

## **ILC Legal Analysis on UN Article 76b Termination of the Trusteeship Agreement with regard to the Cameroons under United Kingdom Administration**

### **Paragraph 83 to 98**

**83.** The General Assembly by resolution 1350 (XIII)<sup>63</sup> recommended that separate plebiscites should be held under the supervision of the United Nations in the northern and southern parts of the Cameroons under United Kingdom administration to ascertain the wishes of the inhabitants concerning their future. It recommended that the plebiscite in the northern part should take place in November 1959, and that the following questions be put to the people: "(a) Do you wish the Northern Cameroons to be part of the Northern Region of Nigeria when the Federation of Nigeria becomes independent?" or "(b) Are you in favour of deciding the future of the Northern Cameroons at a later date?"

**84.** With respect to the southern part of the Territory the Assembly recommended that the plebiscite should be held during the next dry season between the beginning of December 1959 and the end of April 1960. It decided, however, that the alternatives to be put to the people and the qualifications for voting should be considered at its fourteenth session, and hoped that all concerned in the Territory would try to reach agreement on those questions before that session.

**85.** A plebiscite in the northern part of the Cameroons accordingly took place under the supervision of the United Nations on 7 November 1959. The United Nations Plebiscite Commissioner reported<sup>64</sup> to the Trusteeship Council at its tenth special session that almost 88 per cent of the registered voters had voted and that of those 62 per cent were in favour of deciding the future of the Northern Cameroons at a later date. The Commissioner stated that he was satisfied that the plebiscite had been conducted by the Administering Authority with efficiency and impartiality and had been held in an atmosphere of freedom. He also commented that it would appear that the majority of voters had made use of the opportunity afforded by the plebiscite to register what was, in effect, a protest vote against the system of local administration prevailing in the Northern Cameroons. The Trusteeship Council, by resolution 2007 (S-X), decided to forward the report to the General Assembly.

**86.** At the fourteenth session of the Assembly the Fourth Committee unanimously approved and the General Assembly unanimously adopted resolution 1473 (XIV) concerning the Northern Cameroons.

By that resolution the Assembly recommended that, in pursuance of Article 76 b of the Charter and in consultation with the United Nations Plebiscite Commissioner, the Administering Authority organize under United Nations supervision a further plebiscite in the Northern Cameroons, the arrangements for which should begin on 30 September 1960, and that the plebiscite should be concluded not later than March 1961. It decided that the two questions to be put at that plebiscite should be: "(a) Do you wish to achieve independence by joining the independent Republic of the Cameroons?" or "(b) Do you wish to achieve independence by joining the independent Federation of Nigeria?" The Assembly recommended that the plebiscite be conducted on the basis of universal adult suffrage, all those over the age of twenty-one and ordinarily resident in the Northern Cameroons being qualified to vote. It requested the United Nations Plebiscite Commissioner to report to the Trusteeship Council on the organization, conduct and results of the plebiscite in order that the Council might transmit its report to the General Assembly together with any recommendations and observations it considered necessary.

**87.** The Assembly also recommended that the necessary measures should be taken without delay for the further decentralization of governmental functions and the effective democratization of the system of local government in the northern part of the Trust Territory, and that the Administering Authority should initiate without delay the separation of the administration of the Northern Cameroons from that of Nigeria, with that process to be completed by 1 October 1960. The Assembly requested the Administering Authority to report on the process of separation to the Trusteeship Council at its twenty-sixth session, and requested the Council to submit a report on the matter to the General Assembly at its fifteenth session.

**88.** Finally, the Assembly declared that the participation of the Northern Cameroons in the elections to the Federal Legislative Assembly of Nigeria should in no way interfere with, or influence, the free choice of the people of the Northern Cameroons in deciding their future in the forthcoming plebiscite.

**89.** With regard to the Southern Cameroons, statements<sup>65</sup> made in the Fourth Committee by representatives of the Administering Authority and by the Premier of the Southern Cameroons, Mr. J. N. Foncha, and the Leader of the Opposition in the Southern Cameroons House of Assembly, Dr. E. M. L. Endeley, indicated that the parties concerned had not been able to reach agreement on the alternatives to be put in the plebiscite or on the qualifications for voting. The Premier and his party wanted the Southern Cameroons to be separated from the Federation of Nigeria and the future of the Territory determined at a later date. Furthermore, they maintained that only "native-born" inhabitants should take part in any plebiscite. The Leader of the Opposition and his party considered that the

choice should be between continuing as an autonomous or self-governing region in an independent Federation of Nigeria or seceding from Nigeria to effect unification with the Republic of Cameroun (formerly under French administration). The franchise, he argued, should include Nigerian and French Cameroonian inhabitants of the Territory.

**90.** Subsequently, however, the Premier and the Leader of the Opposition issued an agreed statement<sup>66</sup> to the effect that, subject to the agreement of the General Assembly, no plebiscite should be held in the Southern Cameroons in 1960 and that, pending settlement of its future, the Southern Cameroons should continue to be administered under the Trusteeship Agreement, but should be separated from the Federation of Nigeria not later than 1 October 1960, when the Federation would become independent. The wishes of the people as to their future should be ascertained in 1962, and the Trusteeship Agreement should be terminated not later than 26 October 1962.

**91.** During the ensuing discussions<sup>67</sup> it was pointed out that implementation of that statement would give rise to many difficulties. Under the terms of the Trusteeship Agreement the Territory constituted a single entity; to decide the future of one part while leaving that of the other to a much later date might set a dangerous precedent. Legal difficulties might also arise since, if one part of the Territory ceased to be under Trusteeship, then either the Trusteeship Agreement which applied to the whole of the Territory would have to be amended, or it would have to be terminated and a new Agreement drawn up for the Southern Cameroons.

Furthermore, the General Assembly had already decided at its thirteenth session that a plebiscite was to take place in the Southern Cameroons and that the questions to be put and the qualifications for voting were to be decided at the current session. Postponement of the plebiscite would therefore involve revision of a General Assembly decision.

**92.** Subsequently, the Fourth Committee approved by a roll-call vote of 74 to none, with 2 abstentions, a draft resolution 68 which the Premier and the Leader of the Opposition of the Southern Cameroons said they would accept as a compromise. It was later adopted by the General Assembly as resolution 1352 (XIV). By that resolution the Assembly decided that the arrangements for the plebiscite referred to in its resolution 1350 (XIII) should begin on 30 September 1960, and that the plebiscite should be concluded not later than March 1961. It recommended that the two questions to be put at the plebiscite should be: "(a) Do you wish to achieve independence by joining the independent Federation of Nigeria?" or (b) Do you wish to achieve independence by joining the independent Republic of the Cameroons?" It also recommended that "only persons born in the

Southern Cameroons or one of whose parents was born in the Southern Cameroons should vote in the plebiscite". Finally, the Assembly recommended that the Administering Authority, in consultation with the Government of the Southern Cameroons, should take steps to implement the separation of the administration of the Southern Cameroons from that of the Federation of Nigeria not later than 1 October 1960.

**93.** The Administering Authority submitted to the Trusteeship Council at its twenty-sixth session reports<sup>69</sup> concerning the separation of the administration of the Northern Cameroons and the Southern Cameroons from the Federation of Nigeria as from 1 October 1960. **The Council adopted resolution 2013 (XXVI)** whereby it requested the Administering Authority to take into account the observations and suggestions made in the Council in completing the separation of the administration of the two parts of the Trust Territory from that of the Federation of Nigeria not later than 1 October 1960, ensuring, in particular, the existence thereafter of police forces wholly responsible to the authorities in the Trust Territory until the completion of the plebiscites in the Territory. The Council hoped that steps would be taken to extend the principle of universal adult suffrage to all future elections in the Trust Territory. **It also requested the Administering Authority to take appropriate steps, in consultation with the authorities concerned, to ensure that the people of the Territory were fully informed, before the plebiscites, of the constitutional arrangements that would have to be made, at the appropriate time, for implementing the decisions taken at the plebiscites.**

**94.** Separate plebiscites were accordingly held, under United Nations supervision, in the northern and southern parts of the Trust Territory on 11-12 February 1961 and 11 February 1961 respectively. The United Nations Plebiscite Commissioner transmitted a report<sup>70</sup> to the Trusteeship Council on the organization, conduct and results of the plebiscites, which at its eleventh special session the Trusteeship Council noted in **resolution 2101 (S-XT)** and **decided to forward to the General Assembly.**

**95.** With respect to the Northern Cameroons the Commissioner reported that the total of registered voters was 292,985 and that a total of 243,955 valid votes had been cast on polling day, of which 146,296 were in favour of joining the Federation of Nigeria, whereas 97,659 were in favour of joining the Republic of the Cameroun. He stated that the plebiscite had been efficiently organized and conducted by the Administering Authority and that, despite the defects and weaknesses inherent in the situation prevailing in the Northern Cameroons, he was satisfied that the people had had the opportunity to express their wishes freely and secretly at the polls concerning the alternatives offered them.

**96.** With regard to the Southern Cameroons, the Plebiscite Commissioner reported that 94.75 per cent of registered persons had voted, of whom 233,571 were in favour of joining the Republic of Cameroun and 97,741 were in favour of joining the Federation of Nigeria. He stated that the plebiscite had been efficiently organized and conducted by the Administering Authority and that he was satisfied that the people of the Southern Cameroons had had the opportunity to express their wishes freely and secretly at the polls **concerning the alternatives offered them.**

**97.** The General Assembly at its fifteenth session adopted,<sup>71</sup> by a roll-call vote of **64 to 23**, with **10 abstentions**, **resolution 1608 (XV)** which had been submitted in its draft form by the **Fourth Committee**. By that resolution, the General Assembly endorsed the results of the **plebiscites that the people of the Northern Cameroons had, by a substantial majority, decided to achieve independence by joining the independent Federation of Nigeria and the people of the Southern Cameroons had similarly decided to achieve independence by joining the independent Republic of Cameroun**. It considered that, the people of the **two parts** of the Trust **Territory having freely and secretly expressed their wishes with regard to their respective futures** in accordance with General Assembly resolutions 1352 (XIV) and 1473 (XIV), **the decisions made by them through democratic processes under the supervision of the United Nations should be immediately implemented**. It accordingly decided that, the plebiscites having been taken separately with differing results, the Trusteeship Agreement of 13 December 1946 should be terminated, **in accordance with Article 76 b of the Charter and** in agreement with the Administering Authority, in the following manner: (a) **with respect to the Northern Cameroons, on 1 June 1961**, upon its joining the Federation of Nigeria **as a separate province of the Northern Region of Nigeria**; and (b) **with respect to the Southern Cameroons, on 1 October 1961, upon its joining the Republic of Cameroun**.

Finally, the **Assembly invited the Administering Authority, the Government of the Southern Cameroons and the Republic of Cameroun** to initiate urgent discussions with a view to finalizing, before 1 October 1961 the arrangements by which **the agreed and declared policies** of the parties concerned would be **implemented**.

**98.** The Northern Cameroons accordingly on 1 June 1961 joined the Federation of Nigeria as a separate province of the Northern Region<sup>72</sup>. The Southern Cameroons became an integral part of the Republic of Cameroun on 1 October 1961.

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<sup>1</sup> G A resolution 1514 (XV).

<sup>63</sup> Repertory Supplement No. 2, vol. III. under Article 76, paras. 125 and 126.

**64** GA (XIV), Annexes, a.i. 41/Addendum, A/4314, paras. 236-244.

**65** GA (XIV), 4th Com., 885th mtg., paras. 24-26.

**66** G A (XIV), Annexes, a.i. 41, A/C.4/414.

**67** G A (XIV), 4th Com., 886th-899th and 901st-903rd mtgs.

**68** G A (XIV), Annexes, a.i. 41, A/C.4/L.591/Rev.l, sponsored by Cuba, Ghana, Guinea, Iran, Liberia, Libya, Mexico, Morocco, Panama, Sudan, Tunisia, United Arab Republic and United States. For vote, see *ibid.*, 4th Com., 903rd mtg., para. 39.

**69** TC (XXVI), Annexes, a.i. 3, T/1526; a.i. 17, T/1530.

**70** G A (XV), Annexes, a.i. 13/Addendum, A/4727.

**71** G A (XV), Plen., 994th mtg., para. 196.

**72** In 1961 the Republic of Cameroun brought a case (Case concerning the Northern Cameroons, ICJ, Reports 1963, p. 15) in the International Court of Justice against the United Kingdom, charging (*ibid.*, p. 24), among other things, that the provisions of General Assembly resolution 1473 (XIV) relating to the separation of the administration of the Northern Cameroons from that of Nigeria had not been followed and that practices, acts or omissions of the local trusteeship authorities during the period preceding the plebiscite and during the elections themselves involved consequences in conflict with the Trusteeship Agreement. In its judgement of 2 December 1963 the Court, among other things, noted (*ibid.*, p. 34) that by resolution 1608 (XV) the General Assembly had endorsed the results of the plebiscite and had decided that the Trusteeship Agreement should be terminated. The trust itself had thereby disappeared and the United Kingdom had ceased to have the rights and duties of a trustee with respect to the Cameroons. The Court further stated that, by the termination of the Trusteeship Agreement, it was clear that any rights which might have been granted by the articles of the Agreement to other Members of the United Nations or their nationals had come to an end. This was not to say that, for example, property rights obtained in accordance with certain articles of the Agreement and vested before termination of the Agreement, would have been divested by the termination. However after 1 June 1961, when the trust over the Northern Cameroons ceased to exist, no claim of rights or privileges originally granted by the Trusteeship Agreement could be made on the United Kingdom, which as trustee was *functus officio* and divested of all power, authority and responsibility in the area, or on Nigeria, which now had sovereignty over the territory, since Nigeria was not a party to the Trusteeship Agreement and never had any obligations under it and it was not apparent how such a claim could be made against the United Nations itself.