

PART III

DOCUMENTS SUBMITTED TO THE COURT
AFTER THE CLOSURE OF THE
WRITTEN PROCEEDINGS

(Rules of Court, Article 98)

TROISIÈME PARTIE

DOCUMENTS PRÉSENTÉS A
LA COUR APRÈS LA FIN DE LA
PROCÉDURE ÉCRITE

(Règlement, article 98)

Note:

See also the Second Part, Oral Arguments (Vols. VIII-XII), and the Fourth Part, Correspondence (infra).

Voir également Deuxième partie, Plaidoiries (Vol. VIII-XII), et Quatrième partie, Correspondance (ci-après).

I. DOCUMENTS FILED BY THE AGENT FOR THE
GOVERNMENT OF SOUTH AFRICA¹

Original: English

PC/TC/II
4 December 1945.

PREPARATORY COMMISSION OF THE UNITED NATIONS

UNITED STATES DELEGATION:

Proposed amendment to Part III, Chapter IV, Section 2, paragraph 4,
concerning functions of the Temporary Trusteeship Committee.

1. The Report by the Executive Committee makes no provision for any organ of the United Nations to carry out the functions of the Permanent Mandates Commission. In Part III, Chapter IX, dealing with the League of Nations there occurs the following statement: "Since the questions arising from the winding up of the Mandates system are dealt with in Part III, Chapter IV, no recommendation on this subject is included here" (Section 3, para. 5, p. 110). No specific reference to the functions of the Permanent Mandates Commission is to be found, however, in Part III, Chapter IV, relating to the trusteeship system. Section 2, paragraph 4 of that Chapter (p. 56) merely assigns to the Temporary Trusteeship Committee a general advisory function in this field: "(iv) advise the General Assembly on any matters that might arise with regard to the transfer to the United Nations of any functions and responsibilities hitherto exercised under the Mandates system."

2. In order to provide a degree of continuity between the mandates system and the trusteeship system, to permit the mandatory powers to discharge their obligations, and to further the transfer of mandated territories to trusteeship, the Temporary Trusteeship Committee (or such a committee as is established to perform its functions) and, later, the Trusteeship Council should be specifically empowered to receive the reports which the mandatory powers are now obligated to make to the Permanent Mandates Commission. The existing obligations and rights of the parties involved under the mandates system with respect to any mandated territory continue in force until such territory is placed under trusteeship by an individual trusteeship agreement or until some other international arrangement is made. To bridge any possible gap which might exist between the termination of the mandates system and the establishment of the trusteeship system, it would appear appropriate that the supervisory functions of the Permanent Mandates Commission should be carried on temporarily by the organ of the United Nations which is to handle trusteeship matters.

3. In order, therefore, that the report of the Preparatory Commission may be complete in this respect the following amendment is proposed.

¹ See IX, pp. 401 ff. and Part IV, No. 94, p. 580, *infra*.

4. *Amendment*

Add a new subparagraph (v) to paragraph 4 of Part III, Chapter IV, Section 2, to be worded as follows :

“(v) undertake, following the dissolution of the League of Nations and of the Permanent Mandates Commission, to receive and examine reports submitted by Mandatory Powers with respect to such territories under mandate as have not been placed under the trusteeship system by means of trusteeship agreements, and until such time as the Trusteeship Council is established, whereupon the Council will perform a similar function.”

PREPARATORY COMMISSION OF THE UNITED NATIONS

COMMITTEE 4

Speech by the Delegate for
the United States of America
at the
Ninth Meeting, 8 December 1945.

Mr. Chairman, I am very grateful indeed to the Delegate of Yugoslavia for his explanation of the Resolution, document No. 6. I was not at all clear in my own mind as to the exact relationship between this Resolution and his original paper, which was a more general outline of principles. I should like primarily to address myself to the text of the Resolution, but secondarily to some of the remarks and explanations which he made of that text, as far as I could take those explanations down in my notes.

My Delegation, as indicated in the paper which we submitted as a revision of the original paper submitted by the Yugoslav Delegation, is quite willing to accept the Yugoslav proposals as a basis for establishing the trusteeship system with the modifications which we indicated in the revision which we made. I hope the Yugoslav Delegation did not object to the liberties which we took in changing some of the details in his paper. My Delegation still feels that there is nothing objectionable whatever in the Report of the Executive Committee proposing the establishment of a Temporary Trusteeship Committee; it still seems to us that that is a perfectly constitutional method of procedure and a perfectly practical method of procedure, and we are willing to agree to that proposal if we cannot agree on any alternative; but we are quite willing to explore any other alternative arrangement and are quite willing, as I indicated, to accept the proposals of the Yugoslav Delegation on the lines which I have indicated.

May I turn, then, to the text of the Resolution which the Yugoslav Delegation has so kindly explained to us. In the first paragraph I wonder whether he would consider one modification, since he mentions only one of the four objectives of the trusteeship system. Article 76 of the Charter lists four objectives, and it would not seem to me to be quite proper to pick out only one, the second one, which speaks of the economic, political and social advancement of the people, and omit reference to the other three. I should not think there would be any great objection to adding the other three objectives.

In the second paragraph of the Yugoslav Resolution reference is made to Chapter XI of the Charter, which is quite different and in effect has nothing to do with the trusteeship system itself. The Resolution says that further delay prevents the principles declared in Chapter XI from being implemented. If I understand Chapter XI correctly, no delay in the trusteeship system would affect in any way the obligations which the States administering other territories—colonial territories—have under

Chapter XI. Therefore I would suggest deletion of that reference in the second paragraph.

Mr. Chairman, in the third paragraph I have some reservations about the exact language. Our paper which we submitted based upon the first paper of the Yugoslav Delegation took that language verbatim, but I am not quite sure that it gives the correct impression. It is perhaps true from a practical point of view to say that it is easier to deal with the mandated territories at this time than with territories detached from enemy States or territory voluntarily contributed to the system; but I do not think there is any legal distinction between categories (a), (b) and (c) in Article 77: they are of an equal legal status. None of them have to be placed under the trusteeship system: any one of them may be, according to the Charter; and legally there is no more reason for the mandated territories to come first than there is for the territories detached from the enemy States. It is purely a practical problem. In the case of the detached territories, as the Delegate of the Soviet Union said in his opening speech on this question, they are tied up with the question of peace treaties, and therefore do not offer an opportunity for immediate discussion as in the case of the others.

In the fourth paragraph at the bottom of the page of the Yugoslav Delegation's proposal, I wonder if there might be some modification in the language. The paragraph as it now stands seems to imply that the mandatory powers have some special responsibility for delay and postponement under Article 80. If you read Article 80 carefully, you will see that the mandated territories are mentioned along with other territories. The second paragraph of Article 80, to which this paragraph of the Yugoslav Resolution relates, specifies that nothing in the preceding paragraph shall be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system. It seems to me to be not quite fair to the mandatory powers to pick out only those territories, when Article 80 mentions both, and it would need only slight revision to accord with paragraph 2 of Article 80.

Turning to the other side of the page of the Yugoslav Resolution, I have two comments to make on the text of the Resolution itself. The Resolution proposed by the Yugoslav Delegation begins as follows: "The General Assembly of the United Nations calls on the States administering territories in accordance with the League of Nations Mandates to undertake practical steps", etc. I wonder if it might not accord more closely with the language of the Charter if we used the phrase in the Charter: "... calls upon the States directly concerned in mandated territories, including the mandatory power . . .". That is the language of the Charter, which implies, if I understand it correctly, that the mandatory power is an obvious State concerned, but there may be others. Therefore I suggest, as the first point in our revision of the original Yugoslav paper states, that the General Assembly would call upon the States directly concerned, including the mandatory power, to take these steps. That is, anyone, without trying to define which ones are concerned: any which are concerned, including the mandatory power, shall take these steps.

At the end of the Resolution, at the bottom of this last paragraph, it is proposed that the Assembly invite the States concerned, or, as it now reads, the States administering territories, "to submit these agreements for approval during the second part of the first session of the General As-

sembly". I think the purpose is admirable. I merely wish to enter a caveat on practical grounds. There may be difficulties on technical grounds. I am sure the States concerned, including the mandatory powers, are acting in perfectly good faith and share the determination of all of us to get the trusteeship system established as soon as possible. I do not want to underscore these difficulties: I merely point out that there is only a matter of three or four months before the General Assembly might adjourn from its first session, or whatever its schedule may be. That is not much time for a determination to be reached by diplomatic negotiation as to which are the States concerned in individual territories, for those States to prepare their own plans and proposals, to draft agreements, for them to negotiate the agreements and for the General Assembly to consider those agreements. The General Assembly will have other business on its agenda. All of us here are serving Governments and all of us know how much time it takes for any Government to get decisions reached and to negotiate proposals upon the basis of those decisions. So much for the text of the Resolution.

I should like to make one or two comments on the explanation which the Yugoslav Delegate made for us of his paper, if I understand him correctly. I was gratified to hear him say that he would not undertake in this Resolution a definition or determination as to which are the States directly concerned other than the mandatory power, which is specified in the Charter. It is the opinion of my Delegation, as indicated in the revision which we made of the original paper submitted by the Delegate of Yugoslavia, that it would not be proper for the Preparatory Commission or for the General Assembly to undertake such a definition. The Charter specifies the States directly concerned, including the mandatory power in the case of mandated territories. I do not think it would be proper to go behind that definition or statement. It is for the States concerned themselves to determine that. The General Assembly on behalf of the Organization, or the Security Council in the case of agreements dealing with strategic areas, has its opportunity to rule upon this determination of the States concerned when the agreements are 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. I am obliged to the Yugoslav Delegate for revising his original paper. I am not sure, however, that I quite understand his proposal that the permanent members of the Trusteeship Council and the mandatory powers should get together and begin work on these agreements. If I understand him correctly, that would imply a definition of the States concerned by this body. That might be a beneficial procedure, but I would not like to see it in the text of the Resolution, and I assume it will not be there, if this is the paper which he is proposing.

There is one other point on which I have some doubts. That was the position he took on the basic conditions for the establishment of the Trusteeship Council. I am neither a mathematician nor a lawyer, fortunately or unfortunately; so I am not sure that I can give you a definition as to what those conditions are. The Delegate from Yugoslavia seemed to assume that it was a question of territories, that if one territory were placed under trusteeship, then there would be the need for a Trusteeship Council to supervise that territory: you have a trust territory; therefore, you need somebody to look after it and to check up on the administering

authority in exercising all the functions listed in the Charter. On the other hand, the Charter specifically says that there must be a balance within the Trusteeship Council between the States administering and the States not administering trust territories. Those who drafted the Charter at San Francisco were very clear on this point, that in the interests of impartiality and in the interests of an efficient working of the system there should be a balance between those administering territories and those which are not administering territories, and the General Assembly is called upon to elect any number of States that may be necessary to achieve that balance. That in my mind is a serious constitutional objection to the proposal, as I understood it, from the Yugoslav Delegate—that one State administering a trust territory would be enough.

I do not want to enter into these details, but let us just take a hypothetical case. Suppose for example, that my neighbour here, the United Kingdom, placed one of its mandated territories under trusteeship. This is what President Roosevelt used to call an "iffy" question: it is only hypothetical. There you have the United Kingdom as one of the five permanent members of the Trusteeship Council and four other permanent members not administering trust territory. That to my mind is not the balance which the Charter envisages—one against four. I am quite willing to leave this determination to the lawyers and I hope they will help clarify these things, but it seems to me that the proposal as I understood it does raise some constitutional difficulties.

In conclusion, because of these constitutional difficulties, I would like to ask the Delegate from Yugoslavia as to what happens if, for the technical reasons I mention, we do not have sufficient trusteeship agreements approved by the General Assembly by the end of its first session. That in my mind has always been the crucial issue. We will attempt to get those agreements signed, but suppose they are not, for purely technical reasons and because of the difficulties I have mentioned, who exercises these functions; who carries out the principles of the Charter in the absence of a Trusteeship Council? Suppose that I am correct and the Yugoslav Delegate unfortunately is incorrect in his statement of the conditions for establishing the Trusteeship Council, suppose you want more than one trust territory, suppose you need three or four—whatever the lawyers advise us is the proper number, you might have all but one agreement concluded before the General Assembly. What then? Who looks after the territories which have been submitted to trusteeship? That was the advantage of the original Temporary Trusteeship Committee in the Executive Committee Report. That would have been the advantage of the "ad hoc" committee which the Yugoslav original paper proposed, if it were authorized, as our revised paper proposes, to be empowered to carry on after the session of the first Assembly, if you do not get a sufficient number of agreements. I merely raise that question because I think it is a serious one if my interpretation of the basic conditions for the establishment of the Council are correct.

II. DOCUMENTS FILED BY THE AGENT FOR THE GOVERNMENTS OF ETHIOPIA AND LIBERIA ¹

30 June 1965.

MEMORANDUM REGARDING EVIDENCE INTRODUCED BY RESPONDENT DURING THE ORAL PROCEEDINGS OF 24 MAY 1965

During the Course of the oral proceedings on 24 May 1965, Respondent introduced United Nations Preparatory Commission Documents Nos. PC/TC/11 and PC/TC/30.

The essence of Respondent's arguments with respect thereto lies in the significance sought to be attributed to the introduction of a proposed United States amendment (PC/TC/11) to the Report of the Executive Committee of the Preparatory Commission relating to the duties of the proposed Temporary Trusteeship Committee and to the fact that such amendment was not thereafter considered or debated. The inference (gratuitously and erroneously) drawn by Respondent from this circumstance appears to be that the amendment was abandoned for lack of support or that, in some other manner, the incident is relevant to the issue of survival of obligations of international accountability of mandates notwithstanding dissolution of the League of Nations. (IX, pp. 401-403.)

The Applicants have made a careful review of the relevant proceedings and, on the basis thereof, respectfully submit the following findings and conclusions:

I. Findings

(a) The United States Delegation to Committee 4 of the Preparatory Commission submitted two proposals on 4 December 1945. One was the proposal in Document PC/TC/11 (adduced by Respondent). The other, not referred to by Respondent, was the suggested modification of a Yugoslav proposal for an Ad Hoc Committee, pending formation of the Trusteeship Council. The Yugoslav proposal, in turn, was a suggested modification of the Executive Committee's recommendation for a Temporary Trusteeship Committee. The second United States proposal, aforesaid, is appended as Annex A; the original Executive Committee recommendation for a Temporary Trusteeship Committee is appended as Annex B; the Yugoslav proposal is appended as Annex C. (PC/TC/10, PC/EX/113/Rev. 1, and PC/TC/4, respectively.)

(b) At the Ninth Meeting of Committee 4 of the Preparatory Commission, held on 8 December 1945 (not 10 December, as erroneously stated by Respondent) procedures were suggested and agreed upon, as follows:

"3. Continuation of discussion of section 2, chapter IV of the Report, and of PC/TC/3, PC/TC/6, PC/TC/8, PC/TC/10, PC/TC/11, PC/TC/24 and PC/TC/25.

¹ See Part IV, No. 101, p. 587 *infra*.

"The Secretariat proposed that the discussion of the various documents should be divided into three parts:

"(1) The terms of resolution to be recommended to the General Assembly. This discussion would take place on the basis of the Yugoslav proposal (PC/TC/6), but would also take into account the relevant parts of the United States and United Kingdom proposals (PC/TC/10 and PC/TC/25).

(2) The question whether there should be any *ad hoc* committee, and if so, what should be its composition and functions. This discussion would take place on the basis of the Belgian proposal (PC/TC/24), but would also take into account the Philippine proposal (PC/TC/8) and the relevant parts of the Yugoslav, United States, and United Kingdom proposals (PC/TC/3, PC/TC/10, and PC/TC/25).

(3) The United States proposal for providing a degree of continuity between the Mandates system and the trusteeship system (PC/TC/11)."

(Summary Record; PC/TC/31, pp. 1-2; Appended hereto as Annex D.)

(c) During the course of the meeting, the United States Delegate made the statement in PC/TC/30 (the second document introduced by Respondent on 24 May 1965). As is evident, from the agreed agenda, described above, as well as from the substance of the statement itself, the discussion was limited to part (1) of the agenda and related only to Documents PC/TC/6 and PC/TC/25 (see para. (b), *supra*).

(d) The next Meeting of Committee 4 of the Preparatory Commission was held on 10 December 1945 (Summary Record is appended hereto as Annex E). The discussion moved forward into consideration of part (2) of the agreed agenda, *viz.*, Documents PC/TC/10, PC/TC/24, and PC/TC/25. Document PC/TC/10, appended as Annex A hereto, was the Yugoslav proposal. The Summary Record of the Tenth Meeting shows that the Representative of China suggested an alternative to the Executive Committee proposal for a Temporary Trusteeship Committee as well as to the Yugoslav Proposal of an *ad hoc* committee, as follows:

"He therefore urged that use should be made of the main trusteeship committee of the General Assembly, thus leaving the question of a temporary or *ad hoc* committee for the General Assembly itself to decide. If this plan could be adopted, it would answer all questions." (Annex E; p. 4.)

He likewise suggested that a subcommittee be appointed by Committee 4 "to consider the various proposals on this question and recommend to the full Committee a new draft based on these proposals." (*Ibid.*)

(e) The Committee accepted the Chinese proposal, and a subcommittee was appointed accordingly. Consequently, neither at the Ninth nor Tenth Meeting of Committee 4 was part (3) of the agreed agenda reached. Consideration of the United States amendment relating to the duties of the Temporary Trusteeship Committee clearly was irrelevant in any event, inasmuch as consideration of establishment of the proposed Temporary Trusteeship Committee itself had been deferred.

(f) At the Fifteenth Meeting of Committee 4, the Chairman of the subcommittee reported that it "had come to the conclusion that no recommendation should be made for the creation of any temporary organ". (Document PC/TC/42, first page; appended hereto as Annex F.) The recommendation of the subcommittee took the form of a Trusteeship Draft Resolution for the General Assembly (Document PC/TC/41, appended hereto as Annex G). Committee 4 adopted the report of the subcommittee (Document PC/TC/41) by 28 votes to none. On the last page of Document PC/TC/42 (Annex F hereto), the following decision is recorded:

"... the recommendation contained in PC/TC/41 takes the place, in the report to the Preparatory Commission, of sections 2, 3, 4 and 6 of chapter IV of the Report by the Executive Committee. Section 1 of chapter IV of the Report by the Executive Committee likewise disappears, and the report by Committee 4 to the Preparatory Commission consists solely of the text of PC/TC/41 and the text of PC/TC/34/Rev. 1."

(g) The United States proposed amendment to Section 2 of Chapter IV of the Report by the Executive Committee, contained in Document PC/TC/11 (introduced by Respondent on 24 May 1965) thus had lost any relevance whatever.

II. Conclusion

The United States proposal (Document PC/TC/11) was not reached in the course of discussions at the Ninth Meeting of Committee 4. No significance whatever is attributable to the fact that the United States Representative made no reference to it then or thereafter, except that it became irrelevant by reason of the procedure adopted by the Committee.

Annex A

Original: English

PC/TC/10
4 December 1945.

PREPARATORY COMMISSION OF THE UNITED NATIONS

COMMITTEE 4: TRUSTEESHIP COUNCIL DELEGATION OF THE UNITED STATES

SUGGESTION FOR THE FORMATION OF A TRUSTEESHIP COUNCIL BASED UPON THE PROPOSAL OF THE DELEGATION OF YUGOSLAVIA (PC/TC/3)

The difficulties mentioned by the Executive Committee in Section 2, paragraph 2, of its Report could be overcome in the spirit of the Charter without the formation of a temporary Trusteeship Committee.

Of the three categories of territories mentioned in Article 77 of the Charter, the territories under B and C remain uncertain. Only the territories under A (mandated territories) are certain.

The Preparatory Commission could recommend that the First Part of the First Session of the General Assembly should: (1) invite the mandatory powers, who are members of the United Nations Organization, to submit declarations of their willingness to enter into negotiations for placing the territories over which they have so far been acting as administering authorities under the trusteeship system of the Charter; (2) recommend that the States directly concerned in each mandated territory, including the mandatory power, should proceed immediately to negotiate a trusteeship agreement for each such territory and submit the agreement to the General Assembly for approval before the end of the first session or, in the case of strategic areas, to the Security Council for approval; (3) create an *ad hoc* committee or authorize its Trusteeship Committee to create an *ad hoc* sub-committee, to exercise the functions listed in Chapter IV, Section 2, paragraph 4 of the Report, and to be composed as indicated in paragraph 5, except for the following revision of item (ii):

(ii) the Members, other than those mentioned by name in Article 23, which are at present administering mandated territories and which have declared their intention promptly to enter into negotiations for placing any such territories under trusteeship;

and (4) empower this Ad Hoc Committee or sub-committee to remain in existence and exercise its functions between sessions of the General Assembly if for any reason a sufficient number of trusteeship agreements have not been concluded to permit the establishment of the Trusteeship Council by the end of the first session of the General Assembly.

In the meantime on the basis of the above recommendation and in their desire to settle this problem as soon as possible the present mandatory powers would prepare all that may be necessary in order to be able to respond to the invitation of the General Assembly as soon as it is made. These declarations could in this way be discussed during the First Part of the First Session of the General Assembly.

From that moment until the Second Part of the First Session, the States directly concerned could conclude trusteeship agreements. If these agreements covered strategical areas, they should be submitted for approval to the Security Council, but if these agreements covered only non-strategical areas, they could be submitted to the General Assembly during the Second Part of the First Session. An *ad hoc* committee of the General Assembly, or an *ad hoc* sub-committee of the Trusteeship Committee of the General Assembly, to examine these declarations of the present mandatory powers could usefully be formed.

After the Security Council or the General Assembly had approved the agreements a Trusteeship Council could then be formed.

Annex B

CHAPTER IV: THE TRUSTEESHIP SYSTEM

Section 1: Recommendation concerning the Establishment of the Trusteeship System

*The Executive Committee*¹,

Considering that in accordance with Article 86 of the Charter the Trusteeship Council cannot be formed until a number of territories shall first have been placed under trusteeship; and

Considering that it is nevertheless desirable that some interim organ should be established to assist the General Assembly in expediting the constitution of the trusteeship system and, pending the establishment of the Trusteeship Council, in taking such other action in connection with the trusteeship system as may be found necessary;

Recommends:

1. that there be established, in accordance with Article 22 of the Charter, a Temporary Trusteeship Committee, the formation, composition, functions and duration of which are elaborated in Section 2;
2. that the Preparatory Commission adopt for presentation to the Temporary Trusteeship Committee, and for adoption at the latter's discretion, the Provisional Agenda and Provisional Rules of Procedure which are found in Sections 3 and 4, respectively;
3. that, with a view to assisting the Temporary Trusteeship Committee in its work, the Preparatory Commission also approve the proposals contained in Sections 5 and 6, concerning:
 - (a) Rules of Procedure for the Trusteeship Council; and
 - (b) a recommendation to the General Assembly for the establishment of the Trusteeship Council, as soon as the necessary conditions have been fulfilled².

Section 2: Report on Interim Arrangements Required Pending the Establishment of the Trusteeship Council

The Terms of the United Nations Charter

1. The composition of the Trusteeship Council is governed by paragraph 1 of Article 86 of the United Nations Charter, which reads as follows:

"1. The Trusteeship Council shall consist of the following Members of the United Nations:

¹ The Czechoslovak, Soviet and Yugoslav Delegations made objection to the proposal for the establishment of the Temporary Trusteeship Committee on the grounds that such action is not authorized by the Charter and would be unconstitutional.

² Additional material for the consideration of the Temporary Trusteeship Committee will be found in the Appendices to Part III, Chapter IV.

- (a) those Members administering trust territories;
- (b) such of those Members mentioned by name in Article 23 as are not administering trust territories;
- (c) as many other Members elected for three-year terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those Members of the United Nations which administer trust territories and those which do not."

Question of application

2. Half the members of the Council will be those Members of the United Nations which administer trust territories. The term "trust territories" means such territories as may, by subsequent individual agreement, be placed under the International Trusteeship System (Articles 75 and 77). At present, therefore, there are no trust territories, nor will there be any until trusteeship agreements for individual territories have been approved by the General Assembly, or, in the case of strategic areas, by the Security Council (Articles 83 and 85). Consequently, there are at present no Members of the United Nations administering trust territories: and, therefore, a Trusteeship Council composed as laid down in Article 86 of the Charter cannot yet be formed. Some means of resolving this difficulty must be found, and the Committee submits the following recommendations.

Proposal for a Temporary Trusteeship Committee

3. The Committee recommends that the General Assembly, acting under Article 22 of the Charter, create a temporary subsidiary organ to carry out certain of the functions assigned in the Charter to the Trusteeship Council, pending its establishment.

4. This Temporary Trusteeship Committee would, *inter alia*, perform the following functions:

(i) assist the United Nations in expediting the conclusion of trusteeship agreements by the States directly concerned, and the coming into operation of the Trusteeship System provided for in Chapters XII and XIII of the Charter;

(ii) assist and advise the General Assembly in the discharge of any of its functions with regard to proposed non-strategic areas, including the approval of trusteeship agreements;

(iii) assist the Security Council in such matters as the Security Council might wish to refer to the Temporary Trusteeship Committee in relation to matters mentioned in Article 83 (3);

(iv) advise the General Assembly on any matters that might arise with regard to the transfer to the United Nations of any functions and responsibilities hitherto exercised under the Mandates System.

Composition of the Temporary Trusteeship Committee

5. The Committee recommends that the Temporary Trusteeship Committee be composed as follows:

- (i) The five States mentioned by name in Article 23;
- (ii) the Member States other than those mentioned by name in Article 23, which are at present administering Mandated Territories (Australia, Belgium, New Zealand and the Union of South Africa);
- (iii) any other States to which may be allocated the administration of territories detached from enemy States as a result of the Second World War, with a view to their becoming trust territories;
- (iv) as many other members, to be elected by the General Assembly, as are necessary to secure equality between administering and non-administering members. (It is suggested that a recommendation be made to the Assembly that the Netherlands be elected on account of her long experience in the administration of dependent territories.)

Duration of the Temporary Trusteeship Committee

6. The Committee recommends that the tenure of the Temporary Trusteeship Committee should cease when, through the conclusion of a sufficient number of trusteeship agreements, the conditions in Article 86 have been fulfilled.

Section 3: Provisional Agenda for the Temporary Trusteeship Committee

1. Selection of a temporary Chairman in accordance with English alphabetical order of States represented.
2. Adoption of temporary Rules of Procedure governing selection of a Chairman and other Officers.
3. Adoption of the Agenda.
4. Selection of a Chairman and other Officers.
5. Adoption of Rules of Procedure.
6. Recommendation to the Secretary-General on the staff required by the Temporary Trusteeship Committee.
7. Consideration, at the request of the General Assembly or of the Security Council, of any trusteeship agreements submitted to the United Nations for approval.
8. Recommendations to the General Assembly as to the steps to be taken to expedite in the spirit of Article 80, paragraphs 1 and 2, the initiation and preparation of trusteeship agreements in accordance with the provisions of Articles 75, 77 and 79, with a view to the early conclusion of trusteeship agreements for submission to the United Nations for approval.
9. Problems arising from the transfer of functions in respect of existing mandates from the League of Nations to the United Nations.
10. Special problems which will arise if the United Nations itself is designated as an administering authority.
11. Preliminary discussion of the following matters for eventual decision by the Trusteeship Council:

(a) Rules of Procedure for the Trusteeship Council, with special reference to:

- (i) arrangements for the examination of reports;
- (ii) arrangements for the examination of petitions;
- (iii) the method of communicating observations to the General Assembly (or the Security Council) and to the administering authority.

- (b) the questionnaire to form the basis of annual reports;
- (c) arrangements for visits to trust territories;
- (d) procedure for obtaining the assistance of the Economic and Social Council and of the specialized agencies.

12. Formulation of a draft Agenda for the first meeting of the Trusteeship Council.

13. Recommendation to the General Assembly for the establishment of the Trusteeship Council as soon as the necessary conditions have been fulfilled.

14. Consideration of other items.

Section 4: Provisional Rules of Procedure for the Temporary Trusteeship Committee

(Items 2 and 5 of the Provisional Agenda, Section 3)

Considering Articles 83, 85, 86, 87, 88 and 91 of the Charter, the Temporary Trusteeship Committee adopts the following Rules of Procedure:

Rule 1. Sessions

The Temporary Trusteeship Committee shall meet at the seat of the United Nations for as many sessions and at such times as may be found necessary. The date and the duration of such sessions shall be determined in such a way as to facilitate the work of the United Nations.

Rule 2. Officers

The Temporary Trusteeship Committee shall elect, at the beginning of each session, a Chairman and a Vice-Chairman. The Chairman and Vice-Chairman shall hold office until the corresponding elections take place at the beginning of the following session. These elections shall be conducted by the method of secret ballot.

In the absence of the Chairman, the Vice-Chairman shall take his place.

Rule 3. Secretariat

The Secretary-General of the United Nations shall act in that capacity for the Temporary Trusteeship Committee; he may authorize a deputy to act on his behalf.

Rule 4. Languages

The rules regarding the use of languages shall be the same as those adopted by the General Assembly for its own use.

Rule 5. Technical Experts

The Temporary Trusteeship Committee may seek the advice of individual technical experts, or establish commissions of technical experts, to act in an advisory capacity. These experts shall be selected by the Committee for their special knowledge and experience.

Rule 6. Agenda

The provisional Agenda for any session shall be drawn up by the Secretary-General in consultation with the Chairman of the Committee and shall be communicated to the members together with the notice con-

vening the Committee. The first item on the provisional Agenda shall be the adoption of the Agenda. Normally no new item shall be considered until four days after its inclusion in the Agenda.

Rule 7. Quorum

At any meeting, the representatives of two-thirds of the members shall constitute a quorum.

Rule 8. Voting

All decisions or recommendations of the Temporary Trusteeship Committee shall be made by a majority of the representatives present and voting.

If equal numbers of votes are cast for and against any proposal, a second vote shall be taken at the next meeting. If this also results in equality the proposal shall be regarded as lost.

A statement of minority views may be appended to a report or recommendation of the Committee at the request of any member.

Rule 9. Publicity of Meetings

The Committee shall determine in each instance, in accordance with the nature of the Agenda, whether the meeting shall be private or open to the public. At the close of each private meeting, the Committee shall issue a communique through the Secretary-General. All meetings of sub-committees and of commissions of technical experts shall be held in private.

Rule 10. Records

The verbatim records of the meetings, after being approved by the Committee, shall be preserved and made public as and when the Committee decides.

Copies of records relating to non-strategic areas shall be communicated to the General Assembly, and those relating to strategic areas to the Security Council.

Rule 11. Interim Powers

In so far as the Temporary Trusteeship Committee undertakes the functions of the Trusteeship Council, it shall make use of such rules of procedure, concerning the formulation of questionnaires, the examination of reports from administering authorities, the examination of petitions, arrangements for visits to trust territories, and the method of communicating observations to the General Assembly (or the Security Council) and the administering authority, as it shall have prepared for submission to the Trusteeship Council¹. The Committee shall perform such other functions as may be provided for in the trusteeship agreements or as may be assigned to it by the General Assembly or the Security Council, including the expedition and consideration of draft trusteeship agreements and the preparation of recommendations thereon for submission to the General Assembly or the Security Council.

Rule 12. Relations with Other Bodies

The Committee shall, when appropriate, avail itself of the assistance of the Economic and Social Council, of the specialized agencies, and of any

¹ Cf. Item 11 in the Provisional Agenda, Part III, Chapter IV, Section 3 (p. 56).

regional bodies which may be separately established, in regard to matters with which they may respectively be concerned. It shall invite representatives of these bodies, when appropriate, to attend the meetings of the Committee.

Rule 13. Amendments

These Rules of Procedure may be modified by the Committee. Normally a vote shall not be taken until four days after the proposal for modification has been submitted.

Section 5: Provisional Rules of Procedure for the Trusteeship Council

I. SESSIONS

Rule 1

The Trusteeship Council shall meet in regular session at least once a year. The regular session shall be convened by the Council in time to permit the submission of the annual report of the Council to the General Assembly at least fifteen days before the regular annual session of the General Assembly.

Rule 2

Special sessions may be held as and where occasion may require, by decision of the Trusteeship Council or at the request of a majority of its members. A request for a special session may be made by any member of the Council and shall be addressed to the Secretary-General of the United Nations, who shall communicate the request to the other members of the Council. On notification by the Secretary-General that a majority of the members have concurred, the President shall request the Secretary-General to call a special session.

Rule 3

Each session shall be held at the seat of the United Nations unless in pursuance of a previous decision of the Council, or of a majority of its members, another place is designated.

Rule 4

The President of the Trusteeship Council shall fix the date of the first meeting of a special session and shall notify the members through the Secretary-General at least thirty days in advance of the date of such session.

II. AGENDA

Rule 5

A provisional Agenda for every session shall be drawn up by the Secretary-General in consultation with the President and shall be communicated to the members together with the notice convening the Trusteeship Council.

Rule 6

The provisional Agenda shall include: ,

- (a) all items proposed by the Trusteeship Council at a previous meeting;
- (b) all items proposed by any Member of the United Nations;
- (c) all items proposed by the General Assembly, the Security Council, the Economic and Social Council, or by a specialized agency; and
- (d) all items or reports which the President or the Secretary-General deem necessary to put before the Council.

Rule 7

The first item on the provisional Agenda of any meeting of the Trusteeship Council shall be the adoption of the Agenda.

Annex C

Supplement No. 4—PC/TC/4

COMMITTEE 4: TRUSTEESHIP

Summary Record of Meetings

No. 3

Saturday, 1 December 1945

THIRD MEETING

Held on Friday, 30 November 1945, at 2.30 p.m.

Chairman: Mr. Guillermo Bért (Cuba)

Continuation of Discussion of Section 2, Chapter IV of the Report

The Chairman opened the meeting by inviting the Delegates who objected to this Section of the Report by the Executive Committee to submit alternative proposals.

Mr. Franic (Yugoslavia), after some introductory remarks, read the statement which has since been circulated as document PC/TC/3. (See below.)

Mr. Franic (Yugoslavia) explained that the definition of the "States directly concerned" contained in the above statement was founded on Articles 79 and 86 of the Charter.

Mr. Karnebeek (Netherlands) asked that the Yugoslav proposal be distributed in written form in order that the other Delegations might give it their fullest consideration.

The Chairman agreed that the Yugoslav proposal should be distributed in written form, as requested.

Mr. Kiselev (Byelorussian S.S.R.) stated that, in his opinion, it was unwise to create a temporary organ. Calling the attention of the Delegates to the objectives mentioned in Article 76, he said that every speaker had expressed the wish that the trusteeship system should be brought to life as soon as possible and he urged that the mandatory powers should start the process.

The creation of the Temporary Trusteeship Committee would not solve, but hamper, the solution of the basic problem: there was no time limit for this temporary organ. His delegation was in complete agreement with the Government of the Soviet Union concerning the question of the legality and constitutional basis of the Temporary Trusteeship Committee.

Mr. Riaz (Egypt) agreed that from the legal standpoint *Mr. Gromyko's* view that the Temporary Trusteeship Committee was unconstitutional was absolutely right. Even those who supported the idea of the Temporary Trusteeship Committee did not consider that it was entirely satisfactory; they declared that they were prepared to adopt a better method if proposed. It was dangerous to improvise and to make additions to the Charter, unless this was an absolute necessity for practical reasons. After a careful study of the merits of the proposal, he was con-

vinced that the Temporary Trusteeship Committee was not desirable. The Trusteeship Council could be established as soon as one or two or more trusteeship agreements had been concluded.

Turning to the United States memorandum of 27 September, in consideration of the question of "States directly concerned", he found that no definition was made in that memorandum. He asked what there would be for the Temporary Trusteeship Committee to do if there were no agreements.

The best plan was that draft trusteeship agreements in respect of existing mandates should forthwith be referred to the General Assembly for approval. The Trusteeship Council could then be brought into existence. The United Nations were in an extremely favourable position to achieve this end, since the first part of the First Session of the General Assembly would meet in January and the second in April-July, so that they would have four months to study such draft agreements.

In this connection, reference was made to the provision for a Trusteeship Committee in Committee 1 on the General Assembly. He thought that this Committee could be empowered by the General Assembly to consider draft trusteeship agreements with the assistance of a subcommittee set up expressly for this purpose whose composition would bear close resemblance to that of the Trusteeship Council as laid down in the Charter.

Mr. Poynton (United Kingdom) expressed appreciation of the proposal put forward by the Delegate for Yugoslavia and recalled that *Mr. Creech-Jones* had declared on the previous day that the United Kingdom was not wedded to any particular method and would be glad to consider other proposals. He would *not go into a detailed discussion of the Yugoslav proposal for the time being*, but he asked to have time for a close study of their plan which was to be circulated in written form.

He did not agree with the contention that the Temporary Trusteeship Committee was necessarily unconstitutional; he would not, however, go into the argument. There was some misunderstanding of the contention that there was a gap in the Charter. The problem was briefly that, on the one hand, no State could administer trust territories until trusteeship agreements had been approved, while, on the other hand, as the General Assembly had to have the advice of a Trusteeship Council, no trust agreements could be approved until there was a Trusteeship Council. If the Yugoslav proposal were suitable, the United Kingdom would give it serious consideration.

On the point, raised by the Delegate for Egypt, that the mandatory powers should come forward with trusteeship agreements, *Mr. Poynton* asked *what authority would deal with them, whether the General Assembly would do so with or without advice*. Draft agreements should be examined by the most skilled bodies in the first place. The Temporary Trusteeship Committee was recommended as such a body and would be more akin to the Trusteeship Council than an *ad hoc* committee of the General Assembly. That was a point, however, to be considered further.

Mr. Lopez (Philippine Commonwealth) urged the importance of maintaining respect for the Charter and confidence in it. It should be protected and guarded against any attempt to read into it anything which the framers of the document did not have in their minds. He saw in the plan for the Temporary Trusteeship Committee an attempt to make use of Article 22 to read a new intention into the Charter and *Mr. Gromyko*

had given admirable expression to the hopes of the subject peoples.

Mr. Green (United States of America) agreed with the Delegate for the United Kingdom that it would be difficult to make detailed comment on the Yugoslav proposal as early as tomorrow. He was, however, grateful to the Yugoslav Delegate for introducing this novel plan to solve the legal dilemma.

He did not think that the Temporary Trusteeship Committee was, in fact, unconstitutional because there was unquestionably a gap in the Charter. The Recommendation for the Temporary Trusteeship Committee in the Report could still be used as a basis for discussion.

Mr. Riaz (Egypt) feared that he might have been misunderstood by the Delegate for the United Kingdom. Quoting Article 85, he said that the power of reviewing trusteeship agreements rested with the General Assembly which could act without the Trusteeship Council. Moreover, the Charter provided that the representatives on the Trusteeship Council should be chosen by the States Members, and there was nothing to prevent them from nominating the same persons to represent them on an *ad hoc* subcommittee. This committee would then be as expert as the Trusteeship Council itself. If there were any doubt as to the legality of the Temporary Trusteeship Committee, it should be abandoned.

Mr. Orts (Belgium) stated that, since the decisions to be made would have far-reaching influence, the Delegates should be given sufficient time to study the matter.

The Committee decided to postpone further discussion of this issue until after the weekend. It was pointed out, however, that it would be possible meanwhile to discuss section 5 of Chapter IV, and it was agreed to hold the meeting scheduled for Saturday, 1 December, at 5 p.m.

The meeting rose at 4.45 p.m.

DELEGATION OF YUGOSLAVIA:

SUGGESTION FOR THE FORMATION OF A TRUSTEESHIP COUNCIL

The difficulties mentioned by the Executive Committee in section 2, paragraph 2, of its report could be overcome in the spirit of the Charter without the formation of a temporary Trusteeship Committee, which in the opinion of this Delegation would be an unconstitutional organ.

Of the three categories of territories mentioned in Article 77 of the Charter, the territories under B and C remain uncertain. Only the territories under A (mandated territories) are certain.

This Delegation is of the opinion that a necessary step would be the adoption by the Preparatory Commission of a recommendation to the First Part of the First Session of the General Assembly to invite the mandatory powers, who are members of the United Nations Organization, to submit declarations of their willingness to put the territories over which they have so far been acting as administering authorities under the trusteeship system of the Charter, and at the same time to make known which powers they consider as States directly concerned with these territories. In the meantime on the basis of the above recommendation and in their desire to settle this problem as soon as possible the present

mandatory powers would prepare all that may be necessary in order to be able to respond to the invitation of the General Assembly as soon as it is made. These declarations could in this way be discussed during the first part of the first session of the General Assembly and during this discussion opinions could be exchanged and agreement reached on the exact definition of the term "States directly concerned". The Yugoslav Delegation is of the opinion that in the first place the respective mandatory power (Article 79) and the powers mentioned by name (Article 23 in connection with Article 86) as well as perhaps the neighbouring powers should be the States directly concerned.

From that moment until the second part of the first session, the States directly concerned could conclude trusteeship agreements. If these agreements covered strategical areas, they should be submitted for approval to the Security Council, but if these agreements covered only non-strategical areas, they could be submitted to the General Assembly during the second part of the first session. An *ad hoc* committee of the General Assembly to examine these declarations of the present mandatory powers could usefully be formed.

After the Security Council or the General Assembly had approved the agreements a Trusteeship Council could then be formed. The need for a Temporary Trusteeship Committee would thus be eliminated.

If the mandatory powers could at the same time submit drafts of the trusteeship agreements for the territories concerned, these could perhaps also be discussed during the first part of the first session of the General Assembly. This would be very desirable in the interest of the speedy solution of this important problem as it would permit of the agreements being concluded during the first part of the first session ready for submission to the Security Council or the General Assembly for approval, so that at this stage the Trusteeship Council could already be formed.

Annex D

Supplement No. 4. PC/TC/31

COMMITTEE 4: TRUSTEESHIP

Summary Record of Meetings
No. 9
Monday, 10 December 1945

NINTH MEETING

Held on Saturday, 8 December, 1945, at 10.30 a.m.
Chairman: Mr. Guillermo Belt (Cuba)

I. Continuation of discussion of section 5, chapter IV, of the Report by the Executive Committee.

The Chairman opened the meeting by asking the Delegates to consider two remaining amendments for the Provisional Rules of Procedure, and thus to conclude the discussion of section 5, chapter IV, of the Report.

Decision: The Syrian amendment (PC/TC/17), which it was suggested should be considered in connection with Rule 6, was adopted without amendment.

The Committee then turned to consider the Syrian amendment to Rule 30 (PC/TC/18). *Mr. Green* (United States of America) pointed out that the word "educational" which was the word used in Article 88 of the Charter, had been replaced by the word "cultural" in the Syrian amendment. *Mr. Zeineddine* (Syria) explained that the word "cultural" had been used as having a wider meaning than the word "educational". However, he agreed to use the word "educational" as it was thought to be closer to the language of the Charter.

Decision: Subject to this change of wording, the Syrian amendment to Rule 30 was adopted.

2. Appointment of a Drafting Subcommittee.

The Committee agreed that a Drafting Subcommittee should be formed to prepare and present to the full Committee a revised text of the Provisional Rules of Procedure for the Trusteeship Council, and that it should be composed of the Delegates for Australia, Belgium, Canada, Nicaragua, Syria, Ukrainian Soviet Socialist Republic and Yugoslavia.

3. Continuation of discussion of section 2, chapter IV, of the Report, and of PC/TC/3, PC/TC/6, PC/TC/8, PC/TC/10, PC/TC/11, PC/TC/24 and PC/TC/25.

The Secretariat proposed that the discussion of these various documents should be divided into three parts:

- (1) The terms of resolution to be recommended to the General Assembly. This discussion would take place on the basis of the Yugoslav proposal (PC/TC/6), but would also take into account the relevant parts of the United States and United Kingdom proposals (PC/TC/10 and PC/TC/25).
- (2) The question whether there should be any *ad hoc* committee, and if so, what should be its composition and functions. This discussion would take place on the basis of the Belgian proposal (PC/TC/24), but would also take into account the Philippine proposal (PC/TC/8) and the relevant parts of the Yugoslav, United States and United Kingdom proposals (PC/TC/3, PC/TC/10, and PC/TC/25).
- (3) The United States proposal for providing a degree of continuity between the Mandates system and the trusteeship system (PC/TC/11).

Mr. Franic (Yugoslavia) (the full text of his speech has been circulated as PC/TC/29) made a statement in explanation of the proposal contained in PC/TC/6. He drew attention to the omission of provision for a declaration by the existing mandatory powers; he did not object to its inclusion, but the practical steps to which his proposal referred were more essential. Another omission was the definition of the "States directly concerned". 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 claiming to be directly concerned could ask to be allowed to participate in the negotiations. The resulting trusteeship agreement would be submitted to the General Assembly, or to the Security Council, according to whether the States directly concerned had or had not designated the territory in question as a strategic area.

It should therefore be possible for the mandatory powers, without waiting for a resolution of the General Assembly, to enter into contact with the States mentioned by name in Article 23 of the Charter. With the good-will of all the interested parties, the Trusteeship Council could be formed without any delay. This Delegation could not agree that any temporary organ was necessary.

Turning to the question of the fulfilment of the conditions for the creation of the Trusteeship Council, he considered that this could be done as soon as one trusteeship agreement had been concluded.

The balance provided for in Article 86 of the Charter was not a condition for the existence of the Trusteeship Council, but simply a measure according to which the composition of the Trusteeship Council would be determined when it reached its full development. He could not contemplate a situation in which there was any territory under the trusteeship system without the supervision of the competent body of the United Nations.

The views of the Delegate for Yugoslavia were supported by the Delegate for Czechoslovakia.

Mr. Green (United States of America) (the text of his speech has been

circulated as PC/TC/30) expressed the willingness of his Delegation to accept the Yugoslav proposal with certain modifications. At the same time, he could not admit that the proposal for a Temporary Trusteeship Committee had been unconstitutional or impractical.

He suggested that the first paragraph of the Yugoslav proposal (PC/TC/6) should be amended in such a way as to mention all four of the objectives stated in Article 76 of the Charter instead of only one of them.

In paragraph 2, the reference to chapter XI of the Charter should be deleted, since no delay in the establishment of the trusteeship system could in any way affect the obligations arising from chapter XI.

With respect to paragraph 3, he felt that the language there used gave an incorrect impression that there was some legal differentiation between category (a) and categories (b) and (c) of territories referred to in Article 77 of the Charter.

The language of paragraph 4 might also be revised to avoid the implication that the mandatory powers had some special responsibility for delay.

In the text of the resolution itself in PC/TC/6, he suggested two changes:

1. In lines 1 and 2, the substitution for the present language of "calls upon the States directly concerned in mandated territories including the mandatory power to undertake";
2. The substitution of less rigid language for "the second part of the First Session of the General Assembly" at the end of the draft resolution.

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.

He questioned the Yugoslav position on the interpretation of Article 86 of the Charter. Those who drafted it at San Francisco had made it very clear that the balance between administering and non-administering States was an essential element in the constitution of the Trusteeship Council.

He would like to ask the Yugoslav Delegate what would happen if in fact there were not enough trusteeship agreements for this balance to be established on conclusion of the First Session of the General Assembly, and who would look after such territories as had been placed under the trusteeship system in the absence of the Trusteeship Council.

In response to the request of certain Delegates, it was agreed that the speeches of the Delegates for Yugoslavia and the United States of America should be circulated before the next meeting.

On the proposal to adjourn the meeting, several points of order were raised.

Mr. Saba (Egypt) explained that his views had not been accurately represented in the United Kingdom proposal (PC/TC/25). It was not the view of the Egyptian Delegation that an *ad hoc* committee of the General Assembly should necessarily be composed in conformity with the pro-

posals made by the Executive Committee. They wished the General Assembly to have full freedom in this matter.

Mr. Lopez (Philippine Commonwealth) wished to record his opinion that the General Assembly had no authority whatsoever to initiate trusteeship agreements. The authority of the General Assembly authority was limited to non-strategic areas, and the decision as to which territories should be designated as strategic areas rested, in his view, with the Security Council.

The meeting rose at 12.50 p.m.

Annex E

COMMITTEE 4: TRUSTEESHIP

Summary Record of Meetings

No. 10

Wednesday, 12 December 1945

TENTH MEETING

Held on Monday, 10 December 1945, at 10 a.m.

Chairman: Mr. Guillermo Belt (Cuba)

Continuation of discussion of section 2, chapter IV, of the Report by the Executive Committee

Mr. Ponsot (France) made a statement of the French point of view on the whole problem before the Committee.

Referring to the questions contained in section 2, chapter IV, he said that the juridical basis for setting up the trusteeship system was to be found in Articles 10, 16 and 24 and 86. The General Assembly had authority to take all necessary action for bringing the trusteeship system into existence. The General Assembly had also the power to create the necessary subsidiary organs. It was not indispensable to have the Trusteeship Council.

Of the three categories of territories mentioned in Article 77, there was no ground for distinguishing the mandates from the other two categories or for devising a special regime for the mandates. The text of the resolution to be recommended to the General Assembly should therefore relate to all three kinds of territories. It was desirable that territories detached from the enemy States should come under the trusteeship system as soon as possible.

The Trusteeship Council would be a common instrument of the General Assembly and the Security Council. Therefore it was necessary from the outset for the two organs to act in collaboration.

He then proceeded to read the text of a resolution suggested by his Delegation, and expressed the hope that the text might serve as the basis of a working document.

Sir V. T. Krishnamachari (India) called attention to the fact that the Committee was already in substantial agreement on two points: that the existing mandatory powers should be asked to express their readiness to place the mandated territories under trusteeship, and that they should be invited to prepare terms of trusteeship agreements. He did not think that the General Assembly was itself competent to receive the draft agreements. The most expedient way would be to set up an *ad hoc* committee to deal with these draft agreements.

The agreements would consist of three parts: (1) essential features of the trusteeship system, (2) provision for similar treatment for mandates falling in each different class, and (3) special provisions for individual trust territories. Then the problem of selecting strategic areas would await the approval of the Security Council. The quickest way to make the

necessary preparations would be the creation of an *ad hoc* committee.

It was essential to preserve the balance of administering and non-administering States in the composition of the *ad hoc* committee.

The Preparatory Commission should therefore ask the General Assembly to set up the *ad hoc* committee at the same time as it invited the mandatory powers to express their readiness and prepare terms of agreement. This Delegation thought that the recommendation of the Executive Committee was well within the provisions of the Charter, but would welcome agreement along the lines of the papers circulated.

Mr. Creech-Jones (United Kingdom) endorsed the views of the Delegate for India. He was prepared to take up the Yugoslav proposal as the basis for discussion, but stressed that it should not be taken to mean that the recommendation of the Executive Committee was unconstitutional. He would not agree that the mandatory powers were responsible for causing any delay; the United Kingdom was most anxious for the early establishment of the trusteeship system.

He would like to repudiate the innuendo toward the end of the first page of the Yugoslav proposal; he would like that innuendo to be removed from the proposal. In fact, the intention of the United Kingdom was already made clear in recent statements by its Foreign Secretary.

He was in full agreement with the criticisms and the modifications of the Yugoslav proposal, made by the United States Delegation, and he hoped that the Yugoslav Delegation would accept these modifications.

Mr. Orts (Belgium) stated that the Belgian proposal (PC/TC/24) was presented with a view to facilitating a solution. They had taken the Yugoslav proposal into account. The chief merit of the Belgian proposal was that it would lead to a speedy application of the Charter, since it would allow of the Trusteeship Council being established without delay, according to the desire expressed in the Charter, without having recourse to the creation of one or other provisional body, the desirability or legality of which was, rightly or wrongly, opened to discussion. Belgium would be prepared to submit agreements if invited to do so by the General Assembly. If it were not possible to accept this proposal by Belgium, his Delegation would be prepared to consider a proposal on the lines suggested by the United States of America and the United Kingdom (PC/TC/10 and PC/TC/25.)

Mr. Wilson (New Zealand) pointed out that previously the New Zealand Delegation had reserved their position on the question. His Delegation was now ready to take part in the discussion on the basis of the Yugoslav proposal, while supporting the amendments suggested by the United States of America and the United Kingdom. The Trusteeship Council could be set up, upon receiving a sufficient number of declarations of readiness to place territories under trusteeship, and he hesitated to agree that a temporary committee of any kind was necessary.

Mr. Orts (Belgium), referring to the difficulty of keeping a too rigid time-table, said that the committee would have nothing to lose if it proceeded on the assumption that any State who declared its intention of placing a territory under the trusteeship system would do so in all good faith. The Belgian Delegation doubted whether the Trusteeship Council could be brought into being on the basis of one single trust territory.

Mr. Nichols (Union of South Africa) stated that on all material points the proposals seemed to be identical. But the time factor had not been

sufficiently considered, not only because of the difficulties of the restricted staff available in small countries but also in view of the need for consultation with the native populations, notably in such territories as Palestine.

The time limit in the Yugoslav proposal would be insufficient. He preferred that the United Kingdom modification "at the earliest possible opportunity thereafter" should take the place of the original Yugoslav wording "the second part of the First Session of the General Assembly". He likewise deprecated the innuendo in the Yugoslav proposal which was both unnecessary and untrue.

Mr. Gromyko (Soviet Union) suggested that the so-called *ad hoc* committee was in fact the same as the temporary trusteeship committee, with no difference in functions and composition. He was not surprised that the mandatory powers were in favour of substitute organs, but if the problem were dealt with along these lines, discussion could continue for months or years without any action being taken. It was, however, unnecessary for him to repeat the reasons, which he had given on many previous occasions, why it would be wrong to establish substitute organs.

If the mandatory powers really adhered to the Charter, they should come to the General Assembly and state that they were ready to place territories under trusteeship, and at the same time present trusteeship agreements. He was in favour of the original Belgian proposal (PC/TC/24) but he noted that the Belgian Delegate had somewhat changed his position.

It would be extremely undesirable and even dangerous to deviate from the Charter. It would establish a very bad precedent if the proposed temporary body were set up. With a bad precedent, other violations of the Charter might follow and a succession of violations would lead to serious consequences. He asked those who spoke in favour of a substitute organ to reconsider the matter and not to press for any substitute organ.

The Yugoslav proposal would not cause inconvenience to the mandatory powers. The Soviet Union was in full agreement with that proposal.

Mr. Saba (Egypt) spoke against limiting the freedom of the General Assembly. It was not right to prescribe for the General Assembly what advice it should take. Under the suggested composition, the General Assembly would be advised on trusteeship agreements by the very States which had concluded them. The General Assembly should be left free in seeking advice.

Mr. Wellington Koo (China) thought that all Delegates would agree that the problem under consideration was one of short duration. The Chinese Delegation was in accord with the Yugoslav proposal subject to certain amendments.

First, he endorsed the change suggested by the United States Delegation to use the phrase "States directly concerned" for parties who should be asked to proceed to negotiate trusteeship agreements.

Secondly, the Chinese Delegation also wanted the mandatory powers to declare their intentions of placing the mandates under the trusteeship system.

Thirdly, in the last sentence of the draft recommendation by the Yugoslav Delegation, the words "during the second part of the first session of" should be substituted by the word "by".

He pointed out that the Committee was divided on the question of

setting up a temporary or *ad hoc* committee. Those who were opposed to a temporary organ considered that one agreement would suffice for bringing the Trusteeship Council into being. He doubted the soundness of the suggestion.

However, it was not absolutely necessary to set up the temporary or *ad hoc* committee in view of the fact that the General Assembly would have a main trusteeship committee dealing with trusteeship matters in any case. If trusteeship agreements were submitted in the interval between the first and second parts of the First Session of the General Assembly, that main committee could decide what was the best thing to do at the second part of the First Session of the General Assembly. It could also decide what was to happen if it were not possible to create the Trusteeship Council until after the end of the First Session of the General Assembly.

He therefore urged that use should be made of the main trusteeship committee of the General Assembly, thus leaving the question of a temporary or *ad hoc* committee for the General Assembly itself to decide. If this plan could be adopted, it would answer all questions.

He, finally, suggested that the Committee might find it helpful to appoint a subcommittee to consider the various proposals on this question and recommend to the full Committee a new draft based on these proposals.

Decision: The Committee accepted the proposal made by *Mr. Koo* and appointed a subcommittee composed of the Delegates for Belgium, the Soviet Union, Syria, the United Kingdom, the United States of America and Yugoslavia.

The meeting rose at 12.55 p.m.

Annex F

COMMITTEE 4: TRUSTEESHIP

Summary Record of Meetings

No. 15

Saturday, 22 December 1945

FIFTEENTH MEETING

Held on Thursday, 20 December 1945, at 9 p.m.

Chairman: Mr. Guillermo Belt (Cuba)

Discussion of recommendation of the subcommittee on trusteeship (PC/TC/41)

Mr. Franic (Yugoslavia), as Chairman of the subcommittee, said that the recommendation (PC/TC/41) was the result of full agreement of all the members of the subcommittee. After long and serious consideration, they had come to the conclusion that no recommendation should be made for the creation of any temporary organ. The document PC/TC/6 was taken as the basis of discussion in considering what steps were necessary to bring the trusteeship system into being as soon as possible. There were some differences between the original document PC/TC/6 and the document finally agreed upon, PC/TC/41.

In paragraph 2 of PC/TC/41, the subcommittee had decided to include all of the four subparagraphs of Article 76 of the Charter.

In paragraph 3 the words "further delay" had been replaced by "any delay", while the reference to "just aspirations" had disappeared, as the "just aspirations" of certain territories were to gain independence rather than to be brought under trusteeship.

In paragraph 4, it was emphasized that immediate action could only be accomplished with respect to mandated territories.

Paragraph 5 had been carefully redrafted so as to avoid any implication that the mandatory powers might try to delay the establishment of the trusteeship system.

In the text of the resolution itself, the phrase "in concert with the other States directly concerned" was inserted in the third line of the first paragraph, because, while mandatory powers must be the first to take practical steps, the other States directly concerned must co-operate in the conclusion of trusteeship agreements. The phrase "preferably not later than" was introduced to avoid possible difficulties arising from a hard and fast limitation of time.

The last paragraph had been added as some members thought it necessary to emphasize that further practical steps might be needed to expedite the trusteeship system than those mentioned in the preceding paragraph. If the General Assembly considered this was the case, then the Trusteeship Committee of the General Assembly would act and use the methods the General Assembly thought most appropriate.

All the members of the subcommittee were motivated by a desire to have the trusteeship system of the Charter expedited. They all worked

in good will and co-operation. The fact that the disputed matters were finally settled with unanimous agreement was a happy sign that the United Nations could march on to success with nothing insoluble.

Mr. Green (United States of America) associated his Delegation with the foregoing remarks. The recommendations fell well within the limits of the Charter and provided for legal equality between all States directly concerned. The emphasis on the mandatory powers was made purely from a practical standpoint. The second paragraph of the resolution met the desire of the United States Delegation to draw attention to the need of machinery for expediting the establishment of the system.

Mr. Poynton (United Kingdom) said that the United Kingdom in accepting the recommendation, did not admit that the original Executive Committee proposal was defective or unconstitutional. The emphasis had been placed on the mandatory powers for purely practical reasons, although it would be technically possible for a non-mandatory colonial power to act in respect of one of its territories.

He supported the additional paragraph, as there would be a gap between the first and second part of the first session of the General Assembly when some machinery would be desirable to deal with any trusteeship agreements which might be presented. The recommendation, however, left it open for the General Assembly to consider what particular methods it might like to use. The document PC/TC/25 indicated the recommendations the United Kingdom would bring forward.

Mr. Bailey (Australia) said his Delegation would support the recommendation, but wished to reserve its position on several of the statements made in the preamble. The resolution still implied that the legal status of a mandatory power was different from that of the other States directly concerned.

He then drew attention to three other points.

First, with regard to the first paragraph, page 2, the States administering non-mandated territories were as certain as States administering mandates; therefore, they also could take action in placing any kind of dependent territory under trusteeship. Articles 75 and 77 of the Charter did not make any distinction between mandated and other territories.

Secondly, in paragraph 2, page 2, there was an implication that Article 80 imposed an obligation on States administering the territories mentioned in Article 77 to place those territories under trusteeship. The terms of Article 75 and 77 made it clear that the placing of a territory under trusteeship would be a voluntary act.

Thirdly, the phrase "calls on", since it had a special connotation in the Charter (e.g., Articles 33 and 41), was unfortunate in this context.

His Delegation cordially associated itself with the language of the resolution, but had to insist that the language of the preamble was not within the letter and spirit of the Charter; the action of a mandatory would be as voluntary as that of any State putting any kind of dependent territory under trusteeship.

Mr. Loridan (Belgium) said that his Delegation would liked to have gone further in elaborating procedure for the examination of trusteeship agreements, and reserved its position in subsequent discussions of this question. His Government wished to make the following declaration: "The text and certainly the spirit of the Charter implied the placing under trusteeship of territories now under mandate. Belgium wishes this to be done as rapidly as possible."

Mr. Nicholls (Union of South Africa) reserved the position of his Delegation until the meeting of the General Assembly, because his country found itself in an unusual position. The mandated territory of South West Africa was already a self-governing country, and last year its legislature had passed a resolution asking for admission into the Union. His Government had replied that acceptance of this proposal was impossible owing to their obligations under the mandate.

The position remained open, and his Delegation could not record its vote on the present occasion if by so doing it would imply that South West Africa was not free to determine its own destiny. His Government would, however, do everything in its power to implement the Charter.

Mr. Lopez (Philippine Commonwealth) reminded the Committee of the paper which he had submitted (PC/TC/8/Add. 1). He still maintained that recommendations should be made to the Security Council as well as to the General Assembly. The trusteeship system involved the peace and security of the world, and therefore the Security Council was primarily responsible. The jurisdiction of the General Assembly could not begin until the Security Council had decided which territories, or parts of them, should be designated as strategic areas. For these reasons, he was reluctant to vote for the subcommittee's recommendation.

Mr. Wilson (New Zealand) announced that he would vote for the report, on the understanding that his Delegation would be free to discuss its wording further in the General Assembly.

Mr. Manuilsky (Ukrainian S.S.R.) stated that, since reservations were being made by other Delegates, he was obliged to do the same. He did not agree, for instance, that the word "preferably", which had been introduced into the resolution was compatible with paragraph 2 of Article 80 of the Charter. Nevertheless, he would support the proposal.

Mr. Zeineddine (Syria) drew the attention of the Committee to the fact that the omission of reference to "just aspirations" had been removed at the instance of the Syrian Delegation. The just aspirations of the Arab peoples in particular could not be satisfied by anything short of independence. Those Arab peoples, to whom the trusteeship system might be applied, had no less title to express their wishes than the population of South West Africa. The door was left open for the satisfaction of their aspirations because the Charter did not specify that every territory in the three categories mentioned in Article 77 was to come under trusteeship.

He reserved the Syrian point of view on the methods to be used by the General Assembly in inaugurating the trusteeship system. Much would depend on the States directly concerned, who should be those States which really were concerned, on account of their legitimate interests in territories which might be brought under trusteeship.

Mr. Wellington Koo (China) thought the wording of the resolution was susceptible of improvement, but refrained from moving amendments.

The Delegates for Australia and the Philippines had made some pertinent observations. He wondered whether the words "for approval" in the resolution implied approval by either the General Assembly or the Security Council as this was not quite clear in the text, but seemed to be the only logical meaning. He associated himself with the dislike expressed by another Delegate for the word "preferably".

He was satisfied that there would be ample opportunity for the Chinese Delegation to express its views in the General Assembly.

Mr. Gromyko (Soviet Union) approved of the report, but in view of the

statements of other Delegates reserved full freedom for his Delegation in the General Assembly. He disassociated himself from the remarks of the United Kingdom Delegate on the subject of a temporary trusteeship committee.

Mr. Ponsot (France) observed that the French position had been stated in PC/TC/33, and he reserved the right of his Delegation to express it in the General Assembly. He would vote in favour of the proposal.

The delegate for Belgium explained that he had not intended to make any reservation on the text of the subcommittee's recommendation, but only on the question of subsequent procedure.

Mr. Franic (Yugoslavia) thanked his colleagues on the Committee for the tributes which they had paid to his chairmanship of the subcommittee, and accepted them in the name of the subcommittee as a whole.

Decision: The Committee adopted the report by the subcommittee (PC/TC/41) by twenty-eight votes to none. As a result of this decision, the recommendation contained in PC/TC/41 takes the place, in the report to the Preparatory Commission, of sections 2, 3, 4 and 6 of chapter IV, of the Report by the Executive Committee. Section 1 of chapter IV of the Report by the Executive Committee likewise disappears, and the report by Committee 4 to the Preparatory Commission consists solely of the text of PC/TC/41 and the text of PC/TC/34/Rev. 1.

The Delegates for Turkey and the Union of South Africa asked that their abstention in the above vote should be placed on record.

Mr. Poynton (United Kingdom), as representative of the host country, moved a vote of thanks to the Chairman and the Secretariat, including the interpreters. This was seconded by *Mr. Gromyko* (Soviet Union) and supported by *Mr. Lopez* (Philippine Commonwealth), who remarked that the attention given by Committee 4 to the views of small States was a good augury for the future of the United Nations.

A question was raised on the form in which the Committee's action with regard to the Report by the Executive Committee should be placed on record. A motion by the Delegate for the Philippine Commonwealth, to the effect that the rejection of the suggestion for a temporary trusteeship committee should be explicitly mentioned in Committee 4's report, was rejected.

Mr. Bailey (Australia), speaking as Chairman of the Drafting Committee, explained that the form which it had been decided to give to the Report by the Preparatory Commission precluded the adoption of this proposal.

The Chairman undertook that the significance of the adoption by the Committee of the recommendation contained in PC/TC/41 would be explained, not only in the present Summary Record but also in the speech introducing the report of the Committee to a plenary session of the Preparatory Commission.

The Chairman announced that the Committee had concluded its business.

The Committee rose at 12.30 a.m.

Annex G

Original: English

PC/TC/41
20 December 1945.

PREPARATORY COMMISSION OF THE UNITED NATIONS

COMMITTEE 4:

RECOMMENDATION OF SUBCOMMITTEE ON TRUSTEESHIP DRAFT RESOLUTION FOR THE GENERAL ASSEMBLY

Taking into account that the United Nations has assumed the duty under Chapters XII and XIII of the Charter to establish a system of international trusteeship;

Considering that the system of international trusteeship is being established to promote, in particular, the objectives prescribed in Article 76 of the Charter:

“(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 circumstances 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 inter-dependence of the peoples of the world; and

(d) to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations 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 Article 80.”

Considering that any delay in putting into effect the system of international trusteeship prevents the principles of such system as declared in the Charter of the United Nations from being implemented, deprives the populations of such territories as may be brought under the trusteeship system of the opportunity of enjoying the advantages arising from the implementation of these principles;

Considering that under Article 77 of the Charter there are three categories of territories to which the trusteeship system applies, two of which are for the time being uncertain (namely B and C of Article 77) and that immediate action can be taken only in respect of territories under mandate (namely A of Article 77);

Considering that Article 80 of the Charter provides that there shall be no delay or postponement of the negotiation and conclusion of agree-

ments for placing mandated and other territories under the trusteeship system as provided for in Article 77; and

Considering that the trusteeship system of the Charter cannot immediately be brought into being without the close co-operation of the States Members of the United Nations now administering the territories under mandates.

The Preparatory Commission of the United Nations recommends the General Assembly to adopt the following resolution:

"The General Assembly of the United Nations calls on the States administering territories in accordance with the League of Nations Mandates to undertake practical steps, in concert with the other states directly concerned, for the implementation of the provisions of Article 79 of the Charter providing for the conclusion of the agreements on trusteeship terms for each territory to be placed under the trusteeship system, in order to submit these agreements for approval preferably not later than the second part of the first session of the General Assembly.

Those trusteeship matters which will be taken up by the General Assembly at the first part of its first session with the purpose of expediting the establishment of the trusteeship system, will be considered by the Trusteeship Committee of the General Assembly, using the methods which the General Assembly considers most appropriate for the further consideration of these matters."

III. DOCUMENTS FILED BY THE AGENT FOR THE GOVERNMENT OF SOUTH AFRICA¹

RESPONDENT'S REPLY TO APPLICANTS' MEMORANDUM HEADED:
"MEMORANDUM REGARDING EVIDENCE INTRODUCED BY RESPONDENT
DURING THE ORAL PROCEEDINGS OF 24 MAY 1965"

FILED WITH THE REGISTRAR OF THE COURT UNDER COVER OF A LETTER
DATED 30 JUNE 1965

I. In the aforementioned Memorandum Applicants refer to the following documents introduced by Respondent during the course of the oral proceedings on 24 May 1965, viz.:

- (1) Document No. PC/TC/11, dated 4 December 1945, being a document filed by the delegation of the United States of America, which document contained proposals for amendment of the report of the Executive Committee of the Preparatory Commission concerning the functions of the proposed Temporary Trusteeship Committee.
- (2) Document No. PC/TC/30, being the verbatim record of a speech by Mr. Green, delegate for the United States of America, at the Ninth meeting of Committee 4 of the Preparatory Commission on 8 December 1945.

With regard to the said documents Applicants state in their Memorandum:

"The essence of Respondent's arguments with respect thereto lies in the significance sought to be attributed to the introduction of a proposed United States amendment (PC/TC/11) to the Report of the Executive Committee of the Preparatory Commission relating to the duties of the proposed Temporary Trusteeship Committee and to the fact that such amendment was not thereafter considered or debated. The inference (gratuitously and erroneously) drawn by Respondent from this circumstance appears to be that the amendment was abandoned for lack of support or that, in some other manner, the incident is relevant to the issue of survival of obligations of international accountability of mandates notwithstanding dissolution of the League of Nations." (IX, pp. 401-403.)

Applicants then proceed to submit what they term "Findings", purported to be based on the contents of certain further Preparatory Commission Documents, copies of which are annexed to their Memorandum; and, finally, they submit a "Conclusion", purported to be based on their so-called "findings".

¹ See Part IV, No. 118, p. 604, *infra*.

2. Respondent will in the further paragraphs of this Reply demonstrate that there is no justification for Applicants' comment (in the statement quoted above) that the inferences drawn by Respondent from the circumstances surrounding the United States proposed amendment were gratuitous and erroneous, and that in certain material respects Applicants' so-called "findings" are wrong and/or without substance. In particular Respondent will show that Applicants err in making statements to the following effect:

- (a) that the reason why the proposals of the United States of America contained in document PC/TC/II were not discussed by Committee 4 of the Preparatory Commission at its Ninth meeting, held on 8 December 1945, nor at its Tenth meeting, held on 10 December 1945, was that the Committee "agreed" upon an agenda and that at the said meetings discussions took place in accordance with the so-called "agreed agenda";
- (b) that when Committee 4 at its said Tenth meeting referred the proposals then before it to a subcommittee, consideration of the establishment of the proposed Temporary Trusteeship Committee itself was deferred, and further, that, consequently, consideration of the United States proposal relating to the election of the Temporary Trusteeship Committee became irrelevant;
- (c) that when Committee 4 decided against the creation of any temporary organ the United States proposals contained in document PC/TC/II lost all relevance.

In the premises, as will be shown, Applicants' final "conclusion" regarding this aspect of the case has no value whatsoever.

In the course of this demonstration it will be necessary to refer in some detail to the proper sequence of events in Committee 4 of the United Nations Preparatory Commission, and to draw attention to particular provisions contained in the relevant documents. In this regard it may be stated that there was no need for Applicants to have filed the documents annexed to their Memorandum (Annexes A-G) since all such documents are, and have at all times been, available in the library of the Court.

3. The Executive Committee in its report of the Preparatory Commission of the United Nations recommended the establishment of a Temporary Trusteeship Committee to—

"carry out certain of the functions assigned in the Charter to the Trusteeship Council, pending its establishment". (Document PC/EX/II3/Rev. I, 12 Nov. 1945, p. 55 *vide* IX, p. 392.)

The said report contemplated that, in the exercise of its interim powers, the Temporary Trusteeship Committee would undertake the functions of the Trusteeship Council regarding supervision of territories submitted to the trusteeship system. (Document PC/EX/II3/Rev. I, 12 Nov. 1945, p. 58 *vide* IX, pp. 392-393.)

No provision was made in the said report for the supervision of Mandates not brought under Trusteeship. The only function proposed for the Temporary Trusteeship Committee relative to mandates was to—

"advise the General Assembly on any matters that might arise with regard to the transfer to the United Nations of any functions and responsibilities hitherto exercised under the mandate system".

(Document PC/EX/113/Rev. I, 12 Nov. 1945, p. 56 *vide* IX, pp. 392-393.)

It was recommended by the Executive Committee that the tenure of the Temporary Trusteeship Committee should cease when—

“through the conclusion of a sufficient number of trusteeship agreements, the conditions in Article 86 [of the Charter] have been fulfilled”,

i.e., when the Trusteeship Council could itself begin to function. (Document PC/EX/113/Rev. I, 12 Nov. 1945, p. 56 *vide* IX, p. 392.)

4. The part of the report of the Executive Committee relating to the Trusteeship System came before Committee 4 of the Preparatory Commission at its Second Meeting on 29 November 1945. (*Summary Record, PC/TC/2.*)

The representative of Australia, Mr. Paul Hasluck, explained the reasons underlying the proposal of the Executive Committee for a temporary body. (*Summary Record, PC/TC/2, p. 2-3.*)

Thereafter conflicting views were expressed by the delegates.

Certain delegates—Mr. Gromyko of Russia and Mr. Franic of Yugoslavia—expressed the view that the establishment of the proposed temporary committee would be unconstitutional and unnecessary. (*Summary Record, PC/TC/2, p. 3-4.*)

Other delegates expressed a contrary view.

Thus Mr. Green of the United States of America stated that his delegation regarded the establishment of the proposed temporary committee as “reasonable and practical”. He was prepared to consider other proposals, but expressed the view that the “Preparatory Commission must make some recommendation regarding interim machinery”. (*Summary Record, PC/TC/2, p. 4.*)

Mr. Creech-Jones of the United Kingdom also supported the proposal for the establishment of a temporary Committee and stated that, inasmuch as there were—

“difficulties and gaps in the Charter, . . . some improvisation was inevitable”. (*Summary Record, PC/TC/2, p. 4.*)

Mr. Bailey of Australia also favoured the proposal for a temporary Committee. (*Summary Record, PC/TC/2, p. 5.*)

Mr. Nicholls, the delegate of the Union of South Africa, stated that if doubt existed among some of the delegations as to whether the creation of the proposed temporary body would be constitutional the Committee must seek legal judgment. He also stated that—

“on the question of expediency, it seemed reasonable to create an interim body as the Mandates Commission was now in abeyance and countries holding mandates should have a body to which they could report”. (*Summary Record, PC/TC/2, p. 4.*)

Respondent has already advanced compelling reasons for its contention that Mr. Nicholls' remarks could not have been intended to relate to territories such as South West Africa, in respect of which the Union of South Africa had intimated that it should not “be held to have acquiesced in the continuance of the Mandate or in the inclusion of the territory in any form of trusteeship under the new International Organi-

zation". Respondent has also indicated that Mr. Nicholls' words cannot be interpreted as implying that there was an obligation to report. (*Vide IX*, pp. 395-398.)

When the second meeting of Committee 4 adjourned on 29 November 1945, the Chairman suggested that—

"those Delegations that objected to the recommendation of the Executive Committee [i.e., the recommendation for the establishment of a temporary trusteeship committee] should introduce, if they wished, an alternative resolution to be considered at the beginning of the next meeting . . ." (*Summary Record*, PC/TC/2, p. 5.)

5. At the next, the Third, meeting of Committee 4, on 30 November 1945, Mr. Franic of Yugoslavia came forward with a proposal which, as he stated, would eliminate the need for a temporary trusteeship committee.

In brief his proposal was that the General Assembly should—

"invite the mandatory powers, who are Members of the United Nations Organization, to submit declarations of their willingness to put the territories over which they have so far been acting as administering authorities under the trusteeship system of the Charter . . ." (*Summary Record*, PC/TC/4, p. 8.)

His proposal further involved the appointment of—

"an *ad hoc* committee of the General Assembly to examine these declarations of the present mandatory powers . . ." (*Summary Record*, PC/TC/4, p. 9.)

At this meeting the representative of the United Kingdom, Mr. Poynton, asked for time to study the Yugoslav proposal, but at the same time reiterated the view already expressed by his delegation at the earlier meeting of the Committee, namely that the establishment of the proposed Temporary Trusteeship Committee would not be unconstitutional, and he stated reasons for favouring the creation of such a body rather than an *ad hoc* committee of the General Assembly. (*Summary Record*, PC/TC/4, p. 7.)

And Mr. Green of the United States said that—

"He did not think that the temporary Trusteeship Committee was, in fact, unconstitutional because there was unquestionably a gap in the Charter. The recommendation for the temporary Trusteeship Committee in the *Report* could still be used as a basis for discussion." (*Summary Record*, PC/TC/4, p. 8.)

The Committee decided to postpone further discussion of this issue until a later meeting so as to enable the delegates to study the matter. (*Summary Record*, PC/TC/4, p. 8.)

The Committee at its next meeting, the Fourth Meeting, on 1 December 1945, allowed Mr. Manuilsky of the Ukrainian S.S.R. and Mr. Bailey of Australia to speak on the Yugoslav proposal and then proceeded to deal with other matters contained in the report of the Executive Committee. (*Summary Record*, PC/TC/5, p. 10.)

6. The question of the establishment of a temporary trusteeship committee and the alternative proposal by Yugoslavia for the appointment of an *ad hoc* Committee of the General Assembly stood over until the

Ninth Meeting of Committee 4 on 8 December 1945, the Committee in the meantime attending to other matters.

During this interval, however, certain States filed written proposals for amendment of the recommendation for establishment of the temporary trusteeship committee and for the appointment of an *ad hoc* Committee.

Respondent will in the following paragraphs deal briefly with these proposals.

7. *Proposal of the delegation of the Philippines, Summary Record PC/TC/8 dated 4 December 1945.*

The Philippines put forward three alternative proposals, namely,

- (i) the creation of a joint preparatory Committee of the Security Council and the General Assembly on Trusteeship: It was intended that this Committee would co-ordinate the preliminary functions of the Security Council and the General Assembly;
- (ii) the creation of a "Committee on Trusteeship of the Security Council". This Committee was intended to assist the Security Council in performing its functions regarding trusteeship both before and after the establishment of the Trusteeship Council;
- (iii) the creation of a "Preparatory Committee on Trusteeship of the General Assembly". It was intended that this Committee should prepare the necessary ground work for the Trusteeship Council, and should cease to exist as soon as the Trusteeship Council came into being.

None of these three proposals in any respect referred to mandated territories not brought into the trusteeship system.

8. *Proposals of the Delegation of the United States of America.*

The United States of America filed two separate proposals, both bearing the date 4 December 1945 and numbered respectively PC/TC/10 and PC/TC/11.

The first-mentioned of the said proposals is that referred to by Applicants in their Memorandum under the heading "Findings" in the paragraph lettered (a), and was headed—

"Suggestion for the formation of a Trusteeship Council based upon the proposal of the delegation of Yugoslavia (PC/TC/3)."

The proposals contained in this document came very near to the proposals put forward by the delegation of Yugoslavia. Like the Yugoslav proposal it recommended that the General Assembly should invite mandatory powers to submit declarations of their willingness to enter into trusteeship agreements. It also proposed that the General Assembly should create an *ad hoc* Committee or authorize its Trusteeship Committee to create an *ad hoc* Sub-Committee. The said *ad hoc* Committee or *ad hoc* Sub-Committee would then exercise the same functions which the Executive Committee had proposed for the Temporary Trusteeship Committee in its report. With regard to the said functions, see paragraph 3 above.

The second of the United States' proposals was contained in document No. PC/TC/11 headed—

"Proposed Amendment to part III, Charter IV, Section 2, para-

graph 4, concerning the Functions of the Temporary Trusteeship Committee."

The full text of this document is contained in the Verbatim of 24 May 1965 (IX, pp. 401-402).

In this document the United States drew attention to the fact that the report of the Executive Committee made no provision for any organ of the United Nations to carry out the functions of the Permanent Mandates Commission.

It recommended that—

"In order to provide a continuity between the Mandates system and the trusteeship system, to permit the mandatory powers to discharge their obligations, and to further the transfer of Mandated territories to trusteeship, the Temporary Trusteeship Committee (or such a committee as is established to perform its functions) and later, the Trusteeship Council should be specifically empowered to receive the reports which the mandatory powers are now obligated to make to the Permanent Mandates Commission."

It was therefore suggested that the powers of the Temporary Trusteeship Committee (or such Committee as was established to perform its functions) should be enlarged so that such Committee could—

"undertake, following the dissolution of the League of Nations and of the Permanent Mandates Commission, to receive and examine reports submitted by Mandatory Powers with respect to such territories under mandate as have not been placed under the trusteeship system by means of trusteeship agreements, and until such time as the Trusteeship Council is established, whereupon the Council will perform a similar function". (Document PC/TC/II, p. 2.)

It is clear that the United States of America realized that unless specific provision was made to that end, there would be no powers of supervision in respect of mandated territories not submitted to trusteeship. And the United States delegation sought to bring about such provision by recommending that before and until the Trusteeship Council could function a temporary body, be it the proposed Temporary Trusteeship Committee or the proposed *ad hoc* Committee, should "be specifically empowered" to exercise supervisory powers over mandates not converted to trusteeship, and that the Trusteeship Council should "be specifically empowered" to perform a similar function once it came to be established.

As will be shown hereinafter, the reasoning in Applicants' Memorandum indicates that they do not fully appreciate the significance of the proposals contained in the documents PC/TC/IO and PC/TC/II.

9. *Proposal of the delegation of Belgium (PC/TC/24, dated 5 December 1945).*

The Belgian delegation intimated that it was in agreement with the recommendation that the General Assembly should invite the mandatory powers to lodge declarations of their willingness to place their mandated territories under the trusteeship system. It, however, had misgivings regarding the establishment of an *ad hoc* Committee and made proposals which intended to avoid the establishment of any temporary body.

10. *Proposal of the delegation of the United Kingdom (PC/TC/25, dated 5 December 1965).*

In this document the delegation of the United Kingdom stated that in putting forward the proposals contained therein it should not be understood as accepting the arguments advanced by certain delegations that the establishment of a Temporary Trusteeship Committee would be unconstitutional. It expressed the view that there was little essential difference between the proposals of the Executive Committee and the proposal of the Yugoslav delegation. Both schemes made provision for the establishment of a temporary body: in the one scheme a subsidiary organ appointed under Article 22 of the Charter (i.e., the Temporary Trusteeship Committee), and in the other scheme an *ad hoc* Committee of the General Assembly. Neither body was specifically provided for in the terms of the Charter.

The United Kingdom, however, regarded the two schemes as equally satisfactory and was prepared to agree to the Yugoslav proposal if there was general preference for it.

The Yugoslav proposal was therefore incorporated in the United Kingdom proposal, which provided that the General Assembly should invite mandatories to declare whether they intended to place their territories under trusteeship. It also provided for the appointment of an *ad hoc* Committee and set forth the proposed functions of the said Committee. One of the proposed functions was—

“to advise the General Assembly on any matters that might arise with regard to the transfer to the United Nations of any functions and responsibilities hitherto exercised under the Mandates System”.
(Document PC/TC/25, p. 4.)

It is to be noted that the United Kingdom intended the same limited role for the *ad hoc* Committee relative to Mandates as did the executive Committee in its proposal for a Temporary Trusteeship Council. *Vide* paragraph 3, *supra*. Neither the Temporary Trusteeship Committee proposed by the Executive Committee nor the *ad hoc* Committee proposed by the United Kingdom would have powers of supervision over Mandates.

II. At the Ninth Meeting of Committee 4 of the Preparatory Commission the said Committee had before it the Report of the Executive Committee as well as the aforementioned proposals of the various delegations.

The heading of the relevant part of the summary record of this meeting reads as follows:

“Continuation of discussion of Section 2, Chapter IV, of the Report [i.e., the section containing the proposal for the Temporary Trusteeship Committee], and of PC/TC/3 [the Yugoslav proposal], PC/TC/6 [the Yugoslav draft resolution], PC/TC/8 [proposal of the Philippines], PC/TC/10 [the proposal of the United States], PC/TC/11 [the second proposal of the United States], PC/TC/24 [the Belgian proposal], and PC/TC/25 [the proposal of the United Kingdom].”

Under the said heading there appears the following:

“The secretariat proposed that the discussion of these various documents should be divided into three parts:

1. the terms of resolution to be recommended to the General Assembly. This discussion would take place on the basis of the Yugoslav proposal (PC/TC/6), but would also take into account the relevant parts of the United States and United Kingdom proposals (PC/TC/10 and PC/TC/25).
2. The question whether there should be any *ad hoc* committee, and if so, what should be its composition and functions. This discussion would take place on the basis of the Belgian proposal (PC/TC/24), but would also take into account the Philippine proposal (PC/TC/8) and the relevant parts of the Yugoslav, United States and United Kingdom proposals (PC/TC/3, PC/TC/10, and PC/TC/25).
3. The United States proposal for providing a degree of continuity between the Mandates System and the trusteeship system PC/TC/11."

Applicants say in their Memorandum that the said "procedures were suggested and agreed upon". [Applicants' Memorandum para. (b) under the heading "Findings".]

The summary record, however, merely mentions that this procedure was proposed by the Secretariat, and does not say that it was agreed upon. It is, in any case, difficult to see how the three interrelated subjects could be discussed in separate compartments, and, in fact, they were not so discussed.

In this regard Applicants say in their Memorandum:

"During the course of the meeting the United States Delegate made the statement in PC/TC/30 (the second document introduced by Respondent on 24 May 1965). As is evident, from the agreed agenda described above, as well as from the substance of the statement itself, the discussion was limited to part (1) of the agenda and related only to Documents PC/TC/6 and PC/TC/25." (Memorandum, para. (c), under the heading "Findings".)

This statement is not correct.

The very first speaker at this meeting, Mr. Franic of Yugoslavia, disregarded the order of discussion proposed by the Secretariat. He commenced his speech, which is recorded verbatim in document PC/TC/29, as follows:

"The Yugoslav Delegation has submitted the document PC/TC/3 containing suggestions for the formation of the Trusteeship Council. This document, which was subsequently amplified by the Delegations of the United States and Belgium, can serve, we believe, as the basis for discussion. Furthermore, the Delegation of Yugoslavia has submitted the draft resolution concerning the same matter (PC/TC/6). That draft resolution could serve as the basis for the decision which has to be taken." (PC/TC/29, p. 1.)

It will be recalled that the document PC/TC/3, which the Yugoslav delegation suggested should serve as the basis of discussion, recorded that delegation's criticism of the Executive Committee's proposal for the establishment of a Temporary Trusteeship Committee, which in the Opinion of the Yugoslav delegation would have been an unconstitutional step. That document also contained the Yugoslav proposal that Manda-

teries be invited to make declarations of their willingness to put their mandated territories under the Trusteeship system, and furthermore recommended the appointment of an *ad hoc* committee of the General Assembly (*vide* para. 5, *supra*).

And Mr. Franic indeed discussed not only the resolution recorded in document PC/TC/6, but also the proposals contained in document PC/TC/3.

He stated that the Yugoslav delegation was "strongly opposed to the creation of any temporary organs" (PC/TC/29, p. 3), he explained the procedure recommended by the Yugoslav delegation for the speedy establishment of the Trusteeship Council without the necessity for creating a Temporary Trusteeship Committee, and he stated in this regard that his delegation—

"accordingly expects that the Trusteeship Council will be formed not later than during the second part of the first session of the General Assembly, without any provisional or similar organs which would be in conflict with the spirit of the Charter". (PC/TC/29, p. 3.)

He went on to say that the Trusteeship Council could be established as soon as any one territory had been placed under the Trusteeship system and stated—

"In our opinion, the Trusteeship Council cannot be formed so long as there are no territories under the trusteeship system, because there is no object for it. But the Trusteeship Council can and must be formed as soon as there is at least one territory which has been placed under the trusteeship system, that is to say, as soon as there is an object in regard to which the Trusteeship Council can and must exercise its supervising functions." (PC/TC/29, p. 5.)

Immediately after the speech of the representative of Yugoslavia Mr. Green of the United States of America delivered the speech recorded in document PC/TC/30, and it is clear from the text thereof that also he departed from the order of discussion proposed by the Secretariat. Indeed, he was forced to depart from that order in view of the line taken by Mr. Franic of Yugoslavia. He said in this regard:

"... I am very grateful indeed to the Delegate of Yugoslavia for his explanation of the Resolution, document No. 6. I was not at all clear in my own mind as to the exact relationship between this Resolution and his original paper [i.e., PC/TC/3] which was a more general outline of principles. I should like primarily to address myself to the text of the Resolution, but secondarily to some of the remarks and explanations which he made of that text, as far as I could take those explanations down in my notes." (PC/TC/30, p. 1.)

Mr. Green then referred to the paper which the United States had submitted [i.e., PC/TC/10] as a revision of the original paper submitted by the Yugoslav delegation [i.e., PC/TC/3] and he stated:

"I hope the Yugoslav delegation did not object to the liberties which we took in changing some of the details in his paper. My delegation still feels there is nothing objectionable whatever in the Report of the Executive Committee proposing the establishment of a Temporary Trusteeship Committee; it still seems to us that that is

a perfectly constitutional method of procedure and a perfectly practical method of procedure, and we are willing to agree to that proposal if we cannot agree on any alternative; but we are quite willing to explore any other alternative arrangement and are quite willing, as I indicated, to accept the proposals of the Yugoslav delegation on the lines which I have indicated." (PC/TC/30, p. 1.)

Mr. Green then dealt with the text of the Yugoslav proposed resolution and thereafter commented on the explanations made by Mr. Franic in support of his delegation's proposal.

In the course of such comment he dealt with the Submissions of the Yugoslav delegation that the conclusion of one trusteeship agreement would suffice for the establishment of the Trusteeship Council and that the creation of the proposed Temporary Trusteeship Committee was not necessary.

He demonstrated that this contention raised certain constitutional difficulties, and said in conclusion:

"Suppose that I am correct and the Yugoslav delegate unfortunately is incorrect in his statement of the conditions for establishing the Trusteeship Council, suppose you want more than one trust territory, suppose you need three or four—whatever the lawyers advise us is the proper number—you might have all but one agreement concluded before the General Assembly. What then? Who looks after the territories which have been submitted to trusteeship? That was the advantage of the original Temporary Trusteeship Committee in the Executive Committee Report. That would have been the advantage of the "ad hoc" Committee which the Yugoslav original paper proposes [i.e., PC/TC/3], if it were authorized, as our revised paper [i.e., PC/TC/10] proposes, to be empowered to carry on after the session of the first Assembly, if you do not get a sufficient number of agreements. I merely raised that question because I think it is a serious one if any interpretation of the basic conditions for the establishment of the Council are correct." (PC/TC/30, p. 8.)

Immediately after Mr. Green's speech Mr. Saba of Egypt referred to the document filed by the United Kingdom, PC/TC/25, and dealt with the proposal for the creation of an *ad hoc* Committee instead of a Temporary Trusteeship Committee, and with the composition of such a Committee. (PC/TC/31, p. 23.)

Then spoke Mr. Lopez of the Philippines, and the meeting was adjourned.

From the above analysis it is perfectly clear that Applicants are wrong when they state in their Memorandum [paras. (c) and (d) under the heading "Findings"] that at this meeting, i.e., the Ninth Meeting of Committee 4, the delegates discussed only part (1) of the agenda suggested by the Secretariat, and that it was only at the next, i.e., the 10th Meeting of Committee 4 on 10 December, that "the discussion moved forward into consideration of part (2) of the agreed agenda, viz., documents PC/TC/10, PC/TC/24 and PC/TC/25". (Applicants Memorandum, para. (d), under heading "Findings".)

And Applicants are equally wrong in stating that the discussion by Mr. Green of the United States was "limited to part (1) of the Agenda and related only to documents PC/TC/6 and PC/TC/25". (Memorandum, para. (c), under heading "Findings".)

Mr. Green, in fact, discussed the legality and practicability of giving effect to the proposal of the Executive Committee for the establishment of a Temporary Trusteeship Committee; he discussed the proposed resolution contained in Yugoslav paper PC/TC/6; he dealt with the Yugoslav proposal contained in document PC/TC/3 as explained by Mr. Franic, and he discussed the proposal contained in the document filed by the United States, PC/TC/10, including the proposal for the establishment of an *ad hoc* Committee and the powers suggested for that Committee.

Mr. Green did not mention the proposals contained in the United States document PC/TC/11, and it is indeed strange that he did not do so when he drew attention to the functions proposed for the Temporary Trusteeship Committee and for the alternative body, the *ad hoc* Committee, and when he expressed concern regarding supervision of territories which would be submitted to trusteeship before the Trusteeship Council could be formed. Why did he not then make mention of the matter dealt with in document PC/TC/11, i.e., the supervision of mandated territories after the dissolution of the League, which the United States in the said document suggested should be carried out by the proposed temporary committee or by the alternative body, the proposed *ad hoc* committee, and later by the Trusteeship Council itself?

12. The discussions at the Ninth Meeting of Committee 4 were continued at the Tenth meeting of the Committee on 10 December 1945.

The first speaker at that meeting was Mr. Ponsot of France who is reported to have "made a statement of the French point of view on the whole problem before the Committee". (*Summary Record*, PC/TC/32, at p. 24.)

Mr. Ponsot is also reported to have—

"read the text of a resolution suggested by his Delegation, and expressed the hope that the text might serve as a basis of a working document" (*Summary Record*, PC/TC/32, at p. 24).

The text of this resolution is not included in the summary record of the proceedings at this meeting but appears to be that contained in a paper submitted by the French delegation and circulated as document No. PC/TC/33. In this document the French delegation dealt with the problem by referring to various provisions of the Charter of the United Nations and recommended the establishment of—

"an *ad hoc* committee to be called the *Preparatory Trusteeship Committee*, to carry out, under the direct authority of the General Assembly, such preliminary functions as are necessary for the creation, at the earliest possible date, of the Trusteeship Council". (Document PC/TC/33, p. 5.)

It is significant that the French delegation did not intend that the *ad hoc* Committee proposed by them should have any functions relative to Mandates other than the following:

"to advise the Assembly on any matters arising out of the transfer to the United Nations of these functions and responsibilities which originate either in the Mandates system, or in earlier international agreements or instruments". (Document PC/TC/33, p. 5.)

Generally with regard to the functions of this *ad hoc* Committee, the French proposal contained the following:

"This Preparatory Committee, which will in no sense exercise the functions and powers devolving on the Trusteeship Council under Articles 87 and 88 of the Charter, will have no mission other than that of helping to bring about as quickly as possible, under the authority of the Assembly, these conditions under which the Trusteeship Council can be set up." (Document PC/TC/33, p. 6.)

Other delegates at this meeting of Committee 4 also discussed the advisability of establishing either a temporary committee or an *ad hoc* committee, and dealt with the functions intended to be assigned to the said bodies and the question whether the establishment of such bodies would be constitutional.

Thus the representative of India, Mr. Krishnamachari, favoured the establishment of an *ad hoc* Committee although he expressed the opinion that "the recommendation of the Executive Committee [i.e., for the establishment of a Temporary Trusteeship Council] was well within the provisions of the Charter". (*Summary Record*, PC/TC/32, pp. 24-25.)

Mr. Creech-Jones of the United Kingdom stated that he—

"was prepared to take up the Yugoslav proposal as the basis for discussion, but stressed that it should not be taken to mean that the recommendation of the Executive Committee was unconstitutional". (*Summary Record*, PC/TC/32, p. 25.)

Mr. Orts of Belgium said that the Belgian proposal contained in document PC/TC/24, which made no provision either for a temporary or an *ad hoc* body,

"would allow of the Trusteeship Council being established without delay, according to the desire expressed in the Charter, without having recourse to the creation of one or other provisional body, the desirability of legality of which was rightly or wrongly, opened to discussion". (*Summary Record*, PC/TC/32, p. 25.)

The delegate of New Zealand, Mr. Wilson, supported the Yugoslav proposal, which included the appointment of an *ad hoc* body, subject to the amendments suggested by the United States and the United Kingdom, and he said that—

"he hesitated to agree that a temporary Committee of any kind was necessary". (*Summary Record*, PC/TC/32, p. 25.)

Mr. Gromyko of the Soviet Union said that the proposed *ad hoc* committee was in fact the same as the temporary trusteeship committee recommended by the Executive Committee, and his delegation opposed both proposals as being unconstitutional. (*Summary Record*, PC/TC/32, p. 26.)

The Chinese delegate, Mr. Wellington Koo,

"pointed out that the Committee was divided on the question of setting up a temporary or *ad hoc* committee". (*Summary Record*, PC/TC/32, at p. 27.)

He expressed the view that it was not absolutely necessary to set up a temporary or an *ad hoc* committee in view of the fact that the General

Assembly would have a main trusteeship committee dealing with trusteeship matters.

He therefore urged that—

“use should be made of the main trusteeship committee of the General Assembly, thus leaving the question of a temporary or *ad hoc* committee for the General Assembly itself to decide. If this plan could be adopted, it would answer all questions.”

And, in conclusion, he suggested that—

“the Committee might find it helpful to appoint a sub-committee to consider the various proposals on this question and recommend to the full Committee a new draft based on these proposals”. (*Summary Record*, PC/TC/32, p. 27.)

This proposal was accepted and a sub-committee appointed composed of the delegates for Belgium, the Soviet Union, Syria, the United Kingdom, the United States of America and Yugoslavia. (*Summary Record*, PC/TC/32, p. 27.)

Applicants in their Memorandum refer to the Appointment of this Sub-Committee and say—

“Consequently, neither at the Ninth nor Tenth meeting of Committee 4 was part (3) of the agreed agenda reached. Consideration of the United States amendment relating to the duties of the Temporary Trusteeship Committee clearly was irrelevant in any event, inasmuch as consideration of establishment of the proposed Temporary Trusteeship Committee itself had been deferred”. (Memorandum, para. (e), under the heading “Findings”).

There is no substance in these contentions. In the first place, as has been demonstrated above, the delegates did not follow the order of discussion suggested by the Secretariat. Right from the start of the Ninth Meeting, and through the Tenth Meeting, the delegates discussed the proposal for the establishment of a Temporary Trusteeship Committee and the alternative proposals for the establishment of an *ad hoc* Committee. They dealt with the constitutional position of the said proposed bodies and the advantages which they saw in having either the one or the other of these bodies.

It is true that neither the United States delegate, nor any other delegate, referred to the proposals contained in the United States paper, document PC/TC/11. But that, precisely, is the remarkable point of the whole discussion, and particularly of the attitude of the United States Representative, Mr. Green. He defended the proposal for the establishment of a Temporary Trusteeship Committee as being “a perfectly constitutional method of procedure and a perfectly practical method of procedure”, and stated that his delegation was “willing to agree to that proposal if we cannot agree on any alternative”. (Document PC/TC/30, p. 8 and *vide* para. II, *supra*.)

And he dealt with the advantages of having either a Temporary Trusteeship Committee or an *ad hoc* Committee. (Document PC/TC/30, p. 8 and *vide* para. II, *supra*.)

The question immediately arises: why did he not mention the further functions relative to Mandates which his delegation intended and had put

forward in document PC/TC/11 for whichever of these Committees came to be established?

Clearly, in the view originally taken by the United States when it submitted document PC/TC/11, that was an additional advantage which could have been obtained in creating either a temporary or an *ad hoc* body.

Secondly, the Applicants are wrong when they say that by the end of the Tenth meeting "consideration of establishment of the proposed Temporary Trusteeship Committee itself had been deferred" and that, accordingly, "consideration of the United States amendment relating to the duties of the Temporary Trusteeship Committee clearly was irrelevant".

Nothing of the sort happened. The original proposal by the Executive Committee for such a temporary body stood throughout these discussions, together with the alternative proposal for an *ad hoc* Committee. Indeed, the United States delegation expressed themselves willing to agree to the establishment of the proposed temporary committee if Committee 4 could not agree on any alternative.

But Applicants' comment is in any event without foundation inasmuch as the proposal in document PC/TC/11 regarding supervision of Mandates after the dissolution of the League was not tied to the idea of a Temporary Trusteeship Committee. Applicants have lost sight of the fact that the United States proposal as expressed in document PC/TC/11 was that the said function should be performed by—

"the Temporary Trusteeship Committee (or such a committee as is established to perform its functions)." (Document PC/TC/11, p. 1 and *vide* para. 8, *supra*.)

And the United States itself had proposed in document PC/TC/10 that, if instead of the establishment of a temporary Committee, the alternative suggestion was accepted of establishing an *ad hoc* Committee, that Committee should exercise the functions intended for the Temporary Trusteeship Committee. (Document PC/TC/10, p. 1 and *vide* para. 8, *supra*.)

The whole of the comment contained in para. (e) of Applicants' Memorandum, under the heading "findings", is therefore unsound.

13. As far as Respondent is aware, there is no record of the deliberations which took place in the sub-committee relative to the proposals for the creation of a temporary Committee or, alternatively, an *ad hoc* Committee, or relative to the functions which should be performed by such bodies.

As indicated above, the delegate for the United States served on this sub-committee.

At the fifteenth meeting of Committee 4 on 20 December 1945, the sub-committee reported to the said Committee.

Mr. Franic of Yugoslavia, the Chairman of the sub-committee, explained that—

"After long and serious consideration, they had come to the conclusion that no recommendation should be made for the creation of any temporary organ." (*Summary Record*, PC/TC/42, p. 38.)

He then dealt with the recommendation of the sub-committee, which is set out in document PC/TC/41 and which reads as follows:

"The Preparatory Commission of the United Nations recommends to the General Assembly to adopt the following resolution:

The General Assembly of the United Nations calls on the States administering territories in accordance with the League of Nations Mandates to undertake practical steps, in concert with the other States directly concerned, for the implementation of the provisions of Article 79 of the Charter providing for the conclusion of the agreements on trusteeship terms for each territory to be placed under the trusteeship system, in order to submit these agreements for approval preferably not later than the second part of the first session of the General Assembly.

Those trusteeship matters which will be taken up by the General Assembly at the first part of its first session with the purpose of expediting the establishment of the trusteeship system, will be considered by the Trusteeship Committee of the General Assembly, using the methods which the General Assembly considers most appropriate for the further consideration of these matters." (PC/TC/41, pp. 2-3.)

Various delegates addressed the meeting and discussed the amended proposal.

A number of delegates spoke in support of the proposal, but some delegations reserved the right to express views on certain particular points in the General Assembly.

The South African delegate, Mr. Nicholls, reserved the position of his delegation until the meeting of the General Assembly. (*Summary Record*, PC/TC/42, p. 40.)

Mr. Green of the United States also spoke in support of the new proposal. (*Summary Record*, PC/TC/42, pp. 38-39.) Again it is significant that he made no mention of his Government's earlier proposal contained in document PC/TC/11 relative to supervision of mandates after the dissolution of the League.

The proposal of the sub-committee was adopted by Committee 4 by 28 votes to none, Turkey and the Union of South Africa abstaining. (*Summary Record*, PC/TC/42, p. 41.)

The proposal of the sub-committee then took the place of the recommendation contained in sections 2, 3, 4 and 6 of Chapter IV of the report of the Executive Committee.

Applicants in this regard say in their Memorandum:

"The United States proposed Amendment to Section 2 of Chapter IV of the Report of the Executive Committee, contained in document PC/TC/11 (introduced by Respondent on 24 May 1965) thus had lost any relevance whatever." (Memorandum, para. (g), under heading "Findings".)

Also this contention is without substance.

It is true that, inasmuch as the final recommendation adopted by Committee 4 made no provision either for a Temporary Trusteeship Committee or for an *ad hoc* Committee, the United States proposal that whichever of these Committees was to be appointed should have supervisory powers over mandates, fell away. But Applicants have lost sight of the fact that the United States proposal contained in document PC/TC/11 went further. It also recommended that "the Trusteeship Council should be specifically empowered to receive the reports which the

mandatory powers are now obligated to make to the Permanent Mandates Commission". (PC/TC/II, p. 1.)

The proposal of the United States was that the proposed temporary committee or the proposed *ad hoc* Committee should supervise mandates not placed under the trusteeship system "until such time as the Trusteeship Council is established whereupon the Council will perform a similar function". (PC/TC/II, p. 2 and *vide* para. 8, *supra*.)

The fact that it was expected by Committee 4 that there would be no delay in establishing the Trusteeship Council, and that the said Committee eventually made no provision for an interim body, did not at all detract from the United States proposal in PC/TC/II that the Trusteeship Council should be *specifically empowered* to supervise mandates not admitted to Trusteeship as soon as the Council was established.

And it is indeed strange that this proposal, contained in document PC/TC/II, was never referred to by the United States delegate at any of the meetings of Committee 4, or thereafter; nor was it referred to by any other delegation.

14. In view of what is stated above relative to the so-called "findings" in Applicants' Memorandum, it is clear that the following "Conclusion" in the Memorandum has no substance, *viz.* :

"The United States proposal (document PC/TC/II) was not reached in the course of discussions at the Ninth Meeting of Committee 4. No significance whatever is attributable to the fact that the United States Representative made no reference to it then or thereafter, except that it became irrelevant by reason of the procedure adopted by the Committee." (Memorandum, p. 5.)

As indicated above, the procedure of discussion suggested by the Secretariat, which Applicants refer to as the "agreed agenda", was in fact not followed, and there is no question of the United States proposal not having been reached in the course of discussion at the Ninth Meeting of the Committee. Nor had the proposal become "irrelevant by reason of the procedure adopted by the Committee".

The Submissions which Respondent made in the oral proceedings on 24 May 1965 (IX, pp. 401-404) as to the significance of the United States proposal contained in document PC/TC/II, and the fact that it was never raised in the discussions of Committee 4 of the Preparatory Commission, therefore remain valid and forceful.

From the contents of document PC/TC/II it is clear that the United States delegation realized that, unless specific provision was made to that end, the Organs of the United Nations would have no supervisory powers in respect of mandates not submitted to the trusteeship system.

The United States sought to bring about such specific provisions by suggesting that the proposed Temporary Trusteeship Committee or the proposed *ad hoc* Committee should be "*specifically empowered*" to supervise Mandates until such time as the Trusteeship Council was established, and that the Trusteeship Council should be "*specifically empowered*" to exercise the same function relative to mandates not brought under the trusteeship system—as soon as the Council became established.

The fact that the United States delegation at no stage in the discussions of Committee 4, or thereafter, referred to this proposal can only lead to the inference submitted by Respondent in its argument on 24 May 1965, *viz.*,

"that there must have been some reason for that and the most probable reason in the circumstances would be discussion between the United States delegation and other delegations which resulted in the matter being seen in a different light and a proposal of this kind not being proceeded with. In other words, Mr. President, a situation very nearly the same in principle as we found in regard to the first proposal by China at the last meeting of the League Assembly, which after discussion had to be superseded by another proposal, leading to the obvious inference that it was clear that the first one could not have obtained the necessary support." (IX, p. 403.)

This conclusion is also entirely consistent with the attitude adopted by the United States of America after the dissolution of the League.

As indicated elsewhere in the oral proceedings, the United States representative on the Trusteeship Council in 1947, Mr. Gerig, stated clearly and emphatically that outside of a Trusteeship Agreement the United Nations had no Supervisory Powers over Mandates. (II, p. 281; IX, pp. 452-453.)

