

ARTICLE 85

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ARTICLE 85

TEXT OF ARTICLE 85

1. The functions of the United Nations with regard to trusteeship agreements for all areas not designated as strategic, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the General Assembly.

2. The Trusteeship Council, operating under the authority of the General Assembly, shall assist the General Assembly in carrying out these functions.

INTRODUCTORY NOTE

1. The provisions of Article 85 are essentially an elaboration of the terms of Article 16 of the Charter. During the period under review, the General Assembly and the Trusteeship Council continued to perform functions under this Article in the manner described in the *Repertory* and its *Supplements Nos. 1-3*.

2. As explained in the previous study of this Article in the *Repertory*,¹ the term "functions of the United Nations" referred to in Article 85(1) was interpreted by the General Assembly in its widest sense as applying not only to the approval of the Trusteeship Agreements, but to all functions of the United Nations in supervising the administration of Trust Territories not designated as strategic areas.

3. During the period under review, the Trusteeship Agreement for the Trust Territory of Nauru was terminated. The substantive aspects of terminating the Trusteeship Agreement are dealt with in detail in this *Supplement*, under Article 76. Hence only the final decision of the General Assembly to terminate that Agreement is referred to in section A of the Analytical summary of practice.

4. Section II.B of previous studies of this Article in the *Repertory* and its *Supplements Nos. 1-3* concerned the direct exercise by the General Assembly of supervisory functions in the administration of Trust Territories

under Articles 87 and 88. During the period under review, the General Assembly continued the practice of not considering directly the reports submitted by the Administering Authorities, but of taking them into consideration as they were reflected in reports submitted to the General Assembly by the Trusteeship Council² and by the Special Committee on decolonization. Thus there was no new material requiring treatment under Section II.B.1. Nor was there any change in practice, nor did any question arise in regard to section II.B.2(a) and (b). Consequently only the material concerning the capacity in which representatives of a Trust Territory could address the Fourth Committee of the General Assembly has been included in Section B.

5. Section II.C of the previous *Repertory* studies of this Article concerned the relationship between the General Assembly and the Trusteeship Council. The Section was divided under several headings and sub-headings to facilitate analysis of all types of action by both organs bearing on that relationship. The earlier headings that remain applicable are repeated in this study.

6. A list of resolutions pertaining to the International Trusteeship System that were adopted by the General Assembly during the period under review appears in this *Supplement* in the annex to the study of Article 16.

²For consideration by the Trusteeship Council of annual reports of the Administering Authorities, see in this *Supplement* under Article 87.

¹See *Supplement No. 3*, vol. III, under Article 85, para. 2.

I. GENERAL SURVEY

7. During the period under review, no territories were placed under the international Trusteeship System and consequently no questions arose concerning the approval of Trusteeship Agreements, nor were any existing Trusteeship Agreements altered or amended.

8. The General Assembly, at its twenty-second session, in agreement with the Administering Authority, decided to terminate the Trusteeship Agreement for Nauru upon its accession to independence on 31 January 1968.³

9. The Trusteeship Council continued to follow the procedures described in the previous *Repertory* studies in regard to the examination of the annual reports of the Administering Authorities, the submission of its reports to the General Assembly, together with its conclusions and recommendations on the conditions in the non-strategic Trust Territories of Nauru and New Guinea,

and to follow the procedures described in rules 76 to 92 of its rules of procedure in examining the communications, petitions and observations of the Administering Authorities on the relevant petitions concerning the Trust Territories of Nauru and New Guinea.

10. Following the practice adopted⁴ at its twenty-sixth session, the Trusteeship Council continued dispatching United Nations Visiting Missions to individual Trust Territories rather than to a region.

11. The General Assembly continued the practice⁵ of adopting separate resolutions relating to the specific chapters of the reports of the Trusteeship Council concerning conditions in each of the Trust Territories of Nauru and New Guinea.

⁴T C resolution 2017(XXVI).

⁵See *Repertory, Supplement No. 3*, vol. III, under Article 85, para. 10.

³G A resolution 2347(XXII).

II. ANALYTICAL SUMMARY OF PRACTICE

A. Questions concerning the approval, alteration or amendment of Trusteeship Agreements; termination of Trusteeship Agreements

12. By resolution 2347(XXII), the General Assembly, in agreement with the Administering Authority, decided to terminate the Trusteeship Agreement for Nauru upon its accession to independence on 31 January 1968. The substantive aspects of the termination of the Trusteeship Agreement for Nauru are dealt with in this *Supplement*, under Article 76.

B. Questions concerning the exercise by the General Assembly and, under its authority, by the Trusteeship Council, of functions under Articles 87 and 88

**1. REQUESTS FOR REPORTS FROM THE ADMINISTERING AUTHORITIES; CONSIDERATION OF THESE REPORTS; RECOMMENDATIONS CONCERNING THE CONTENT OF CERTAIN ANNUAL REPORTS SUBMITTED BY THE ADMINISTERING AUTHORITIES UNDER ARTICLE 88

**2. THE HEARING OF ORAL PRESENTATIONS BY THE FOURTH COMMITTEE OF THE GENERAL ASSEMBLY

**a. *Hearing of petitioners*

**b. *Initiative taken by the Fourth Committee in inviting petitioners to appear before it*

c. *The question of the capacity in which representatives of a Trust Territory could address the Fourth Committee*

13. During the twenty-first session of the General Assembly, the question of the formal capacity of the representatives of the Territory was raised in the Fourth Committee when the representative of Australia, as Administering Authority of the Trust Territory of New Guinea, informed⁶ the Chairman that two members of his delegation, who were also members of the House of Assembly of Papua-New Guinea, wished to make brief statements before the Committee.

14. The Chairman suggested⁷ that they might address the Committee as petitioners. The representative of Australia pointed out,⁸ however, that his colleagues were not petitioners, but members of the Australian delegation.

15. In support of the Chairman's suggestion, the view was expressed that it was inappropriate for people from a colonial country to come to the Fourth Committee and speak on behalf of that colonial power. Moreover the list of members of the Australian delegation did not include the names of the two proposed speakers.⁹ One speaker suggested that they might be invited to speak as special guests of the Fourth Committee and another suggested that the Chairman call upon the representative of Australia who would then ask for permission for his two colleagues to speak.

16. The Chairman then agreed to hear the two representatives as members of the Australian delegation since

their identity with that delegation had been established by the Australian representative himself.¹⁰

17. This practice was followed during the twenty-second session of the General Assembly, when Head Chief Hammer De Roburt of Nauru, Special Adviser to the Administering Authority, addressed¹¹ the Fourth Committee as a member of the Australian delegation.

C. The question of the relationship between the General Assembly and the Trusteeship Council

1. ACTION TAKEN BY THE GENERAL ASSEMBLY WITH RESPECT TO THE EXERCISE BY THE TRUSTEESHIP COUNCIL OF ITS RESPONSIBILITIES

a. *Action taken by the General Assembly on the annual reports submitted to it by the Trusteeship Council*

18. During the period under review, the General Assembly, in resolutions 2226(XXI), and 2347(XXII) on the Trust Territory of Nauru, and in resolutions 2227(XXI), 2427(XXIII) and 2590(XXIV) on Papua and the Trust Territory of New Guinea, recorded¹² the fact of its having examined or considered the annual reports of the Trusteeship Council on the concerned Trust Territory.

b. *Endorsement by the General Assembly of certain specific conclusions, recommendations and observations of the Trusteeship Council*

19. During the period under review, the General Assembly, by resolution 2590(XXIV), took into account¹³ the observations of the Trusteeship Council regarding developments in Papua and the Trust Territory of New Guinea.

c. *Recommendations regarding measures to be taken by the Trusteeship Council in dealing with questions or problems concerning Trust Territories; requests to the Trusteeship Council to carry out special studies*

20. By resolutions 2427(XXIII) and 2590(XXIV), the General Assembly requested¹⁴ the Trusteeship Council and the Special Committee on decolonization to continue to examine the question of Papua and the Trust Territory of New Guinea with respect to, *inter alia*, the full implementation of the Declaration with a view to achieving the ultimate objective of the International Trusteeship System set forth in Article 76 of the Charter, and to report thereon to the Assembly at the following sessions.

21. Furthermore, by resolution 2590(XXIV), the General Assembly requested¹⁵ the Trusteeship Council to include in its periodic visiting missions to the Trust Territory of New Guinea non-members of the Trusteeship Council, in consultation with the Special Committee, in accordance with the Charter of the United Nations.

⁶G A (XXI), 4th Com., 1670th mtg., para. 62.

⁷*Ibid.*, para. 69.

⁸*Ibid.*, para. 70.

⁹*Ibid.*, paras. 71-73 and 76.

¹⁰*Ibid.*, paras. 77-80 and 82.

¹¹G A (XXII), 4th Com., 1739th mtg., para. 13.

¹²G A resolutions 2226(XXI), 2nd pream. para.; 2347(XXII), 4th pream. para.; 2227(XXI), 1st pream. para. 2427(XXIII), 1st pream. para.; and 2590(XXIV), 3rd pream. para.

¹³G A resolution 2590(XXIV), 5th pream. para.

¹⁴G A resolutions 2427(XXIII), para. 5; 2590(XXIV), para. 7.

¹⁵G A resolution 2590(XXIV), para. 5.

****d.** *Requests that the Trusteeship Council make recommendations to the Administering Authorities*

****e.** *Recommendations made by the General Assembly concerning the procedures of the Trusteeship Council and the annual reports of the Council to the General Assembly*

2. ACTION TAKEN BY THE TRUSTEESHIP COUNCIL ON THE RECOMMENDATIONS MADE TO IT BY THE GENERAL ASSEMBLY

22. In response to the requests contained in General Assembly resolutions 2427(XXIII) and 2590(XXIV) concerning Papua and the Trust Territory of New Guinea, the Trusteeship Council considered these resolutions during its examination of the annual reports of the Administering Authority, with particular reference to the question of early implementation¹⁶ in the Territory, and reported thereon in its annual reports to the General Assembly at the following sessions.

3. RECOMMENDATIONS MADE BY THE GENERAL ASSEMBLY TO THE ADMINISTERING AUTHORITY TO IMPLEMENT ITS RESOLUTIONS AND REPORT TO THE TRUSTEESHIP COUNCIL AND THE SPECIAL COMMITTEE

23. By resolution 2227(XXI), the General Assembly, recalling its resolution 2112(XX), called¹⁷ upon the

Administering Power for Papua and the Trust Territory of New Guinea to implement resolution 1514(XV) fully and to inform the Trusteeship Council, at its thirty-fourth session, as well as the Special Committee, of the action taken in that regard.

24. By resolution 2348(XXII), the General Assembly, *inter alia*, reaffirming its previous position as set forth in General Assembly resolutions 2112(XX) and 2227(XXI), called¹⁸ upon the Administering Power to take the necessary measures to implement without delay the provisions of the above-mentioned resolutions. In the resolutions cited, the General Assembly had requested the Administering Authority to report on the implementation of the respective resolutions to the Trusteeship Council, at its respective following sessions, as well as to the Special Committee on decolonization.

25. By resolution 2427(XXIII), the General Assembly called¹⁹ upon the Administering Power to implement fully resolution 1514(XV) and to that end to take the following measures, in particular: (a) to fix an early date for self-determination or independence in accordance with the freely expressed wishes of the people of the Territories; (b) to hold free elections under United Nations supervision on the basis of universal adult suffrage in order to transfer effective power to the representatives of the people of the Territories. By the same resolution, the General Assembly requested the Administering Power to report to the Trusteeship Council and the Special Committee on decolonization on the action taken in that regard.

¹⁶G A (XXIV), Suppl. No. 4, paras. 32-33 and G A (XXV), Suppl. No. 4, paras. 50 and 51.

¹⁷G A resolution 2227(XXI), para. 3.

¹⁸G A resolution 2348(XXII), para. 3.

¹⁹G A resolution 2427(XXIII), para. 3.

Chapter XIII
THE TRUSTEESHIP COUNCIL