.10 Doc.310 (Engs)11/4/11 May 5, 1945 P.1

The fourteenth meeting of the Committee began with a statement by Field Marshal Smuts. The statement referred to the special character of the South West African Mandate which, Field Marshal Smuts said, was recognised at Versailles.

Mandated territories were at different stages of human and economic development and this is why mandates were divided into three categories with different objectives and different methods of administration. South-West Africa was different from other "C" mandates because of its physical contiguity to the Union of South Africa and its biological kinship with the rest of Southern Africa. Since its national existence had been threatened from this territory, South Africa was anxious for strategic reasons to annex it and only agreed to accept it in a mandate experimentally.
According to U. K. the compulsory application of trusteeship system to existing colonies "would amount to interference with the internal affairs of member states". Mr. Kelsen holds that the charter does not impose upon the states entitled to dispose of the former mandated territory the obligation to place under the trusteeship system all these territories. The territories mentioned in (a) and (b) can only voluntarily be placed under the trusteeship system. The charter cannot be interpreted to oblige states to place territories under the trusteeship system. The word "voluntarily" mentioned in the third category of territories

President Wilson had said at Versailles that the Union of South Africa would administer the territory as an annex to the Union as far as was consistent with the interests of the inhabitants. It was up to the Union to make it so attractive that South-West Africa would come into the Union of its own free will.

The Union of South Africa and the people of South West Africa, said Field Marshal Smuts, now submitted that the experimental stage had passed away. Its formal incorporation was necessary in order to remove uncertainty so that private capital and individual initiative and enterprise should be encouraged to assist in the effective development of the Territory. Pastoral and mining industries were the main sources of revenue and both needed the stimulus of a certain future. Incorporation was required so as to render unnecessary a separate fiscal system and enable the inhabitants to share in the increasing sums being made available in the Union for native education, public health and social welfare.

Despite repeated representations from the European population of South-West Africa the Union Govt. felt that the states of the territory could not be changed without proper consultation with all the peoples of the territory and with competent international organs. At San Francisco, South Africa had entered reservation during the trusteeship discussion, on the future status of South West Africa. The charter, Field Marshal Smuts, pointed out made the application of the trusteeship system to mandated territories a matter voluntary agreement. At the London General Assembly the South Africa Govt. reserved its position pending consultations with the peoples of the area.

If the territory was incorporated there would be no departure from the principle of promoting the moral and material welfare of the population.

The separation of South West Africa from the Union had been due solely to the dispatch of a warship by Bismarck in support of a German trader and the vacillating policy of the British Govt. of that day, it was a geographic, ethnic, strategic and economic part of the Union.
may be interpreted to mean "that in the case of territories in the first two categories, the states directly concerned are at least morally obliged to enter into the agreement necessary to bring them under the system, while in the case of territories in the third category, no suggestion whatever of obligation while the door is open to any member which possesses a colony to agree to place it under the trusteeship system, there can be no allegation of breach of faith or violation of the spirit of the charter if it refuses to do so."

Field Marshall Smuts concluded his statement by saying that to give effect to the wishes of the population of the territory would be the logical application of the democratic principles of political self-determination. It would also confer upon the territory, the benefits of the membership of a large community without loss of these original rights and responsibilities it enjoyed under the mandate."


The Indian delegate strongly opposed the South African proposal to incorporate the mandated territory of South West African in the Union as a retrograde step and in contradiction to the spirit of the charter. He enumerated the discriminatory practices in the Union against the natives and against all non-Europeans. Further the Indian delegate sought it was impossible to believe that the native population of South West Africa had understood the issues involved and the advantages of the trusteeship system and referred to the fact that consultation had been conducted by officials and magistrates of the Govt. The only appropriate action was to put such territories under a trusteeship system which would lead them progressively to political independence. (U.N. Weekly Bulletin Vol.1 No.16 Nov. 18, 1946 P-9).
By Art 78, certain territories are explicitly excluded from the application of the trusteeship system. The territories are those which have become members of the U. N. and the relationship among them is based on the principle of the sovereign equality of all its members. This is taken from Art 2(1). In the Original working paper this principle was not mentioned. The addition was made by the U. S. delegate, perhaps "it was thought desirable to make this explicit for the reassurance of certain participants in the Sanfrancisco conference whose international status had been called into question."

The Chinese delegate criticised South-African proposal to incorporate South-West African in Union as a retrograde step. He doubted if improvements in the living conditions of the inhabitants, geographical contiguity or economic ties were adequate grounds for incorporation and consultations conducted exclusively by administering authority were not perhaps a sound basis. He also referred to policies of racial discrimination in the Union of South African which would be to the disadvantage of the natives of South West African if that territory was incorporated. (Ibid P-11).

The Soviet delegate described the South African proposal for the incorporation of South West African as a flagrant violation of the charter and said that if everyone placed the same interpretation on the charter, no nation would have to submit trusteeship agreement and no trusteeship council would be formed. As members of U. N., every country was pledged to implement the charter". (Ibid P-12).
Method of bringing the territories within the system.

It has been noted that a territory can be placed under trusteeship only by agreement but the question arises what are the parties to the agreement? Art 79 states:

"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 Arts 83 and 85.

From this Art we may infer that the terms of trusteeship shall be agreed upon by the States directly concerned which are under the Articles empowered to make alterations for amendment of the terms and trusteeship agreement as to be approved by the General Assembly or by Security Council as provided in Arts 83 and 85 respectively. But no definition with regard to the States directly concerned is given in the charter. No agreement was reached on this issue during the discussion in London in the preparatory commission and during the first part of the first session of the General Assembly.

The General Assembly in its resolution on Feb.9, 1946, inviting the members to take practical steps to submit agreements, did not define the phrase "the States directly concerned". When the trusteeship agreements for eight of the mandated territories were placed before the fourth committee for consideration an attempt was made to define the meaning of "the States directly concerned"."


The U. S. representative expressed the opinion that the agreements should be approved by the states directly concerned which should be interpreted to mean only the states administering the trust territories. The Soviet representatives disagreed with the view expressed by the delegates. At the 27th meeting of sub-committee 1 of the 4th committee, the representative of the Soviet Union submitted "that among the states directly concerned should be counted the five great powers as they were permanent members of the Trusteehip Council. That special position emphasised their responsibility for trust territories. It should also be considered that the trust territories according to articles 76 and 84 of the charter were called upon to play their part in the attainment of international peace and security within the general system of measures not to be ignored when deciding the question of the states directly concerned". At the meeting, the representative of Australia stated. Since in a real sense, every state had an interest in the trusteeship agreement for each territory, the charter had specified that a states concern must be not only real and strong, but it must also be a "direct concern". Interest in the administration of a territory by another state could not be direct unless it was a judicial interest. The conclusion was reinforced by consideration of Article 77(c) of the charter, which provided the voluntary submission to the trusteeship system of territories other than those held under mandates or taken from enemy states in the last war. It was improbable, in the case of such territories that the charter required the consent of states other than the administering state, if there was nothing in their history to justify that consent being required. It was clear, therefore, that a

46 - Summary records of Sub-committee 1, Nov.15-
Doc.10, 1946 P.174.
direct judicial interest must exist in order that a State should be directly concerned. The representative of Iraq proposed that the General Assembly should resolve... for determining whether a State is directly concerned, the following:

1. Neighbourship and geographic adjacency of a State to the territory in question. (II) Linguistic, cultural, economic, social and historical ties between a State and the territory in question. The aforesaid considerations are not exhaustive. States which have other reasons to be considered as directly concerned may be entitled to participate in the negotiation of a given trusteeship agreement.

However, the representatives failed to evolve a canon definition of the phrase "the States directly concerned" which would be acceptable to the Sub-committee. Finally, a proposal mooted by the U.S. delegate was accepted. The proposal states: "The General Assembly does not prejudge the question that States are or are not directly concerned within the meaning of the Art 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 subsequent proposal and trusteeship agreements."

As a matter of fact the decision to make trusteeship agreement was left to the Mandatory powers in case of mandated territories; in the case of category (c) the State responsible for the administration was also directly concerned and in the case of territory detached from the enemy states the State in actual occupation was directly concerned.

42 - Ibid P-206.
43 - Summary record of meeting of fourth committee January 11- February, 1940, P-49.
The agreement thus made shall be approved by the General Assembly in the case of non-strategic territories and by security council in case of strategic territories.

Dr. M. Jawi said "there is no specific regulation in the charter as to how to terminate the trusteeship. A territory under trusteeship has no specific way of applying for independence and being granted that independence. It is at the mercy of the trustee power. Had provision been made for that the charter would have been better." 49

So far the termination of trusteeship is concerned no provision is laid in the charter. 49

49 - UNTO Vol. I.

Referring to the termination of trusteeship, he affirmed, that where the prerequisites for independence existed this goal would attained inevitably with or without a trusteeship system, the delegate of Netherlands, UNTO Vol. 10, Doc. 200 11/4/3 May 12, 1945 UNTO P-422.

50 - During the discussion of para 11-10 it was pointed out that the working paper did not include provision for the termination of a trust or for its transfer from one administering authority to another. The views were expressed that their could be no compulsory transfer except as a consequence of a breach of peace, and that the termination of a trust would occur when the dependent state concerned became a member of the international organisation. A question was raised as to whether the term of para B.13 would make it possible for any action to be taken by the General Assembly against an administrative state which failed to carry out its obligations. Comment was also made on the absence of any reference to the wishes of a dependent people as the choice of a trustee and a comparison was drawn with Art 23 of the covenant of the League of Nations in this respect. (UNTIO Vol.10, Doc. 785, 11/4/31, June 1, 1945 P-508).

Egypt proposed for provisions relating to termination of trusteeship:-

That in all trust territories within its competence, the General Assembly shall have the power to terminate the status of trusteeship, and declare that territory to be fit for full independence, either at the instance of the administering authority or upon the recommendation of any member of the Assembly.
None of the draft proposals submitted by the sponsoring
govts indicated how and when trusteeship would terminate.
The question that arose was what would happen in case of
the withdrawal of a member State acting as an administering
authority or what action would be taken against a member
State acting as administering authority for the commission
of an act of aggression by such a state. The charter says
nothing with regard to these situations.

"That whenever there is any violation of the terms of
the trusteeship agreement by the administering authority or
when the administering power has ceased to be a member of the
U. N. or has been suspended from membership the organisation
shall take the necessary steps for the transfer of the
territory under trusteeship to another administering
authority subject to the provision of Arts 2 and 6 above".

In favour of this notion it was said that it was intended to fill a gap in the chapter on trusteeship which
contained no provision relating to the termination of a
trusteeship. This omission had been noted by the document
prepared by the Secretary analysing the proposals submitted
by the various govts on the trusteeship system. The
committee should draw conclusion from experience under the
League of Nations when Japan withdrew from the League it
not merely retained the mandates assigned to it but
ignored the obligations in respect to the mandate which
it had assumed. Because the mandatory had been allocated
not by the League, but taken no action. At the present time
discussion was in progress in another technical committee
concerning provision for withdrawal or expulsion from the
U. N. The question whether such States should be permitted
to retain trust territory held by them should be settled by
Com 11/4.

"Against the notion it was said that a provision for
the termination or transfer of a trusteeship without the
consent of the trustee power would be contrary to the
voluntary basis upon which the trusteeship proposals had
been built. In some cases details with regard to
termination through independence might be included in the
trusteeship agreement. However, experience under the
League had shown that provision for termination of
trusteeship through the independence was unnecessary and
might be left to individual agreement. With regard to the
question of the transfer of a territory to another
administering authority as a penalty for maladministration
or as a consequence of the withdrawal of a member from the
organisation, the situation was provided for in the other
parts of the charter. The security council was empowered to
go into any dispute or situation brought to its
attention by any State. There would be evident difficulties
if the organisation should attempt to take away a trusteeship
from a State which did not desire to (surrender it). Moreover
some states might withdraw from the organisation for
respectable reasons, such as inability to accept some
amendments to the charter and it would be doubtful in such
cases whether the best interest of the people concerned
The trusteeship agreement contained no provision for the termination of trusteeship. During the first session in the General Assembly by the fourth committee the delegate of U. S. proposed to insert a new article.

would be served by having trust territory transferred to some other power.

"The Chairman asked the U.K. and U.S. if they could give an authoritative statement on the following question. If a State withdraws from the U.N.O. and continues to hold a trust territory under the charter, here is the organization to continue to exercise its responsibilities with respect to the administration of that trust territory? And if a State administering a trust territory commits an act of aggression, what consequences will follow in relation to its trust?"

"The delegate for Egypt stated that since he had put before the committee his views on a matter which he regarded as of great importance and on which he had received consideration by the committee he would not press his motion. He assumed that the delegates for the U.S. and the U.K. would provide the committee with the statement requested by the Chairman (UN Doc. Vol. 10 No. 563)

"Joint statement by the delegates of the U.K. and the U.S.

"As requested by the Chairman of Committee 11/4 at its 16th meeting (Dec 1012) the representatives of U.K. and U.S. in Com 11/4 submit the following statement for inclusion in the Rapporteur's report."

"If a State administering a trust territory commits an act of aggression whose consequences will follow in relation to its trust? The powers of the Security Council as defined in Ch. VIII of the charter are not limited to dealing with acts of aggression. The Security Council may investigate any situation which may lead to international friction or give rise to a dispute. In order to determine whether its continuance is likely to endanger the maintenance of international peace and security. Any member of the U.N. may bring any such situation to the attention of the General Assembly or of the Security Council. If the Security Council should in any particular case decide that the continuance of the situation is in fact likely to endanger the maintenance of international peace and security it may recommend appropriate procedures or methods of adjustment. In this way a Trustee State which showed signs of aggressive intentions or had committed an aggression could be dealt with, whether it were still a member of the organization or not. In general, however, the same considerations apply as one explained in reply to question two namely that the action to be taken in such a case can only be decided upon at the time and in the light of all relevant circumstances."

"The present agreement shall enter into force upon approval by the General Assembly of the United Nations. It shall remain in force for a period of ten years and thereafter shall be reviewed and modified according to the degree of attainment of purposes set forth in Art 76 of the Charter of the United Nations. This proposal was subsequently dropped. (contd)

2) If a state withdraws from the U.N. and continues to hold a trust territory under the chapter, how is the question to continue to exercise its responsibilities in respect to the administration of that trust territory? A state withdraws for reasons which reflect no discredit on it and if it declares its willingness to continue to do so by the terms of the trusteeship system although itself refusing to be a member of the General Assembly or Trusteeship Council there should be no reason for transferring the trust territory. There is no inherent reason why the system of regular reports, periodic visits etc., could not continue in such circumstances and the administering authority might be given the opportunity (though not compelled) to attend meetings of the Trusteeship Council when matters affecting the trust territory are under consideration. However, if after ceasing to be a member of the U.N. the administering authority committed violations of the trust, measures which are provided elsewhere of the charter that member states could be invoked equally against the state in question. If, however the state were allowed to withdraw for other reasons or were expelled and did not unani mously consent to the transfer of the trust to another authority, the resulting situation could only be judged by the General Assembly and the Security Council on its merits in the light of all the circumstances prevailing at the time. It is impossible to make provision in advance for such situation. (It was decided that while the statement should be regarded as an expression of the views of the Committee it should be appended to the Rapporteur's Report in an annex UNRCA Vol.16 Pec 1110 11/4/141(1)(a) June 16, 1949, p(10-11)
The provision for the termination of the trusteeship for the territory within specified time may involve complication. The trusteeship agreement it shall be borne in mind, is based on the voluntary consent of the trustee power submitting the territory within the trusteeship system. The consent of the trustee power must necessarily be taken into consideration in dealing with the provision of the termination of its trusteeship; if that consent is not taken, it will go against the voluntary basis of the trusteeship agreement. Moreover, there is another difficulty. The political, social and economic conditions of the territories are not uniform, but are variant. In view of these varying levels of development it seems difficult for the U.N. to prejudge the question of termination of the trusteeship for each territory within specified time-limit. The Charter therefore, as a rule, does not follow any rigidity in this matter, it provides flexibility by leaving the question of termination of trusteeship to the individual trusteeship agreement which is to be made by the state placing its territory within the trusteeship system.
Nature of administering Authority - its obligations and rights.

Article 81 includes three things - (1) to determine the terms under which the territory shall be administered (2) to determine the administering authority and (3) that administering authority may be one or more states or the organisation itself. Under the League covenant the practice was for single state and therefore the charter in providing the alternative differs from the League system in this respect. The Chinese proposal embodied the principle of international administration. In explaining his Govt's view on international administration the Chinese delegate said: "In the Chinese conception of a system of trusteeship the international organisation was itself the trustee, the administering authority whether an organ of International organisation or an individual country was merely the agent. " The Union of South Africa expressed opposition to direct international administration".

"Art 4 of the draft" Any territory belonging to one of the above three categories of territories may be administered either directly by the international organisation through an agency of its own or indirectly by one or more of the U.N. by agreement of the states concerned." (UNCIO Vol.3 Doc 2 g/26(c) May 10, 1945).

The Indian representative said "while these dependent territories were being prepared for independence -- the U.N. itself should exercise the functions of trusteeship under the charter. This would enable the various policies to be co-ordinated, would be more impartial and promote more rapid progress towards self-govt. The powers responsible for the day to day administration of these territories would be agents of U.N." (Weekly bulletin U.N. Vol II No. 18, 1946 P 8).

"The Norwegian delegate opposed the Indian proposal to place trust territories under the administration of the U.N. itself at this time on the grounds that at present the organisation had neither the personnel nor the experience for the purpose". (Ibid P 11).
The Australian proposal stated that the power of administration would be vested in each case in the hands of a specified member which would exercise that power on the authority of General Assembly. The U.K. draft included that the tutelage of the peoples of trust territories should remain the responsibility of advanced nations which would exercise that tutelage on behalf of the U.N. The working paper, however, incorporated the proposal that the administering authority may be one or more states or the organization itself.

The problem was raised by some delegates whether the wishes of the inhabitants of the Trust territory would be taken into consideration for the selection of the administering authority. Under the League covenant in para 4 of Art 22 the wishes of the inhabitants of the mandated territory were treated as a principal consideration in the selection of the mandatory powers.

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*§§ - Art 4 of the Australian draft (UNCITVol 3 Doc 2 g/14(1) May 5, 1945).

*§§ - Art 3 of the U.K. draft states "In order to give practical effect, in the categories of territory, the tutelage of such peoples should be made or should remain the responsibility of advanced nations who are best fitted to undertake this responsibility and who are willing to accept it and this tutelage should be exercised by them on behalf of the U.N." (UNCITVol 3 Doc 2 g/26(d) May 6, 1945) This was "derived from Art 22 of the covenant but revised so as to have regard to the different classification of territories which may be brought under the proposed machinery - (comment on U.K. draft - UNCIT Vol.3 P 4)"
Egyptian delegate moved an amendment to the proposal with precise intention of giving the inhabitants the opportunity to ascertain their wishes in the selection of the trustee power. Mr. Lt. Jamaal said under the same para (4) of Art 32 of the covenant of the League of Nations, the wishes of the people are to be taken into account in the selection of the mandatory power. There such provision in the trusteeship system. Now I said, and I gain, there are peoples who are advanced enough so that their could be taken into consideration in the choice of the and the trustee power. The wishes of the people in the choice of the trustee power are of great significance to the success of the trusteeship itself because it is our experience and our knowledge of some territories under the mandate have had hard time with mandatory powers because their wishes were not

The committee having acted to a motion by the Delegate for Egypt, that the following words be added at the end of para 38: "Due regard being given to the wishes of the population in the selection of the trustee authority in accordance with para 32 above". Para 38 would read as follows: "The trusteeship agreement in each case shall be subject to the terms under which the territory will be administered in accordance with the wishes of the population in the selection of the trustee authority in accordance with para 32 above". The committee having acted to a motion by the Delegate for Egypt, that the following words be added at the end of para 38: "Due regard being given to the wishes of the population in the selection of the trustee authority in accordance with para 32 above". Para 38 would read as follows: "The trusteeship agreement in each case shall be subject to the terms under which the territory will be administered in accordance with the wishes of the population in the selection of the trustee authority in accordance with para 32 above".

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taken into consideration in the choice of the mandatory power. The same may hold true about trusteeship. Consideration of the wishes of the people should have been included in the charter. The reason for not incorporating this provision in the Charter appears to be that it felt that the administering authority would be given ample opportunity between the period of drafting the trusteeship agreement and the submission of the same for its approval by the General Assembly for the consideration of the wishes of the people concerned. It also seemed somewhat difficult to ascertain the wishes of the backward people who would come within the trusteeship system. Moreover, the allocation of the territories or the determination of the administering authority would be made by a number of considerations. Strategic consideration would play a vital part in the allocation of the territories and in determining the choice of the administering authorities.

This article states that the trusteeship shall in each case include the terms under which the trust territory is

mandates much trouble would have been avoided. Since the Committee proposed to give directions to the Assembly in such matters as the composition of the Trusteeship Council, directions might also appropriately be given to the Assembly.

Against the motion it was said that if certain words from para B2 were to be repeated in para B5, all of para B2 should for consistency likewise be repeated. The interests of the peoples concerned were protected by para B5 as well as by para B2 and in addition the trust agreements would require approval by the General Assembly at which time ample opportunity for taking into consideration
to be administered. This is an important thing and
it may imply that there can be no trusteeship agreement
if it does not include the terms under which the trust
territory will be administered. But who will specify
the terms? The charter does not lay down all the specific
principles which are to be included in the terms for adminis-
tration of the trust territory, but it only sets forth the
general principles and the detail is left to the
administering authority.

in so far as possible the wishes of the peoples
concerned would be afforded. There would be
evident practical difficulties in ascertaining
the wishes of the people of very backward areas.
The motion placed no limit upon the areas to
which it should apply, while the reference in
the covenant to consulting the wishes of the
people was restricted to "A" mandates. It was
quite probable that at the end of the war, the
allocation of territories would be determined
by a number of considerations in addition to regard
for the wishes of the inhabitants. Strategic
considerations for example might be an important
element in determining the choice of the trustee
power" (UNDOC Vol. 1018 11/4/38, June 16,
1945 P. 545 - 546) 58
50- UNDOC Vol. 8.
51 -
Practically all drafts submitted by the
Member states mentioned the terms.
Art. 4 of the U.K. draft mentioned: "The
character of the trust differ according to the
stage of the development of the people the geograph-
ic situation of the territory, its economic
condition. The details will be matters for subse-
quent agreement between the State entrusted with
the administration of the territory and the
U.N. No revision of existing League of Nations
Mandates exercised by States Members of the U.N.
shall be made without the agreement of the Manda-
tory Power concerned. This is "based generally
on Art. 22 of the covenant. It recognized that
the individual mandates will not necessarily be
in standard terms and that some revision of
The administering authority is obligated to ensure that the trust territory plays its parts in the maintenance of international peace and security and to this end it is empowered to make use of the volunteer forces, facilities and assistance from the territory in carrying out the obligations undertaken towards the Security Council. From Art 84, it is clear that the charter provides for the administering authority the obligation to institute the volunteer forces and not the compulsory military training; and such volunteer forces may be used for local defence and police purposes and for carrying out the commitments towards the Security Council for the maintenance of international peace and security which is stipulated as an objective in Art 76(a).

But the question arose whether the institution of the volunteer forces was permissible within the charter. Reference was made to the League Mandate system where the mandatory powers were obligated to prevent the establishment of fortification of military and naval bases and military training of natives for other than their police purposes and the defense of territory. (UNCIO Vol. 3 Doc 3 g/26(d) May 6, 1945).

Art 6 of the Chinese draft includes. It should be understood that in the trusteeship agreements the people of each territory should be accorded civil liberty and right of representing in the local deliberation or legislated assemblies;

58. Art 15 of the U.K. draft contained. "It shall be duty of the State administering any territory to which the special machinery be applied to ensure that the territory shall play its parts in the maintenance of international peace and security. To this end the State shall be empowered to make use of forces, facilities and assistance from the territory in carrying out the obligations undertaken by the State to the Security Council in this regard and for local defence and the maintenance of law and order within the territory (UNCIO Vol. 3 Doc 2 g/26(d) May 6, 1945).

The delegate of U.K. said on the suggestion that the administering State should have the right to use the facilities and forces of the trust territory to aid in world security and local defence his Govt's opinion was that such authorization should extend only to the use of volunteer forces" (UNCIO Vol. 10 Doc 260 11/6/8, May 12, 1945 P 434).
At the 9th meeting of the sub-committee 1 of the fourth committee the representative of U.S.S.R. stated with reference to the words "obligation to the Security Council in Art 84", in the Soviet view these obligations could refer only to the designation of strategic areas under Art 82 and 83 of the Charter. He declared that the authority to establish military bases in a trust territory could be derived only from the reference in Art 84 to "obligations towards the Security Council" which according to his view were obligation of an administering authority of a strategic trust territory. Further, the U.S.S.R. delegate at the 23rd meeting of the 4th Committee advocated the view that "according to Art 83 of the charter, the establishment of military, naval and air bases is permissible only on trust territory designated as strategic areas and consequently only with the approval of the Security Council. He stated that Art 76 and 84 of the Charter provided for the participation of the trust territory in the maintenance of international

The delegate for Egypt moved as an amendment to this para to insert after the word "empowered" in line 4 of the words "under the control of the Security Council" the second sentence of para 9 would then read: "to this end the State shall be empowered under the control of the Security Council to make use of volunteer forces facilities and assistance from the territory in carrying out the obligations undertaken by the state for the Security Council in this regard and for local defense and the maintenance of law and order within the territory".

In favour of the motion it was said that without the amendment the power of the administering authority in a trust territory would be absolute a situation which would be undesirable for the peoples of the territory. Against the motion it was said that the Security Council should not be concerned with the maintenance of internal law and order. Moreover, the amendment would give to the Security Council part of the supervisory jurisdiction belonging to the Assembly and to the Trusteeship Council.

Decision: Amendment was rejected by 28 to 2 votes. Para 9 adopted by 29 to 1 vote. (UNCITR No. 16, Doc. 583 11/4/24, May 28, 1945 p 488)
peace and security. But the use of the territories for that purpose was limited by the provision of Art 84 concerning "volunteer" forces, facilities and assistance and by the reference in that Art to the obligations towards the Security Council undertaken by the administering authority. If bases should be required for purposes other than those stated in Art 84, the administering authority could take advantage of Arts 82 and 83 of the charter. If the administering powers were to build fortifications in the trust territory, they would transform them into strategic areas which should be put under the control of the Security Council. This was necessary, moreover in order to avoid the use of the trust territory for military purposes to satisfy narrow national interests in contradiction with the aims stated in the Charter of the U.N. That misuse of the trust territory would create a situation worse than that existing under the mandates system, which did not permit fortification of mandated territory. 29

This view was contended by many. The delegate of Belgium said "while art 84 implied that administering authority had no right to impose conscription on the population of the trust territory it did not limit the measure which administering states might.

take for their own security.” At the 11th meeting of sub-committee 1 of the Foumth committee the representative of Belgium stated that the charter did not attempt to ensure demilitarisation of the trust territory as had been the case under mandates."

As a matter of fact, the trusteeship agreements incorporate these provisions for the maintenance of volunteer forces.

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64 - Summary records of meetings of 4th com Nov. 1 1943, p 143.
65 - Summary records of meetings of sub com 1 Nov. 1 1946 p 73.

** The merit of this provision is discussed in the chapter on "Mandate and Trusteeship - a comparative study."
Article 56 states:

Except as may be agreed upon in individual trusteeship agreements made under Arts 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 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 etc.

The Art is intended to be a conservatory clause, in other words, its purpose is to safeguard the existing rights in the mandated territories pending the entrance into force of the trusteeship agreements. It was included in the working paper as para 5 of Sec. B.

When this was placed for discussion in the San Francisco Conference, the question arose: whose rights it was intended to protect? As Mr. A. L. Gamal said "this chapter of the charter does not guarantee the rights of these territories now under mandate in the new arrangement when they are put under trusteeship. Their rights are

56 The U.S. moved an amendment to para 5 to add after the word "arrangements" in line 2, the words "made under paras 4 and 6 at the end of the para to strike out the period and add a comma, and the words "or the terms of any mandate". This para would read "Except as may be agreed upon in individual trusteeship arrangements made under paras 4 and 6 placing each territory under the trusteeship system, nothing in the chapter should be construed in and of itself to alter in any manner the rights of any state or any peoples in any territory or the terms of any mandate".

The delegate for Egypt moved that para 5 be amended by the deletion of the following words: "Except as may be agreed upon in individual trusteeship arrangements made under paras 4 and 6 placing each territory under the trusteeship system" and the substitution of the words "the people of" for the words "of any state or any peoples in the fourth and fifth lines of the para. As thus amended para 5 would read as follows: "Nothing in this chapter should be construed..."
being preserved up to the time the new arrangements are made. But after the new arrangements are made we don't know what happens. There is no specific guarantee that the rights of these now under mandate will be preserved. Some of you know that para 4 of Art. 22 of the covenant of the League of Nations has recognized that territories formerly belonging to Ottoman Empire are provisionally recognized as independents. The recognition of this right is not specified in the Charter."

The delegate of Egypt moved an amendment of the proposal in order to give effect to the rights of the

in and of itself to alter in any manner the rights of any territory of the terms of any mandate. In support of the amendment it was argued by various delegates that the presence in the draft of a statement protecting the rights of the mandatory powers was a deviation from the purpose of the trusteeship system which is the welfare of the dependent peoples; mandatory powers have duties, not rights. The language of para 5 did not clearly indicate the people whose rights it was intended to protect. It should be made certain that only the rights of the inhabitants of the territory were protected.

On the other hand, it was stated that the amendment proposed by the delegate for Egypt would do the opposite party intended, that it would freeze existing situations and make it impossible to enlarge the rights of the people in mandated territories. Certain delegates stated that they could not accept the position taken by the delegate for Egypt that mandatory powers had no rights under the mandates.

The U.S. stated that para 5 was intended as a conservatory or safeguarding clause. He was willing and nerous that the minutes of this committee show that it is intended to me that all rights whatever they may be remain exactly the same as they exist, that they neither increase or diminished by the adoption of this Chapter. Any change is left as a matter for subsequent agreements. The clause should neither add nor detract but safeguard all existing rights whatever they may be.

The delegate for Egypt sought to amend his motion first by leaving in the words "of any state or" at the end of line 4 and the beginning of line 5 and by inserting after the word "state" the words "if any" and subsequently by retaining para 5, except for the substituting for the words "of any state or any peoples in lines 4 and 5 the words of the people of."
inhabitants. He criticised the proposal on the ground that "it protected the *4 rights of mandatory powers and was a deviation from the basic of the trust principle of the trusteeship system." The representatives of Iraq and Syria also sought for amendments with the intention of safeguarding the rights of the inhabitants of the territories coming within the trusteeship system.

Other delegates expressed the view that the mandatory powers had equal rights which should be protected. The original draft was further amended by

The committee declined to permit to make these amendments.

The original amendments proposed by Egypt was lost by 25 to 5 votes.

The delegate for Syria moved as an amendment to para 5 to replace the words "in any territory" in line 5 by the words" of the territory concern." Para 5 would then read, "Except as may be agreed upon in individual trusteeship arrangements made under para 4 and 6 placing each territory under the trusteeship system, nothing in this chapter shall be construed in aid of itself or any peoples of the territory concerned or the terms of any mandate."

In favour of the amendment, it was said that it would exclude claims to rights on the part of peoples outside the territory concerned. If such peoples had rights these rights would be presented by the states to which such peoples belonged, not by the peoples themselves. Against the motion it was said that the effect would be seriously to weaken the conservatory or safeguarding clause by failing to preserve certain rights." The amendment was lost by 26 to 5 votes.


The final U.S. amendment:

Except as may be agreed upon in individual trusteeship arrangements made under the paras 3, 4 and 6, placing each territory under the trusteeship system and until such agreements have been concluded, nothing in this chapter shall be construed in any manner to alter in any manner the rights whatsoever of any any states or any people of the terms of existing international instruments to which member states may respectively
Art. 83 provides that the Security Council is to avail itself of the assistance of the Trusteeship Council. The trusteeship agreements for the former Japanese mandated territories provide that Arts. 87 and 88 of the charter shall be applicable, although Art. 87 stipulates only functions of the General Assembly relating to non-strategic areas and Art. 88 only obligations of administering authority to such territories. But the application of the two Arts. is restricted by the condition "provided that the administering authority may determine the extent of their applicability to any areas which may from time to time be specified by it as closed for Security.

59 Egypt moved that the word "may" at the end of the sixth line of para 8 should be changed to "Should". On behalf of this proposal, it was argued that though in any strategic areas functions relating to strategy would evidently be exercised by Security Council humanitarian functions went beyond the competence of that council and should be exercised by the Trusteeship Council mentioned in para 11. The Trusteeship Council he assumed, would receive reports from the administering authority with regard to territories entrusted to them. It should, therefore be a matter of necessity not choice that the Security Council should avail itself of the help of the trusteeship council in matters relating to the welfare of the people. Against this proposal it was pointed out that it would not always be possible to separate political, economic and social matters from security matters and that it was essential to avoid laying a basis for future jurisdictional conflicts between the Security and the Trusteeship Council. The U.S. suggested that the words 'shall when appropriate' might meet the objection raised by the Egyptian delegate and it was pointed out that this left the matter to the sole discretion of the Security Council. The Egyptian delegate however indicated that he was unable to accept the suggestion. (UNCIO Vol.10 Doc. 512 H/4/11 May 23, 1945 P 483)

The delegate for Egypt withdrew the amendment to para 8 of the working paper which he had proposed of the previous meeting. In place thereof an amendment to para 8 was moved jointly by the delegates for Egypt and the U.S. to delete the word may in line 6 and to insert in it the words 'shall without prejudice to Security considerations'. The final sentence would then read: 'the Security Council shall without prejudice to security considerations avail itself of the assistance of the Trusteeship Council provided for in para 11 below to perform those functions of the organisation under the Trusteeship system relating to political economic and social matters in the strategic areas, subject to the provisions of the Trusteeship Agreement. Amendment adopted Para adopted (UN.C.I.O. Vol.10 Doc. 580 11/4/24 - May 26 1945 P 448)
In defending it, the U. S. delegate stated: "The proposal made by my Government is for the designation of the former Japanese mandated islands as strategic area. In such an area, the security objective must be an overriding consideration.

By Art. 85, the charter stipulates that the General Assembly is to perform the trusteeship functions except for strategic areas. Under the Art. 22 of the League covenant, it was the Council which was responsible for the performance of the League functions in respect to mandatory territories. The agreements for the mandated territories were made by the mandatory powers and those agreements were submitted to the Council for approval. The report on its administration was submitted by the mandatory powers to the Council. The League Assembly, however, was given the opportunity in connection with its consideration of the Secretary-General's report to review the administration of the territories and to make recommendation.

The practice under the charter system is different. The General Assembly is entrusted with the trusteeship functions in respect of the non-strategic territories. The international supervision which is the cornerstone of the trusteeship system is exercised by the General Assembly on behalf of the U.N. The trusteeship agreements for the non-strategic territories are submitted to the General Assembly for approval. The General Assembly is however, given the power to delegate its functions in respect of the non-strategic areas, to the Trusteeship Council which is responsible to the General Assembly. The method of international control as provided in the charter seems to give the U.N. a broader basis than was the case with the League.
The charter provision for the designation of two kinds of territories, strategic and non-strategic. The designation of a strategic area was unknown in the League mandate system. But the charter by making provisions for the establishment of a special regime to which U. N. may have special interest definitely goes beyond the League.

The question arises why does the charter provide for a special regime? "The situation which apparently gave rise to this difference was the need of finding some device by which the principle of non-aggrandisement laid down in the Atlantic Charter might be harmonised with the special security consideration of certain member of the U. N. The U. S. for example after the experience of attack insisted upon control over the areas in the Pacific in national defence. However, by the terms of the mandate, U. S. committed to the principle of territorial non-aggrandisement." Thus security considerations became overwhelming to a member state whose existence seemed to be threatened by the outbreak of war and hence adequate protection was demanded.

This provision was included in all the drafts submitted by the Governments.

The delegate of China said that "it proposed that the extent of strategic areas should be kept to a minimum and they should fall within both the general plan of international security and the system of reporting to the U.N." (UNCIO Vol.10 Doc 260 11/4/45, May 12, 1945 p.434)

In an explanatory note on the draft chapter submitted by the U. K. delegation, it was stated questions of security policy are also bound to arise in relation to territories under trusteeship and therefore suitable arrangements must be made in any trusteeship system for meeting security arrangements. In the draft circulated by the U. K. attempt has been made to meet in full the demands while at the same time making it an objective of the inhabitants is the major consideration. (UNCIO Vol.3 Doc 2 23 of the U. K. draft deals with the
to safeguard its national interest. The incorporation of this Art. is intended to give that protection."

The agreements for the strategic area follow closely the trusteeship agreements for the non-strategic area. It includes the provision for the political, economic and social and educational advancement of the native peoples.

It has been stated that in Art. 83 that administering authority in discharging its obligations must pay due regard to the basic objectives as mentioned in Art. 76. But there is some obvious deviation from the Art. 76(d)

security matters...."the U. K. approach to this question differs materially from that adopted in the U. S. draft but it is felt that the U. K. draft provides all the safeguards which are provided in a different way by the U. S. proposal. The latter contemplated the division of the territories covered by the trusteeship into two categories viz. (a) strategic areas administered by states subject only to a limited degree of supervision by the Security Council and other areas which would be under the supervision is unsatisfactory on three grounds: First for the U. K. Government the interest of the indigenous inhabitants are a paramount consideration; and in so far as the social and economic problems affecting the inhabitants of territories in the categories mentioned in the Yalta Protocol require measure of international supervision - this supervision is just as necessary in strategic areas as in other areas. Indeed it is probable in areas of strategic importance that the social problems such as housing labor, conditions etc. are likely to assume special significance, Secondly and particularly in large territories it seems possible to draw a hard and fast line separating strategic areas from the non-strategic areas; and consequently if the security interests were to be properly safeguarded under the U. S. scheme of sub-division, it might often be necessary to designate the whole of a large territory inhabited by dependent peoples as a strategic area a cause which though no doubt satisfactory from the purely military standpoint would be open to criticism on wider grounds in that it would remove from the purview of the Trusteeship Council many of the matters for which the Trusteeship system was primarily designed twenty-five years ago. Thirdly, it seemed most desirable that a mandatory power should be permitted to mobilise the war potential of its mandated territories as well as of its colonies as part of its contribution to the maintenance of International peace and security provided that the military policy of all states is brought into conformity with their obligations under the U. N. O. The U. K. draft by avoiding any distinction between civil and security functions not only meets any possible charge of annexation or infringement of the Atlantic Charter but states in more positive form than does
which accords equal treatment to all members of the U.N. and their nationals. Art. 8 of the trusteeship agreement for the Japanese mandates stipulates that the administering authority may discriminate in favour of the nationals of the administering authority. Furthermore, according to Art. 83, the U.N. will exercise all functions relating to this strategic area through the Security Council. The administering authority will place the territory under the supervision of the Security Council which is empowered to approve the terms and their alteration or amendment. But what does this approval mean? Are the decision of the Security Council necessary for any alteration or amendment? As Mr. Kelsen says: "If the act called 'approval' is supposed to have any legal effect at all it can only mean that the trusteeship agreement is not valid without such approval on the part of the organisation". With regard to the alteration of the term the delegate of U.S.S.R. stated: "The terms of the present agreement may be altered, supplemented or terminated by decisions of the Security Council". This was not accepted by the U.S. Government. Art. 15 of the U.S. draft for the Japanese mandated territories stated "the terms of agreement shall not be altered amended or terminated without the consent of the administering authority".

the United States proposal that territories under the trusteeship system will be called upon to contribute from their resources towards international peace and security. At the same time the U.K. proposal will not embarrass "mandatory" powers in the exercise of security functions in the territories concerned. "(UNCIO Vol. 3 Doc 2 G/26(d) May 6, 1945."
Trusteeship Council

The Trusteeship council is the principal organ established under the authority of the General Assembly and therefore responsible to it for the exercise of its functions. In its composition, powers and functions, it differs from the Permanent Mandates Commission established under the League mandate system.

The members of the Permanent Mandates Commission consisted of experts who were appointed by the council and the majority of the members were nationals of non-mandatory powers. But the Trusteeship council is organised on a different principle. The French, the Chinese, and United States drafts stated that the Trusteeship council should be composed of (i) one each by states entrusted with the administration of territories under trusteeship (ii) one by an equal number of states appointed for three years by the General Assembly. When the working paper was submitted for discussion, the composition of the Trusteeship Council was notified. Thus amended it provided for constituting the council in the manner laid down in the Art. 26.

The Trusteeship council consists of (1) members of United Nations administering the trust territory (2) members of the United Nations named in the charter (Art. 23) as permanent members of the Security Council (3) and as many additional members elected for three

66 Art. 9 of the French and the United States drafts and Art. 12 of the Chinese draft.
years by the General Assembly as may be necessary to equalise the number of members administering the trust territory and the number of members which do not.

The establishment of the Trusteeship Council involved some complications. In order to establish the Trusteeship Council as provided in Art 86, two requirements are to be fulfilled. First, the administering authority will place the territory under the trusteeship system; secondly, one or more trusteeship agreement will come into force. If the states do not voluntarily place territories under trusteeship system by concluding an agreement with the United Nations determining the terms of trusteeship and if no trusteeship agreement enters into force the organisation would have no trusteeship function at all, and as such no Trusteeship Council could be instituted. Therefore, the two requirements are to be first complied with before the Trusteeship Council could be established. With a view to expedite the establishment of the trusteeship council, the

The United States placed para B11 in an amended form: (b) one each by the states named in Ch. VI. Sec A, which are not administering territories and (c) one each by a sufficient ......... concerned."

The revised provision for the composition of the Trusteeship Council gave rise to a discussion in the cause of which the delegate for Egypt proposed that the words "elected and non-elected" should be substituted for the words "administering and non-administering." In favour of this proposal it was argued that the permanent members of the Security Council resembled the administering states in that they were interested parties and the peoples of the trust territory would be better protected if half the seats on the Trusteeship Council were held by elected members. To this, it was objected that there was no distinction in humanitarian purpose between those categories mentioned in the para, but only of practical experience and that what was required on the Trusteeship council was the greatest possible sum of knowledge and wisdom.
Preparatory Commission recommended the General Assembly to call upon members to submit trusteeship agreement for approval by General Assembly. On February 9, 1946 the General Assembly in a resolution on Non-self-governing peoples, invited states to undertake practical steps in the implementation of the trusteeship system. In pursuance of the resolution draft Trusteeship Agreement for eight of the mandated territories were made.


During the second part of its first session, the General Assembly adopted a resolution establishing the Trusteeship council. The council held its first session from March 26 to April 28, 1947.

The council elects its own president. Members of Trusteeship council are states which are obliged under Art 86 para 2 to designate qualified persons. The council.

The part of para retained from the working paper was adopted unanimously; sub para a, b, and c adopted. The whole para was adopted. (UNGC/WM/10 Doc 877 11/4/35, June 9 1945P 5'17-519)

"We objected to the composition of the Trusteeship Council because we considered that Trusteeship council is an organ of the Assembly and therefore the Assembly should have a far greater hand in nominating its members than is now provided by this chapter which enables the Assembly only to nominate a minority of the members of the Trusteeship Council." (The Egyptian delegate - UNG/90 vol. 3)
carries out its business according to its own Rules of Procedures which apply in details its trusteeship funda-

tions.

Under the League mandate system, the Permanent Mandates Commission acted as a subsidiary body. But the charter makes the Trusteeship Council a principal organ through which the international supervision of the Trusteeship system is carried out by the organisation. The powers and functions of the Trusteeship council are stated in a comprehensive manner in the charter. As Mr. Smuts says, "Trusteeship Council will be elected representing partly the powers who are trustees and partly other members of the United Nations in equal numbers. This council will see that the obligations undertaken are carried out and reports will have to be submitted annually by the responsible trustees in which they set out the work that has been done and the progress that has been made and keep the U.N.O. fully informed of what is going on. The result will be that as.... whenever you have territory inhabited by dependent peoples ... peoples that are not advanced enough to look after them-
selves, peoples that are still backward in development in

61 But Art 6 of the United Kingdom draft states; "A permanent commission shall be constituted to prescribe the form of the annual reports referred to in para 7 to receive and examine them, and to advise the Economic and Social Council on all matters relating to the observance of the terms of trusteeship, other than security, which applies to each territory." Commenting on this, it was said, "Here again, it is made clear that the new international organ analogous to the Permanent Mandates Commission will have no power to interven-
ne in security matters. It will, however, be empowered to deal with the civil aspects of administration in all terri-
tories to which the system may be applied. The U.K. draft
in one way or another all have the benefits of this:
also have the U.N.O. seeing that they
that these principles which have been evolved
government and their advancement are duly cared

Mr. Smuts stated the functions of the Trust
ipcouncil in general terms. In order to make the interna-
tional supervision effective, in order to make the voices of
the dependent peoples heard in the U.N. the Trusteeship
council is given some specific functions and these include
the consideration of reports submitted by the administering
authority, the acceptance of petitions and the sending of
visiting missions to the trust territories and the provision
to "take these and other actions in conformity with the terms
of the trusteeship agreements."

The consideration of the reports depend upon the
administering authority submitting such reports. By the
provision of Art 88, the administering authority is required
to make an annual report to the General Assembly upon the
administration of the territories for which it is responsible

differ from United States draft in that the former does not
go into any great detail as to the methods of procedure or
composition of the Trusteeship organ. In this respect, the
United Kingdom draft follows Art 22 of the covenant. It
contemplates however, that the organ should be a commission
under the Economic and Social Council. The matters with which
the commission is concerned will be economic, social and
humanitarian, and it is appropriate that it should be directly
responsible to the body which will coordinate the activities
of the U.N.O. and of its associated specialised organ with
regard to these matters." (UNGDOC Vol. 3 DOC 2 G 126 (a) 1945)
73-UNG-40-vol. 8
The report of the administering authority is required to be based on the basis of questionnaire formulated by the Trusteeship council and such questionnaire covers a wide range of items, such as the status of the territory and its inhabitants, international and regional relations, maintenance of international and domestic peace, political, social, economic and educational advancement. This questionnaire is used in order to secure a measure of uniformity and greater completeness in the reports of the trustee powers.

The word "consider" implies the power to examine to discuss and the power to make recommendations. "The power of the general assembly under this Art reinforced by the provisions of Art 10 of the charter extends to the discussion of this reports and the making of recommendations with respect to them, as well as to the review of the work of the Trusteeship council itself on the basis of reports submitted by the council under Art 15 para 2 of the charter. The council's

"I believe that the charter should have given greater chance to the people of the territories under trusteeship to have their voice heard by the Trusteeship Council and by the organisation. The trustee power is always the channel which carries the voice of the people to the organisation. That direct access and direct inspection by the organisation of the territories would have made the charter much better." (The Egyptian delegate - UNCTC vol. 9)

The Chinese draft provides: "A representative of the people of a trust territory should be entitled to attend the meetings of the Trusteeship Council when matters relating to the particular trust territory are being considered." (UNCTC vol. 8 Doc. G/26/C May 10, 1945)
Rules of Procedure in conformity with Art 15, para 2

the charter, require that the council present to the General Assembly an annual general report on its activities and the discharge of its responsibilities. The Council's report shall also include the conclusions of the Trusteeship Council regarding the execution and interpretation of the provisions of ch. XIII and XIII of the charter and of the trusteeship agreement and such suggestions and recommendations concerning each trust territory as the Council may decide.

The charter provides that the Trusteeship Council will accept the petitions. The petition may be accepted or examined if they concern "the affairs of one or more trust territory or the operation of international trusteeship system," as laid down in charter. Petition may be of two kinds, in writing or in oral. A written petition may be either transmitted directly to the secretary general or through the administering authority to him. Such petition will normally be placed on the agenda of a regular session if it has been received by administering authority directly or through the secretary general at least two months before the date of the session. The action of Trusteeship Council takes the form of a resolution adopted by a majority vote.

The charter makes provision for periodic visits. This gives the Trusteeship Council to come into direct contact with the peoples of the trust territories. Such periodic visits were not permitted by the Mandate system, because it was argued that the periodic visits would have a weakening effect on the system. The periodic visits of the trusteeship council will be conducted by the sending of a visiting mission to the trust territories. The members of the visiting mission are selected by the Trusteeship council which
also determines its terms of reference and issues such special instructions as it may consider appropriate. The mission acts on the basis of such instructions and is responsible to it. A report is submitted by the mission to the Trusteeship Council with its observations and recommendations. The reports submitted by the visiting missions are included in the general reports of the Council to the General Assembly and the information and recommendation can be considered by the General Assembly as well as by the Trusteeship Council.

By the terms of the Art 91, the Trusteeship Council is required to avail itself of the assistance of the Economic and Social Council and of the specialised agencies in matters with which they are respectively concerned. This provides a closer cooperation of the activities of the organs of the United Nations and of the specialised bodies. Such cooperation is desirable because it will help the Trusteeship Council to secure the services of those bodies for the dependent peoples under trusteeship.
We shall now make a comparative study between the mandate system and the trusteeship system indicating how far the principles formulated in the trusteeship system represent an improvement upon the previous system in the matter of international cooperation for the development of the backward peoples.

The mandate system came into existence in a period when a colonial government had been essentially a matter of national policy and directed to national interests. The Trusteeship system emerged out of the rich accumulating experience of mankind in the international cooperation for the betterment of the colonial peoples in the inter-war period. New problems for the colonial peoples arose and consequently a new outlook was taking shape for the re-adjustments of these problems in a new world based on the harmonious cooperation of different nations for the attainment of peace, security and freedom for all peoples. Having been drafted in the context of two different periods, the two systems cannot be the same. There are some points of similarities between the two with regard to the objectives, the scope of application, the nature of the supervision.

To begin with, let us examine the objectives of the two systems. The League mandate system did not generalise the objectives in one single place. For three different categories of the mandates, the three different objectives were formulated. The attainment of independence was envisaged as the objective of the "A" class mandates; for "B" mandates other objectives were incorporated such as "freedom of conscience and religion, the prohibition of abuses, such as slave trade, arms traffic and liquor traffic", only those purposes relating to the interests of the native population were recognised. The Charter on the other hand brings all the purposes together and it attempts no differentiation for the application of these objectives. The Charter is,
therefore, more comprehensive in its definition of the objectives.

The classification of the territories into three was based on the degree of the political advancement of the territories. But the Charter makes the classification on three broad principles and not on the degree of consciousness attained by the people. The degree of power conferred upon the mandatory powers was based on the difference between the three categories in the mandate. For "A" class mandates, the administration was to render "advice and assistance" for "B", the authority would retain full administrative control and for the "C" mandates, the territory could be administered under the laws of the mandatory as integral portions of its territory. Since the Charter does not attempt at the classification of the three territories on the degree of political consciousness, since the charter does not envisage the three different objectives, the degree of power conferred on the administrative authority in relation to any one of the trust territories, except the strategic ones, is not different but it is uniform.

One of the most notable features in the trusteeship system is the designation of the strategic and non-strategic areas. Such designation was not made in the mandate system. The administration of the strategic area was entrusted to the U.S. under the supervision of the Security Council.

The designation of the strategic areas has been made for the security considerations of U.S. which considered the areas as strategically important for its security in the event of war. But it should be also borne in mind that the area also covers within the defence perimeter and natural security of Japan which has been excluded from the membership of the Security Council.

A system of security has to be built on the recognition of their mutual interests in the areas, so that one nation may not grow suspicious of the other. And it is, therefore, desirable, that the areas being strategically important for the tu
Another difference is the nature of the administrative authority for the territories. Under mandate system, the administration for each territory was entrusted on a single state. But the Trusteeship system postulates the alternative, it may be one or more administrative authority or the international organization as the case may be. The most novel innovation in the Trusteeship system is the enumeration of the principle which places upon the administering authority the obligation to ensure that the trust territory plays its part in the maintenance of international peace and security. The Charter empowers the administering authority to raise volunteer forces not only for local defence and police purposes but also for carrying out commitments towards the Security Council for the maintenance of peace and security. Under the mandate system, the mandatory powers were forbidden to make military fortification. The Charter does not follow the mandate. The Charter intends to remove the restriction and limitations placed on the mandatories for raising the resources in the event of total war.

The rational justification for such flexibility seems to be that the international supervision under the Charter on the activities of the administering authority is more direct than it had been in the League mandate system. No administering authority can use the volunteer forces for its own security or advantage, its policy of maintaining the volunteer forces has to be linked up with the general policy of international peace and security.

Lastly let us examine the nature of international supervision. Under the mandate system, the report on the administration of the trusteeship was submitted by the mandatory to the council which was responsible under the Covenant for
performing League functions in respect to mandated territory. But the Charter makes the General Assembly responsible for the performance of these functions except for strategic areas. This gives the UN a control of the trusteeship system on a broader scale than was done with the League. Moreover, to make the international supervision more direct, the charter empowers the General Assembly to send the visiting mission to the trust territories in order to make a proper study of the conditions of the people. The League had no authority to send the visiting mission to the territories.

The system of the Charter as a whole aims at the extension of benefits of civilisation to the dependent people, at the furthering of the welfare of the people, their legitimate aspiration towards self-government and at the same time it attempts to secure these high principles by a well knit system of international supervision.