

OPM Legal brief on United Nations Trusteeship:

Chapter XII of the UN Charter establishes the framework of the international trusteeship of non-self-governing territories, whether established by previous mandate, Second World War detachment, or by subsequent agreements;

- article 75 establishes that a subsequent Trust Deed shall be an individual agreement,
- article 76 establishes the purpose of international trust agreements, and by virtue of Charter article 103 has precedence over any conflicting terms of an agreement,
- article 77(c) with article 79 establish the transferring of administration to the trust shall be done with agreement of the Settlor or Settlers,
- article 83(1) with article 85(1) establish that the United Nations via its Security Council or General Assembly shall act as Appointor with discretion of authorising and amending appointment of the administrator, and
- article 83(3) and 85(2) establish that the United Nations Trusteeship Council shall assist the United Nations fulfilling its sundry obligations including articles 103, 76, 83, 85, 87, and 88.

The 1962 New York Agreement appears to have originally been proposed in May 1959¹ as an “United Nations trusteeship over the territory for a limited number of years”, Indonesia accepted the proposal in 1961 although they did not wish the trusteeship to be called a trusteeship², the Dutch were outraged in early 1962³, and UN counsel explained that the plan would use Charter article 81 (trusteeship) requiring General Assembly authorisation⁴. The proposed temporary nature was implemented via creation of the United Nations Temporary Executive Authority (UNTEA), to which the General Assembly as Appointor granted the agreement’s proposed discretion for transferring the UNTEA administration to the Republic of Indonesia, an action which was not at that time in conflict with the General Assembly’s sundry obligations; however, transfer of administration does not affect or nullify the United Nations own obligation as Appointor under the International Trusteeship System.

As a matter concerning legal interpretation of the Charter of the United Nations, it is the International Court of Justice (ICJ) that has sole jurisdiction to render opinions and decisions regarding the United Nations historic and current legal relationship with West New Guinea in regard of Charter obligations; any preemptive speculations by the Assembly or its members would be without jurisprudence. And for future expediency, Assembly members wishing to petition the Court should consider the principle of *ignorantia juris non excusat* before making submission.

Once the issue of General Assembly resolution 1752 is on the agenda of the Trusteeship Council, the Council with benefit of the earlier General Assembly resolution 171 will be able to ask the International Court of Justice for its advisory opinion upon the “proper status of the territory in relation to the Charter” about which the Australian Attorney General Sir Garfield Barwick had also expressed concern in the minutes after voting in support of resolution 1752 in 1962.

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1 <https://history.state.gov/historicaldocuments/frus1958-60v17/d203>

2 <https://history.state.gov/historicaldocuments/frus1961-63v23/d150>

3 https://wpik.org/Src/Australia/19620124_trusteeship_question.png

4 https://wpik.org/Src/UN/19620412_Stavropoulos1.png https://wpik.org/Src/UN/19620412_Stavropoulos2.png