

TRUSTEESHIP

THE QUESTION OF THE "STATES DIRECTLY CONCERNED"
(ARTICLE 79 OF THE CHARTER)

(Item 12 of the Provisional Agenda for
the Second Part of the First Session)

Memorandum prepared by the Secretariat

The phrase "states directly concerned" with reference to Trusteeship agreements had its origin in the decision reached at Yalta by Messrs. Churchill, Roosevelt and Stalin that the agenda of the United Nations Conference on International Organization at San Francisco should include the consideration of a Trusteeship System which would apply to such territories as might be placed under it by means of Trusteeship agreements agreed upon among the "states directly concerned". At San Francisco, and subsequently at London, this phrase, which found its way into Chapter XIII of the Charter, has been the subject of considerable discussion with particular reference to its definition and the interpretation to be placed on it. 19

Two main questions have arisen, namely, (1) which would be the states directly concerned in each Trusteeship agreement and what criteria would be used in determining them; and (2) by what procedures would the states directly concerned be determined and agreed upon in each case.

The following summary of the discussions on this subject at the San Francisco and London meetings of the United Nations is based upon a careful review of the records.

It will be noted that in these discussions no conclusions were reached concerning a precise definition of the "states directly concerned" in any specific Trusteeship agreement or in the agreements as a whole. Nor were any conclusions reached as to the criteria to be employed in determining

which are the "states directly concerned".

Article 79 of the Charter states that 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 ...". Thus, under the Charter, only one state, the mandatory in the case of mandated territories, is given positive identification as a "state directly concerned". The identification of other "states directly concerned" is thus left for determination by such other means as may be available, including the presentation of claims, the channels of diplomatic negotiation, and the decision of the General Assembly.

In the case of any particular agreement the number of states directly concerned could be one, a few, or many. States which might consider themselves as having justifiable claims to be states directly concerned in a particular territory, could, conceivably, waive such claims in the interest of expediting the approval of the Trusteeship agreement.

In any case, the approval of the Trusteeship agreements and any subsequent alteration or amendment of their terms, will require a two-thirds majority of the General Assembly (Article 18).

United Nations Conference on International Organization (San Francisco)

The first discussion of this phraseology took place at San Francisco in the Five Power Consultations on Trusteeship which produced a Working Paper on Trusteeship for the Conference Committee on Trusteeship (II/4).

At the first meeting of the Five Power Group on 30 April 1945, the representative of the Soviet Union, referring to the draft proposal of the United States, "inquired as to the meaning of the phrase 'the States directly concerned' in paragraph 4 (of the American draft)."

* Informal Minutes of Preliminary Consultations on Trusteeship by Representatives of the Five Powers, First Meeting, page 3.

The United States representative explained that "the words concerned in this context would mean those States having some authority over the territory, which might be either by reason of what may have happened in the last war or in this war."* The Soviet representative remarked that "this might be interpreted to mean economic, cultural, military or other concerns and interests."** The French member of the Five Power Group inquired "whether it would not mean something like a legal authority over the territory"*** and the United States Delegate replied affirmatively.

The representative of the Soviet Union asked "who would decide the question of the States that might be considered 'directly concerned'."**** It was remarked by the American Delegate that "this decision would be for the States to make. Some of the decisions would be based on what happened during the last war and some would be based on decisions made as to territories in this war." "This", he continued, "would be a matter of negotiation and might be determined in the Peace Treaties growing out of this war."*****

At a later point during this same meeting, the question was raised again when an American representative asked who would determine which were the states "directly concerned".

* Informal Minutes of Preliminary Consultations on Trusteeship by Representatives of the Five Powers, First Meeting, pp. 3 and 4.

** Ibid, p. 4.

*** Ibid, p. 4.

**** Ibid, p. 4.

***** Ibid, p. 4.

The United States Delegate replied that "the determination would be by subsequent agreement among the States." The American representative pointed out that "some ship captain who had stopped at an island years ago might put in a claim to that island and asked who would determine the merits of this claim." The United States Delegate emphasized that "the American proposal was not designed as machinery for determining claims to territory; that these claims would be determined and settled in the traditional way by negotiation among the claimants themselves; that the machinery of the Trusteeship System was designed merely to take care of any territories which might be placed under it after nations with claims to the territory had reached agreement on the mandate."*

Later in the same meeting, the Delegate for the United Kingdom inquired "as to who would make the designation of the strategic areas provided for in paragraph 6" (of the American proposal). The Chairman of the Group, who was the Delegate for the United States, replied that "this designation would be made by the State or States directly concerned and that this might be the prospective administering authority. The States directly concerned would propose the designation and it would be subject to approval by the Security Council."**

The question arose again during the first meeting when the Soviet representative wished to know "who would be the parties to the 'subsequent agreement' referred to in the last sentence of paragraph 3" (of the American proposal).

The United States Delegate replied that "the States directly concerned would be the parties directly concerned and that this language comes directly from the Yalta Agreement." The Soviet representative asked "whether this would mean that the subsequent agreement would be among the five powers", and the United States Delegate replied that this would not necessarily be the case.

* Informal Minutes of Preliminary Consultations on Trusteeship by Representatives of the Five Powers, First Meeting, p. 5.

** Ibid, p. 6.

He pointed out that "more, or less, than the five countries might be involved in a particular territory, depending upon the circumstances." The Delegate for the United Kingdom stated it as his understanding that this would mean the states "immediately" concerned.*

At the Five Power Group's fifth meeting, on 14 May 1945, further consideration was given to the question as a result of a Soviet proposal that the wording of the United States draft be amended to read: "which were or are concerned in this matter". In support of this proposal, the Soviet representative stated that "The intent of the Soviet proposal is that all of the States concerned in this matter must participate in the agreements. Some States were concerned before the war; some are concerned now. The sole purpose of the Soviet proposal is to provide a wording which would make this intent much clearer than it is in the original American draft."**

The Delegate for the United Kingdom stated that "the meaning of the Soviet phraseology, 'were or are concerned', was not entirely clear to him. Would this mean that Japan might have to be brought into this agreement?" In reply the Soviet representative said that "The Soviet group certainly did not have in mind any present enemy states, and that if there were any doubt on this question the wording might be revised to make specific reference to the United Nations".

The Delegate for the United States remarked that he had entertained the same question as had the Delegate for the United Kingdom. The Soviet Member of the Group pointed out that "by a broad interpretation of the original wording in the United States draft, the same implication could be gained. The Soviet group would be willing to specify the 'United Nations'."

The Chinese representative asked "whether it was contemplated that the trusteeship arrangements provided for in paragraph 4 (of the United States draft) would be made between the states concerned and the Organization, or

* Informal Minutes of Preliminary Consultations on Trusteeship by Representatives of the Five Powers, First Meeting, pp. 6, 7.

** Ibid, Fifth Meeting, p. 2

merely between the States concerned". The American Delegate explained that "the State or States concerned would reach an agreement among themselves and would present this agreement to the Organization. If the Organization would not approve such an agreement with respect to a particular territory, then there would be no trusteeship regime over that territory."

In response to a query as to whether both the Organization and the States would be parties to the agreement, the American Delegate replied that "finally this would be so". The American Delegate confirmed that both the States and the United Nations would be parties to the agreement only "finally" in response to a question by the representative for France.*

Later in the same meeting, the Chinese Delegate suggested that "in paragraph 4 the wording 'directly' could be dropped, as it had been dropped in the Chinese draft". The American Delegate noted, in reply, that "if 'directly' were not included, then, for example, an interpretation might be made to the effect that all of the 49 States of the Organization would be the States concerned."**

There is no further recorded discussion of this terminology during the San Francisco Conference. The Conference, however, adopted the terminology as proposed originally in the United States' draft, which was incorporated in the Working Paper presented to Committee II/4 by the Five Power Group. As finally adopted in Article 79, the language used was "the states directly concerned, including the mandatory power in case of territories held under mandate by a Member of the United Nations".

Preparatory Commission (London)

The question of the connotation of this terminology arose during discussions in the Executive Committee of the Preparatory Commission (2 October 1945) of a Memorandum presented by the United States Delegation

* Informal Minutes of Preliminary Consultations on Trusteeship by Representatives of the Five Powers, Fifth Meeting, pp. 3, 4.

** Ibid, p. 10.

on the procedure for dealing with Trusteeship agreements (PC/EX/TC/11). At that time, the representative of the United Kingdom wished "to record the fact that his Government had not at any time accepted any interpretation of the phrase 'the States directly concerned' and to make an explicit reservation on this point. On the other hand, it was difficult to see how the procedure outlined in PC/EX/TC/11 would work out in practice until this phrase was defined. The emphasis placed in this paper on the 'states directly concerned' seemed to suggest that they might be interposed as a third party between the Administering Authority and the United Nations and this conception went beyond the terms of the Charter."*

In answer to this statement, it was pointed out by the representative of the United States that the paper of the United States made no effort to define the phrase "states directly concerned" and adhered closely to the language used in the Charter.*

During the meetings of the Preparatory Commission itself, the question arose again in connection with the debate over the most effective means of bringing the Trusteeship Council into being. The Yugoslav Delegation, in a document submitted to Committee 4 of the Preparatory Commission (PC/TC/3), stated that it was "of the opinion that, in the first place, the respective Mandatory Power (Article 23 in connection with Article 36) as well as perhaps the Neighbouring Powers should be the States directly concerned." In a later meeting of the Preparatory Commission, however, (ninth meeting, 10 December 1945), the Yugoslav representative declared that "this phrase would have to be defined in relation to each territory separately and, therefore, there was no value in an abstract definition."

"In the case of each mandated territory, the States directly concerned would include the Mandatory Power and the States mentioned by name in Article 23 of the Charter. These Powers should immediately enter into direct negotiations in the course of which they might decide to invite other States to take part. Moreover, any other Member of the United Nations

* Summary Report of the Seventh Meeting of Committee 4 of the Executive Committee (PC/EX/TC/20).

claiming to be directly concerned could ask to be allowed to participate in

the negotiations."*

In response, the representative for the United States declared that "he

was gratified that the Delegate for Yugoslavia had not incorporated in his

draft a definition of the 'States directly concerned'. It would not be proper

for either the Preparatory Commission or the General Assembly to undertake

such a definition. This must be for the States directly concerned to determine

themselves, although the General Assembly or the Security Council would have

an opportunity to give a ruling upon their decisions when the Trusteeship

Agreements were submitted.

"If the General Assembly finds that an Agreement, which is submitted by

States A, B and C, omits State D which the General Assembly in its judgment

thinks should be included, it can refuse to approve the Agreement."*

General Assembly (First Part of the First Session, London)

The problem of the "states directly concerned" was brought to the

attention of the Delegates of the First General Assembly in London when the

Syrian Delegate declared at a plenary meeting of the General Assembly on

19 January 1946, that "the whole of the Trusteeship System mainly rests on

the formation of the Trusteeship Agreements between the States directly

concerned and on the provisions of such Agreements. It is, therefore, of

prime importance that the United Nations see that all the States directly

concerned are a party to the preparation and formation of each Agreement.

It is evident to our mind that the words 'directly concerned' in Article 79

of the Charter do include those States which, by virtue of their neighbourliness

their cultural, linguistic, historical, social and economic ties with the

Territory to be placed under Trusteeship, are legitimately concerned."**

* Summary Record of the Ninth Meeting of Committee 4 of the Preparatory
Commission (PC/TC/31).

** Journal of the General Assembly, No. 100, Sixteenth Plenary Meeting,
First Session, p. 268.

Trusteeship questions were considered in London by Committee 4 of the General Assembly. At the third meeting of this Committee, held on 23 January 1946, the representative of the United Kingdom outlined briefly the procedure which his Government had adopted with respect to the states directly concerned. He announced that "draft agreements had been submitted to those States which seemed to the United Kingdom to be the States directly concerned and also to the Great Powers for their information. This had been done without prejudice to the ultimate determination of the 'States directly concerned.'"*

The question arose again when the Fourth Committee, during the fifth meeting on 24 January 1946, was discussing a United States proposal for a draft resolution to be adopted by the General Assembly (A/C.4/3). At that meeting, the representative of the Philippine Commonwealth asked "why the wording of the United States of America amendment deviated from that of the draft resolution presented by the Preparatory Commission '... the States administering territories under League of Nations Mandate ... in concert with the other States directly concerned ...' ". He also asked "for enlightenment as to the meaning of 'the States directly concerned' as used in the United States' amendment."**

In reply, the representative of the United States declared that "there was no intention on the part of his Delegation to imply that the Mandatory Powers were not included because the Charter itself specified that 'the states directly concerned' included the Mandatory Powers." However, he had "no objection to using the language of the Charter - 'the states directly concerned including the Mandatory Powers'."***

Later in the meeting, the Syrian Delegate raised again the question of

* Journal of the General Assembly, No. 12, First Session: Supplement No. 4 (A/C.4/4), p. 8.

** Journal of the General Assembly, No. 14, First Session, Supplement No. 4 (A/C.4/6), p. 17.

*** Ibid, p. 17.

the meaning of the term "states directly concerned" in the United States amendment. He declared that this question was one "of fundamental importance because it was necessary to know on whom the General Assembly would be calling to draw up Trusteeship Agreements."*

At the following meeting, held on 25 January 1946, the Chairman of the Committee (Dr. MacEachen of Uruguay) proposed that the Committee consider this question raised by the Delegates for the Philippine Commonwealth and Syria concerning the term "states directly concerned".**

The American representative explained "that consideration of this matter was not within the competence of this Committee. In previous discussions at San Francisco and in the Preparatory Commission, it was decided that the term could not be defined more completely. The United States amendment, therefore, followed the language of the Charter.

"There was no doubt that at some point the General Assembly would have opportunity to go into this matter. The normal procedure involved the initiative being taken by the Mandatory Powers in drawing up agreements and in securing adhesion to such agreements by those States which, through diplomatic negotiations, might be considered as States directly concerned. When the agreements were finally submitted to the General Assembly for approval, the General Assembly could then decide for itself whether the parties to the agreements were in fact the States directly concerned.

"For this reason and because of the difficulty in solving the problem in general terms, it would be inappropriate for the Assembly now to engage in a long and academic discussion as to which were the 'States directly concerned'."***

The Delegate for Iraq announced his Delegation's view "that the Preparatory Commission's recommendation was based on the premise that the

* Journal of the General Assembly, No. 14, First Session, Supplement No. 4 (A/C.4/6), p. 18.

** Journal of the General Assembly, No. 15, First Session, Supplement No. 4 (A/C.4/7), p. 19.

*** Ibid. p. 19.

Trusteeship System rested entirely on the conclusion of Trusteeship Agreements. The United States amendment invited the 'States directly concerned' to conclude these Agreements. It was therefore necessary to know which were the 'States directly concerned'.

"His Delegation advanced the view that among the States directly concerned would be:

1. The Mandatory Powers in the case of the Mandated Territories (Article 79);
2. States which submitted their colonies to the Trusteeship System;
3. States which were concerned by virtue of neighbourship or cultural linguistic, economic, social and continued historical ties with the Territories to be placed under Trusteeship."

He declared further that "the General Assembly and its Trusteeship Committee had the right and duty to consider this question." He asked the Committee to decide "whether it wished to establish some criterion by which the States to be invited could be distinguished."*

The Delegation of Iraq later submitted a proposed amendment to the Preparatory Commission Report which contained the definition of states directly concerned which had been outlined by its representative and also outlined a procedure whereby the States directly concerned could be determined. The relevant portion of this amendment (A/C.4/11) follows:

"THE GENERAL ASSEMBLY THEREFORE RESOLVES:

1. A state directly concerned with regard to a given territory referred to under Article 77 should notify the Secretariat of the United Nations of its intention to negotiate a Trusteeship Agreement. In this notification, that state mentions the names of the other states with which it intends to negotiate as well as the principle provisions which it considers fit to include in that agreement.
2. The Secretariat shall promptly convey that notification to all the Members of the United Nations. A Member which considers itself directly concerned can ask to participate in the negotiation of a given agreement. If that Member's demand is not duly accepted by the state or states which have made the notification to the Secretariat, it is entitled to bring the question before the

* Journal of the General Assembly, No. 15, First Session: Supplement No. 4 (A/C.4/7), pp. 19, 20.

General Assembly whenever that Member deems it appropriate.

3. (a) A state which administers at present, a territory under a mandate system, and a state which voluntarily places under the Trusteeship System a territory falling under category C of Article 77 are directly concerned each with regard to the territory in question.

(b) That among the prime and principle considerations for determining whether a state is directly concerned are the following:

(i) 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.

4. 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."

The Fourth Committee at the same meeting continued to debate the question of whether the Committee was competent to consider the question of states directly concerned. A general agreement was reached that the Committee was competent but considerable discussion ensued as to the desirability of the Committee attempting at that time to reach a definition. The representatives of Syria, Egypt, the Lebanon and the Philippine Commonwealth supported the view that the Committee should attempt a definition at that time.

The Delegate for the Union of South Africa commented "on the difficulty of defining the States directly concerned. For the purpose of entering into agreements it would be necessary only to conceive that some States were going to be affected by these agreements. Therefore this matter could not be defined at this time without doing harm to the interests of some countries which might be directly concerned. The decision could best be taken by the Trusteeship Council in individual cases. It would be extremely difficult for the Committee to determine categorically in advance what should be considered and what reasons must be considered in drawing up Trusteeship Agreements."*

* Journal of the General Assembly, No. 15, First Session:
Supplement No. 4 (A/C.4/7), p. 20.

General agreement with this view was expressed by the representative of The Netherlands who declared "that the Committee was not competent to define the 'States directly concerned' during the present stage of drawing up Trusteeship Agreements envisaged in Article 79 of the Charter. The Committee would become competent to deal with this matter when asked to do so by the General Assembly during the stage of approving draft Trusteeship Agreements (Article 85)."*

The Phillipine Delegate remarked that "since it was the United Nations which had set up the Trusteeship System, it was the United Nations which must decide this question. If any States were dissatisfied with the decision of the United Nations, they could refuse to accept its definition merely by not submitting territories under their control to the Trusteeship System."**

The Australian representative, although in agreement that the question must be answered, pointed out that "opinions might differ as to when, where and how this could best be done. It might even prove unnecessary for the General Assembly ever to give a formal definition. The difference was between giving the phrase a meaning by the processes of argument and giving practical effect to it by the processes of negotiation and approving Trusteeship Agreements.

"This phrase should be given a meaning which would make it applicable to each of the three categories of territories mentioned in Article 77 of the Charter. Such a definition would involve an extremely complicated process of analysis. The question before the Committee was whether the process could best be attempted by general debate in the Committee or by the

* Journal of the General Assembly, No. 15, First Session:
Supplement No. 4 (A/C.4/7), p. 20.

** Ibid., p. 20

approach suggested by the United Kingdom Delegate in an earlier statement. The United Kingdom had approached initially a few States which it considered would in any case be directly concerned in drawing up Agreements for the Mandated Territories under its control. This approval was, however, without prejudice to the rights of any other States. Any Member of the United Nations could, during the subsequent period of negotiations, advance its claim to be a 'State directly concerned'. The General Assembly, when it came to consider the Agreements, would thus have the advantage of knowing that all States had had the opportunity to have their claims considered. During the final stage of approval, the General Assembly would be able to consider in practical fashion whether the terms of the Charter concerning the 'States directly concerned' had been adhered to."

The Australian representative agreed that the Committee was competent to consider the question but suggested that the process he had outlined would be more likely to facilitate agreement than a general debate at that time.*

The representative of the United Kingdom outlined for the Committee the practical measures which his Government, after careful thought, had adopted as a means of approaching a definition of this term. He referred to the previous remarks of the United Kingdom Delegation on this subject and pointed out that Prime Minister Attlee had elaborated upon them in a statement delivered before the House of Commons.**

The United Kingdom Delegation subsequently circulated a paper (A/C.4/9) which presented the text of the relevant passage of Prime Minister Attlee's statement, as follows:

* Journal of the General Assembly, No. 15, First Session:
Supplement No. 4 (A/C.4/7), p. 21 and revision Journal No. 24:
Supplement No. 4 (A/C.4/22), p. 35.

** Journal of the General Assembly, No. 15, First Session:
Supplement No. 4 (A/C.4/7), p. 21 and revision Journal No. 24:
Supplement No. 4 (A/C.4/22) p. 35

"As regards Tanganyika, Togoland and the Cameroons, which are to be placed under the international trusteeship system, the House will like to know that His Majesty's Government in consultation with the Governors concerned, has already drawn up draft terms of trusteeship based, generally speaking, on the mandates, but revised to bring them into conformity with the provisions of the United Nations Charter. Without prejudice to the ultimate interpretation of the phrase 'States directly concerned' His Majesty's Government felt that there were certain States which, on any interpretation, must be regarded as directly concerned in the African Mandated Territories, namely, France in respect of Togoland and the Cameroons, Belgium in respect of Tanganyika, and the Union of South Africa in respect of all three. The draft terms of trusteeship have accordingly been sent to the Governments of those States for their observations. Copies of the drafts have been sent, for information only at this stage, to the Governments of China, the Soviet Union, the United States of America, and (in respect of Tanganyika) France. I feel, therefore, that His Majesty's Government have, in this manner, taken all the practicable steps which it is within their power to take at present.

"As soon as these drafts have been agreed upon by the States regarded as being in any event 'directly concerned', and before they are submitted to the United Nations for approval, their terms will be communicated to Parliament and the local Legislative Councils."

The Committee's Rapporteur (Dr. Ivan Kerno, Czechoslovakia) quoted from a Report of the Juridical Committee at the San Francisco Conference (Committee IV/2) which advanced the opinion that each organ of the United Nations would be free to interpret those portions of the Charter which related to that organ. He supported the views previously expressed that the Committee would be competent to deal with the question of determining the question of "the states directly concerned". When the draft agreements came to the General Assembly for approval, it would be best, he said, to proceed from the "known" to the "unknown", as had been recommended by the Preparatory Commission, in other words, "to allow the Mandatory States to undertake negotiations with other States considered to be directly concerned, subject to final decision by the General Assembly."*

The New Zealand Delegate advised that "the proper course would be for the Mandatory Powers to initiate negotiations using the best of common sense in deciding upon the States directly concerned, but the General Assembly would

* Journal of the General Assembly, No. 15, First Session: Supplement No. 4 (A/C.4/7), p. 22.

have full opportunity to consider the whole matter when the draft Trusteeship Agreements came to it for approval."*

In the following meeting of the Fourth Committee, discussion of this question was resumed. The Syrian Delegate declared that "there should be no doubt about the competence of the Committee to deal with the matter. The United States of America in including the matter in its amendment had, in fact, admitted the competence of the Committee. Moreover, Article 85 of the Charter clearly stated that the functions of the United Nations with regard to Trusteeship Agreements for non-strategic areas fell within the purview of the General Assembly. The attributes of the General Assembly, as outlined in Chapter IV of the Charter, left no doubt concerning the competence of the General Assembly on such questions. The argument that the Trusteeship Council could not consider this matter at a later date was not conclusive because the Trusteeship Council, being a body to assist the General Assembly, would have no authority of its own". He also disagreed with those "who thought that this matter was a legal question and should be dealt with by the International Court of Justice." He said that "the matter was political in nature and, therefore, the General Assembly would be the appropriate body to deal with it."

He continued: "however, there remained the practical question of the advisability of taking up the matter at this stage. The problem had to be faced because it was actually before the Committee. Since a complete solution could not be found at this point, the Committee should go as far as it could. Consideration of the matter now would avoid a duplication of effort in the negotiation of Trusteeship Agreements."

The Syrian Delegate suggested as a means of solution that "the Committee adopt the United States proposal which invited all 'States directly concerned'. The States starting negotiations would notify the Secretary-General and, through him, all Members of the United Nations. Upon being thus notified, those Members who considered themselves directly concerned would advance their claims.

* Journal of the General Assembly, No. 15, First Session: Supplement No. 4 (A/C.4/7), p. 22.

"Such claims should rest upon certain basic desiderata which were indisputable despite the heterogeneity of the territories which would have to be considered. These desiderata were geographical proximity and social, economic, linguistic, cultural and continued historical ties. Obviously the Mandatory Powers in the case of Mandated Territories and the Colonial Powers who intend to place their territories under Trusteeship were 'States directly concerned'. Of course there might be other considerations."*

The Canadian representative submitted a proposal of the Canadian Delegation outlining the procedures for handling this problem (A/C.4/8/Rev.1), as follows:

"The Fourth Committee has considered the important implications involved in the words 'States directly concerned' used in Article 79 of the Charter and recommends to the General Assembly that, pending the establishment of the Trusteeship Council, the Assembly should adopt the following resolution:

"The General Assembly recommends that pending the establishment of the Trusteeship Council, the following steps should be taken in order to conclude Trusteeship agreements.

"A member of the United Nations which desires to place territories under the Trusteeship System should notify the Secretary-General or the Executive-Secretary of its intention and of the names of the states with which it intends to negotiate. (This notification shall be regarded as a 'Declaration of Intention').

"The Secretary-General or the Executive-Secretary shall communicate this Declaration of Intention to all Members of the United Nations. Any Member which considers itself directly concerned and which has not been named in the Declaration of Intention, may so notify the Secretary-General who shall, in turn notify the Member which made the Declaration of Intention. It will be the responsibility of the latter Member to consider such claims as it may receive and to report to the General Assembly on the action it has taken in this connection when it submits a Trusteeship agreement for approval."

The Canadian Delegate explained that the advantages of this proposal were:

- "(a) It provided a practical procedure to facilitate the speedy establishment of the Trusteeship Council;
- "(b) it was an interim measure; the Trusteeship Council, when established, must itself define the phrase in question;

* Journal of the General Assembly, No. 17, First Session: Supplement No. 4 (A/C.4/13), pp. 23, 24.

"(c) it would enable each Member of the United Nations to be advised of the actions proposed in connection with the Trusteeship Agreements; and
"(d) it would give full protection to the Members who might consider themselves 'States directly concerned'."*

The representative for Belgium stated his agreement with the principle that the Mandatory States "should be left to negotiate, with the other States they considered to be directly concerned" and that "the Agreements when concluded would come before the General Assembly" which "could ascertain whether the Agreements conformed with the Charter."

He added that "Belgium had, in fact, already pursued this procedure by submitting the draft Agreement for Ruanda-Urundi to the United Kingdom which was by any definition a 'State directly concerned' and also to the permanent Members of the Security Council for their information." This procedure, he explained, was without prejudice to the claims of other states.**

The view that this question should be considered on an ad hoc basis, in the case of each territory to be placed under Trusteeship, was supported by the Delegate for China. He was of the opinion that the adoption of "a definition of the 'States directly concerned' would not facilitate but might delay the early establishment of the Trusteeship System." He also thought that even the adoption of a general procedure might have an undesirable effect, and declared that the Chinese Delegation would be content to see no definition made or any criteria set.***

The Netherlands representative supported in principle the Canadian proposal while reserving his position on the details.****

* Journal of the General Assembly, No. 17, First Session:
Supplement No. 4 (A/C.4/13), p. 24

** Ibid., p. 24

*** Ibid., p. 25

**** Journal of the General Assembly, No. 17, First Session:
Supplement No. 4 (A/C.4/13), p. 25

An amendment to the Canadian proposal was introduced by the Belgian Delegation (A/C.4/15):

"The Belgian delegation suggests an amendment to the fourth paragraph of the Canadian delegation's proposal (document A/C.4/8) so that the text would read as follows:

.....
"The Secretary-General or the Executive-Secretary shall communicate this 'Declaration of Intention' to all Members of the United Nations. Any Member which considers itself directly concerned and which has not been named in the 'Declaration of Intention' may so notify, through the diplomatic channel, the Member which made the 'Declaration of Intention'. It will be the responsibility of the latter to consider such claims as it may receive, and to report to the General Assembly on the action it has taken in this connection when it submits a Trusteeship Agreement for approval."

In the eighth meeting of the Fourth Committee, there was further discussion of this question. The Indian Delegate suggested, with respect to the Canadian amendment, that the states which claimed to be directly concerned in mandated territories could notify the Mandatory Power directly as well as the Secretary-General.*

After further inconclusive discussion, it was decided to refer this question to a sub-committee being set up to deal with all the amendments to the Preparatory Commission's recommendations.

Sub-Committee Decision

In the Sub-Committee the Syrian Delegate announced that, in view of the difficulty in reaching a decision on the matter, the Iraqi Delegation would be willing to withdraw its amendment (A/C.4/11). In this way the words "states directly concerned" would remain undefined as in the American draft and the Iraqi position would be included in the Rapporteur's report without a decision being taken as to whether or not it should be defined. After considerable debate over the text of the reference to the Iraqi proposal in the Rapporteur's report, the Sub-Committee finally adopted the following text:

"The Committee had before it an amendment submitted by the Iraqi Delegation (A/C.4/11) which outlined certain considerations

* Ibid., (A/C.4/18), p. 27

for determining the 'States directly concerned' in the negotiation of Trusteeship Agreements. This amendment further dealt with the procedure to be followed for the negotiation of such agreements. The Canadian and Belgian Delegations also presented amendments on the latter point (A/C.4/8/Rev.1 and A/C.4/15). In view of the limited time available to the Committee and the importance and complexity of the problems involved, these amendments were withdrawn without prejudice to their consideration at a later date".*

The Committee adopted this text without debate.

Final Remarks during the first part of the First Session of the General Assembly

In supporting the adoption of the draft report submitted by Committee 4, the United States representative declared in the plenary meeting of the General Assembly held on 9 February that:

"By this Resolution, the United Nations calls upon its Mandatory States in concert with the other States directly concerned to conclude Trusteeship Agreements for subsequent submission to this Assembly, preferably not later than our next meeting. Thus progress in this matter need not await a prior legalistic definition of that elusive phrase 'States directly concerned'. Such a definition could have been found only after great delay and also any abstract definition might have given States not directly concerned in establishing a Trusteeship System a legal position which might, in practice, have impeded the full and prompt establishment of that System."**

The Delegate for Egypt made a brief statement in this meeting in which he reiterated the position that a definition of the term before the consummation of Trusteeship Agreements would be legal and would be desirable in order to avoid later political debate.***

* Unpublished Summary Records of Sub-Committee of Committee 4 on Amendments to Section 1 of Chapter 4 of the Preparatory Commission Report, Meetings 1, 2, and 3.

** Journal of the General Assembly, No. 28, Twenty-Seventh Plenary Meeting, First Session, p. 483

*** Ibid., p. 486

The Delegate for Peru advanced the thesis that the existence of "states directly concerned" implied that there were also States that were indirectly concerned. The Peruvian Government was of the opinion that this distinction should not be made. He declared that "All States, whichever they are, are directly concerned in the matter before us because it had not only a political aspect but also economic, social, and humanitarian aspects. My country has, of course, no direct claim to direct participation in the Trusteeship System but there are countries such as my own whose geographical position calls for special interest on their part in the whole Trusteeship System which is now here under discussion and we cannot remain indifferent to the fate of non-self-governing peoples. As a country bordering the Pacific Ocean, I wish to state that we have a particular interest in the social and economic aspects of this problem."*

* Ibid., pp. 489, 490.