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America's Strategic Trusteeship Dilemma Its Humanitarian Obligations*

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In 1947, Congress authorized[1] presidential approval[2] of a United States-initiated United Nations strategic trusteeship agreement[3] for the previously-mandated Mariana, Caroline, and Marshall Island chains in the Western Pacific,[4] collectively known as Micronesia.[5] During a Senate Foreign Relations Committee hearing on the far-flung islands' imminent political disposition, Naval Secretary James V. Forrestal responded affirmatively to Senator Hickenlooper's query whether United States economic and social interest in this vast oceanic area[6] depended upon its strategic value.[7] Committee members even assured themselves that security rights accorded the United States by the impending trusteeship agreement would be no less than if the strategic areas were annexed.[8]

According to the 1947 Agreement's strategic clause the United States, as Administering Authority,[9] may from time to time specify various areas as closed for security reasons.[10] However, the Charter of the United Na-

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* This article is the first of two parts on Micronesia, the United States, and the United Nations by Mr. Green. The second part will appear in the next issue.

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1. 61 Stat. 397 (1947).
2. Exec. Order No. 9875, 3 C.F.R. 658 (1947).
3. Trusteeship Agreement for the Former Japanese Mandated Islands, 61 Stat. 3301, T.I.A.S. No. 1605, 8 U.N.T.S. 189 (1947) [hereinafter cited as 1947 Agreement].
4. In 1951, Japan renounced its claim to the islands. Treaty with Japan, September 8, 1951, [1952] 3 U.S.T. 3169, T.I.A.S. No. 2490, 136 U.N.T.S. 45 [hereinafter cited as Treaty with Japan].
5. This ethnic designation signifies "sea of small islands," but popular usage excludes the adjoining British Gilbert and Ellice Island Colony and the isolated phosphate island sovereignty of Nauru.
6. Trust-territorial Micronesia's estimated 2,141 islands sustained in 1972 some 114,645 residents on almost 700 square miles, an area only one-half that of Rhode Island. Yet, the approximate oceanic expanse of the Territory is 3,000,000 sq. mi., a size approaching that of the continental United States. State Dep't Rep. to the U.N. on the Ad. of Trust Territory of the Pacific Islands 1, 4 (1972).
7. *Hearings on S.J. Res. 145 Before the Senate Comm. on Foreign Relations*, 80th Cong., 1st Sess., at 18 (1947).
8. *Id.* at 5, 6, *et seq.*
9. 1947 Agreement, *supra* note 3, art. 2.
10. *Id.* art. 13.

tions,[11] from which the authority of trusteeship agreements is derived,[12] specifies exercise by the Security Council of all United Nations functions relating to strategic areas, including approval of the terms of such agreements, their alteration, and amendment.[13] The United States has indeed used its strategic privileges on occasion—not, however, without international repercussions. It has nevertheless pledged to

> foster the development of such political institutions of the trust territory towards self-government or independence as may be appropriate to the particular circumstances of the trust territory and the freely expressed wishes of the peoples concerned . . . .[14]

The Charter, model for this language, established the humanitarian objectives of the international trusteeship system.[15] Incorporation within the 1947 Agreement of dominant strategic and humanitarian provisions produced "a historical accident of the colonial period, and therefore an artificial creation."[16] It has remained optimally a "union of doubtful legitimacy between the ideal of colonial trusteeship and the practical needs and objectives of the foreign policies of Great Powers : . . ,"[17] and at most "a vicious precedent."[18]

The strategic trusteeship agreement is a by-product of post-World War II international conditions, specifically, polar requirements of national and collective security. Inclusion of the strategic Pacific Islands territory in the international trusteeship system, according to Chowdhuri, has afforded that entire regime a "retrograde" flaw as far as the predecessor League Covnant's provision for mandate-nonmilitarization is concerned.[19] The entire spirit of trusteeship has therefore beem compromised by international acceptance of a system that yeilds to a Great Power veto over the supervision, scrutiny and action of a world body in respect to its legitimate territorial oversight. Kelsen, an early writer on the world organization's charter, doubted whether the "sacred trust" of self-reliant nations for the welfare of dependent peoples would withstand the immutable requirements of international peace and security.[20] Oppenheim in turn emphasizes the paramountcy of the trustee power's obligation to "promote the political, econom-

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11. U.N. CHARTER, June 26, 1945, 1 U.N.T.S. 16, 3 BEVANS 1153, T.S. 993, 59 Stat. 1031 (1945).
12. *Id.* art. 75.
13. *Id.* art. 83, sec. (1).
14. 1947 Agreement, *supra* note 3, art. 6, sec. (1).
15. U.N. CHARTER art. 76, para. (b).
16. Quigg, *Coming of Age in Micronesia*, 47 FOR. AFF. 493, 495 (1969) [hereinafter cited as Quigg].
17. A. MCDONALD, TRUSTEESHIP IN THE PACIFIC 54 (1949).
18. Former Secretary of State Sumner Welles, in Quigg, *supra* note 16, at 501.
19. R. CHOWDHURI, INTERNATIONAL MANDATE AND TRUSTEESHIP SYSTEMS 211 (1955).
20. H. KELSEN, LAW OF THE UNITED NATIONS 557 (1950) [hereinafter cited as KELSEN].

ic, social and educational advancement" of the territorial inhabitants under their stewardship. In his view, this responsibility displaces all others.[21] According to Brierly, the key words of the United Nations Charter's article 73 ("accept as a sacred trust the obligation . . .") undoubtedly connote prima facie a legal commitment.[22] However, the historic multilateral nuclear test-ban treaty of 1963,[23] together with the United States-U.S.S.R. agreement to limit anti-ballistic missile systems of 1972 and 1973,[24] have drastically diminished the utility of the 1974 Agreement's strategic language.

The trust region's strategic value of denial to a politically hostile power is nevertheless compelling in the contemporary era; a second prong of America's Pacific area security interest lies as well in its projected retention of forward defense bases along Micronesia's western flank. Unfortunately, historical neglect by the Administering Authority of its humanitarian obligations towards the territory's politically and economically dependent wards[25] may well jeopardize its legitimate claim to military security in their home islands, leaving in its wake a legacy of insular disenchantment and even outright alienation. The harshly ingrained effects of a trust-territorial administration worthy of "no enthusiasm and little admiration"[26] are still very much in evidence and wholly incompatible with a Micronesian attitude of trust which will loom essential to the preservation of America's minimal security interest.

I. THE ONGOING UNITED STATES SECURITY INTEREST

A. Strategic Significance of the Islands in History

Although resort by the Administering Authority to its strategic-clause option facilitated only experimentation in nuclear weaponry from 1947 to 1958,[27] these tiny, widely-scattered islands of the western Pacific will retain their value for conventional forces after America has completed the

21. Oppenheim, in L. LAUTERPACHT, INTERNATIONAL LAW: A TREATISE 226 (1955).

22. J. BRIERLY, LAW OF NATIONS 177 (1963).

23. Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space, and Under Water; signed August 5, 1963; entered into force October 10, 1963, [1963] 2 U.S.T. 1313, T.I.A.S. No. 5433, 480 U.N.T.S. 43 [hereinafter cited as Test Ban Treaty].

24. Treaty with the Soviet Union on the limitation of Anti-Ballistic Missile Systems; signed May 26, 1972; entered into force October 3, 1972; [1972] 23 U.S.T. 3475, T.I.A.S. No. 7503 [hereinafter cited as Anti-Ballistic Missile Treaty]. Interim Agreement with the Soviet Union on Certain Measures with Respect to the Limitation of Strategic Offensive Arms, signed May 26, 1972, entered into force October 3, 1972; [1972] 23 U.S.T. 3462, T.I.A.S. No. 7504; and Basic Principles of Negotiations with the Soviet Union on the Further Limitation of Strategic Offensive Arms; T.I.A.S. 7653, June 21, 1973 (1973).

25. *See* Mink, *Micronesia: Our Bungled Trust*, 6 TEX. INT'L L.F. 181 (1971) [hereinafter cited as Mink].

26. S. DESMITH, MICROSTATES AND MICRONESIA 133 (1970) [hereinafter cited as DESMITH].

27. *See* pt. III, *A*, (1), *infra*.

reduction of its "profile" throughout mainland and insular Asia.[28] Heavy casualties incurred by American forces during their wartime occupation of the strongly fortified, but crumbling, Mandate's bitterly contested islands and atolls inspired *post bellum* foreign policy planners to acquire dominating strategic peacetime control over a region which would have become a geopolitical power vacuum open to all comers[29] but for entrenched United States military occupation.[30]

Denial of its availability to a hostile interest constitutes as greatly today as before the war the strategic trust's most viable asset.[31] Sadly, prewar American public opinion ignored this fact until that "collective Louisbourg, the multiple Helgoland of the 1940's—the enemy's fortress"[32] effectively weighted the outreach of imperial Japanese territorial sovereignty against a continuing American-sponsored peace, its precariousness notwithstanding. Long after its attack of 1941 on the United States Pacific fleet at Pearl Harbor—even after the war itself—military leaders discovered that the former Empire had not substantially fortified the Mandate until its carrier-based offensive against helpless American vessels had been accomplished.[33] Indeed, the much-vaunted prewar Japanese naval installation at Truk constituted a "fraud among fortresses."[34] Tactical isolation and neutralization of the Mandate's scattered pinpoint bases by American Naval, Army, and Marine forces, however, appreciably forestalled conclusive assaults on the Philippine Archipelago and Okinawa Gunto campaigns requiring further scrutiny of their strategic value in a post-nuclear, multipolar international environment.

B. A Continuing Geopolitical Asset in the Era of Nuclear Negotiation

The course of bilateral United States-Soviet strategic armament-limitation talks has been encouraging to date, if one is willing to discount both officially and privately the burgeoning "internal affairs" human rights is-

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28. Japan will experience the greatest effect of this shift. *See* Miyoshi, *Nixon Doctrine in Asia*, 91 ADELPHI PAPERS 1 (November 1972) [hereinafter cited as Miyoshi].

29. Japan's interest in its former suzereignty still exists; its Ministry of Foreign Affairs maintains a Micronesian Affairs Division. JOINT COMM. ON FUTURE STATUS, 92D CONG., 2D SESS., REPORT OF THE SPECIAL SUBCOMMITTEE ON THE TRUST TERRITORY OF THE PACIFIC ISLANDS 4 (1972).

30. The United States based its de facto control on the law of belligerent occupation. Hague Regulations, sec. III, arts. 42 to 56 (1907). *See also* M. GREENSPAN, MODERN LAW OF LAND WARFARE 209 (1959).

31. Miller, *The United States and Oceania: New Dimensions in the Cold War Refrain*, 21 NAV. WAR COLL. REV. 45, 77 (1969) [hereinafter cited as Miller]. *See also* Morgiewicz, *Micronesia: Especial Trust*, 94 U.S. NAV. INST. PROC., 68, 78 (1968).

32. E. POMEROY, PACIFIC OUTPOST xix (1951).

33. Haigwood, *Japan and the Mandate*, in W. LOUIS, NATIONAL SECURITY AND INTERNATIONAL TRUSTEESHIP IN THE PACIFIC 108 (1972) [hereinafter cited as LOUIS].

34. 2 D. RICHARD, U.S. NAVAL ADMINISTRATION OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS 14 (1957) [hereinafter cited as RICHARD].

sue. The initial (and now multilateral) United States-Soviet agreement of 1963 (excepting the People's Republic of China) to limit nuclear arms experimentation[35] matured by 1972 to incorporate the "assured mutual destruction" doctrine.[36] According to this approach, each party psychologically deters the other from erecting comprehensive defenses or even deploying non-offensive weapons (ABM's) out of fear of encouraging a preemptive strike from the country whose population and resources are still exposed by force of treaty. America's absolute advantage, nevertheless, lies at sea where, for example, it can deploy more and better-equipped submarines.[37] These will assume critical importance to an Asia from which a defending superpower has at last successfully disengaged itself.

In 1969 President Richard M. Nixon formulated four principles as doctrinal guidelines for post-reduction policy towards Asia:

> (1) a continuing U.S. commitment to existing treaties;
>
> (2) avoidance of any action that would increase Asian dependence upon the United States so greatly that the latter would become embroiled anew in conflicts heir to the Viet-Nam counter-insurgency operations;
>
> (3) continuing provision of a nuclear umbrella for these nations; and
>
> (4) reliance throughout the 1970's on collective security as protection against domestic or external threats, except those posed by nuclear powers.[38]

Acceptance of responsibility for nuclear protection conditions the efficacy of such deterrence upon assured submarine mobility.[39] Mainland China's continuing efforts to achieve nuclear priority will undoubtedly further enhance the significance of this advantage. Should China subsequently adhere to the assured mutual destruction gospel as a predominating theme of modern diplomacy, conventional forces, not fissionable armaments, will once again lend themselves as resources for the competitive international allocation of global power.

De facto hegemony over the Pacific trusteeship's islands and atolls has also entrusted to the United States their lasting protection beyond any uncer-

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35. Test Ban Treaty, *supra* note 23.

36. Anti-Ballistic Missile Treaty, *supra* note 24. Art. 1, sec. (2) of this more recent treaty forbids each party thereto from deploying anti-ballistic missile (ABM) systems to defend its own territory, from providing a base for such a defense, and from deployment of ABM systems for the defense of an individual region, except as provided for in art. III.

37. J. NEWHOUSE, COLD DAWN: THE STORY OF SALT 22 (1973).

38. *Informal Remarks in Guam with Newsmen, July 25, 1969*, in PUB. PAP. PRES. U.S.: R. NIXON, *1969*, entry no. 279, at 544-56 (1971) [hereinafter cited as *Informal Remarks*].

39. Nuclear weapons, useful for the final United States occupation of the Pacific Islands mandate, may have reduced its utility, according to Pomeroy. *See American Foreign Policy Respecting the Marshalls, Caroline, and Mariana Islands, 1898-1941*, 17 PAC. HIST. REV. 43, 53 (February 1948). Such has not been the case.

tainty imposed by choice;[40] an unfettered Micornesia not politically allied with the United States would constitute a "disaster of the first magnitude."[41] Indeed, one objective of the sustained Soviet assault on Western hegemony over Oceania has been the denial of Pacific island areas to the United States and their consequent vulnerability to Communist political subversion and exploitation.[42] Despite President Nixon's assessment of re-emerging Big Power relationships as conducive to an era of "negotiation rather than confrontation,"[43] the decade of the 1970's will characterize a period in which Soviet strategy towards the West will aim at limiting the freedom of action of the United States.[44] China has voiced similar misgivings; in July 1972, five months after President Nixon's visit to the People's Republic, an official of that country revealed Peking's deep concern that the United States might withdraw from such international areas of the Pacific and allow the Soviet Union to forge ahead militarily.[45] Miyoshi speculates: "Even Asians appear to . . . feel that the presence of the U.S. Seventh Fleet [based at Guam adjacent to the Trust Territory8] must be maintained by all possible means."[46]

Assuredly, the United States will remain a Pacific Power for the predictable future,[47] although its dominance will be neither comprehensive nor even assured. For one thing, safeguards for the Pacific Fleet's vital communications sea-lanes are presently restricted by force limitations,[48] apart from Soviet activities. The western and southwestern Pacific's strategic balance has been significantly altered by United States military withdrawals from Okinawa and South Viet-Nam, and its political balance may be further disequilibriated by the new attitudes of recently elected governments in Australia and New Zealand.[49] Even so, regional international agreements on the order of ANZUS and SEATO have not afforded America's posture of security throughout the Pacific basin,[50] whatever their future validity.

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40. H. BALDWIN, STRATEGY FOR TOMORROW 163 (1970) [hereinafter cited as BALDWIN].

41. Bergbauer, *A Review of the Political Status of the Trust Territory of the Pacific Islands*, 22 NAV. WAR COLL. REV. 43, 49-50 (March 1970).

42. Miller, *supra* note 31, at 46.

43. *Informal Remarks, supra* note 38, at 548.

44. Beavers, *End of an Era*, 98 U.S. NAV. INST. PROC. 833, 836 (1972).

45. Miyoshi, *supra* note 28, at 17.

46. *Id.* at 19.

47. *Our Pacific Interests: an Interview with Admiral John S. McCain, Jr., USN (Ret.)*, 1 STRAT. REV. 15, 20 (Spring 1973).

48. *Hearings on Department of Defense Appropriations for 1974 Before the Subcomm. on the Department of Defense of the Comm. on Appropriations*, 93d Cong., 1st Sess., pt. 2, at 247 (1973) (remarks of Adm. Elmo R. Zumwalt, CNO, USN).

49. Sulzberger, *Foreign Affairs: Back to Confusion*, N.Y. Times, March 9, 1973, at 35M.

50. DESMITH, *supra* note 26, at 81. For an extended discussion of the postwar ANZUS and SEATO pacts, consult T. ADAM, WESTERN INTERESTS IN THE PACIFIC REALM (1967).

C. *The Marianas—Bulwark of Continued Stability*

America's line of defense in the western Pacific will undoubtedly coincide with the entire Mariana Islands group including Guam, as it stands down its forces in a fall-back operation from the Philippines, Okinawa, and Japan.[51] This act will engage political issues frontally, posing stressful challenges to dominating power dependency relations. The United States has expressed its wish to acquire approximately two-thirds of Tinian Island in the Marianas chain for the construction of a major base,[52] an effort that would necessitate evacuation to the island's craggy southern tip of approximately 1,000 residents located centrally at San Jose.[53]

Integration of the United States territory of Guam with its trusteed sister islands in the northern Marianas to form a uniform fall-back defense line will eventually dictate the course of American strategic emplacement throughout the insular chain. A senior military affairs specialist with the New York Times remarked that a projection of United States power to the Pacific coast of Asia must rely upon secured and strengthened insular fortifications.[54] The Marianas' strategic importance is not likely to diminish in the foreseeable future and could even increase if an unfavorably shifting political climate curtails or eliminates American base rights in Japan, Okinawa, Taiwan, and the Philippines.[55]

The denial potential of islands and atolls adjacent to the volcanic Marianas, a future hub of United States military activity,[56] became precipitously apparent during World War II, a conflict that demonstrated the absurdity of securing an isolated Guam against hostile military bases throughout an encroaching Japanese mandate preserve.[57] At the very least, these pinpoints of land variously east and southeast of the Marianas must form a *cordon sanitaire* sealed on its western flank, denied to any other Power by the fortified Marianas chain itself.

Construction of prerequisite bases at this time, however, would raise a furor in the United Nations despite legal issues. Influential Micronesians have realized that American interest in their home islands has traditionally stemmed from security considerations. Bases appear on that account more

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51. *New Defense Lines in the Pacific*, U.S. NEWS & WORLD REP., August 7, 1967, at 52.
52. Halloran, *Island of A-Bomb Memories*, N.Y. Times, June 5, 1973, at 8, cols. 1-3.
53. Orr Kelly, *Interview with Franklin Hayden Williams, United States Ambassador to the Micronesian Future Status Talks*, Washington Evening Star & Daily News, June 12, 1973, at A14, cols. 3-5 [hereinafter cited as Kelly].
54. Baldwin, *After Vietnam—What Military Strategy in the Far East?*, N.Y. Times, June 9, 1968, at 36, sec. 6.
55. Lincoln, *The Mariana Islands*, in LOUIS, *supra* note 33, at 132.
56. BALDWIN, *supra* note 40, at 280.
57. Johnson, *Trust Territory of the Pacific Islands*, 58 CURR. HIST. 233, 255 (April 1970).

lucrative as sources of revenue than any other asset now in prospect;[58] one Micronesian undoubtedly expressed the sentiment of many, declaring: "[O]nly if we are independent will we be able to negotiate with you Americans as equals. Basically, our real estate is all you want and all we have to sell [read "lease"] and we're determined to get a fair price for it."[59] Congress may balk at this arrangement, however, delaying any resolution of the trusteeship's political status that draws heavily on apprpriated United States funds.[60] The residents of Micronesia's islands and atolls have been expressing their preference for greater autonomy at a time when their military importance may be growing increasingly vital.[61] Vague promises and secret Department of Defense survey team visits—such as that of Marine Corps Lt. Gen. Lewis Walt to Babelthuap Island in the Palau District during 1969 to assess potential amphibious training sites[62]—do not encourage the credence which the Micronesians deserve.[63]

A parallel of sorts has emerged between the dissonant intimacy of the 1947 Agreement's strategic and humanitarian clauses and Micronesia's subsequent administrative history. This artificially flawed relationship will spark ongoing controversy over continued American attempts to mediate a militarily and strategically stable environment in the western Pacific, bound up as this has become with the onus of the past and the swiftly approaching challenge of the Territory's future political disposition.[64]

II. ORIGIN OF THE QUANDARY: AMERICANS POSTWAR DIPLOMATIC OFFENSIVES

As operations in the European theater of conflict grew decisive and the outcome of America's struggle in the Pacific became certain, a wave of idealism infused into Allied thinking a strong element of genuine concern for the political future of the world's colonies, mandates, and dependent areas. The nexus of liberal idealism with the crucial need for an Allied preservation

58. Quigg, *supra* note 16, at 502.

59. *Id.* at 503.

60. INTERIOR DEP'T, FUTURE POLITICAL STATUS OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS; REPORT BY THE PRESIDENT'S PERSONAL REPRESENTATIVE FOR MICRONESIAN STATUS NEGOTIATIONS ON THE HANA, MAUI, HAWAII TALKS 59, 118, 119 (1971).

61. Miller, *supra* note 31, at 59.

62. Residents of the Palau District, westernmost in the Territory, recently forwarded a resolution to the Trusteeship and Security Councils requesting the United States Marine Corps not to establish proposed training facilities there. U.N. Doc. T/Com.10/L.22 (April 11, 1969). Lt. Gen. Walt indicated that such a base would not be erected against the Palauans' wishes. N.Y. Times, May 11, 1969, at 2, col. 3.

63. Dobbs, *Macrostudy of Micronesia*, 18 N.Y.L.F. 139, 161 (1972).

64. The course of future status negotiations may elicit unfavorable responses from both the United Nations and the United States Congress. These could complicate efforts to terminate the 1947 Agreement. The author will explore this issue in "Whither Micronesia? Termination of the U.S. Pacific Islands Trusteeship and the Executive-Congressional-U.N. Nexus," in vol. 9:2 of this journal.

of their war effort shaped and eventually compromised this policy through a collectively sponsored system for dependent area trusteeship supervision.

A. Humanitarian Ideals Ascendant

As the war progressed, principles enunciated by President Franklin D. Roosevelt and Prime Minister Winston Churchill in their Atlantic Charter for the reconstitution of a peaceful world order[65] encountered the contravening influence of *realpolitik* as a crystallizing manifestation of Allied relations. Specifically, ideological dissention, itself the forerunner by July 1944 of future United States-Soviet Cold War divisions within the framework of an uneasy peace, hobbled and largely negated the spirit of the Anglo-American leaders' joint wartime policy declaration of 1941.[66] In this rather informal but nevertheless far-reaching statement, the United States committed itself publicly to a rejection of territorial claims,[67] notwithstanding its unarticulated and only partially realized post-war security requirements. Unwittingly, the two heads-of-state limned a philosophy which later paved the way for protracted clashes among the United States State, War, and Navy Departments over conflicting humanitarian and military policies.

The roots of trusteeship initially flourished in more fertile soil. Liberal post-World War I opinion throughout the United Kingdom spearheaded the efforts to press for a wartime territorial "no annexations" policy in 1917 and 1918. President Woodrow Wilson advanced two principles on the political disposition of colonies:

> (1) that these should be governed in the interest of the native peoples concerned; and
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> (2) that the principle of equal economic opportunity for all nations should be recognized.[68]

American policy in regard to non-self-governing peoples had also been reflected in the grant of independence to Cuba,[69] in the Jones Act of 1916[70] foreshadowing the political independence of the Philippines Archipelago thirty years later, and in the act of that name in 1917,[71] which granted full American citizenship and a substantial measure of home rule to Puerto Ricans. At the conclusion of the Great War, the United States adopted its conviction that no dependent territory detached from Germany and Turkey should be absorbed by any of the Allied and Associated Powers.[72]

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65. Joint Declaration of August 14, 1941; 3 BEVANS 686, E.A.S. 236, 55 Stat. 1600 (1941) [hereinafter cited as Joint Declaration].
66. E. ROBINSON, THE ROOSEVELT LEADERSHIP, 1933-1945, at 348 (1955).
67. Joint Declaration, *supra* note 65.
68. J. PRATT, AMERICA'S COLONIAL EXPERIMENT 198 (1950).
69. 30 Stat. 738 (1898).
70. 39 Stat. 545 (1916).
71. 39 Stat. 951 (1917).
72. Haas, *Attempt to Terminate Colonialism*, 7 INT'L OR. 1 (1953) [hereinafter cited as Haas].

Secretary of State Cordell Hull initially endorsed on July 22, 1940—before the Atlantic Charter's promulgation—a plan at the Havana Conference for "the establishment of a collective trusteeship . . . [which] must not carry with it any thought of the creation of a special interest by any American republic."[73] President Roosevelt realized soon after the outbreak of hostilities that demands for self-government and independence by colonial peoples would become a major political issue during peacetime.[74] However, he realized trusteeship as a desire for accommodating a plethora of international difficulties not necessarily related to the encouragement of colonial independence movements.[75] Nevertheless, Secretary Hull declared on July 23, 1942, that "[i]t has been our purpose in the past—and will remain our purpose in the future—to use the full measure of our influence to support attainment of freedom by all peoples, who by their acts, show themselves worthy of it and ready for it."[76] The United States Government subsequently developed postwar plans to establish international machinery to replace the dying mandate system of the star crossed League, which came to be described informally as a "trusteeship system" in contrast to its ill-fated predecessor.

Tentative State Department articulation of Hull's July 23rd address hardened Roosevelt's conviction that the instrumentality of trusteeship should safeguard international peace and security, rather than the sole promotion of self-government or independence. Above all, it would avoid violation of Atlantic Charter principles as would annexation for the purpose of securing strategic areas which might otherwise lend themselves as springboards of aggression.[77] Significantly further evolution of proposals within the broad context of a Draft Charter added two features lacking in the mandates chapter of the League's Covenant:[78] rights of international inspection and petition by trust territorial inhabitants.[79]

B. Ideals Under Fire—Paradise Lost

Sacrifices exacted of the nation by the continuing global struggle displaced an evanescant liberal humanitarianism, opening a new chapter in trusteeship policy-preparation. Sometime during the spring of 1944, the question of future Pacific military bases occupied the President's thinking. No doubt exists but that his Atlantic Charter commitment to eschew war-connected

73. H. NOTTER, POSTWAR FOREIGN POLICY PREPARATION, 1939-1945, at 35 (1949) [hereinafter cited as NOTTER].
74. R. RUSSELL & J. MUTHER, HISTORY OF THE UNITED NATIONS CHARTER 75 (1958) [hereinafter cited as RUSSELL & MUTHER].
75. Haas, *supra* note 72, at 1.
76. NOTTER, *supra* note 73, at 109.
77. 2 C. HULL, MEMOIRS, 1604-05, 1596 (1948).
78. LEAGUE OF NATIONS COVENANT, art. 23.
79. Draft Constitution on International Organization, chs. 12, 13, Doc. 1191, 6/128, 15 U.N. C.I.O. 286 *et seq.*

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territorial annexation shaped his convictions, based as they were on a realization that such a course would set an undesirable precedent for the Russians.[80] Desiring at no time to maintain these islands under United States control, he disclosed in a letter to his Joint Chiefs of Staff a wish that the future United Nations would ask the United States to act as a trustee for the Japanese mandate.[81]

De-emphasizing independence in favor of self-government only, the State Department's pre-Dumbarton Oaks "Possible Plan" called for internationally sponsored efforts toward developing the capabilities of dependent peoples to effectuate their reasonable aspirations of sharing in the "progress of the world community."[82] Qualifying the right to self-government with a consideration for world community interests,[83] the revised scheme also yielded to the yet unformed United Nations jurisdiction over trust territories hosts to military bases established pursuant to international security measures. Forerunner of the controversial Charter strategic provisions, this plan rejected the non-militarization principle formerly applied to areas within the purview of the League of Nations Permanent Mandate Commission.

Upon the Possible Plan's submission in June 1944 to the high level executive Postwar Programs Committee, the Secretaries of War and Navy demanded unhampered United States retention of the Pacific mandate as crucial to national security, dispatching on behalf of the Joint Chiefs' official representatives to future State Department trusteeship formulation talks[84] despite continued omission from the pre-Dumbarton Oaks document of independence as an alternative to mere self-government. Secretary Forrestal committed to his personal diary the conviction that "it seems to me a *sine qua non* of any postwar arrangements that there should be no debate as to who ran the Mandated Islands . . . ."[85] Pacific-area military concerns were two-fold:

> (1) the incalculable importance to the United States of Russia's early entry into the war against Japan; and
>
> (2) "very profound changes" that would occur in the relative post-war military strengths of the major Powers.[86]

The Joint Chiefs recommended that the entire trusteeship issue remain open-ended at Dumbarton Oaks, pending determination of a joint United States

80. Haas, *supra* note 72, at 337.
81. *Loc. cit.*
82. RUSSELL & MUTHER, *supra* note 74, at 337.
83. *Loc. cit.*
84. Minutes of the 40th Mtg., Interdepartmental Political Agenda Group (IPAG), April 6, 1944; in Notter Files, Box 142, 60 D-224/17901, on file with the Diplomatic Section, National Archives, Washington, D.C.
85. W. MILLS, FORRESTAL DIARIES 8 (1951).
86. Letter from Chief of Staff, U.S. Army (Marshall) to the Secretary of State (Hull), August 3, 1944, in U.S. DEP'T STATE, FOR. REL. U.S., 1944: GENERAL 699, 700 (1966) [hereinafter cited as 1944 Dipl. Pap.].

policy on the ultimate disposition of various Japanese administered islands, including the Mandate.[87] Reasoning that imminent German defeat would leave Russia in a position of assured military dominance in Eastern Europe and the Middle East, they strove to encourage its participation in the Allied victory over Japan. They recommended that a Soviet-aided defeat precede any discussion of territorial trusteeship.[88] Accordingly the trusteeship issue disappeared from the planned agenda.[89]

Considerable criticism over this omission, however, together with Soviet demands for an exchange of views prior to the general San Francisco conference on international organization scheduled to open the following year,[90] forced the hand of Secretary Stettinius who realized that formulation there of general principles and administrative machinery could precede specific consideration of the Mandate.[91] The State Department recommended that Presidential agreement during the upcoming Big Four Yalta talks include a chapter on trusteeship in the evolving Charter.[92] In his stead, Secretary Stimson pressed home the Joint Chiefs' national security arguments and a need to gain Russian support of that end.[93] With this advice, President Roosevelt proceeded to Yalta.

C. Yalta Trade-Off—Expeditious Compromise

Over twelve months ealier, the Big Four leaders resolved at Cairo to strip Japan of all its Pacific islands acquired since the start of the First World War.[94] On January 22, 1946, Acting Secretary Dean Acheson informed the press that the still unpublished Yalta agreement providing for a post-war Soviet occupation of the Japanese Kurile Island chain[95] had not been finalized. A radio broadcast from Moscow asserted that the secret agreement had clearly provided for such occupation. Secretary of State James F. Byrnes claimed that a copy of the agreement was in White House safekeeping, and therefore unavailable. British Government officials at Whitehall declared in turn that they lacked the document.[96] Its release by the

87. Memorandum, Joint Chiefs of Staff to the Secretary of State, *id.* at 700.
88. *Id.* at 700, 701.
89. Letter, *supra* note 81, at 699.
90. Letter from Secretary of State to Secretary of War (Stimson), December 30, 1944, in 1944 Dipl. Pap., *supra* note 86, at 922, 923.
91. *Id.* at 923.
92. Memorandum, Spec. Ass't Sec'y State (Pasvolsky) to the Sec'y State, January 23, 1945, in U.S. DEP'T STATE, FOR. REL. U.S., 1945); CONFERENCES AT YALTA AND MALTA, at 82 (1955) [hereinafter cited as Malta & Yalta Docs.].
93. Memorandum, Sec'y War (Stimson) to the Sec'y State, January 23, 1945, in Malta & Yalta Docs., *supra* note 92, at 78-81.
94. Cairo Declaration, para. 3, December 1, 1943, 3 BEVANS 858 (1943) [hereinafter cited as Cairo Declaration].
95. Agreement Regarding Entry of the Soviet Union into the War Against Japan, February 11, 1945, in Malta & Yalta Docs., *supra* note 92, at 984.
96. McKay, *International Trusteeship: Role of the United Nations in the Colonial World*, 22 FOR. POL. REP. 54, 63 (May 15, 1946).

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State Department weeks after Acheson's denial confirmed the fact of agreed Soviet Kuriles occupation.[97]

A second, seemingly unrelated but nonetheless seminal development emerged on the Crimea. Soviet and British Labor Government pressure underscored domestic United States sentiment during the Big Three discussions for an enlightened dependent areas policy. Yet according to Thullen, a Yalta formula classified specific trust territories as "strategic" and "non-strategic," the former of which were to be supervised by the future United Nations Security Council where the United States as a permanent member could resort at will to its veto power in safeguarding national interests.[98] No record of this apparently tacit agreement appears in the State Department's United States Foreign Policy series on the Yalta conversations.

During a Council of Foreign Ministers meeting in New York City towards the end of 1946, Soviet Foreign Minister Vyacheslav M. Molotov reminded Secretary of State James F. Byrnes that the Soviets did not contemplate trusteeship for the Kuriles; this matter had been settled at Yalta. Mr. Roosevelt, Byrnes wrote,

> had said repeatedly at Yalta that territory could be ceded only at the [ensuing] peace conference and [that] he had agreed only to support the Soviet Union's claim at the Conference. While it could be assumed that we would stand by Mr. Roosevelt's promise . . ., we would want to know, by the time of the peace conference, what the Soviet Union's attitude would be towards our proposal for placing the Japanese mandated islands under our trusteeship. Mr. Molotov quickly grasped the implications of this remark. When the United States trusteeship agreement was voted upon later by the Security Council, I was delighted but not surprised to see that the Soviet Representative had voted in favor of our proposal.[99]

Can a tacit East-West tradeoff of Security Council sponsored strategic trust area approval for Soviet war-connected self-aggrandizement have possibly been struck at Yalta? Although the agreement was obviously not intended for public consumption, the former Pacific Islands mandate certainly became the first among equals. In that event, the Atlantic Charter, to which the Soviets were not a party, can be justifiably termed a "forgotten pledge."[100]

D. Strategic Trusteeship—Emergent Riddle

Further War-Navy anxieties[101] forced a tripartite recommendation to President Harry S. Truman for only the "possible machinery" of a trustee-

97. Agreement, sec. 3, in Malta & Yalta Docs., *supra* note 92.
98. G. THULLEN, PROBLEMS OF THE TRUSTEESHIP SYSTEM 35 (1964).
99. J. BYRNES, SPEAKING FRANKLY 221 (1948).
100. *Id.* at 76.
101. *See* Memorandum, Secretary of State (Stettinius) to President Roosevelt, April 9, 1945, in U.S. DEP'T STATE, FOR. REL. U.S., 1945: GENERAL 211, 212, 213 (1967) [hereinafter cited as 1945 Dipl. Pap.].

ship system.[102] At San Francisco, a divided United States Delegation pressed the strategic-nonstrategic dichotomy apparently confirmed that winter. To meet British concerns for the territorial inhabitants' welfare,[103] the United States Delegation revised its proposals to apply the system's basic objectives specifically to peoples of strategic areas. An additional stipulation ensured a territorial role in the maintenance of international peace and security, empowering administering states to rely upon voluntary forces and facilities to effect Security Council obligations.[104]

At length, word arrived from Washington that interdepartmental differences on independence were to be resolved in the direction of War and Naval views. Consequently, this now controversial phrase found no place in the emerging Charter's statement of policy principles for dependent peoples, the Declaration Regarding Non-Self-Governing Territories.[105] It survived in its trusteeship provisions, however highly qualified.[106] The United States insisted on a dichotomous classification of individual trusteeships, whereby strategic areas would fall within broad Security Council aegis.[107] Drafting technicians of Committee II/4 (Conference Technical Committee on Trusteeship) overrode recurring British objections[108] "probably reflecting the general acquiescence in the rigid United States position,"[109] subsequently distilled for Charter inclusion.[110]

In November 1946. President Truman submitted a draft trusteeship agreement for the former mandate to the Security Council's membership.[111] The United States rejected outright a Soviet amendment restricting alteration, supplementation, and termination of the document to the Council, threatening to withdraw the agreement altogether.[112] The Soviet attempt went by the boards and the full Council unanimously approved the draft agreement on April 2, 1947.[113] That July, Congress granted President Truman enabling legislation[114] to issue an executive order[115] consummating at

102. Memorandum, Secretaries of State, War, & Navy to President Truman, April 18, 1945, *id.* at 351.
103. Territorial Trusteeship: United Kingdom Draft of Chapter for Inclusion in United Nations Charter, Doc. 2-G/26(d), 3 U.N.C.I.O. Docs. 609 *et seq.* (1945).
104. J. MURRAY, U.N. TRUSTEESHIP SYSTEM 26 (1957).
105. U.N. CHARTER, art. 73.
106. U.N. CHARTER, art. 76, para. (b).
107. Arrangements for International Trusteeship: Additional Chapter proposed by the United States, Doc. 2-G/26(c), 3 U.N.C.I.O. Docs. 607, 608 (1945).
108. Arrangements . . . , An Explanatory Note on the Draft Charter Submitted by the United Kingdom Delegation, paras. 5, 6; Doc. 2-G/26(d), 3 U.N.C.I.O. Docs. 619 (1945).
109. RUSSELL & MUTHER, *supra* note 74, at 834.
110. U.N. Charter, arts. 82, 83.
111. White House, *Press Release of November 6, 1946*, 15 DEP'T STATE BULL. 889 (1946).
112. 2 U.N. SCOR, 415, 417 (1947); 2 U.N. SCOR, 473-77, 670 (1947).
113. 2 U.N. SCOR, 680 (1947).
114. 61 Stat. 397 (1947).

long last the tortuously conducted United States diplomatic offensive for its strategic trust objectives.

E. Duress of Necessity

Most significantly, the United Nations launched its trusteeship system into an atmosphere marked by political tensions and profound ideological division. Its christening reflected the chaotic aftermath of the Axis collapse, unprecedented Soviet expansion, the quickening political voices of formerly dependent and subservient peoples, and technological weapons development.[116] United States acquisition in San Francisco of strategic trusteeship as a Charter principle discredited the otherwise commendable record of the entire tutelary regime. Its administrative history sharply revealed the various cleavages permeating this unfortunate but unavoidable compromise of humanitarianism with expediency. The United States Delegation Chairman's post-conference assertion to President Truman that native interests could be preserved while safeguarding the administering Power's security objectives[117] seems far-fetched on its face, and as future events unfolded, unrealistic as well.

III. A MICRONESION-UNITED STATES COMMUNITY OF INTERESTS: ITS PROSPECTS

The preceding observations do not necessarily imply the Administering Authority's express lack of humanitarian concern. Ends-means analysis of American postwar diplomatic offensives to acquire a realistically appreciated degree of military security reveal adaptability requisite to this goal, given early indications of an ideologically motivated falling-out of Allies and the concomitant demands of *realpolitik*. Again, direct United States observance of its Atlantic Charter commitment together with later disavowal of territorial acquisition[118] afforded for international trusteeship an essentially defective character, the alternative to which would have become an unsheathed Allied scramble for various parts of the globe's territorial spoils of war.

A. Strategic Trusteeship in Practice—Uneven Scorecard

Economic and social chaos together with indirect occupational rule eventually followed each successive wave of invasion throughout the Mandate, and upon the eve of trusteeship, the entire region as well as scattered islands along the northward reaches toward the Japanese archipelago had fallen under United States Naval dominion. Shortly after hostilities ceased, Admiral

115. Exec. Order No. 9875, 3 C.F.R. 658 (1947).
116. H. HALL, MANDATES, DEPENDENCIES, AND TRUSTEESHIP 290 (1948).
117. CHAIRMAN, U.S. DELEGATION, CHARTER OF THE UNITED NATIONS: REPORT TO THE PRESIDENT 136 (1945).

Chester W. Nimitz, Commander in Chief of the Pacific Fleet, enunciated a "Pacific Charter"[119] as a corrective measure honoring only the *status quo ante bellum*.

Rapid demobilization of military personnel during 1945 necessitated in the following year development of an administrative training program at Stanford University[120] emphasizing improvement of social, economic, political, and health conditions.[121] Nevertheless, an increasingly observant United Nations found overall progress—even under civilian auspices—below its expectations. Administration of incontestably occupied islands engendered intensive anti-Navy debate in Congress and elsewhere,[122] a controversy which hastened President Truman's decision to transfer their safekeeping to the Department of Interior,[123] by which time a pattern of active strategic and military preparedness and passive local administration had jelled.

(1) Military Activism and AEC Weapons Testing—Their Political Fallout

During the summer of 1946—one full year before trusteeship's inception —the recently established Atomic Energy Commission[124] initiated experimentation in nuclear fission at Bikini Atoll in the Marshalls with Naval cooperation, requiring dislocation of one hundred sixteen residents to Kili, an unsuitable island far to the south where they experienced environmental difficulties.[125] On July 23, 1947, five days after the trusteeship agreement became effective, the AEC established its Pacific Proving Ground,[126] declaring later that year its selection of Eniwetok Atoll for further experimental detonation of nuclear armament.[127] Consequently, the agency resettled that atoll's one hundred forty-five inhabitants on the Marshallese atoll of Ujelang.[128] Since larger test detonations could not be conducted on the United States mainland "with the requisite degree of safety," the AEC evacuated its entire program to the Marshalls staging area.[129] An unexpected shift of the prevailing winds over Bikini Atoll carried radioactive fallout from a hydrogen device exploded there in 1954 to the neighboring atolls of Rongerik, Rongelap, and Utirik.[130] The test explosion's magnitude was "under-

118. Cairo Declaration, *supra* note 94, para. (3).
119. DEP'T NAVY, INFORMATION ON THE TRUST TERRITORY OF THE PACIFIC ISLANDS UNDER NAVAL ADMINISTRATION TO 1 NOVEMBER 1950, at 5 (1951).
120. School of Naval Administration (SONA).
121. 2 RICHARD, *supra* note 34, at 280.
122. *See* 91 Cong. Rec. A3205 (1946) (remarks of Hon. Joseph Farrington).
123. Exec. Order No. 10,265, 3 C.F.R. 766 (1951).
124. Created by the Atomic Energy Act of 1946, 60 Stat. 755, 42 U.S.C. §§ 2011 *et seq.* (1970).
125. For an authoritative account of the Pacific Islands testing program, see N. HINES, PROVING GROUND (1962).
126. N.Y. Times, July 24, 1947, at 1, col. 2.
127. DEP'T NAVY, TRUST TERRITORY OF THE PACIFIC ISLANDS 3 (1948).
128. AEC Press Release No. 70 (December 1, 1947).
129. 13 AEC Semiann. Rep. 81 (January 1953).
130. *AEC Announcement*, N.Y. Times, March 17, 1954, at 1, col. 1.

estimated by a factor of one-half."[131] This thermonuclear accident exposed two hundred thirty-six Marshallese residents of the three atolls and twenty-eight American personnel to radiation,[132] injuring as well all twenty-three crew members of an adjacent fishing vessel, *Fukuryu Maru* (The Lucky Dragon).[133]

The Trusteeship Council's Standing Committee on Petitions received a complaint from the Marshallese Congress' Hold-Over Committee attesting to fallout-connected damage.[134] India's Delegate, V.K. Krishna Menon, proposed a General Assembly request to the International Court of Justice at the Hague for an advisory opinion on the test's legality,[135] submitting thereupon a draft resolution.[136] A vote of three favoring to seven against rejected it with two abstentions.[137]

Nuclear armaments testing at both Bikini and Eniwetok ceased in 1958, by which time fifty-eight nuclear devices had been exploded altogether. By the early summer of 1973, Bikini had apparently not yet become radiation-free,[138] although the Administration had initiated rehabilitation "so that the Bikinians might soon return to their home islands."[139] As of June 1973, however, neither the Bikinians nor Eniwetokese had done so.[140]

Protracted controversy over the propriety and quality of Naval stewardship[141] initiated President Truman's decision to shift the islands' continuing administration to the Department of the Interior in 1951.[142] Plans to erect training facilities on Saipan for Central Intelligence Agency-sponsored clandestine activities on the Chinese mainland lay behind his subsequent transfer of Saipan and Tinian Islands in the northern Marianas back to Naval control.[143] Truman's successor, Dwight D. Eisenhower, extended Naval control over the remaining northerly islands with the sole exception of Rota.[144] Shortly thereafter, the Navy erected a physical plant on Saipan's northern end at the reputed cost of $29 million to train Nationalist Chi-

131. N.Y. Times, April 1, 1954, at 20, col. 1.
132. *AEC Announcement*, N.Y. Times, March 12, 1954, at 1, col. 1.
133. N.Y. Times, March 17, 1954, at 1, col. 5 *and* at 9, col. 3.
134. U.N. Doc. T/Pet.10/28 (1954).
135. U.N. Doc. T/Sr.554, at 200 (1954). For opposing views on their legality, see Margolis, *The Hydrogen Bomb Experiments and International Law*, 64 YALE L.J. 629 (1955); McDougal & Schlei, *The Hydrogen Bomb Tests in Perspective: Lawful Measures for Security*, 64 YALE L.J. 648 (1955).
136. U.N. Doc. T/L.498 (1954).
137. 14 U.N. TCOR, 561st Mtg., at 248 (1954).
138. U.N. Doc. T/Pv. 1412, at 73 (1973) (remarks of Congress of Micronesia Sen. Joab Sigrah, Before the 40th Session of the Trusteeship Council).
139. 1969 Ann. Rep. on the Trust Terr. Pac. Is. to the Sec'y Int'r. at V (1970).
140. U.N. Doc. T/Pv.1416, at 52 (1973) (remarks of Sir Lawrence McIntyre Before the 40th Session of the Trusteeship Council).
141. For Interior Department thinking, see Ickes, *The Navy at Its Worst*, Colliers, August 31, 1946, at 22. *See also, supra* note 122.
142. Exec. Order No. 10,265, 3 C.F.R. 766 (1951).
143. Exec. Order No. 10,408, 3 C.F.R. 906 (1952).
144. Exec. Order No. 10,470, 3 C.F.R. 951 (1953).

nese insurgents for their vaunted assault operation.[145] One experienced observer has even suggested that politically strong separatist tendencies among Chamorro speaking Mariana Islanders may have arisen from administrative division between separate Departments.[146] The ambitious program's efficacy had vanished by the early 1960's, heralding a recently founded tradition of official United States-Chinese cordiality.

The Mariana Islands District, however, became the subject once more of United States military planning—this time as America's projected line of defense across the western Pacific. The United States has recently stated its wish to acquire approximately two-thirds of Tinian for the construction of a major airbase,[147] an undertaking that would once again force the dislocation of local populations.[148] Dissatisfaction with the threatening "unrestricted and uncontrolled" use of Tinian by the Administering Authority prompted that tiny island's political leadership to voice its grievances before the Trusteeship Council in June 1973.[149] Two months later, the Council received another protest disclosing that the Interior Department's Office of Micronesian Status Negotiations and the Department of Defense had ordered the territorial High Commissioner to halt all economic development on Tinian as of May 5, engendering, in effect, an upswing of unemployment.[150] The United States, however, did not comment explicitly on the directive in its response to the islanders' petition.[151] This unfortunately clumsy thrust of policy poorly articulated United States' concerns for continuing Pacific stability, however legitimate on its own merits. It illustrates America's most profound and still unresolved moral dilemma, its implicit obligation to reconcile perceived strategic requirements with the international tutelary system's humanitarian goals. Akin to Lt. General Walt's 1969 tour of Palau,[152] this measure has further inhibited recognition by Americans and Micronesians alike of their common interest in synthesizing the disparate elements of the 1947 Agreement.

(2) The Administrative Record—Protracted Dependence

The impending political disposition by Australia of its similarly dependent Papua-New Guinea trusteeship[153] will threaten the Pacific Islands with a lone trusteed existence; their nine predecessors have either acquired inde-

145. E. KAHN, REPORTER IN MICRONESIA 39, 40 (1966).
146. N. MELLER, CONGRESS OF MICRONESIA 390 (1969).
147. Halloran, *The Island of A-Bomb Memories*, N.Y. Times, June 5, 1973, at 8, cols. 1-3. The world's largest airfield was operational there in 1945.
148. Kelly, *supra* note 53.
149. U.N. Doc. T/Com.10/L.110 (1973). One hundred seventy-six island residents signed the statement of disapproval.
150. U.N. Doc. T/Pet.10/80 (1973).
151. U.N. Doc. T/Obs.10/41 (1973).
152. *Supra* note 62.
153. Trusteeship Agreement for the Territory of New Guinea, 8 U.N.T.S. 181 (1946).

pendence or undergone incorporation into the territory of sovereign states.[154] Papua-New Guinea became self-governing on December 1, 1973;[155] acquisition of sovereign status by that jurisdiction sometime in 1974[156] will relegate all of the United Nation's various tutelaries to history but for the strategic Pacific Islands.

An underlying cause of its longevity can be traced to the first fifteen years of its nearly twenty-seven year long duration when concrete progress in the Micronesians' welfare assumed a holding pattern broken only by the expressed concerns of an increasingly active Trusteeship Council. Keesing's description of the "zoological park" as an approach to dependency administration[157] characterized the entire Naval period and at least the subsequent eleven years of civilian stewardship. During its postwar inception, an economic survey team concluded that warfare and occupation had regressed the islands' economic welfare by at least a quarter of a century.[158] From that time until transfer of the Territory to civilian hands,[159] the Navy Department continued to supervise affairs through its Islands Government Division (Office of the CNO in Washington, D.C.)[160] and a High Commissioner installed well over the horizon at Pearl Harbor.[161] Navy rule created over one hundred chartered municipalities, several of which exercised responsibility for local and financial matters.[162] Before 1951, the Administering Authority established civilian administration[163] and District Courts, the latter of which enjoyed broad original jurisdiction,[164] entirely in local affairs.

In addition, a Legislative Advisory Committee recommended measures for the High Commissioner's signature, advising as well on policy matters within his discretion. Although administrators planned the Committee's evolution from a mere executive advisory group into a bona fide legislature representing the Territory's constituents, its membership excluded Micronesians and inauguration of civilian tutelage quickly effected its demise.[165]

Civilian stewards only occasionally attempted before 1962 to establish quasi-legislative organs of territorial scope. Indeed, fourteen years of Interior Department aegis slipped by before the territorial administration acquired republican lineaments. Cultural and linguistic differences impeded

154. Marston, *Termination of Trusteeship*, 18 INT'L & COMP. L.Q. 1, 40 (1969) [hereinafter cited as Marston].
155. Embassy of Australia/Washington, D.C., Circular No. 184/73 (28 June 1973).
156. Papua-New Guinea Newsletter, June 28, 1973, at 1.
157. F. KEESING, SOUTH SEAS IN THE MODERN WORLD 81ff (1945).
158. B. BAKER & R. WENKHAM, MICRONESIA: THE BREADFRUIT REVOLUTION 53 (1971).
159. *Supra* note 142.
160. 3 RICHARD, *supra* note 34, at 52.
161. *Id.* at 140.
162. *Id.* at 388, 406ff.
163. *Id.* at 426ff, 436ff.
164. *Id.* at 440.
165. Interim Regulation 4-48, sec. 22(c), HiComTerPacIs (Guam: May 8, 1948), printed in DEP'T NAVY, REP. ON THE TRUST TERR. PAC. IS. 1 (1953).

upward mobility even within the Districts' executive hierarchies, as the Administering Authority failed to surmount these obstacles for many years. Between fiscal years 1950 and 1972, for example, Micronesian employment hovered near ninety percent of all working personnel, a figure reflective of junior slots within the bureaucratic pyramid.[166] Since March 1971, however, no further expatriate administrators have accepted employment in the Territory, as a shift in recruitment policy now favors only contract personnel.[167] Again, all District administrators (DistAds) are now exclusively Micronesian, as are several chiefs of division at Headquarters on Saipan.[168] Although annual proportional percentages fail to reflect this influx of Micronesians into the administrations' higher reaches, these changes took place only after 1970, yielding to question the previous twenty-three years of trust-territorial tutelage. Moreover, a touring United Nations Secretariat inspection mission learned that the administration was still generally regarded throughout the entire trusteed area as a "United States, not a Micronesian, institution."[169]

Legislative development weathered a similarly long period of military, then civilian inaction. Early Interior Department officials recognized numerous obstacles to self-government—among them a Micronesian failure to "appreciate that democratic procedures can be justified only thorugh the acceptance of community responsibility," and the difficulty and expense of bringing outlying communities into the orbit of policy implementation.[170] Only after seven years of international trusteeship did the Administering Authority foster any sense of territorial political identity across ethnically established District lines, and then only as a series of tentative measures. The Honolulu-based administration's conference on self-government opened only once in Truk District during July 1953,[171] but its Micronesian participants "revealed the confusion evoked by references to self-government in the Trust Territory."[172] The General Assembly and Trusteeship Council agreed in 1954 with the United States that little basis existed for the establishment of legislative organs with jurisdiction over larger areas or the territory as a whole.[173]

Three years passed before the Administration's second attempt at pan-territorial political unification, the fully elected Interdistrict Micronesian

166. Data was adapted from appendices, 1950-1972 ANNUAL REPORTS OF THE HIGH COMMISSIONER TO THE SECRETARY OF INTERIOR ON THE TRUST TERRITORY OF THE PACIFIC ISLANDS.

167. 1971 Ann. Rep. to the U.N. on the Ad. of T.T.P.I. 29.

168. Report of the U.N. Visiting Mission to the Trust Territory of the Pacific Islands; U.N. Doc. T/1741, at 43 (1973) [hereinafter cited as Visiting Mission Rep.].

169. *Id.* at 45.

170. 1953 ANN. REP. TO THE U.N. ON THE AD. of T.T.P.I. 9.

171. 1954 ANN. REP. TO THE U.N. ON THE AD. OF T.T.P.I. 111 [hereinafter cited as 1954 ANN. REP TO THE U.N.].

172. Meller, *supra* note 146, at 184.

173. 1954 ANN. REP. TO THE U.N., *supra* note 171, at 107.

Leaders Conference. Urged by an increasingly activist Trusteeship Council to develop a territorially central legislative branch, the United States fostered its budding concern, enabling it to engage political, social, and economic issues directly. It resolved itself subsequently into specialized committees to place various recommendations before the High Commissioner.[174] When a critical report of touring United Nations observers[175] occasioned in 1962 a departure in policy planning for the Territory, President John F. Kennedy reunited the entire region under civilian auspices, relocating Headquarters from neighboring Guam to Saipan Island in the Marianas.[176] Three years later, the Council of Micronesia, the Conference's successor, and like it a purely advisory group, acquired at long last the Interior Department's blessing and a basic legislative identity under its new rubric, the Congress of Micronesia.[177] Notably, its restricted legislative powers included an option to appropriate only self-generated revenues.[178] In addition, congressionally approved bills vetoed by the High Commissioner proceed upon repassage to the Secretary of Interior who must effect final action within sixty days.[179] Although over five years have elapsed since an amendment of its mandate, the territorial law-creating body still lacks final authority over congressional bloc grant appropriations although, through an established tradition of budgetary hearings, it plays a major role in annual monetary dispositions. By amending legislatively proposed and administratively supported line expenditures, the United States Congress enjoys final jurisdiction over all such disbursements.[180] Denials on this order of the legislature's vital competence have persisted despite pointed Trusteeship Council recommendations since 1970 that Micronesian budgetary responsibilities be extended.[181]

Although a significant number of Micronesians staffed the sub-District community court system upon inception of civilian administration,[182] Peace Corps influence after 1968 favored increased participation by trained Micronesians in the Territory's judicial system. Members of that activist group, the Attorney General's office, and the Congress itself established a Micronesian Institute of Legal Education to co-ordinate training programs throughout the trust area, and to encourage its residents' entry into mainland

174. 1959 ANN. REP. TO THE SEC'Y INT'R ON THE TRUST TERRITORY OF THE PACIFIC ISLANDS 25, 26.
175. U.N. Visiting Mission Report . . ., U.N. Doc. T/1560.
176. Exec. Order No. 11,021, 3 C.F.R. 600 (1962).
177. Sec'y Int'r Order No. 2882, as amended (1964).
178. Sec'y Int'r Order No. 2918, Part III, sec. (4) (1968). Printed in 1972 ANN. REP. TO THE U.N. ON THE AD. OF T.T.P.I. 183-91.
179. *Id.* pt. III, sec. 13.
180. Visiting Mission Rep., *supra* note 168, at 50.
181. 28 U.N. GAOR, Spec. Supp. 1, U.N. Doc. 5/10976 (1973).
182. 1952 ANN. REP. TO THE SEC'Y INT'R ON THE TRUST TERRITORY OF THE PACIFIC ISLANDS 21.

law schools.[183] By 1972, Micronesian students studied at home, in the Philippines, and in the United States for judgeships, court reporterships, and judicial administratorships.[184] Nevertheless, the High Court, senior judicial branch of the Territory, still lacks Micronesian participation. In addition, two of its expatriate members had found in several cases before them in favor of the Administration "against the balance of the evidence."[185] Whether the Administering Authority will replace them with Micronesians who would then enjoy opportunities to familiarize themselves with High Court affairs before its apprenticeship becomes self-governing is unknown from the evidence available. That a District legislature, together with the Congress itself, approved resolutions demanding the expatriates' dismissal[186] points to a potentially explosive impasse. Generally, acquisition of academic training in this vital governmental branch by Micronesians should render their case for further professional participation more compelling.

Once again, the United States delayed for many years compensation of Micronesian claimants for wartime and post-secure damages inflicted on their islands during its eviction of the Japanese and first years of military occupation. Indeed, this question had become the subject of Trusteeship Council and visiting mission recommendations since islanders' petitions first raised the issue in 1950.[187] The Governments of Japan and the United States negotiated an agreement side-stepping questions of legal responsibility for the payment of $5 million each,[188] *ex gratia*, to liquidate a plethora of war claims against both countries.[189] Congresswoman Patsy Mink characterized the agreement as "paternalistic," inasmuch as Micronesians were barred from participating in the determination of how or when they would be repaid.[190] Furthermore, congressional action prompted in 1971 by trenchant Trusteeship Council criticism[191] to effect relief has not been forthcoming. Legislation to that effect[192] implicitly prohibits any settlement of

183. 1969 ANN. REP. TO THE SEC'Y INT'R ON THE TRUST TERRITORY OF THE PACIFIC ISLANDS 8.

184. 1972 ANN. REP. TO THE SEC'Y INT'R ON THE TRUST TERRITORY OF THE PACIFIC ISLANDS 7.

185. *See* Visiting Mission Rep., *supra* note 168, at 48.

186. *Loc. cit.*

187. 26 U.N. GAOR, Spec. Supp. 1, U.N. Doc. S/10237 (1971).

188. In Japanese currency, this amounted to 1.8 million yen, approximately equivalent to $7 million at present valuations. *Supra* note 168, at 110.

189. Agreement with Japan concerning the Trust Territory of the Pacific Islands, April 18, 1969, [1969] 20 U.S.T. 2654, T.I.A.S. No. 6724. The treaty of peace with Japan envisaged the conclusion of such a special agreement concerning the property and claims of Micronesian residents against both Japan and the United States. *See* Treaty with Japan, *supra* note 4.

190. Mink, *supra* note 25, at 189.

191. U.N. Doc. S/10237, *supra* note 187, at 9.

192. Pub. L. No. 39, 92d Cong., 1st Sess., 85 Stat. 92, 50 App. U.S.C., §§ 2018 *et seq.* (1971).

claims before the end of 1976, because of its budgetary ceilings,[193] and a requirement that a Micronesian Claims Commission established for this purpose award compensation within these restrictions. Therefore, all cases present and future must be considered and disputes settled before payments can be disbursed. Although the law in no way prohibited speedy post-secure damages compensation, war claims must await passage of three more years, by which time many victims will either have died, or be too old to benefit therefrom.[194] Upon their return to New York in 1973, United Nations territorial observers termed any delay in the compensation of all Micronesians who suffered from World War II without having been parties thereof "wrong and unjust."[195] Any further postponement of congressional amendatory action[196] expediting the early payment of claims would add insult to injury in the minds of many claimants.

(3) An Evaluation—Crisis of Confidence

Years of activist military planning but indifferent civilan tutorship of a seemingly docile, acquiescent population voided an early opportunity for socializing a political elite receptive to both the international trustee's humanitarian aspirations and America's legitimate strategic concerns and military interests. Its unique genre of internationally sponsored dependency administration notwithstanding, the United States as trustee pursued its humanitarian obligations only as custodian. Specifcally, the deterioration of living conditions on Ebeye Island, a jerry-built bedroom community for Marshallese employees of the Armed Forces' Kwajalein Atoll missile testing facility[197] has reinforced the image of military self-interest throughout the trust territory, although this may have been offset somewhat by the Navy's Civic Action Teams (SeaBees or construction battalions), which drew praise from the Congress of Micronesia, touring United Nations observers, and the Trusteeship Council itself for their construction of roads, classrooms, dispensaries, and water-storage facilities.[198] Introduction of Peace Corps volunteers in 1966 and thereafter[199] has been perhaps America's most singly altruistic undertaking, although these young people have from time to time pointedly articulated the most visibly discrediting features of the American presence, in addition to their mission.

Whether these commendable activities will offset the sullied United States image among Micronesian political elites remains open. Years of Naval-civilian indifference, truncated precipitously after 1961 by a sudden swing

193. Twelve million dollars for war damages, and $20 million for post-secure damages.
194. Visiting Mission Rep., *supra* note 168, at 112.
195. *Loc. cit.*
196. U.N. Doc. 5/10976, *supra* note 181, at 10, 11.
197. Visiting Mission Rep., *supra* note 168, at 116-19.
198. *Id.* at 87, 88; U.N. Doc. 5/10976, *supra* note 181, at 54.
199. 1972 Ann. Rep. to the U.N. on the Ad. of T.T.P.I. 110.

towards activist policies, has engendered a revolution of rising expectations among the emergent, institutionalized political leadership over the issue of its future destiny. Development of a political consciousness among the early corps of Micronesian legislators after 1965 enabled the Congress' constantly changing membership to articulate largely justified misgivings over the sincerity of America's trusteeship commitment. As a result, political elites within Micronesia have occasionally disparaged the ambiguous American presence as a vote-garnering device, even at the expense of its legitimate but poorly expressed interest in their home islands and atolls. Having largely ignored its administrative dilemma in the first hopeful postwar years, the United States must politically account for this elision at a time when national values, always at variance globally, are shifting rapidly at home. America's delayed humanitarian response to its western Pacific war-orphans requires an evaluation of its overall commitment within the twin contexts of the 1947 Agreement and the United Nations Charter, given its uneven application of the former's provisions.

B. America's Humanitarian Obligations—Challenges to Its Security

(1) The 1947 Agreement as Bilateral, Creative of Rights and Duties

During spring 1947 Security Council debates on the draft agreement's acceptance, the American delegate countenanced a Soviet amendment reserving to the Council power to alter, supplement, and terminate clauses of the agreement by reminding its members that this was

> inconsistent with the bilateral conception of these agreements as laid down in the Charter, and therefore cannot be accepted. . . . [T]he draft trusteeship agreement is in the nature of a bilateral contract between the United States on the one hand and the Security Council on the other.[200]

The several trusteeship agreements' contractual nature stems from their conclusion between the various administering authorities concerned and the United Nations Organization. The International Court of Justice held in *Northern Cameroons* that

> the Trust Agreement was concluded by being embodied in a resolution of the United Nations Assembly and it has been common ground throughout the present case that the sole entities formally parties to it were the Administering Authority on the one hand and the United Nations represented by the General Assembly on the other.[201]

Kelsen even affirms their legal status as treaties: "These trusteeship agreements are treaties concluded by the United Nations on the on hand, and

200. 2 U.N. SCOR 415 (1947) (remarks of Amb. Warren R. Austin); 2 U.N. SCOR 476, 477 (1947) (remarks of Amb. Austin).

201. Case Concerning the Northern Cameroons (Cameroon v. United Kingdom); Preliminary Objections, [1963] I.C.J. 143.

the States competent to dispose of these territories on the other hand."[202] Parry, a more cautious observer, posits their obligatory power nevertheless by claiming that "[a] result of the consideration of Chapter XII of the Charter does not go beyond the conclusion that the 'trusteeship agreements' of which it speaks are instruments *sui generis*. Whatever their claim to be designated 'treaties,' they are without doubt acts in the law, creative of rights and duties."[203] Moreover, trusteeship agreements

> are drafted in the format of international treaties, they have been recorded in the United Nations Treaty Series and it has never been maintained by States that they are other than what they purport to be, namely, instruments governed by the rules of international law. Moreover, it is now settled beyond argument that the United Nations Organization is an international person with the capacity to enter into treaties.[204]

Therefore, the 1947 Agreement may be reasonably considered an instrument in international law concluded variously between the United States as Administering Authority and the Security Council as the appropriate organ of the United Nations[205] in a manner creative of rights and duties.

(2) Reinforcing Power of G.A. Res. 1514(XV)

At the end of their Fifteenth Session, the General Assembly's parliamentarialy informed collectivity of newly admitted countries adopted a resolution rendering political self-determination a compelling issue for the first time. Its accomplishment, the celebrated "Declaration on the Granting of Independence to Colonial Countries and Peoples"[206] proclaimed "the right to self-determination" for all peoples,[207] and a corresponding obligation of member states to transfer immediately all power to the people of the trust and non-self-governing territories.[208] It additionally prevailed on all states to observe "faithfully and strictly" provisions of the United Nations Charter among others on the basis of "equality, non-interference in the internal affairs of all States," and respect for the "sovereign rights of all peoples and their territorial integrity."[209] Moreover, inadequacy of political, economic, social, or educational preparedness could never serve as a "pretext" for delaying independence.[210]

Strongly identifying independence with self-determination, it most signifi-

202. KELSEN, *supra* note 20, at 602.
203. Parry, *The Treaty Making Powers of the United Nations*, 26 BRIT. Y.B. INT'L L. 108, 127 (1949).
204. Marston, *supra* note 154, at 11.
205. U.N. CHARTER, art. 83, sec. (1).
206. G.A. Res. 1514, 15 U.N. GAOR Supp. 16, at 66, U.N. Doc. A/4684 (1960) [hereinafter cited as G.A. Res. 1514(xv)].
207. *Id.* para. (2).
208. *Id.* para. (5).
209. *Id.* para. (7).
210. *Id.* para. (3).

candly ignored Charter safeguards for the domestic jurisdiction of states,[211] *e.g.*, self-government of dependent areas within large political entities, such as Guam, the United States Virgin Islands, and Puerto Rico. Indeed, the Assembly's Committee of Twenty-Four[212] recently adjudged United States Commonwealth of Puerto Rico, which possesses its own Constitution as a freely-associated state, an entity to which application of G.A. Res. 1514 (XV)[213] was valid,[214] although the relationship has remained legally constant since 1953.[215]

Despite Committee posturing, G.A. Res. 1514(XV) enjoys at least some status in international law. Scholarly speculation on the legal potency of early resolutions skirted a "rather futile controversy,"[216] limiting their significance in law.[217] Sloan, however, recognizes the legal effect of General Assembly recommendations only through the growth of customary rules of international law.[218] In later years, writers gradually accepted for resolutions various degrees of significance in customary law.[219] Expressly declaratory, G.A. Res. 1514(XV), "General Charter of Decolonization,"[220] stands out against the vast repertoire of its counterparts. Moreover, no apparent difference exists in the repertory of United Nations practice between the terms "declaration" and "recommendation."[221]

As late as 1964, other scholars accepted the conclusion that recommendations are not legally binding, possessing merely a political or moral value.[222]

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211. U.N. CHARTER, art. 2, para. (7).

212. Established in 1961, the "Special Committee on the Situation in Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples" originally possessed a roster of seventeen members. G.A. Res. 1654, 16 U.N. GAOR Supp. 16, at 65, U.N. Doc. A/5100 (1961). This increased by seven to twenty-four in 1962. UNITED NATIONS, THE U.N. & DECOLONIZATION 7 (1964). Strictly speaking, reference should be made to the "Committee of 22," as the United Kingdom and United States withdrew in 1971. U.N. Docs. A/8256 and A/8277 (1971).

213. G.A. Res. 1514(xv), *supra* note 206.

214. U.N. Doc. A/Ac.109/Pv.948 (1973).

215. That year, the General Assembly agreed that Puerto Rico had effectively exercised its right to self-determination upon selecting their particular constitutional and international status. G.A. Res. 748, 8 U.N. GAOR Supp. 17, at 25, 26, U.N. Doc. A/2630 (1953).

216. W. FRIEDMAN, CHANGING STRUCTURE OF INTERNATIONAL LAW 139 (1964).

217. *See generally* Sloan, *The Binding Force of a Recommendation of the General Assembly of the United Nations*, 25 BRIT. Y.B. INT'L L. 1 (1948) [hereinafter cited as Sloan]; Johnson, *Effect of Resolutions of the General Assembly of the United Nations*, 32 BRIT. Y.B. INT'L L. 47 (1955-56).

218. Sloan, *supra* note 217, at 18.

219. *See*, for example, Bleicher, *Legal Significance of Re-Citation of General Assembly Resolutions*, 63 AM. J. INT'L L. 444 (1969) [hereinafter cited as Bleicher].

220. Coret, *La Declaration de l'Assemblee Generale de l'ONU sur l'Octroi de l'Independence aux Pays et aux Peuples Coloniaux*, 15 REV. JUR. ET POL. D'OUTRE-MER 4, 599 (1961).

221. Rosenstock, *Declaration of Principles of International Law Concerning Friendly Relations: A Survey*, 65 AM. J. INT'L L. 713-15 (1971) [hereinafter cited as Rosenstock].

222. De Yturriaga, *Non-Self Governing Territories*, 18 Y.B. WORLD AFF. 178, 209-

Through its resolutions, the General Assembly can state but not modify the existing law—as can legislatures—to create new rules. Effects of its resolutions are not constitutive, but declaratory.[223] Drawing upon several Charter provisions, G.A. Res. 1514(XV) attempted to extend its obligations. In this regard,

> when the General Assembly draws up resolutions interpreting the Charter in quite extensive manner, prescribes that member states shall strictly observe their provisions and sets up a committee for their application, is it not attributing to itself something more than the functions of discussion, consideration, initiation of studies, promotion of international cooperation and recommendation, which is all that one finds mentioned in Articles 10 to 16 of the Charter?[224]

A member state is certainly not bound to comply with Assembly directives as such, but "when the majority in the Assembly asserts that there are obligations imposed by the Charter, the position of the dissenting State becomes somewhat delicate."[225]

Falk, however, attributes quasi-legislative force to resolutions of the General Assembly "[as] a middle position between a formally difficult affirmation of true legislative status and a formalistic denial of law-creating role and impact."[226] He argues that the nature of obligation in international law underlies any enquiry into the status of resolutions, pointing out a discernable trend from consent to consensus as the basis of international legal commitments.[227] However, Onuf found lacking any generalized community agreement on the inherent legal significance of particular resolutions.[228]

Gross' denial of the Assembly's law-creating power typifies his statement that self-determination

> is not or not yet one which can be characterized as based on customary international law. . . . On the contrary, the practice of decolonization is a perfect illustration of usage dictated by political expediency or necessity or sheer convenience. And, moreover, it is neither constant nor uniform.[229]

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210 [hereinafter cited as DeYturriaga]; G. SCHWARTZENBERGER, MANUAL OF INTERNATIONAL LAW 279 (1960); Vollat, *Competence of the United Nations General Assembly*, 97 RECUEIL DES COURS DE L'ACADEMIE DE DROIT INTERNATIONAL DE LA HAYE 203 (1959).

223. Sorensen, *Principes de Droit International Publique*, 101 RECUEIL DES COURS DE L'ACADEMIE DE DROIT INTERNATIONALE DE LA HAYE 150, (1960).

224. Waldock, *General Course on Public International Law*, 106 RECUEIL DES COURS DE L'ACADEMIE DE DROIT INTERNATIONAL DE LA HAYE 5, 17 (1962).

225. Waldock, quoted in DeYturriaga, *supra* note 222, at 211.

226. Falk, *On the Quasi-Legislative Competence of the General Assembly*, 60 AM. J. INT'L L. 782 (1966).

227. *Id.* at 784, 785.

228. Onuf, *Professor Falk on the Quasi-Legislative Competence of the General Assembly*, 64 AM. J. INT'L L. 349, 355 (1970).

229. Leo Gross, quoted in Emerson, *Self-Determination*, 65 AM. J. INT'L L. 459, 461 (1971) [hereinafter cited as Emerson].

Higgins asserts variously:

> The lack of a legislative competence in the Assembly does not . . . mean that [it] is incapable . . . of contributing to the development of customary international law. The resolutions and declarations of international organs, repeated with sufficient frequency and bearing the characteristic of *opinio juris*, can establish a general practice recognized as legal custom. . . . [Therefore], [w]hat is required is an examination of whether resolutions with similar content, repeated through time, voted for by overwhelming majorities giving rise to a general *opinio juris* have created the norm in question.[230]

If, then, the international community's standards of lawful behavior is crucial for determining new legal rules, how is the international community composed, and what portion of that collectivity may be excluded without impairing its overall unity?[231] G.A. Res. 1514(XV) was adopted by a vote of 97 to 0, with 4 abstentions,[232] including those major Powers possessing territorial jurisdictions. Again, the peoples or territories to which a right of self-determination operative in international law could apply must be worked out with at least reasoanble clarity.[233] Thus, the status of Biafrans or Ibos, the Baltic peoples, the Formosans, and so on falls short of this criterion.[234] (Self-determination of a trust territory peoples is on its face non-controversial.) The issue of consensus as one source of a resolution's status in international law depends moreover on its strength and continuity (*i.e.*, longevity). Thus, each such measure rests on its own merits, differing generically in kind. A declaration's principle aim, according to Castanada, "is to confirm the existence of customary rules or to express general principles of law. [Such] resolutions do not all have identical legal value."[235] They recognize and declare law only, consisting basically of either customary rules or general principles. Determining cases in doubt, they authoritatively verify whether a legal norm exists. Basic in the final analysis to the binding force of rules or principles that are "declared," "recognized," or "confirmed" by a resolution is their status as customary rules or general principles.[236] If these rules gradually acquire the widespread support of consensus, their candidacy for stature in at least customary international law is assured.

National and international tribunals have actually invoked such resolutions as proof of their legal character—among them, G.A. Res. 1514(XV),

230. Higgins, *The U.N. and Law Making: The Political Organ*, 64 AM. J. INT'L L. 37, 42-43 (1970).
231. Emerson, *supra* note 229, at 462.
232. R. HIGGINS, DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGAN OF THE UNITED NATIONS 102 (1963) [hereinafter cited as HIGGINS].
233. H. JOHNSON, SELF-DETERMINATION WITHIN THE COMMUNITY OF NATIONS 55 (1967).
234. Emerson, *supra* note 229, at 463.
235. J. CASTAÑADA, LEGAL EFFECTS OF U.N. RESOLUTIONS 165 (1969).
236. *Id.* at 165, 168, 169, 172.

whose provisions possess varying degrees of customary legal validity. As its inexorable goal, independence has become a short-term imperative. The Declaration "symbolizes and concretizes a new politico-juridical conception: the definite repudiation and end of colonialism."[237] Through at lest the first six sessions following its passage, the Assembly re-cited G.A. Res. 1514 (XV) textually in ninety-five subsequent measures; the greatest number and highest average of such citations per session.[238] Bearing this in mind, elaboration in specific terms of a Charter obligation may link such a resolution with unquestionably binding sources of law.[239] Abstention by a state is treated without injustice as acquiescence in obligations specified on the basis that any real demurrer could have been equally expressed.[240] Thus, the United States is bound equally with states voting for G.A. Res. 1514 (XV).[241] Moreover, a given resolution's frequent recitation indicates embodiment of a firm communal view rather than an emphemerality of General Assembly politics.[242]

Frequent references accorded G.A. Res. 1514(XV) gave no sign of tapering off during the General Assembly's Twenty-First Session in 1966. Again, the implicit source of rules set forth therein is the Charter itself, including within its scope four of the declaration's seven substantive paragraphs. The wording of the measure clearly indicates that the roots of the measure lie in the founding document itself. For instance, both paragraphs (a) and (b) of article 73 of the United Nations Charter have inspired paragraph (b) of the measure, which derives its general principle that colonialism is unlawful.[243]

This controversial declaration's radical tone[244] appears at profound variance with a more temperate General Assembly resolution approved the very next day, adopting a treble choice of self-determination-independence, free association with a metropolitan state, or absorption within its boundaries.[245] Indeed, the Puerto Rican-United States relationship together with that of the Cook Islands and New Zealand can be described as voluntary, Committee of Twenty-Four action notwithstanding. A decade later, the Assembly demonstrated once more a flexible attitude on the lingering issues of decolonization and self-determination. Apparently to weaken the Committee of Twenty-Four's identification of self-determination only with independ-

237. *Id.* at 175.
238. Bleicher, *supra* note 219.
239. *Id.* at 448.
240. *Id.* at 449.
241. HIGGINS, *supra* note 232.
242. Bleicher, *supra* note 219, at 453.
243. *Id.* at 472.
244. *See* note 208 *supra* & accompanying text.
245. G.A. Res. 1541, 15 U.N. GAOR Supp. 16, at 27, U.N. Doc. A/4684 (1960). This weaker counterpart of the previous decolonization measure served, in fact to justify censure of Portugal's colonial rule in Africa and elsewhere. [1960] Y.B. OF THE U.N. 504-13.

ence, the world organization's central body declared in 1970 as a legitimate outcome of self-determination "free association or integration with an independent state or the emergence into any other political status freely determined by a people [which constitutes] modes of implementing the right of self-determination by that people."[246] According to Rosenstock, this declaration, G.A. Res. 2625(XXV), has emerged more as a statement of binding rules rather than a mere recommendation, although it includes elements of both.[247] Upon their acceptance of the 1970 measure, subscribing states automatically acknowledged its principles as interpretations of Charter obligations.[248] Furthermore, reliance upon "should" rather than "shall" when they intended to speak *de lege ferenda*[249] or stating mere *desiderata* further supports the view that the states concerned intended to effect binding rules of law where they used language of firm obligation.[250] Having adopted a more flexible posture on at least the universe of possible self-determinative outcomes, G.A. Res. 2625(XXV) has nevertheless failed to dampen the now broadly based Committee of Twenty-Four's anti-colonial offensive. Its application of G.A. Res. 1514(XV) to *el Estado Libre Associado de Puerto Rico*—well on the heels of the tripartite declaration—betrays the prevalence of radical Assembly politics over thoughtful moderation, an undoubted reason for its limited influence among the central organ's more powerful members. For example, the Committee's Subcommittee II unsuccessfully asked the United States in 1966 to receive its own Pacific Islands visiting mission,[251] and has taken no action on that particular trust area since then.

Security Council oversight regarding strategic trust affairs notwithstanding,[252] paragraph (5) of the 1960 Declaration generically embraces the various peoples of the Pacific Islands. Yet, this measure must be reconciled with its more flexibly-worded successors, G.A. Res. 1541(XV) and G.A. Res. 2625(XXV). This can be done, even if Bleicher's selective interpretation of the declaration stating the customary legal prescription that "colonialism is unlawful"[253] is read as outlawing alien subjugation, domination, and exploitation generally.[254] To that extent, G.A. Res. 1514(XV) effectively directs the United States to terminate its twenty-seven year trusteeship for the Pacific Islands with all deliberate speed. Moreover, it may so proceed

246. G.A. Res. 2625, 25 U.N. GAOR Supp. 28, at 121, U.N. Doc. A/8028 (1970).
247. Rosenstock, *supra* note 221, at 714-15.
248. Vienna Convention on the Law of Treaties, U.N. Doc. A/Conf. 39/27 (1969), arts. 1, 3. Printed in 63 AM. J. INT'L L. 875 (1969).
249. In English: "for suggesting law."
250. Rosenstock, *supra* note 221, at 715.
251. 3 U.N. Month. Chron., October, 1966, at 29, 30.
252. U.N. CHARTER, art. 83, sec. (2). The Security Council has long since delegates its powers to the Trusteeship Council. Indeed, the former has not debated issues affecting the Pacific Islands trust territory since the mid-1950's.
253. Bleicher, *supra* note 219. *See* notes 238, 243 *supra* & accompanying text.
254. G.A. Res. 1514(XV), *supra* note 206, at para. (1).

according to its own methods and timetable within the constraints of good faith. Tripartite self-determination applies as well. The United States Deputy Representative for Micronesian Status Negotiations recently discounted legal arguments as important factors in trusteeship termination talks with Micronesian leaders favoring a "pragmatic" political consideration—how to realize the freely-expressed will of those concerned.[255] This "political" issue is nevertheless subject to the prohibition of G.A. Res. 1514(XV) against alien subjugation and the like as inconsistent with customary law at the present time. To be sure, equal application of the 1947 Agreement's strategic and humanitarian provisions has not been forthcoming.

In that regard, the 1947 Agreement charges the Administering Authority with the legal duty[256] to promote Micronesians either towards self-government or independence, as appropriate.[257] Authority to conclude trusteeship agreements resides in the Charter.[258] Moreover, G.A. Res. 1514(XV) compels member states to observe "faithfully and strictly" United Nations Charter provions.[259] It is not inconceivable that the Committee of Twenty-four could in the future initiate an active enquiry into the Pacific Islands, should certain political conditions prevail, including Soviet Committee support (assuming detente proves fleeting or unreliable) and a rising Micronesian demand for the precipitate liquidation of dependent status.

(3) A Final Observation

America's failure to apply equally the 1947 Agreement's variously constituted provisions will increasingly nourish political alienation throughout its trusteed Pacific Islands, further discrediting its already clouded reputation as a staunch guardian of international morality. Were the imbalance of United States policy towards the Territory's hapless wards to characterize its numbered days in the strategically important Pacific Islands, any claim it may prosecute for continuing military security will be lost in the furor of global condemnation. A community of interests protective both of Micronesian well-being and America's unabating security interest must evolve. One observer wrote in 1947—at the inception of the United States strategic trust venture:

> We need not only outposts of military defense; even more we need outposts of human loyalty.[260]

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255. Statement of James N. Wilson, Jr., U.S. Deputy Representative for Micronesian Status Negotiations, Before the 1973 Annual Convention of the American Society of International Law, April 12, 1973, at the Statler Hilton Hotel, Washington, D.C.; to be published in 1973 AM. SOC'Y INT'L L. PROC.

256. The 1947 Agreement is an act in international law creative of rights and duties. *See* pt. III, *B*, (1), *supra*.

257. 1947 Agreement, *supra* note 3, art. 6, sec. (1).

258. U.N. CHARTER, art. 75 *et seq.*

259. G.A. Res. 1514(xv), *supra* note 206, at para. (6).

260. Kennedy, *American Interest in the Social and Political Future of the Pacific Peoples*, in J. VINCENT, AMERICA'S FUTURE IN THE PACIFIC 42 (1947).