

# ARTICLE 86

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## ARTICLE 86

### TEXT OF ARTICLE 86

1. The Trusteeship Council shall consist of the following Members of the United Nations:

- (a) those Members administering Trust Territories;
- (b) such of those Members mentioned by name in Article 23 as are not administering trust territories; and
- (c) as many other Members elected for three-year terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those Members of the United Nations which administer trust territories and those which do not.

2. Each member of the Trusteeship Council shall designate one specially qualified person to represent it therein.

### INTRODUCTORY NOTE

1. The material contained in this study has been set out under the headings used in the *Repertory* and its *Supplements Nos. 1-3*.

2. There is, however, no material requiring treatment under Section E, entitled "Qualifications of representatives of members."

### I. GENERAL SURVEY

3. As noted previously,<sup>1</sup> since the establishment of the Trusteeship System, an important basic principle set forth under Article 86 has been parity of membership between the administering and non-administering members. During the period under review, with the attainment of independence of Nauru, and the consequent withdrawal of the Administering Power concerned, the question of maintaining parity in the composition of the Council arose.

4. After the attainment of independence by the Trust Territory of Nauru on 31 January 1968,<sup>2</sup> New Zealand and the United Kingdom, two of the three<sup>3</sup> Joint

Administering Authorities, ceased to be administering members of the Trusteeship Council. The United Kingdom, however, continued to be a member of the Council by virtue of Article 86(1)*b*.

5. The three-year elected term of office of Liberia expired on 31 January 1968 and Liberia ceased to be a member of the Council as from that date. A decision had accordingly to be taken on how to fulfill both the requirements set out in Article 86(1)*b* and *c*.

6. During the period under review, representatives of indigenous populations of the Trust Territories continued to be included in the delegations of the Administering Authorities. No question arose over the participation in the Council of any Member States other than those members of the Trusteeship Council.

<sup>1</sup>See *Repertory*, vol. IV, under Article 86, paras. 17-22.

<sup>2</sup>G A resolution 2347(XXII).

<sup>3</sup>Australia, New Zealand and United Kingdom.

### II. ANALYTICAL SUMMARY OF PRACTICE

#### A. Parity of membership between administering and non-administering Members of the United Nations

##### 1. COMPOSITION OF THE TRUSTEESHIP COUNCIL

7. During the years 1966 and 1967, there was parity of membership in the Trusteeship Council between administering and non-administering members, as follows:

###### *Members administering Trust Territories*

Australia  
New Zealand  
United Kingdom  
United States

###### *Members mentioned by name in Article 23 of the Charter not administering Trust Territories*

China  
France  
USSR

###### *Member elected by the General Assembly, with date of retirement*

Liberia.....31 December 1968

8. At the thirty-fourth session of the Trusteeship Council, in anticipation of the proposed independence of the Trust Territory of Nauru at the end of January 1968, the question of the future composition of the Council was raised.<sup>4</sup>

9. At its thirteenth special session, the Trusteeship Council decided<sup>5</sup> to terminate the Trusteeship Agreement for Nauru upon its attaining independence on 31 January 1968 and, on the proposal of the representative of Australia, requested<sup>6</sup> the Secretary-General to prepare a legal opinion on the future composition of the Council.

<sup>4</sup>T C (XXXIV), 1322nd mtg., para. 17.

<sup>5</sup>T C (S-XIII), 1323rd mtg., para. 58.

<sup>6</sup>*Ibid.*, paras. 63 and 64.

10. The note prepared by the Secretary-General pointed out<sup>7</sup> that, while the continuance of a majority of non-administering members on the Trusteeship Council would render Article 86(1)c inoperative, no amendment of the Charter could restore parity between administering and non-administering members while retaining all the permanent members of the Security Council on the Trusteeship Council. It was further pointed out that, although the Charter had provided for parity between administering and non-administering members in the Council, that provision had not been extended to the membership of the Fourth Committee or the General Assembly under whose authority the Council operated. Moreover the objective of providing supervision by non-administering members in order to ensure the paramountcy of the interests of the inhabitants of the Trust Territories would still be achieved with administering Powers forming a permanent minority. If, however, the administering Powers considered that the loss of parity would prejudice their interests, it would be open to them to raise the matter for consideration through appropriate procedures. The note concluded that membership of the Trusteeship Council might continue until the normal expiration of the three-year term of the member previously elected under Article 86(1)c on 31 December 1968, and that thereafter the Council should be composed of members automatically appointed under Article 86(1)a and b until all Trusteeship Agreements had been terminated or, in the case of an amendment to the Charter, until the amendment had come into force.

11. In support of the view that no amendment of the Charter was necessary, it was pointed out<sup>8</sup> that the parity provided for under Article 86(1)c was designed to prevent an excess of administering Powers over non-administering Powers. Since a number of Trust Territories had attained independence, the non-administering Powers were in the majority in the Council, and it was impossible for the provision of Article 86(1)c to be artificially implemented. Thus it would not be contrary to the Charter for the Council to continue its work without the participation of New Zealand. As regards Liberia, which had been elected in accordance with Article 86 of the Charter, it would remain a member until its term of office expired.

12. On the proposal of the President, the Council decided,<sup>9</sup> without objection, to take note of the Secretary-General's note on the future composition of the Council, and of the comments made in the Council. Subsequently, on the recommendation of the Fourth Committee, the General Assembly decided,<sup>10</sup> without objection, to take note of the position<sup>11</sup> of the Trusteeship Council at its thirteenth special session relating to the composition of the Trusteeship Council.

13. Accordingly, on the attainment of independence by Nauru on 31 January 1968, New Zealand and the United Kingdom ceased to be administering members of the Council. The United Kingdom, however, continued to be a member of the Council by virtue of Article 86(1)(b).

14. Following the expiration of its three-year term of office on 31 January 1968, Liberia ceased to be a member of the Council as from that date.

15. Thus, the composition of the Council during its thirty-sixth session and thereafter remained as follows:

*Members administering Trust Territories:*

Australia  
United States of America

*Members mentioned by name in Article 23 of the Charter but not administering Trust Territories:*

China  
France  
Union of Soviet Socialist Republics  
United Kingdom of Great Britain and Northern Ireland

## 2. COMPOSITION OF SUBSIDIARY BODIES

16. It will be recalled that four subsidiary bodies of the Trusteeship Council, namely, the Standing Committee on Administrative Unions, the Standing Committee on Petitions, the Committee on Classification of Petitions, and the Committee on Rural Economic Development of the Trust Territories were abolished during the period covered by Supplement No. 3.<sup>12</sup>

17. At the twenty-ninth session of the Council, the membership of the Drafting Committee to prepare recommendations on the Trust Territory of the Pacific Islands was reduced from four to two, with one administering and one non-administering member.<sup>13</sup> However, for the first time, the principle of parity of membership of the Drafting Committee was not observed when the Trusteeship Council, at its thirty-fifth and thirty-sixth sessions, constituted Drafting Committees<sup>14</sup> for the Trust Territory of the Pacific Islands, consisting of France and the United Kingdom, both being non-administering members. This was accepted in spite of the fact that such parity could have been maintained by the appointment of Australia which was an administering member of the Trusteeship Council.

## 3. COMPOSITION OF VISITING MISSIONS

18. In regard to the composition of visiting missions to Trust Territories, it will be recalled that in the early days the adopted practice was to appoint an equal number of members representing administering and non-administering Powers.

19. At the thirty-fourth session of the Trusteeship Council, the President suggested<sup>15</sup> that the Council should decide that the next United Nations visiting mission to the Trust Territories of Nauru and New Guinea should be dispatched early in 1968 and be composed of representatives nominated by France, Liberia, New Zealand and the United States.

20. In the course of the discussion, the question of the application of the principle of equal representation of administering and non-administering members to visiting missions was raised. It was suggested<sup>16</sup> that it was contrary to the spirit of the times to continue the practice of appointing visiting missions composed of an equal number of administering members to occupy a position to which they were not entitled under the Charter or the Council's rules of procedure. Instead, it was proposed that the Visiting Mission to New Guinea and Nauru should be a joint mission of the Council and the

<sup>7</sup>T/1674 (mimeographed). See also *United Nations Juridical Yearbook*, 1967, p. 330 H.

<sup>8</sup>T C (S-XIII), 1324th mtg., para. 3.

<sup>9</sup>*Ibid.*, para. 5.

<sup>10</sup>G A (XXII), Plen., 1641st mtg., para. 47.

<sup>11</sup>G A (XXII), Annexes, a.i. 13, A/6926, paras. 10-15.

<sup>12</sup>See *Repertory*, Supplement No. 3 under Article 86, annex II.

<sup>13</sup>See *Repertory*, Supplement No. 3, vol. III, under Article 87, paras. 15 and 16.

<sup>14</sup>T C (XXXV), 1333rd mtg., para. 1 and T C (XXXVI), T/PV.1352, p. 27.

<sup>15</sup>T C (XXXIV), 1321st mtg., para. 2.

<sup>16</sup>*Ibid.*, USSR, para. 3.

Special Committee on decolonization, with one or two members appointed by the Council and two or three members by the Special Committee.

21. Some members of the Council considered that the established practice of appointing a visiting mission composed of two administering and two non-administering members of the Council should be maintained. In proposing<sup>17</sup> a draft resolution on the proposed Visiting Mission to New Guinea and Nauru in 1968, it was stated that the majority of members of the Council were ready to agree that the composition of the Visiting Mission should be in line with the established practice of the Council. This proposal was supported by one delegation which saw no reason to depart from established practice. At its 1321st meeting, on 29 June 1967, the Trusteeship Council adopted<sup>18</sup> the draft resolution by 6 votes to none, with 1 abstention, as its resolution 2148(XXIV).

22. The question of constituting a joint Visiting Mission to the Trust Territory of New Guinea, consisting of members and non-members of the Trusteeship Council, was again raised at the twenty-fourth session of the General Assembly. Following the general debate on the question of Papua and the Trust Territory of New Guinea, the Fourth Committee considered a draft resolution<sup>19</sup> sponsored by the Afro-Asian States, paragraph 5 of which would require that the Visiting Mission to the Trust Territory of New Guinea should consist of members of the Trusteeship Council and the Special Committee on decolonization. The representative of Liberia submitted an amendment<sup>20</sup> making this a recommendation from the General Assembly to the Trusteeship Council rather than a decision.

23. Following consultations among the supporters of the proposal, the Liberian amendment was withdrawn and a revised draft resolution was introduced,<sup>21</sup> whereby the General Assembly, *inter alia*, would request 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 on decolonization and the Administering Authority. In support of the revised draft resolution, one representative stated<sup>22</sup> that, according to the provisions of Articles 85 and 87 of the Charter, the General Assembly had not only full authority, but also had the obligation to take appropriate action. Since the visiting missions of the Trusteeship Council included only members of the Council, which in turn was composed in the main of past or present administering Powers and did not include a single member elected by the General Assembly, his delegation was convinced that any visiting mission would need the valuable contribution of those Member States which had recently emerged from colonial or trusteeship status as they would be better able to understand the feelings of colonial peoples.

24. At its 1870th meeting, on 12 December 1969, the Fourth Committee adopted<sup>23</sup> the revised draft resolution as a whole, as orally amended by the addition of the words "in accordance with the Charter of the United Nations", by 87 votes to none, with 4 abstentions.

25. Following the adoption of the draft resolution, the representative of the United States stated<sup>24</sup> *inter alia* that it was the view of his delegation that, in pursuance of the Charter, the provisions of paragraph 5 of the draft resolution should be considered as a recommendation to the Council, which should be responsible for any decision regarding a visiting mission, and that no decision of the Council concerning the Trust Territory of New Guinea should be taken as a precedent for any visiting mission to other Trust Territories. At its 1835th plenary meeting, on 16 December 1969, the General Assembly adopted<sup>25</sup> the draft resolution recommended by the Fourth Committee by 112 votes to none, with 3 abstentions, as its resolution 2590(XXIV).

26. Paragraph 5 of the resolution read as follows:

"Requests 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 on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples and the Administering Authority, in accordance with the Charter of the United Nations."

#### **B. Participation of States not members of the Trusteeship Council in the work of the Council**

27. During the period under review, no Member State of the United Nations not a member of the Trusteeship Council, either requested or was invited by the Trusteeship Council to participate in its work.<sup>26</sup>

#### **C. Participation of representatives of the indigenous populations of Trust Territories in the work of the Trusteeship Council**

28. Representatives of indigenous populations continued to be included in the delegations of Administering Authorities in several capacities, as reported in the previous *Repertory* studies. They served as advisers or special advisers to the Special Representatives of the Administering Authorities on their own Territories, made statements and replied to questions on local conditions, put to them by the members of the Council or by the representatives of the Administering Authorities.

29. During the thirty-fourth session of the Trusteeship Council, a point of order was raised<sup>27</sup> as to whether the member of the House of Assembly of Papua-New Guinea—serving as special adviser to the Special Representative of the Administering Authority—who had been given the floor, wished to speak as a member of the Australian delegation or as a representative of the New Guinean people. In this connexion, the view was expressed that the statement of the advisers to the Special Representative could only reflect the view point of the Australian delegation, as there was no provision in the Charter or in the rules of procedure of the Trusteeship Council that members of the House of Assembly could come and speak before the Council independently.

30. The representative of Australia pointed out that two members of the House of Assembly of Papua-New Guinea were members of the Australian delegation but had asked to speak in their personal capacity.

<sup>17</sup>*Ibid.*, United Kingdom, para. 4.

<sup>18</sup>*Ibid.*, para. 17.

<sup>19</sup>G A (XXIV), Annexes, a.i. 13, A/7895, para. 6 (A/C.4/L.956).

<sup>20</sup>*Ibid.*, para. 7, A/C.4/L.957.

<sup>21</sup>*Ibid.*, paras. 9, 10 and 12, A/C.4/L.956/Rev.1/Corr.1.

<sup>22</sup>G A (XXIV), 4th Com., 1870th mtg.: United Arab Republic, para. 11.

<sup>23</sup>*Ibid.*, paras. 15 and 16.

<sup>24</sup>*Ibid.*, paras. 21 and 22.

<sup>25</sup>G A (XXIV), Plen., 1835th mtg., para. 61.

<sup>26</sup>In this connexion, see also para. 26 above.

<sup>27</sup>T C (XXXIV), 1306th mtg., paras. 21-26.

31. The President of the Council pointed out that it was the Council's practice to allow the advisers to the Special Representatives of the Administering Authorities to speak in their personal capacity.

32. The Council did not pursue the matter further and the two members of the House of Assembly of Papua-New Guinea addressed the Council in their personal capacity.

**D. The question of the verification of the composition of the Trusteeship Council in accordance with the terms of the Charter**

33. During the period under review, the Trusteeship Council continued to consider the reports<sup>28</sup> of the Secretary-General on the credentials of the members of the

Council, but did not examine the credentials of each member separately.

34. At the thirty-fourth,<sup>29</sup> thirty-fifth<sup>30</sup> and thirty-sixth<sup>31</sup> sessions of the Trusteeship Council, it was again contended that only the representatives of the Peoples Republic of China could represent China in the United Nations. Against this view it was maintained that only the Republic of China was entitled to represent China in the United Nations.

35. At each session the Trusteeship Council decided to take note of the report of the Secretary-General on credentials and also to take note of the observations made by the concerned members of the Council.

**\*\*E. Qualifications of representatives of members**

<sup>28</sup>T/1666; T/1687 and T/1698.

<sup>29</sup>T C (XXXIV), 1314th mtg., paras. 5-10.

<sup>30</sup>T C (XXXV), 1336th mtg., paras. 44-49.

<sup>31</sup>T C (XXXVI), T/PV. 1347, p. 47 and 48.

**ANNEX I**

**Membership of the Trusteeship Council (during its thirty-fourth, thirty-fifth and thirty-sixth regular sessions and its thirteenth special session)**

**MEMBERS ADMINISTERING TRUST TERRITORIES**

Australia                      New Zealand<sup>a</sup>                      United Kingdom<sup>b</sup>                      United States

**MEMBERS NOT ADMINISTERING TRUST TERRITORIES**

*Members mentioned by name in Article 23 of the Charter and not administering Trust Territories*

China                                      France                                      United Kingdom<sup>c</sup>

*Member elected by the General Assembly*

<i>Member</i>	<i>Session of the General Assembly at which the member was elected</i>	<i>Regular session of the Trusteeship Council during which the member served</i>	<i>Special session of the Trusteeship Council during which the member served</i>
Liberia <sup>d</sup>	XX	XXXIV-XXXV	XIII

<sup>a</sup>Up to 31 January 1968.

<sup>b</sup>Up to 31 January 1968.

<sup>c</sup>From 1 February 1968.

<sup>d</sup>Retired on 31 December 1968.

## ANNEX II

## Membership of subsidiary bodies of the Trusteeship Council

<i>Visiting Missions</i>	<i>Members not administering Trust Territories</i>	<i>Members administering Trust Territories</i>
United Nations Visiting Mission to the Trust Territory of the Pacific Islands, 1967	Miss Angie Brooks (Liberia, Chairman) Mr. Pierre Basdevant (France)	Mr. Kenneth Rodgers (Australia) Mr. Richard Posnett (United States)
United Nations Visiting Mission to the Trust Territory of New Guinea, 1968	Mr. P. H. Gaschignard (France) Mr. A. Fahnwula (Liberia)	Mr. J. M. McEwen (New Zealand, Chairman) Mr. Ward P. Allen (United States)
 <i>Drafting Committees</i>		
<i>Thirty-fourth Session:</i>		
Nauru	France	United States
New Guinea	China	New Zealand
Pacific Islands	France	United Kingdom
<i>Thirty-fifth Session:</i>		
New Guinea	Liberia	United States
Pacific Islands	France	*
	United Kingdom	
<i>Thirty-sixth Session:</i>		
New Guinea	China	United States
Pacific Islands	France	*
	United Kingdom	

\*The principle of parity of membership of the Drafting Committee was not observed. See para. 17 above.