

ARTICLE 76

CONTENTS

	<i>Paragraphs</i>
Text of Article 76	
Introductory note	1-2
I. General survey	3-7
II. Analytical summary of practice.	8-33
A. Question of the progressive development towards self-government or independence in the Trust Territory	8-26
B. Question of human rights in the Trust Territory	27-33

ARTICLE 76

TEXT OF ARTICLE 76

The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

- (a) To further international peace and security;
- (b) To promote the political, economic, social and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;
- (c) To encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion, and to encourage recognition of the interdependence of the peoples of the world; and
- (d) To ensure equal treatment in social, economic and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

INTRODUCTORY NOTE

1. During the period under review, the Trusteeship Council focused attention on the attainment by the only remaining Trust Territory, the strategic Trust Territory of the Pacific Islands, of the ultimate objective of the international trusteeship system as set out in Article 76*b* of the Charter, namely self-government or independence. In pursuit of that objective, the Trusteeship Council adopted a number of conclusions and recommendations which, together with a summary of its debates, were included in its reports to the Security Council.¹ As in past years, no action was taken by the Security Council on the reports of the Trusteeship Council.

2. The structure of the present study of this Article has been simplified in comparison with previous studies, due to the reduced amount of material requiring treatment.

I. GENERAL SURVEY

3. During the period under review, the question of the effect of military bases and arrangements in the Trust Territory on its progress towards self-government and independence, and on international peace and security, was raised during the debate at each session of the Trusteeship Council. The Council took no decisions, however, specifically related to the objectives defined in Article 76*a*.

4. The Trusteeship Council concentrated in its debates on the progress towards achieving the goals set out in Article 76*b*, particularly political development. As in past years, the Council, in its conclusions and recommendations, reaffirmed the inalienable rights of the people of Micronesia to self-determination, including the right to independence.²

¹ S C (35), Spec. Suppl. No. 1; S C (36), Spec. Suppl. No. 1; S C (37), Spec. Suppl. No. 1; S C (38), Spec. Suppl. No. 1; S C (39), Spec. Suppl. No. 1.

² S C (35), Spec. Suppl. No. 1, para. 715; S C (36), Spec. Suppl. No. 1, para. 840; S C (37), Spec. Suppl. No. 1, para. 908; S C (38), Spec. Suppl. No. 1, para. 801; S C (39), Spec. Suppl. No. 1, para. 209.

5. Political advancement in the Trust Territory was also examined by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in the context of General Assembly resolution 1514 (XV), which contained the Declaration on the Granting of Independence to Colonial Countries and Peoples. The Declaration was proclaimed to be applicable to Trust and Non-Self-Governing Territories or all other Territories which had not yet attained independence (see the present *Supplement*, under Article 83).

6. The two main questions considered with regard to the political development of the Trust Territory concerned whether or not "free association" with the Administering Authority could be considered a political status consonant with self-government, and whether or not the Trusteeship Agreement could be terminated at different times for different political entities within the Trust Territory, given that each entity had adopted separate courses towards self-government.

7. With regard to Article 76c, the Trusteeship Council received information from the Administering Authority to the effect that it guaranteed basic human rights in the Territory. The Trusteeship Council reported that it found no evidence of racial or other discrimination in the Territory.

II. ANALYTICAL SUMMARY OF PRACTICE

A. Question of the progressive development towards self-government or independence in the Trust Territory

8. Two main issues were raised under Article 73b during the period under review: the legitimacy of "free association" as a political status compatible with the terms of the Trusteeship Agreement and the Charter of the United Nations, and the question of terminating the Trusteeship Agreement for some parts of the Trust Territory before it was terminated for others. Both questions arose as a result of the fragmentation of the Trust Territory into four separate political entities, each with its own constitution, and each negotiating its own political status relationship with the Administering Authority. The four entities were the Federated States of Micronesia, the Marshall Islands, the Northern Mariana Islands and Palau.

9. As described in the previous *Supplement*, various districts within the Trust Territory as a whole had begun to adopt separate paths towards self-determination and independence. In 1975, the Northern Mariana Islands had signed a commonwealth agreement with the Administering Authority. It was agreed that while most of the provisions regarding self-government would be applied, the entry into force of some provisions, such as that conferring United States citizenship on the residents of the islands, would be delayed until the Trusteeship Agreement was terminated (see paras. 15-26 below).

10. During the period under review, the remaining areas of the Trust Territory continued their separate progress towards self-government. In July 1978, Kosrae, Ponape, Truk and Yap ratified a draft constitution which had been drawn up in 1975, by which they formed the Federation of Micronesian States. The Marshall Islands and Palau rejected the constitution, declined to join the Federation and continued work on drafting their own separate constitutions. In March 1979, in a referendum observed by the Trusteeship

Council,³ a majority of Marshall Island voters ratified a draft constitution. In July 1980, the people of Palau formally and fully adopted a draft constitution through a popular referendum. Subsequent to the entry into force of these constitutions, the Administering Authority began devolving power to the new Governments. According to the Administering Authority, it provided the maximum permissible degree of self-government to the Federated States of Micronesia, the Marshall Islands and Palau, pursuant to their respective constitutions and pending termination of the Trusteeship Agreement.⁴ The Administering Authority began negotiations with the three entities on a "compact of free association", according to which the three Governments would be responsible for their internal and foreign affairs, while the United States would be responsible for defence and security. The three entities together negotiated with the Administering Authority, though each one would have to ratify the compact separately.

11. The Administering Authority and other members of the Trusteeship Council thus considered that the Administering Authority was fulfilling its obligations under Article 76b in that every major political development had been endorsed by the "freely expressed wishes of the peoples concerned", as witnessed by visiting missions of the Trusteeship Council.⁵ In its conclusions and recommendations adopted at its forty-sixth session, in 1979, the Council acknowledged that the decision to adopt separate constitutions had been taken by the people of the Territory, though it regretted the choice of the people to form separate entities.⁶

³T/1805.

⁴S C (35), Spec. Suppl. No. 1, para. 187.

⁵See, for example, S C (36), Spec. Suppl. No. 1, France, paras. 692 and 693; S C (37), Spec. Suppl. No. 1, France, para. 773; United States, paras. 798 and 790; S C (38), Spec. Suppl. No. 1, United States, paras. 657 and 658.

⁶S C (34), Spec. Suppl. No. 1, para. 664.

12. The representative of the Soviet Union, however, objected strenuously to what it termed the "dismemberment" of the Trusteeship Territory, as well as to the participation of the Trusteeship Council in that process, in particular by sending visiting missions to observe the various referendums and plebiscites, which in fact appeared to legitimize the instruments of schism (see in the present *Supplement* under Article 83, paras. 42-51). The arguments of the Soviet Union against the Administering Authority were both procedural and substantive. The procedural argument was that the administrative and political divisions that resulted from the referendums and plebiscites constituted a "change in status" which could only be carried out by a decision of the Security Council, in accordance with Article 83 of the Charter of the United Nations. Thus the unilateral actions of the Administering Authority in bringing about such changes were illegitimate and could not be regarded as legal. The substantive argument was that the referendums and plebiscites in fact did not represent the freely expressed wishes of the people of the Trust Territory, but covered up a deliberate policy of the Administering Authority to fragment the Territory and to turn it into a colonial possession.⁷ The Soviet Representative argued that during the referendum held in 1978 on the constitution of the Federated States of Micronesia, a majority of Micronesians had reaffirmed their desire to keep the Territory a single unit, but the Administering Authority had unilaterally dissolved the Congress of Micronesia as part of its policy of "divide and rule".⁸ The referendums and plebiscites approving the compacts of free association constituted "blackmail", as the people had been informed that a failure to endorse the compacts would lead to the suspension of vital economic aid.⁹ Finally, during the forty-ninth session of the Trusteeship Council, in 1982, prior to the popular endorsements of the compacts of free association, the Soviet Union countered the assertion endorsed by the Council that the status of free association was not incompatible with the Trusteeship Agreement (see para. 14 below). The Soviet representative said that such a conclusion by the Council was premature, as the Micronesian people had not yet expressed their views on the question, and furthermore that the premature endorsement by the Council constituted a weapon in the hands of the Administering Authority with which to put pressure on the Micronesian people.¹⁰

13. In response to those claims, the Secretary for Foreign Affairs of the Government of the Marshall Islands said that the separate peoples within the Trust Territory had never been politically unified as a single entity, except through the imposed colonial artefact of the Trusteeship Agreement and the mandate of the League of Nations. The Soviet Union, he said, was underestimating the determination with which the peoples of the Territory had fought to have their separate

identities taken into account.¹¹ Another adviser to the Administering Authority noted that a people's right to self-determination could not be lost simply by virtue of once having been included for administrative purposes in a larger Trust Territory. He cited the cases of Rwanda and Burundi¹² and Cameroon¹³ as examples of united Trusts that had been divided upon independence.¹⁴

Decision

14. The Trusteeship Council declined to make specific recommendations on the Trust Territory. In a series of conclusions and recommendations on constitutional developments throughout the period under review,¹⁵ however, it did reaffirm the inalienable right of the peoples of Micronesia to self-determination, including the right to independence, in accordance with the Charter. It also noted that the status of free association was not incompatible with the Trusteeship Agreement, provided that the populations concerned freely accepted it, and it expressed the hope that the Micronesians would take all necessary steps to establish, after termination of the Trusteeship Agreement, the all-Micronesian entity they had agreed upon at Molokai in October 1977.¹⁶

15. The division of the Trust Territory into separate political entities, and the varied speeds with which those entities progressed towards self-government, also raised the issue of whether the Trusteeship Agreement could be terminated in stages, as each separate entity within the Territory achieved self-government, or whether the Trusteeship Agreement could only be terminated when all the entities had achieved self-government.

16. During the forty-sixth session of the Trusteeship Council, the Administering Authority reaffirmed its intention to seek agreement with the parties concerned to terminate the Trusteeship Agreement by 1981, simultaneously for all areas of the Trust Territory, including the Northern Mariana Islands, which had signed a commonwealth agreement with the United States in 1975.¹⁷ During the same session, a Senator from the Congress of the Federated States of Micronesia, who was also a Special Adviser to the Administering Power, said that such an early date of termination was unrealistic given the "uncoordinated and penurious" approach the Administering Authority had taken towards the transition to self-government; he said that the primary achievement of terminating the Trusteeship

¹¹S C (35), Spec. Suppl. No. 1, para. 611.

¹²*Repertory, Supplement No. 3*, vol. III, under Article 76, paras. 125-188.

¹³*Ibid.*, paras. 83-98.

¹⁴S C (36), Spec. Suppl. No. 1, para. 686.

¹⁵S C (34), Spec. Suppl. No. 1, paras. 739-751; S C (35), Spec. Suppl. No. 1, paras. 715-732; S C (36), Spec. Suppl. No. 1, paras. 840-852; S C (37), Spec. Suppl. No. 1, paras. 809-824; S C (38), Spec. Suppl. No. 1, paras. 801-814; S C (39), Spec. Suppl. No. 1, paras. 209-211.

¹⁶*Repertory, Supplement No. 5*, vol. IV, under Article 76, para. 123.

¹⁷S C (34), Spec. Suppl. No. 1, para. 580.

⁷See, for example, S C (34), Spec. Suppl. No. 1, paras. 637 and 638; S C (35), Spec. Suppl. No. 1, para. 18; S C (36), Spec. Suppl. No. 1, para. 19; S C (37), Spec. Suppl. No. 1, para. 42.

⁸S C (34), Spec. Suppl. No. 1, para. 641; S C (35), Spec. Suppl. No. 1, para. 588.

⁹S C (39), Spec. Suppl. No. 1, para. 79.

¹⁰See, S C (36), Spec. Suppl. No. 1, para. 20; S C (37), Spec. Suppl. No. 1, para. 44.

Agreement should not be to relieve the Administering Authority of a burdensome charge.¹⁸

17. Due to delays in ratifying the constitution for Palau, it became clear, at the forty-seventh session of the Trusteeship Council, that the Trusteeship Agreement could not be terminated by 1981. The Special Adviser from Palau said that the Agreement should not be terminated before the Administering Authority had fulfilled its obligations under that Agreement.¹⁹ The Special Adviser of the Northern Mariana Islands, however, was eager for the Agreement to be terminated at the earliest possible date, given that many provisions in its commonwealth covenant would not become operative until the Agreement was terminated. If necessary, he said, he would request that the Northern Mariana Islands be accorded special treatment in the event that the termination of the Agreement were delayed because of circumstances beyond its control. He further said that the Trusteeship Agreement had outlived its usefulness, that the people of the Northern Mariana Islands had already exercised their right to self-determination in opting for the commonwealth agreement, and that, if necessary, the Trusteeship Agreement could be terminated by a simple declaration by his Government that it no longer recognized the Agreement's validity.²⁰

18. The possibility of terminating the Agreement in phases was also raised through a petition²¹ by the people of the Enewetak atoll in the Marshall Islands that was considered by the Trusteeship Council at its forty-eighth session, in 1981. By the petition, the people of Enewetak, an atoll in the Marshalls whose population had been resettled to allow for the conducting of nuclear tests, requested that the Trusteeship Agreement be continued beyond its termination for the other entities. They argued that a special relationship existed with the United States as a result of its testing of nuclear weapons on their atoll, and the disadvantages caused by nuclear testing meant that it would take longer and require more effort for them to become self-governing. The Administering Authority responded that it would discuss the issue with the petitioners and with the Government of the Marshall Islands (to which Enewetak was subject). It also reiterated that it would fully meet its obligations to those affected by nuclear testing, before and after termination of the Trusteeship Agreement.²² The United Kingdom considered it unfortunate that the people of Enewetak wanted the Trusteeship Agreement extended, or that their request would delay the process of ending the Agreement.²³

19. During the forty-ninth session of the Trusteeship Council, the special representative of the Northern Mariana Islands noted that the Trusteeship Agreement had not been terminated in 1981 as planned, and called once again for it to be terminated as early as possible so that the people of his entity could enjoy all the benefits of commonwealth, most importantly United States citizenship, which had been

deferred pending the termination of the Trusteeship Agreement. The request was reiterated by several other advisers from the Trust Territory.²⁴

20. At the same session, the Special Representative of the Marshall Islands noted that his Government had been engaged in negotiations with the Administering Authority on a compact of free association. In 1980, his Government had initialled what it knew to be an imperfect agreement on the promise by the Administering Authority that the Trusteeship Agreement would end in 1981. When negotiations resumed on the subsidiary agreements, however, the Administering Authority had attempted to retract commitments without which the original document would not have been signed. He said he saw no need to prolong the negotiations. If there was any possibility of agreement, it would be reached shortly; if not, to avoid further delay, the concept of free association should be presented to the people along with the choice of independence. He therefore suggested a schedule according to which negotiations on the subsidiary agreements should be completed by July 1982, and a plebiscite presenting a choice between free association and independence without conditions should be held in August 1982. A vote for the compact would trigger the approval of the document and free association through constitutional process in the Marshall Islands and in the United States. The Trusteeship Agreement would terminate on 1 October. If by that date the compact had not been approved by the United States, then the Marshall Islands would be independent without conditions. A vote against the compact would be interpreted as a positive vote for independence. Whatever the electoral outcome, therefore, the Trusteeship Agreement would terminate on 1 October 1982.²⁵

21. The representative of the United Kingdom signalled "practical doubts" with regard to the proposal.²⁶ The representative of France said that the referendum should include the option of independence, and added that his Government hoped for the termination of the Trusteeship Agreement as soon as possible out of respect for the wishes of the people in the Territory and in accord with the Charter of the United Nations.²⁷

22. During the fiftieth session of the Trusteeship Council, in 1983, the Administering Authority reported that compact of free association agreements and related subsidiary agreements had been signed with each of the three remaining entities, and that the three compacts would be put to a popular vote.²⁸ The representative of the Administering Authority noted that the holding of the plebiscites would not conform to the original principle of simultaneity, but that, as with a number of other developments, the departure from simultaneity was a Micronesian initiative to which the United States had only reluctantly acquiesced.²⁹ The Administering Authority said that its policy was still to take up the matter of termination of the Trusteeship Agreement

¹⁸Ibid., para. 614.

¹⁹S C (35), Spec. Suppl. No. 1, para. 574.

²⁰Ibid., paras. 576-578.

²¹T/PET.10/183.

²²S C (36), Spec. Suppl. No. 1, para. 686.

²³Ibid., para. 696.

²⁴S C (37), Spec. Suppl. No. 1, paras. 742-746.

²⁵Ibid., paras. 760-765.

²⁶Ibid., para. 771.

²⁷Ibid., paras. 772 and 773.

²⁸S C (38), Spec. Suppl. No. 1, para. 598.

²⁹Ibid., para. 95.

with the appropriate bodies of the United Nations as soon as it was possible to consider all parts of the Trust Territory simultaneously. However, it might be constrained to consider other options should developments require that.³⁰

23. By the fifty-first session of the Trusteeship Council, the Federated States of Micronesia and the Marshall Islands had both held plebiscites approving the compacts of free association. Problems continued to exist with regard to Palau, however, where a provision in the compact was incompatible with a provision in Palau's constitution. The special representative of Palau told the Trusteeship Council that his Government fully supported the speedy approval by the United States Congress of compacts relating to the Federated States of Micronesia and the Marshall Islands, and said that termination of the Trusteeship Agreement as it applied to those two entities should not be held up on account of the situation in Palau.³¹

24. The representative of France said that his Government would have preferred for the ballots to have been conducted simultaneously.³²

25. At the same session, the Chief Secretary from the Marshall Islands urged the Trusteeship Council to assist in terminating the Trusteeship Agreement for the Marshall Islands regardless of the status of Palau.³³

Decision

26. Despite the Trusteeship Council's frequent consideration of the possibility of terminating the Trusteeship Agreement separately for different entities within the Trust Territory, no decision was taken as to either the possibility or the impossibility of the suggested practice; the Council continued to refrain from making precise recommendations on the future political status of the Territory, and this included questions related to the termination of the Trusteeship Agreement. The Council took due note of the various proposals to terminate the Trusteeship Agreement in phases.³⁴ It also noted that the United States Government intended to proceed in a manner fully consistent with the Charter of the United Nations and to take up the matter of termination at an appropriate time with the Trusteeship Council and the Security Council in accordance with Article 83 of the Charter.³⁵

B. Question of human rights in the Trust Territory

27. During the period under review, the Administering Authority, in its annual reports to the Trusteeship Council, included a section on human rights, in which it indicated that

the inhabitants of the Trust Territory enjoyed the protection of their basic human rights. These included freedom of religion, of speech and of the press, the right of assembly and the right to petition; protection against unreasonable search and seizure; no deprivation of life, liberty or property without due process of law; no discrimination on account of race, sex or language; maintenance of free elementary education; no imprisonment for failure to discharge contractual obligations; writ of habeas corpus; protection of trade and property rights; and due recognition of local customs.

28. The Trusteeship Council, in its consideration of the reports, took note of this item and generally made no specific recommendations thereon.³⁶ On one occasion, however, at its thirty-eighth session, the Council noted in its report to the Security Council that its 1982 visiting mission had observed that, as in many other countries, because of traditional and social barriers, women in the Trust Territory were still at a disadvantage when seeking positions, even when they possessed the required training. The mission had urged the authorities to continue to keep in mind the importance of women playing a full and equal part in the economic, social and political development of the Trust Territory. It stressed that many problems lay ahead and that no country could afford to neglect the potential contribution of half of its population.³⁷

29. The question of encouraging respect for human rights was also raised in the context of cooperation with the Committee for the Eradication of Racial Discrimination and in connection with the Administering Authority's practice of nuclear testing.

30. With regard to racial discrimination, the representative of the Soviet Union in the Trusteeship Council noted that the Administering Authority was deficient in presenting information on its compliance with United Nations resolutions prohibiting racial discrimination, and that the Trusteeship Council should be more strict about the Administering Authority's assertions regarding respect for human rights in the Territory.³⁸

31. At its forty-eighth session, on 11 June 1981, the Trusteeship Council considered an invitation from the Director of the Division for Human Rights of the United Nations Secretariat to be represented at a seminar on effective measures to prevent transnational corporations and other established interests from collaborating with the racist regime of South Africa. On the same date, the Council decided to authorize its President to address a letter to the Director informing him that, while different opinions had been expressed on that matter in the Council, the Council had decided that it was not in a position to accept his

³⁰Ibid., para. 617.

³¹S C (39), Spec. Suppl. No., para. 61.

³²Ibid., para. 652.

³³Ibid., para. 74.

³⁴S C (35), Spec. Suppl. No. 1, para. 728; S C (37), Spec. Suppl. No. 1, para. 917.

³⁵S C (36), Spec. Suppl. No. 1, para. 850; S C (37), Spec. Suppl. No. 1, para. 922; S C (38), Spec. Suppl. No. 1, para. 809; S C (39), Spec. Suppl. No. 1, para. 209.

³⁶S C (34), Spec. Suppl. No. 1, paras. 445 and 446; S C (35), Spec. Suppl. No. 1, paras. 420 and 421; S C (36), Spec. Suppl. No. 1, paras. 530 and 531; S C (37), Spec. Suppl. No. 1, paras. 593 and 594.

³⁷S C (38), Spec. Suppl. No. 1, paras. 487-489.

³⁸S C (34), Spec. Suppl. No. 1, para. 111; S C (35), Spec. Suppl. No. 1, para. 92; S C (37), Spec. Suppl. No. 1, para. 236; S C (38), Spec. Suppl. No. 1, paras. 137 and 140.

invitation. The President of the Council transmitted a letter to that effect on 12 June 1981.³⁹

32. On the question of weapons testing, the representative of the Soviet Union said that by having transformed Micronesia into a testing ground for nuclear bombs, the Administering Authority had violated its obligations under the Charter and the Trusteeship Agreement with respect to its obligations to defend human rights. He noted that petitioners to the Council had made repeated

reference to facts that demonstrated a fundamental failure to respect the human rights of the inhabitants.⁴⁰

33. The representative of the Administering Authority responded to these allegations by noting that its human rights record in the Territory could be confirmed during the next visiting mission, and by noting statements by France during the open debate of the Trusteeship Council, which had congratulated the Administering Authority for its human rights record.⁴¹

³⁹S C (36), Spec. Suppl. No. 1, paras. 193-196.

⁴⁰Ibid., paras. 186 and 187.

⁴¹S C (37), Spec. Suppl. No. 1, para. 245.