ARTICLE 82

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TEXT OF ARTICLE 82

There may be designated, in any trusteeship agreement, a strategic area or areas which may include part or all of the trust territory to which the agreement applies, without prejudice to any special agreement or agreements made under Article 43.

INTRODUCTORY NOTE

1. Article 82 makes permissible the inclusion in any Trusteeship Agreement of a clause designating the Territory to which the Agreement relates, or any part thereof, as a strategic area to which the provisions of Article 83 shall apply. Such designation is without prejudice to any special agreement or agreements made under Article 43.

2. Since the text is of a formal permissive character, and inasmuch as Article 43 has not yet been implemented, Article 82 has raised few questions.

3. Only two questions have arisen in connexion with Article 82 and they are dealt with in the Analytical Summary of Practice. These concern (1) the criteria which may be used for determining an area or Territory to be strategic, and (2) the procedure for so designating it. No specific criteria have, in fact, been adopted and, in the sole instance in which Article 82 has been applied, action was initiated by the Member State submitting the draft Trusteeship Agreement for the Territory deemed to be a strategic area. The designation of the Territory as a strategic area was approved by the Security Council under Article 83 as part of the terms of the Agreement. Since there has been no instance where a Trusteeship Agreement concluded under Article 85 has been modified so as to include a strategic area within a Trust Territory not designated as a strategic area under trusteeship, no questions related thereto have arisen.

4. The application of the Trusteeship System to the one strategic area placed under that System is dealt with in this Repertory under Article 83.

I. GENERAL SURVEY

5. Article 82 has been applied in only one case, namely, the Trusteeship Agreement for the Trust Territory of the Pacific Islands (the former Japanese Mandated Islands). On that occasion a draft Agreement designating the Territory as a strategic area was submitted directly to the Security Council by the United States. 1/ There was no discussion regarding the appropriateness of that designation, which the Security Council formally endorsed by its approval of article 1 of the Agreement. 2/

1/ S C, 2nd yr., Suppl. No. 8, annex 17 (S/261).
2/ S C, 2nd yr., No. 31, 124th mtg., p. 659.
II. ANALYTICAL SUMMARY OF PRACTICE

A. The criteria for designating a strategic area

6. Article 82 does not state what constitutes a strategic area and the practice of the various organs of the United Nations sheds little light on this question. In the only case in which a Territory to be placed under the International Trusteeship System was designated as a strategic area, namely, the former Japanese Mandated Islands, the reasons adduced were (1) the fact that the islands were important for international security in the Pacific as demonstrated by their strategic role during the Second World War and (2) the fact that the islands constituted an integrated physical complex vital to the security of the United States.

7. The only action which did have a bearing on this question was the rejection by a majority of the Fourth Committee of amendments to the draft Trusteeship Agreements for the non-strategic areas of Western Samoa, New Guinea, and the African territories formerly under mandate. Those amendments would have had the effect of providing that the establishment of military bases and fortifications in the Trust Territories should be subject to the approval of the Security Council under Article 83. The Fourth Committee, by approving the provisions of the draft Trusteeship Agreements which entitled the Administering Authorities to establish such bases and fortifications, determined that these would not ipso facto create strategic areas. The decision of the Fourth Committee was endorsed by the General Assembly when the latter rejected a draft resolution calling upon it to withhold its approval of the draft Trusteeship Agreements on the grounds that inclusion of the right to establish military bases was contrary to Article 83.

B. The procedure for designating a strategic area

8. Article 82 provides for the designation of a strategic area or areas in any Trusteeship Agreement, but does not prescribe a procedure for initiating action under Articles 82 and 83 whereby a Territory may be so designated.

9. In the case of the Trust Territory of the Pacific Islands, which constitutes the only precedent, action was initiated by the United States, which submitted a draft Trusteeship Agreement to the Security Council. Since article 1 of that Agreement designated the Trust Territory as a strategic area, the adoption by the Security Council of that article constituted approval of that designation.

10. In the case of the former mandated territories in Africa, the Trusteeship Agreements contain specific provisions safeguarding the right of the Administering Authorities to propose, at any future date, the amendment of the Agreements for the purpose of designating the whole or part of the Territories concerned as strategic areas.

4/ G A (I/2), 4th Com., part I, 23rd mtg., p. 144; G A (II), 4th Com., 46th mtg., p. 104.
6/ For a detailed discussion of this question see in this Repertory under Article 84.
7/ G A (I/2), Plen., 62nd mtg., p. 1286.
9/ S C, 2nd yr., No. 31, 124th mtg., p. 659.
areas. 10/ Similar provisions are not included in the Agreements for Western Samoa, New Guinea and Nauru. The Trusteeship Agreement for Somaliland under Italian administration provides that the Agreement shall not be altered or amended except as provided in Articles 79 and 85 of the Charter. 11/