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DEPARTMENT OF STATE  
Washington, D.C. 20520

1-1594-18  
10/7/69

October 2, 1969

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Mr. Harry H. Almond, Jr.  
Office of Assistant General Counsel  
for International Affairs  
Department of Defense  
Room 3D928, Pentagon  
Washington, D.C. 20301

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REVIEWED BY <u>J. FASMAN</u>	DATE <u>1/6/6</u>
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Dear Harry:

In response to your memorandum to Steve Boyd of September 24 requesting certain materials on the trust territory we are enclosing the following:

1. An undated Department paper entitled "Termination of the Trusteeship Status" (Secret).
2. A Department paper dated September 30, 1969 entitled "Ending of Trusteeships Through Plebiscites" (Unclassified).
3. A Department paper dated September 30, 1969 entitled "Termination of Trusteeships Without a Plebiscite" (Unclassified).
4. An internal Department memorandum dated March 22, 1967 entitled "Termination of the Trusteeship Agreement for the Trust Territory of the Pacific Islands" (Secret).

Were the 1967 memorandum to be revised, we would be less optimistic about prospects for avoiding major opposition in the Security Council. Any judgment regarding potential opposition or support in the Security Council or the United Nations, generally, would of course depend on the final arrangements on which termination would be based.

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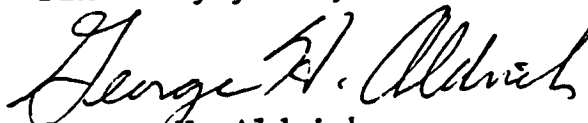
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We have not made a review of the preparatory work of Articles 73 and 85 of the U.N. Charter but you might wish to consult Whiteman's Digest, Volume 1 at page 731 et seq and Volume 13 at page 690 et seq.

Sincerely yours,



George H. Aldrich  
Deputy Legal Adviser

Enclosures:  
As listed above.

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TERMINATION OF THE TRUSTEESHIP STATUS

The procedure for terminating the trusteeship status would involve three basic steps: the US Congress would signify its willingness to extend the new status to Micronesia; the people of Micronesia would express themselves in an act of self-determination; and the US would inform the UN Security Council that these steps met the terms of the Trusteeship Agreement and that the Territory had voluntarily chosen permanent association with the United States.

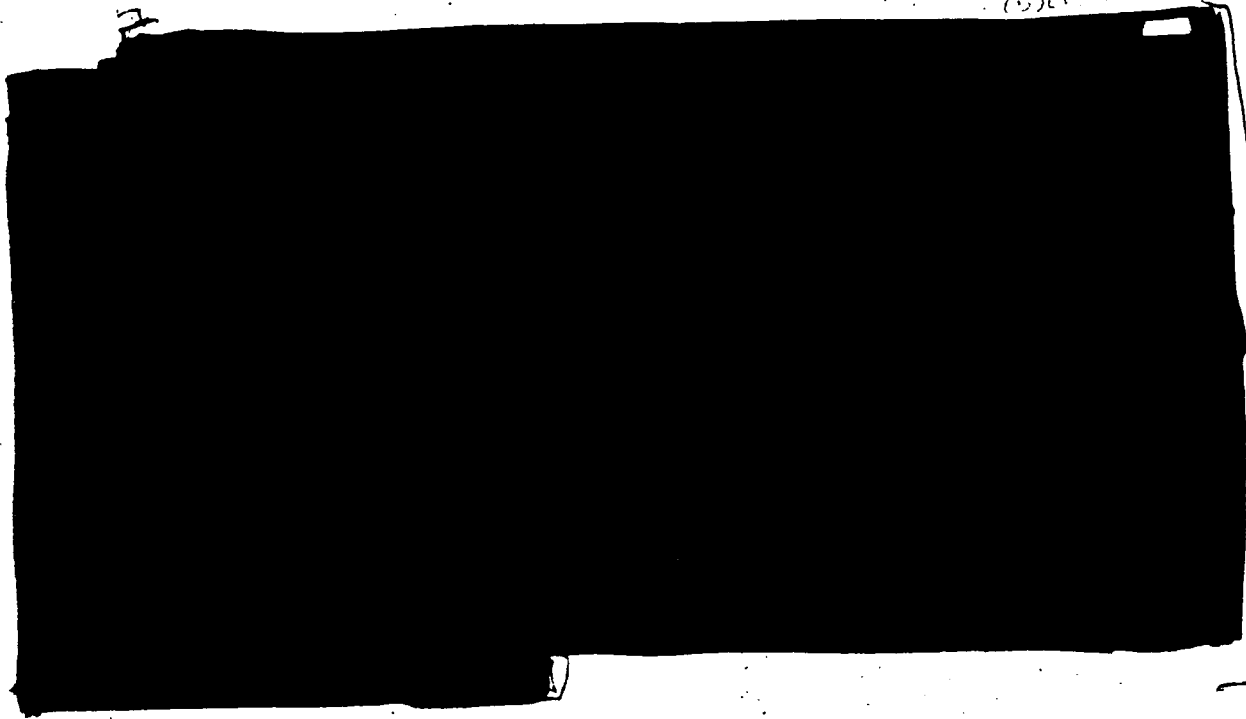
*James  
instrument.*

Efforts might be made in the Security Council to block our action, but we would hope to see to it that such efforts failed to achieve the necessary votes and, in any event, would be in a position to frustrate them by veto if necessary. This would be our first use of the veto and it should be avoided if at all possible. Under the best of circumstances we would expect substantial criticism of our methods in the General Assembly and the possible adoption of a resolution challenging the validity of US actions. ]

*advisory  
opinion.*

1. Procedures in the US and Micronesia

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2. Procedures at the United Nations

Neither the UN Charter nor the Trusteeship Agreement specifies the method by which the agreement is to be terminated. The negotiating history of the Agreement makes clear, however, that the United States expected at the time the Agreement was concluded that both the United States and the Security Council would agree on termination.

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1. British-Administered Togoland

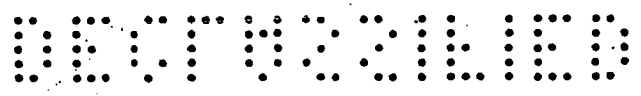
The British administered this Trust Territory under joint administration with their territory known as the Gold Coast. In 1954, having decided to give the Gold Coast its independence, the United Kingdom asked the advice of the Trusteeship Council regarding the future of the Trust Territory. A Visiting Mission was sent, and it recommended the people of Togoland be offered a choice between continuing the union with the Gold Coast after it became the independent state of Ghana, or separation from the Gold Coast and continued trusteeship. The people voted 93,095 to 67,492 to stay with the Gold Coast and become independent. The Gold Coast became independent on March 6, 1957 and the Trusteeship Agreement for British Togoland ended the same day -- with the two territories becoming the new state of Ghana. The 11th General Assembly had adopted a resolution approving the decision of the people and approving in advance the termination of the trusteeship.

Thus this case was much like what will presumably take place in the case of the Trust Territory of New Guinea and its neighboring Australian Territory of Papua.

2. British-Administered Cameroons

This situation is more complicated. Both the British and French Cameroons were originally a German territory which was split into the two portions after World War I. The British portion was, in turn, divided into two sections, with a 45-mile separation, known as Northern and Southern Cameroons.

Until 1954, the two halves were administered as integral parts of the Northern and Eastern Regions respectively of the British territory of Nigeria. In 1954, as the result of a conference on the Nigerian constitution, while Northern Cameroons continued at its own request to be so administered as a part of the state of Northern Nigeria within the Federation of Nigeria, the Southern Cameroons was given, also at its request, quasi-federal status within the Federation, with institutions of its own. In 1957 as the result of a constitutional review in London, the term quasi-federal was dropped



and it became the state of Southern Cameroons within the Federation of Nigeria. The Northern Cameroons on the other hand decided to remain a part of the state of Northern Nigeria.

During this period, there were also repeated inquiries about the possibility of reuniting the French and British Cameroons. But the matter was always deferred.

In 1958 the British pointed out that Nigeria was due to become independent on October 1, 1960. They did not wish to force the Trust Territory of Cameroons to stay with Nigeria so they asked the UN's advice on how the views of the people might best be assessed. The problem was compounded by the setting of the independence date for the French Cameroons for January 1, 1960.

A Visiting Mission was sent and as a result the General Assembly in 1959 recommended separate plebiscites in both halves of the British Cameroons. The Northern half was to be given a choice of remaining as part of Northern Nigeria within the Nigerian Federation when it became independent, or deciding its future later. It was decided to put off the Southern vote until the end of 1959 and decide the questions then. The North, however, voted 70,546 to 42,788 to put off the decision on its future, thus effectively putting off the decision for both halves.

In 1960 the General Assembly therefore decided to hold new plebiscites in both halves, no later than March 1961, with both being given the choice between joining Nigeria (which would then be newly independent) or the former French Cameroons (which had just become independent). In the meantime, the British were to bring about the separation of both halves of their Trust Territory of the Cameroons from Nigeria before it became independent in October 1960. This was done and the votes were held on February 11, 1961, with the North voting to join Nigeria and the South voting to join the new state of Cameroons (the former French trust).

The 15th General Assembly, at its resumed session in April 1961, adopted a resolution approving these results and the termination of the trusteeship in accordance with the wishes of the people.



Thus while much more complicated than the case of Togoland, the situation in the Cameroons was also essentially a case of Trust Territories and national territories evolving together toward independence on the basis of earlier ties.

### 3. Western Samoa

Western Samoa followed a different course. Starting with the constitutional convention of 1954, New Zealand followed a policy of leading the Territory toward self-government, and independence or very loose association. The final plebiscite, which was really two referendums, was conducted on the recommendation of the General Assembly, based on the report of a Visiting Mission, and asked the people first to approve the Constitution drawn up at the 1960 Constitutional Convention and second to approve the accession to independence in 1962. The vote took place in 1961 and both issues were approved.

The 16th General Assembly passed a resolution approving these results and accordingly terminating the trusteeship.

Note: In all three cases it was the United Nations which decided what choices would be offered to the people -- not the Administering Authority.

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Termination of Trusteeships  
Without a Plebiscite

Nauru

The Nauru Local Government Council discussed its future with the Australian Government in June 1967. The Australians proposed two alternatives: either association with Australia or full independence, with Australia handling defense and foreign affairs under a treaty arrangement. The Australians suggested a plebiscite. The Nauruan delegation said they wished to be independent; that they did not think a plebiscite was necessary; that there was not time to hold a plebiscite; and that, in any case, a general election was already scheduled. Australia agreed and Nauru became independent on January 31, 1968. The General Assembly approved these developments during its 22nd session.

Ruanda-Urundi

The following is a simplified version of this most complex case:

A 1960 UN Visiting Mission recommended that because of the political difficulties in Ruanda-Urundi a conference be held as soon as possible between Belgium -- the Administering Authority -- and the African leaders regarding the future of the territory. The mission also recommended UN-supervised elections for national assemblies of separate kingdoms of Rwanda and Burundi. The General Assembly then decided to set up a three-man commission to supervise the elections and, additionally, to lend its advice and assistance in "advancing peace and harmony in the territory."

At a resumed session of the General Assembly in April 1961, the General Assembly called for the establishment of caretaker governments in both parts of the territory and the holding of elections of popular governments under UN supervision. Legislative elections, held under UN supervision in September 1961, seemed to show, in terms of the platforms of the winning parties, that the majority of the inhabitants wished to emerge from trusteeship as separate independent states.

After further investigation by a UN Special Commission, the General Assembly, at its resumed session in June 1962, approved,

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with the concurrence of Belgium, the termination of the trusteeship through the creation of two independent states.

### Tanganyika

Great Britain followed an orderly course of granting increased measures of self-government in the territory over a period of years. This process was culminated in 1960 with changes which brought about a large measure of internal self-government, including the appointment of a Chief Minister from among the members of the Legislative Council. This latter body was also reformed to insure an African majority, almost exclusively elected. Under this new system, elections were held in September 1960 for the Legislative Council and the Council of Ministers, the majority of the elected, was formed. These elected leaders represented the people at a Constitutional Convention in March 1961 with the United Kingdom, at which both sides agreed that Tanganyika should become independent in December 1961. The General Assembly, at its resumed 15th session and again at its 16th session, passed resolutions approving these developments and terminating the trusteeship.

### Somaliland

The original Trusteeship Agreement, reflecting a 1949 decision of the General Assembly, set December 2, 1960, as the date of independence. This date was moved up approximately six months at the request of the administering authority and the local government. Otherwise the transition was carried out as prescribed by the Agreement.

### French Cameroons

In 1957 under a new Statute of the Cameroons, France granted considerable self-government and gave the Legislative Assembly the authority to ask for further transfer of powers. In 1958 the Assembly asked France to recognize the option of independence and to grant it full internal power. This was done. Later in 1958 the Assembly asked the Government to inform France that the Cameroons wished to become independent in 1960. A Visiting Mission went to the Territory and concluded this request was supported by a great majority of the people. France agreed and the General Assembly approved.

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French Togoland

In 1958 the General Assembly voted to accept the invitation of the French Government to supervise election of a legislative assembly which was to be asked to formulate, in consultation with the administering authority, proposals for attainment of early independence. UN-supervised elections were held in 1958. The UN observer declared that they were free and the resulting assembly could honestly speak for the Togolese people. France recognized during the negotiations with the Togolese representatives that they had opted for independence and arrangements were worked out to achieve it. The General Assembly then approved.

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DEPARTMENT OF STATE  
THE LEGAL ADVISER

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March 22, 1967

TO : UNP - Miss Brown

FROM : L/UNA - Robert Starr<sup>RS</sup>

SUBJECT: Termination of the Trusteeship Agreement for the Trust Territory of the Pacific Islands

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Formal termination of the Trusteeship Agreement would require the consent of the Security Council.

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Relevant Texts

Article 79 of the Charter provides:

"The terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the states directly concerned, including the mandatory power in the case of territories held under mandate by a Member of the United Nations, and shall be approved as provided for in Articles 83 and 85." (emphasis added)

Article 85, referred to in Article 79, deals with non-strategic trusteeships, which are under the authority of the General Assembly; Article 83 is concerned with trusteeships relating to strategic areas. Article 83(1) provides:

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"All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the Security Council." (emphasis added)

Article 15 of the Trusteeship Agreement with the Security Council is identical to the draft article proposed by the United States in the Security Council proceedings in 1947. It provides:

"The terms of the present agreement shall not be altered, amended or terminated without the consent of the administering authority." (emphasis added)

Formal Termination May Be Vetoed

A well-settled principle of international law is that an international agreement such as the Trusteeship Agreement for the Trust Territory of the Pacific Islands cannot be modified without the consent of all the parties, unless a different procedure is prescribed in the agreement. Article 15 of the Trusteeship Agreement does not depart from that general principle and allow the United States to terminate unilaterally.

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There is nothing in the negotiating history of article 15 to suggest that the United States would have a unilateral right of termination. During the debates in the Security Council, which took place from February 26 to April 2, 1947, no representative suggested that the Charter or draft trusteeship agreement would condone a unilateral right of

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termination by the Administering Authority. In fact, the United States representative in the Security Council, Mr. Austin, expressly recognized the Security Council's role with respect to termination. In objecting to a Soviet proposal on article 15 of the draft agreement, he said:

"In other words, obviously it is not the Security Council which originates the amendment; certainly it cannot authorize the termination; the most it can do, under the Charter, is approve or disapprove." (emphasis added)

Continuing, Mr. Austin recorded the view that the Trusteeship Agreement was in the nature of a bilateral contract between the United States and the Security Council. The Charter defines the duties, powers and responsibilities of the Security Council, while the Agreement confines itself to provisions for the powers, duties and responsibilities of the Administering Authority:

"Thus article 15 of the draft agreement defines the action which would be required of the administering authority with respect to changes in the agreement, and does not attempt to define the responsibilities of the Security Council in this respect. The latter are already defined; they are in the Charter; and no amendment or termination can take

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place without the approval of the Security Council. There is no need to repeat them here, though there would not be any harm in doing so. If you want to make a change, the United States would see no harm at all in saying that alterations in the terms of the trusteeship can only be undertaken by agreement between the United States and the Security Council...." (emphasis added)

Mr. Austin then suggested that, if any change were made in draft article 15, language such as the following should be used:

"The terms of the present agreement shall not be altered, amended or terminated, except by agreement of the administering authority and the Security Council." (Security Council, Official Records, 2d year, No. 23, pp. 475-76.)

In an attempt to find compromise language two other texts were suggested, both of which were unacceptable to the United States, apparently because they did not specify that the consent of the Administering Authority would be necessary to terminate the agreement. Absent such a reference to the Administering Authority, the clause might be open to the interpretation that the Security Council could terminate the Agreement unilaterally. After lengthy debate Soviet and

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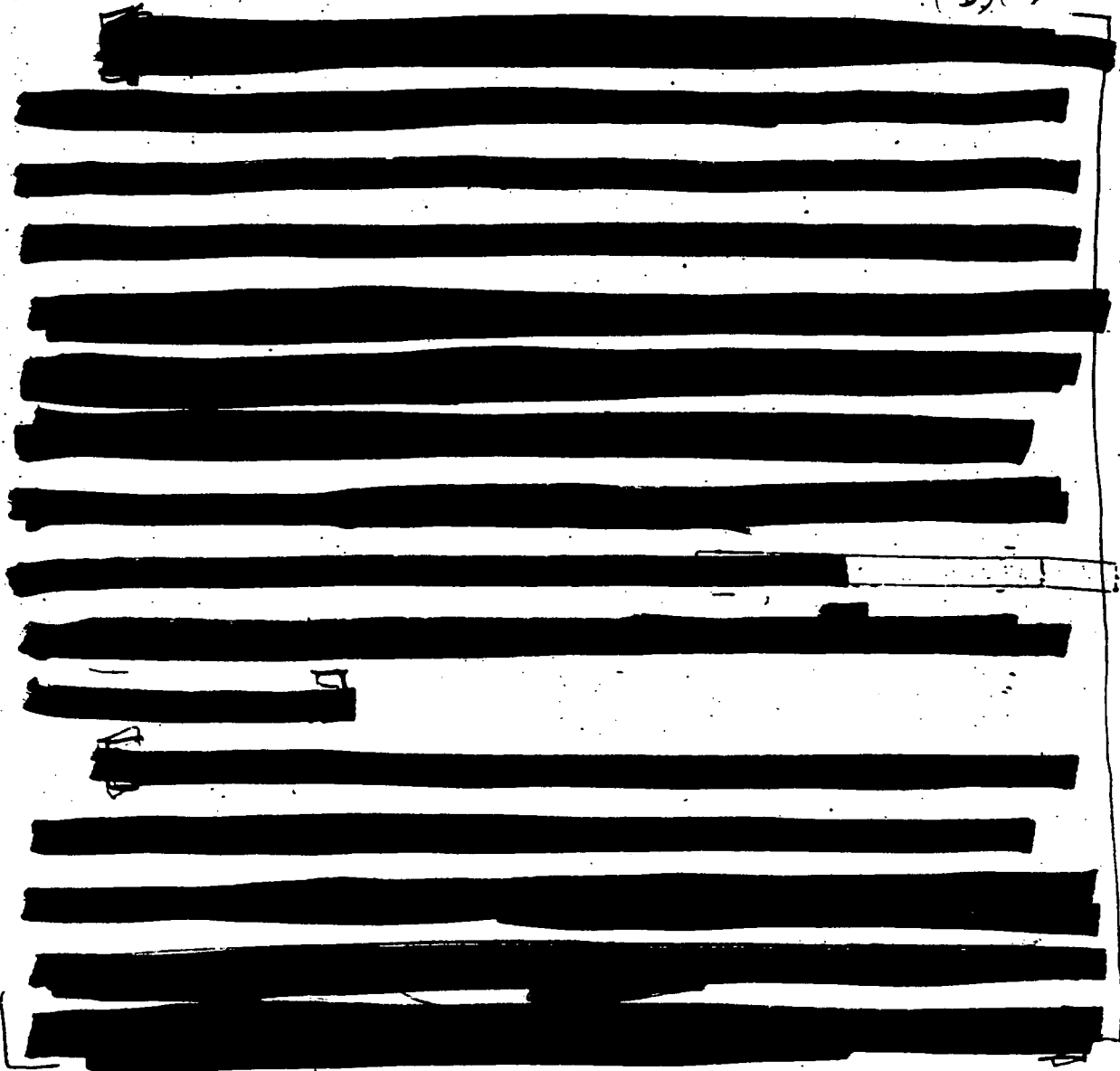
Polish proposals to modify article 15 were rejected. The original text of article 15 as proposed by the United States was then put to the vote and adopted by a vote of 8 in favor to none against, with three absentions (Poland, Syria, U.S.S.R.).

None of the trusteeship agreements with the General Assembly expressly refers to termination. Nonetheless, the Assembly has expressly approved of the termination of the eight agreements which are no longer in force.\* The Assembly has--with minor differences in text--"resolved, with the agreement of the Administering Authority" that on a given date each agreement "shall cease to be in force." That practice lends strong support to the position that termination of a trusteeship agreement is not a matter of unilateral decision.

*President  
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\*Togoland under British Administration, GA RES 1044 (XI); Cameroons under French Administration, GA RES 1349 (XIII); Togoland under French Administration, GA RESES 1253 (XIII) and 1416 (XIV); Somaliland, GA RES 1418 (XIV); Cameroons under British Administration, GA RES 1608 (XV); Tanganyika, GA RESES 1609 (XV) and 1642 (XVI); Western Samoa, GA RES 1626 (XVI); and Ruanda-Urundi, GA RES 1746 (XVI).

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There is some evidence in the negotiating history of the Trusteeship Agreement to support the view that termination is not governed by the Charter. When the Polish

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representative proposed, as a compromise text for article 15 of the Trusteeship Agreement, that the terms of the Agreement "shall not be...terminated except as provided by the Charter", the United Kingdom's representative asked: "What does the Charter say about termination?" The Syrian representative replied: "Nothing." The United Kingdom's representative added:

"Then what is the point of that amendment?  
It does not mean anything at all.

"What I mean is this: what is the use of putting forward amendments saying that a thing must only be done in accordance with the Charter, when the Charter does not say anything on the subject. It is a perfectly vague phrase which would give rise to constant controversy and we would never know where we were." (Security Council, Official Records, 2d year, No. 31, pp. 676-78.)

No representative contradicted this interpretation of the Charter advanced by the United Kingdom. However, there are abundant references elsewhere in the Security Council debates to the role of the Security Council in termination, particularly by the United States representative. \_\_\_\_\_

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Finally, there is nothing in the negotiating history of the Trusteeship Agreement to support the view that article 15 was intended to depart from the well-settled principle of international law according to which the consent of both parties would be necessary to terminate an international agreement such as the one under consideration here. (9)

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Concurrence:

L:L/UNA:RStarr:mab:3-22-67

L/UNA - Mr. Reis

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