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TEXT OF ARTICLE 83

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

2. The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.

3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas.

INTRODUCTORY NOTE

1. Article 83 (1) and (3) provide the authority under which the Security Council and the Trusteeship Council perform their respective functions in regard to strategic areas under the Trusteeship System. In this respect these paragraphs are the counterpart of Article 85, which provides the authority for the actions of the General Assembly and the Trusteeship Council in regard to Territories under trusteeship other than strategic areas. Article 83 (2), however, relates to the objectives of Article 76 and, therefore, raises separate problems.

2. Article 83 (1) provides that all functions of the United Nations with respect to strategic areas shall be exercised by the Security Council, and Article 83 (3) provides that in performing certain of these functions the "Security Council shall ... avail itself of the assistance of the Trusteeship Council". In the application of Article 83, the problem of determining the constitutional relationship between the two Councils, and more specifically, the nature of the assistance to be provided by the Trusteeship Council, has arisen.

3. The General Survey gives a brief account of the implementation of Article 83.

4. The Analytical Summary of Practice contains a description of the principal questions which have arisen in connexion with the application of Article 83, together with a summary of illustrative material from the proceedings of the two Councils which have a bearing on the interpretation of that Article.

5. The questions are discussed in relation to the corresponding passages of Article 85. Thus, section A of the Analytical Summary deals with the scope of the functions of the United Nations relating to strategic areas under trusteeship, and serves as a preface to sections B and D, which discuss the actual performance of those functions.

6. Section C relates directly to Article 83 (2), which refers to the question of the applicability of the provisions of Article 76 to strategic areas under trusteeship.
I. GENERAL SURVEY

7. The most significant instances of the application of Article 83 are the decisions taken by the Security Council with regard to the approval of the Trusteeship Agreement for the Trust Territory of the Pacific Islands, and the decisions taken by the Security Council and the Trusteeship Council with respect to the constitutional relationship between them. The last-named decisions are embodied in the Security Council resolution of 7 March 1949 (S/1280) and Trusteeship Council resolution 46 (IV), respectively.

8. In implementation of Article 83 (3) and of the agreed procedure set forth under the two resolutions, the Trusteeship Council, since March 1949, has performed the functions described in Articles 87 and 88 in respect of the Trust Territory of the Pacific Islands, transmitting the provisional and revised questionnaires and the annual reports of the Administering Authority to the Security Council. Since the approval of the Trusteeship Agreement, and the adoption of its resolution of 7 March 1949, the Security Council has taken no further decisions under the terms of Article 83.

II. ANALYTICAL SUMMARY OF PRACTICE

A. The functions of the United Nations relating to strategic areas under trusteeship

9. In the only Trusteeship Agreement relating to a strategic area which has been approved, namely the Agreement for the Trust Territory of the Pacific Islands, it is stated that the provisions of Articles 87 and 88 which set forth the functions and powers of the United Nations in respect of Trust Territories other than strategic areas, would be generally applicable, subject to the reservation that the Administering Authority might determine the extent of their applicability to any areas which might, from time to time, be specified by it as closed for security reasons. The representative of the Administering Authority stated, however, in submitting the draft Agreement that, in his opinion, the application of Articles 87 and 88 to the whole of the Trust Territory of the Pacific Islands went beyond the requirements of the Charter relating to strategic areas.

10. Nevertheless, when the Security Council considered the question of implementing Articles 87 and 88 in respect of the above Agreement, it in fact determined procedures for their application in respect of all strategic areas under trusteeship. Although there was some disagreement in both the Security Council and the Trusteeship Council as to which of the two bodies should exercise the functions enumerated in Articles 87 and 88, with respect to strategic areas, there was no disagreement concerning the functions themselves.

11. Subject to the provisions of this Trusteeship Agreement and also to any special limitation of its application by the Security Council for reasons of security, the functions of the United Nations described in Articles 87 and 88 are applicable to the one strategic area now under trusteeship.

1/ S/1280.
2/ For the discussion of the question of the determination of a strategic area, see in this Repertory under Article 82.
4/ S C, 2nd yr., No. 20, 113th mtg., p. 412.
5/ S C resolution of 7 March 1949 (S/1280).
6/ See paras. 27-39 below.
12. The only restriction \(^{1/}\) which has been imposed under the terms of article 13 of the Agreement has been upon the admission of periodic visiting missions provided for in Article 87 c to the two atolls of Eniwetok and Bikini. In neither case has the Security Council considered the action taken by the Administering Authority, although in each case the Administering Authority has given due notice of the imposition of such restrictions.

B. Questions relating to the approval of the terms of Trusteeship Agreements for strategic areas and of their alteration or amendment

1. Competence of the Security Council to make the date of entry into force of a Trusteeship Agreement approved by it dependent upon action by another body

13. During the discussion by the Security Council of the draft Trusteeship Agreement for the Trust Territory of the Pacific Islands (the former Japanese Mandated Islands) the question arose whether the Council could make the date of entry into force of the Agreement approved by it dependent upon the date on which the treaty of peace with Japan became binding. The views expressed by members of the Council on this question are summarized below.

14. It was argued \(^{2/}\) on the one hand that the final disposal of the former Japanese Mandated Islands formed part of the peace settlement with Japan and that the approval of the Trusteeship Agreement by the Council should not become effective prior to the conclusion of the peace treaty. On the other hand, it was maintained \(^{2/}\) that Japan had already forfeited its rights under the mandate and that, therefore, the Council had the authority to dispose of the Territory as a strategic area under the International Trusteeship System without awaiting the peace treaty.

15. In support of the first view, it was proposed \(^{10/}\) that the draft Agreement be amended by the inclusion of a provision to the effect that the Agreement would enter into force on the date on which the treaty of peace with Japan became effective. Since there was no constitutional objection to article 16 of the draft Agreement, which provided that the Agreement should not enter into force until approved by the United States Government after due constitutional process, there could likewise be no constitutional objection to making the date of its entry into force dependent on some other event.

16. The amendment was opposed \(^{11/}\) on the grounds that the inclusion in the Agreement of a clause making the date of its coming into effect dependent upon action by another body would place a limitation on the jurisdiction and competence of the Security Council under Article 83 (1). It was held \(^{12/}\) that there was no similarity between the provision of article 16 of the Agreement and the proposed amendment since the former related to the procedure necessary for approval by one of the parties to the Agreement and the latter related to action by a body which was not a party to the Agreement.

\(^{1/}\) S C, 2nd yr., Suppl. No. 20, p. 169, S/613; S/2978.

\(^{2/}\) S C, 2nd yr., No. 29, 116th mtg., pp. 464–466; No. 26, 119th mtg., p. 520. A similar opinion was later expressed by one of the States members of the Far Eastern Commission which were invited to participate in the discussion, without vote, under Article 31 (S C, 2nd yr., No. 30, 123rd mtg., p. 630).

\(^{10/}\) Ibid., p. 521

\(^{11/}\) Ibid., pp. 524, 525, 530, 538 and 540. See also S C, 2nd yr., No. 30, 123rd mtg., pp. 633–635.

\(^{12/}\) Ibid., p. 525.
17. The proposed amendment was subsequently withdrawn in the interests of a unanimous decision and following a decision by the Council to extend an invitation to the States members of the Far Eastern Commission (States which had participated in the war with Japan) to participate in the discussion, without vote, under Article 51 of the Charter.\textsuperscript{13}

2. Competence of the Security Council to propose amendments to a draft Agreement submitted for its approval

18. No doubt has been expressed in the Security Council regarding the competence of the Council to propose amendments to a draft Trusteeship Agreement submitted for its approval under Article 83 (1). In fact, during the discussion of the draft Trusteeship Agreement for the Trust Territory of the Pacific Islands, a number of amendments submitted by various delegations were approved\textsuperscript{14} by the Council and accepted by the Administering Authority.

19. In connexion with two proposed amendments which were not acceptable to his Government, the representative of the Administering Authority stated\textsuperscript{15} that he would not vote against them because he did not consider it proper to exercise the veto in a case where his Government appeared to be acting in a dual capacity, both as a permanent member of the Security Council and as a party to the Agreement. His Government could, nevertheless, withdraw the draft Agreement if the Council adopted the proposed amendments. In fact, both amendments were rejected.\textsuperscript{16}

3. Competence of the Security Council with respect to alteration, amendment or termination of an Agreement which it has approved

20. In the course of the discussion by the Security Council of the draft Trusteeship Agreement for the Trust Territory of the Pacific Islands, the question arose whether the powers conferred upon the Council by Article 83 (1) included the power to alter, amend or terminate an Agreement by its own decision after the Agreement had been approved.

21. The text of the draft Agreement\textsuperscript{17} as submitted for the approval of the Security Council provided in article 15 that the terms of the Agreement should not be altered, amended or terminated without the consent of the Administering Authority. One member of the Council stated\textsuperscript{18} that this formula placed a limitation upon the rights of the Security Council under Article 83 (1). It was his view that since the Council had the right to approve and amend draft Agreements for strategic areas, no one could deny that it had the same rights under that Article in respect of the Agreements after they had been approved. He therefore proposed an amendment\textsuperscript{19} to article 15 of the Agreement to the effect that the terms of the Agreement might be altered or amended, or the term of its validity discontinued, by the decision of the Security Council. Other members of the Council were of the view,\textsuperscript{20} however, that the proposed amendment would cause the Security Council to exceed its powers and that, as in the case of Trusteeship

\textsuperscript{13} See in this Repertory under Article 31.
\textsuperscript{14} S C, 2nd yr., No. 31, 124th mtg., pp. 658-680.
\textsuperscript{15} Ibid., pp. 665 and 670.
\textsuperscript{16} Ibid., pp. 666 and 679.
\textsuperscript{17} S C, 2nd yr., Suppl. No. 8, annex 17 (S/281).
\textsuperscript{18} S C, 2nd yr., No. 31, 124th mtg., pp. 671 and 672.
\textsuperscript{19} S C, 2nd yr., No. 20, 113th mtg., p. 415.
\textsuperscript{20} S C, 2nd yr., No. 31, 124th mtg., pp. 670-672 and 675.
Agreements for areas other than strategic, the consent of the Administering Authority was required for any modification of the Agreement or for its termination. The proposed amendment was rejected and the original text of article 15 was retained without modification. 22/

C. The question of the application of the basic objectives set forth in Article 76 to strategic areas under Trusteeship

22. Article 83 (2) provides that the basic objectives of the Trusteeship System set forth in Article 76 shall be applicable to the people of each strategic area.

23. In the course of the discussion by the Security Council of the draft Trusteeship Agreement for the Trust Territory of the Pacific Islands, the question arose whether Article 83 (2) should be interpreted to mean that all the provisions of Article 76 were applicable to strategic areas, or only those provisions relating to the welfare and advancement of the inhabitants. The draft Agreement itself provided for the application of all the provisions of Article 76 with the exception of the provision in Article 76 relating to equal treatment in economic and commercial matters for all Members of the United Nations and their nationals. Article 8 (1) of the draft Agreement provided for equality of treatment for the nationals and companies of all Member States except the Administering Authority.

24. One member of the Council took the view that this inclusion of a "most-favoured nation" clause was incompatible with Article 76 and Article 83 (2) and submitted an amendment to the draft Agreement providing for its omission. Another member of the Council expressed some doubt as to whether Article 83 (2) in fact meant that the rule of equality of treatment for all Member States provided for in Article 76 was applicable to strategic areas and, therefore, while voting against the amendment, reserved the position of his delegation on the question of interpretation.

25. The representative of the Administering Authority opposed the amendment on the grounds that Article 83 (2) referred specifically to the people of the strategic area, and did not require the application of those provisions of Article 76 which did not relate to the people of the Territory. In a strategic area, the security objective must be an overriding consideration. The limitation of the provisions of Article 76 contained in article 8 (1) of the Agreement was based on considerations of security and was considered essential by the Administering Authority. He intimated that the

21/ S C, 2nd yr., No. 31, 124th mtg., p. 679.
22/ In the course of the debate one member expressed doubt whether the relevant provisions of any of the Trusteeship Agreements conformed with Article 79 which required that any alteration or amendment of the Agreements should be agreed upon by the States directly concerned. See in this Repertory under Article 79.
23/ S C, 2nd yr., Suppl. No. 8, annex 17 (S/281), articles 5 to 8.
24/ The text of article 8 (1) of the Agreement reads as follows: "In discharging its obligations under Article 76 d of the Charter,... the Administering Authority, subject to the requirements of security and the obligation to promote the advancement of the inhabitants, shall accord to nationals of each Member of the United Nations and to companies and associations organized in conformity with the laws of such Members, treatment in the Trust Territory no less favourable than that accorded therein to nationals, companies and associations of any other United Nation except the Administering Authority."
25/ S C, 2nd yr., No. 31, 124th mtg., p. 662.
26/ Ibid., p. 663.
27/ Ibid., pp. 663-665.
Administering Authority might withdraw the tender of an agreement if the proposed amendment was adopted.

26. The proposed amendment was rejected and the text of article 5 (1) of the Agreement as submitted was adopted 28/ without modification.

D. The question of the assistance to be given by the Trusteeship Council to the Security Council in the exercise of its functions under the Trusteeship System

27. Although Article 83 (1) provides that all functions relating to strategic areas shall be exercised by the Security Council, Article 83 (5) qualifies this by providing that, subject to certain reservations, the Security Council shall avail itself of the assistance of the Trusteeship Council to perform those functions under the Trusteeship System which relate to political, economic, social and educational matters in the strategic areas. The problems raised by the interpretation of these two passages and the determination of the constitutional relationship between the two Councils were resolved when the Security Council adopted its resolution of 7 March 1949 29/ together with the interpretation 30/ given to that resolution by the Trusteeship Council. The position was further clarified by the Trusteeship Council in its resolution 31/

28. Provision was made for the Trusteeship Council to exercise certain functions in the supervision of strategic areas under trusteeship in the draft rules of procedure 32/ prepared for the Council by the Preparatory Commission. They provided that (a) subject to the terms of the Trusteeship Agreements, the Trusteeship Council might examine petitions from strategic areas (rules 41, 42 and 43), (b) at the request of the Security Council, it might study documents relating to strategic areas, make provision for periodic visits and submit reports to the Security Council (rules 38, 40, 54, 50 and 61) and (c) it should perform such other functions as might be provided for in the Trusteeship Agreements or as might be assigned to it by the Security Council (rule 58).

29. When these draft rules were examined 33/ by the Trusteeship Council, they were modified in the light of the relevant provisions of the Trusteeship Agreement for the Trust Territory of the Pacific Islands, which restricted the application of Articles 87 and 88 of the Charter in regard to areas declared closed for security reasons. As approved, the rules of procedure of the Trusteeship Council 34/ provided in regard to strategic areas that (a) the functions of the Council relating to the examination of petitions should be governed by Article 33 of the Charter and the terms of the relevant Trusteeship Agreements (rules 76, 85 and 88), (b) the Council should make provision for periodic visits to the Territories in accordance with Article 87 c and Article 83 (3) (rule 94), and (c) the Council might perform other functions at the request of the Security Council (rule 101).

30. Thus, the rules of procedure of the Trusteeship Council, although showing clearly that the Council expected to perform certain functions in regard to strategic areas under Article 83 (3), did not define its relationship with the Security Council in regard to trusteeship of strategic areas, or the precise scope of the powers of the Trusteeship

28/ S C, 2nd yr., No. 31, 124th mtg., p. 666.
29/ S/1280. See para. 34 below.
34/ See para. 36 below.
36/ I), Suppl., annex 2 (T/1).
36/ I), 15th mtg., pp. 368-381.
Council in that field. A subsequent resolution 35/ of the Trusteeship Council provided for consultation between the two Councils concerning the functions and responsibilities of the Trusteeship Council in respect of strategic areas under trusteeship. 36/

31. In the Security Council, the question of the interpretation of Article 83 (3), arose in connexion with the need to determine procedures for the implementation of article 13 37/ of the Trusteeship Agreement for the Trust Territory of the Pacific Islands. 38/ The Committee of Experts of the Security Council, to which this question was referred for study, 39/ decided, however, to recommend the adoption of a resolution applicable to strategic areas generally. 40/ In the course of the discussion by the Committee of Experts, it became apparent that there was a major difference of opinion concerning the interpretation of Article 83 (1) and (3). As a result of this disagreement, two draft resolutions 41/ were submitted to the Council. The first of these, supported by the majority of the Committee of Experts, provided in effect that the Security Council, while reserving to itself decisions on security matters, would request the Trusteeship Council to exercise the functions specified in Articles 87 and 88 relating to the advancement of the inhabitants of strategic areas under its supervision, and to submit its reports thereon to the Security Council. The second draft resolution, supported by two members, provided that the Security Council would itself exercise all functions of the United Nations relating to strategic areas under trusteeship and would avail itself of the assistance of the Trusteeship Council after having examined in each case separately the circumstances of the task to be performed.

32. The discussion of these two draft resolutions in the Security Council made it clear that the difference of opinion revolved around the interpretation of the words "shall... avail itself of the assistance" occurring in Article 83 (3). It was maintained 42/ that this paragraph placed an obligation upon the Security Council to avail itself of the assistance of the Trusteeship Council in the performance of those functions relating to political, economic, social and educational matters in strategic areas unless the provisions of Trusteeship Agreements or security considerations intervened. In rebuttal, it was contended 43/ that Article 83 (3) was permissive and simply empowered the Security Council, which, under the Article, was required to exercise all functions of the United Nations relating to strategic areas, to avail itself of the assistance of the Trusteeship Council, in case of need, to carry out specific tasks and assignments. Furthermore, the terms of the draft resolution

35/ T C resolution 10 (II).
36/ T C (II/1), 16th mtg., pp. 581-593.
37/ Article 13 reads as follows: "The Provisions of Articles 87 and 88 of the Charter shall be applicable to the Trust Territory provided that the Administering Authority may determine the extent of their applicability to any areas which may from time to time be specified by it as closed for security reasons".
39/ Ibid., p. 2763.
41/ Ibid., pp. 9 and 10.
42/ S C, 3rd yr., No. 87, 324th mtg., pp. 9, 11, 13 and 14; S C, 4th yr., No. 18, 415th mtg., pp. 3 and 4. One member stated that under the terms of the draft resolution supported by the majority of the Committee of Experts, the Security Council would retain full and ultimate responsibility for all action which the United Nations might take in regard to strategic areas; the Trusteeship Council would merely act on behalf of the Security Council and the latter would retain its right to make further requests and recommendations to the Trusteeship Council on any matters dealt with in the draft resolution (S C, 4th yr., No. 18, 415th mtg., pp. 2 and 3).
43/ S C, 3rd yr., No. 87, 324th mtg., pp. 2, 6 and 12.
supported by the majority of the Committee of Experts were unacceptable on the grounds that they would have the effect of defining the relationship between the Security Council and the Trusteeship Council in regard to all strategic areas which might be placed under trusteeship.

33. In the meantime, in view of Trusteeship Council resolution 10 (II) which provided for consultation between the two Councils concerning the functions of the Trusteeship Council in respect of strategic areas under trusteeship, the Security Council had appointed a committee consisting of its President and two other members to meet with a similar committee of the Trusteeship Council for the purpose of obtaining the views of the Trusteeship Council on the matter. As the result of these consultations the Security Council was informed that, except for one member, the Trusteeship Council found the draft resolution supported by the majority of the Committee of Experts acceptable, its acceptance being based, however, upon a specific interpretation of certain provisions of the draft resolution.

34. The Security Council adopted both the draft resolution proposed by the Committee of Experts and the interpretation given it by the Trusteeship Council. The draft resolution, which was adopted by 8 votes to none, with 3 abstentions (one abstention being that of a permanent member), provided as follows:

"The Security Council

"Resolves:

"1. That the Trusteeship Council be requested, subject to the provisions of trusteeship agreements or parts thereof, in respect of strategic areas, and subject to the decisions of the Security Council made having regard to security considerations from time to time, to perform in accordance with its own procedures, on behalf of the Security Council the functions specified in Articles 87 and 88 of the Charter relating to the political, economic, social and educational advancement of the inhabitants of such strategic areas.

"2. That the Trusteeship Council be requested to send to the Security Council, one month before forwarding to the Administering Authority, a copy of the questionnaire formulated in accordance with Article 88 of the Charter and any amendments to such questionnaire which may be made from time to time by the Trusteeship Council.

"3. That the Secretary-General be requested to advise the Security Council of all reports and petitions received from or relating to strategic areas under trusteeship, and to send copies thereof, as soon as possible after receipt, to the Trusteeship Council for examination and report to the Security Council.

44/ S C, 4th yr., No. 18, 415th mtg., pp. 8 and 9.
45/ S C, 3rd yr., No. 87, 324th mtg., p. 17.
46/ S C, 4th yr., Suppl. for March, p. 1, S/916. See also T C (III), 9th mtg., pp. 111-117 and 10th mtg., pp. 118-125.
47/ One member abstained on the grounds that the resolution did not go far enough in recognizing the "essential competence" of the Trusteeship Council to supervise the measures taken to further the welfare of the inhabitants of the Trust Territories (S C, 4th yr., No. 18, 415th mtg., pp. 10 and 11).
"4. That the Trusteeship Council be requested to submit to the Security Council its reports and recommendations on political, economic, social and educational matters affecting strategic areas under trusteeship." 48/

35. The interpretation 49/ of the above-cited resolution given by the Trusteeship Council and endorsed 50/ by the Security Council contained the considerations set forth below. (1) The Security Council would have power to alter or amend the Questionnaire only for security reasons and the Trusteeship Council would not be obliged to accede to requests for amendments not based on security reasons. (2) The Trusteeship Council would have the duty to examine all reports and petitions received from strategic areas, which did not involve security considerations, in accordance with its normal procedure and to report thereon to the Security Council, it being understood that, since the latter would be advised of all such reports and petitions upon their arrival, it would have ample opportunity to forestall any action by the Trusteeship Council on any report, petition or part thereof which involved security considerations.

36. Subsequently, at its fourth session, the Trusteeship Council formally resolved to undertake the functions ascribed to it under Article 83 (3) when it adopted a resolution, 51/ the operative part of which reads as follows:

"Decides to undertake, in accordance with Article 83 (3) of the Charter and in the light of the Security Council's resolution and the interpretation given to it by the Trusteeship Council, those functions of the United Nations under the International Trusteeship System relating to political, economic, social and educational matters in the strategic areas under trusteeship;

"Decides to transmit to the Security Council a copy of the Provisional Questionnaire adopted by the Trusteeship Council at the 25th meeting of its first session for its consideration in accordance with paragraph 2 of the above-mentioned resolution;

"Requests the Secretary-General, if no observations are made by the Security Council within one month, to transmit the Provisional Questionnaire to the Government of the United States of America as the Administering Authority for the Trust Territory of the Pacific Islands."

37. In accordance with the Security Council resolution of 7 March 1949 and Trusteeship Council resolution 46 (IV), the Secretary-General, at the request of the Trusteeship Council, transmitted the Provisional Questionnaire to the Security Council. The latter having made no observations on the document, after a period of one month it was transmitted to the United States as Administering Authority of the Trust Territory of the Pacific Islands. On 24 July 1953, following the same procedure, the revised Questionnaire was also transmitted to the Security Council before being sent to the Administering Authority.

38. Since the adoption of these resolutions, and in accordance with them, the Trusteeship Council has performed the functions specified in Articles 87 and 88 in respect of the Trust Territory of the Pacific Islands. The Council has examined the relevant reports of the Government of the United States on its administration of that Territory at its fifth, seventh, eighth, tenth, twelfth and fourteenth sessions. By

48/ S/1280.
49/ S C, 4th yr., Suppl. for March, pp. 2-4, S/916.
50/ S C, 4th yr., No. 18, 415th mtg., p. 9.
51/ T C resolution 46 (IV).
the end of the fourteenth session, the Council had examined twenty-eight petitions from that Territory and had adopted resolutions pertaining thereto. The Council has also dispatched two visiting missions to the Territory, in 1950 and 1953. The reports of the visiting missions were submitted to it at its eighth and twelfth sessions.

39. At each of the sessions referred to above, the Trusteeship Council prepared a report on the exercise of its functions in respect of strategic areas under trusteeship for transmission to the Security Council. The reports were transmitted to the members of the Security Council for information, and were not considered by the Council.

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52/ T C (VIII), Suppl. No. 2 (T/897) and T C (XII), Suppl. No. 3 (T/1077).  