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UNITED NATIONS PARTICIPATION IN POPULAR CONSULTATIONS AND ELECTIONS

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I. INTRODUCTION

The history of United Nations involvement in the conduct of popular consultations or elections in colonial dependencies is rich and varied. Basically it is predicated on the right of dependent peoples to self-determination, which is guaranteed by the Charter of the United Nations. The Declaration on the Granting of Independence to Colonial Countries and Peoples gave further impetus to this right and sanctioned its extension to all non-self-governing peoples covered by Chapter XI of the Charter. Thereafter, the role of the United Nations was not limited to Trust Territories, but to all Territories falling within the scope of the Declaration.

The purpose of United Nations involvement in popular consultations is to ensure that the people are able to exercise their choice in a free and unfettered manner. It should be pointed out, however, that the precise function of the United Nations in observing or supervising popular consultations has not been uniform. It has varied according to the circumstances of the case and the mandate established by the General Assembly, the Trusteeship Council or other appropriate organs of the United Nations. The ultimate objective in all cases, however, has been to ensure that the people made their choice and determined their future in complete freedom.

This paper is intended to give a succinct yet comprehensive description of the common features of the role of the United Nations in supervising plebiscites, referendums or elections or in observing them, the main distinction being that, in the act of supervision, the United Nations involvement is wider in scope and covers all the organizational aspects as well as the observation. These common features, which are described in section II, are illustrated in section III by three actual examples of United Nations supervision of popular consultations (British Togoland, French Togoland and Western Samoa) and in section IV by two examples of United Nations observation (Trust Territory of the Pacific Islands and Niue). These examples have been selected in order to cover as wide a span as possible both geographically and over time and also to cover plebiscites and referendums as well as elections.

II. ACTS OF SUPERVISION OR OBSERVATION

A. Decision to conduct a popular consultation

The first step in organizing a popular consultation is to determine the time and the circumstances under which such consultations would be held. This determination can be made in three ways.

1. Determination by the Administering Authority

In the vast majority of cases so far, the Administering Authority, having reached the conclusion that the people of a given Territory were ready for an act of popular consultation and having worked out the necessary arrangements with the local authorities in the Territory, has informed the United Nations of its decision to hold an act of popular consultation in the Territory. At the same time, the Administering Authority has extended an invitation to the United Nations to either supervise or observe the act.

2. Determination on recommendation of a visiting mission

In some cases, a United Nations visiting mission to a given Territory, after reviewing the conditions in the Territory and ascertaining the wishes of the people, usually in consultation with the Administering Authority, has recommended to the competent inter-governmental body or bodies (e.g. the Trusteeship Council, the Special Committee of 24 or the General Assembly) that in view of the stage of political advancement reached by the people, an act of popular consultation should be held in the Territory.

However, even when a visiting mission makes such a recommendation, the agreement of the Administering Authority to hold popular consultations is essential before a decision can be reached on the time and circumstances for popular consultations. Furthermore, the United Nations can be involved in the act, whether in the form of supervision or observation, only at the request or invitation of the Administering Authority.

3. Other possibilities

It is also possible to envisage United Nations involvement in an act of popular consultation as a result of a decision by the General Assembly or the Security Council relating to a given area or Territory which may be disputed or whose status may be the subject of contention. In such an event, however, the agreement of all the concerned parties would be a prerequisite for the smooth conduct of the act of popular consultation. In such cases, United Nations involvement might range from supervision or observation to co-operation with a regional organization and even direct responsibility in order to ensure that the popular consultation is conducted in an atmosphere of complete freedom and impartiality. It is also possible to contemplate situations where the act of supervision or observation by the United Nations might need to be carried out in combination with a peace-keeping operation in the Territory.

B. Establishment of a legal framework

Whatever the nature and circumstances of an act of popular consultation, a legal framework must exist to govern such acts. From the viewpoint of the United Nations, the basic legal instruments are the United Nations Charter, the Declaration on the Granting of Independence to Colonial Countries and Peoples and relevant international agreements. Within the context of these basic documents, the legal framework for a given act is established on the one hand by the General Assembly or any other appropriate United Nations organ and on the other by the Administering Authority or the authorities in the Territory.

The legal basis for United Nations involvement in an act of popular consultations is provided by a resolution of the General Assembly or any other competent organ of the United Nations. Apart from providing the legal basis, the resolution also generally appoints or authorizes the appointment of a mission or a commissioner and defines the mandate of the mission or the commissioner. As a general rule, where the United Nations role is confined to observation, an observation mission has been appointed and when the United Nations is expected to supervise the act of popular consultation, a commissioner or commission has been appointed. In both cases, the mandate contained in the resolution is of crucial importance in determining the exact nature of the United Nations role in the conduct of popular consultations.

The Administering Authority or, in some cases, the territorial authorities, establishes the legal framework for an act of popular consultation through a legislative order or an enactment passed by the appropriate legal body for that purpose. Such an enactment or instrument provides for the establishment of an authority (usually called an administrator) to carry out the functions relating to the consultation. In addition, it usually enumerates the powers of that authority and the various stages of the consultation to be executed by the authority.

The United Nations has established the practice of close consultations with the authorities concerned and of reviewing various aspects of the legal framework for an act of popular consultation in order to ensure that they are in conformity with the requirements of complete freedom and impartiality. In cases of both supervision and observation, the United Nations commissioner or mission has not hesitated to suggest modification or revision of the enabling legislation, if called for.

C. Organization and conduct

In the experience of the United Nations thus far, the Administering Authority, either alone or in consultation with the territorial authorities, has been responsible for all aspects of the organization and conduct of popular consultations, although the possibility exists that the United Nations might assume direct responsibility or carry out such a responsibility in co-operation with a regional organization. In any event, the United Nations has always insisted on either observing or, in cases of supervision, being closely associated with all phases of the organization and conduct of popular consultations.

The organization of a popular consultation involves: defining a precise calendar for the various phases of the act of consultation; formulating regulations and rules; determining the wording of the ballot or, in the case of elections, the system of voting; determining the franchise and carrying out of the registration of voters; maintaining law and order; carrying out a political education programme; monitoring a political campaign; making arrangements for voting on the polling day(s); providing for penalties for offenses in connection with the vote; counting and tabulating the votes; declaring the results; and making arrangements for appeals and reviews.

1. Calendar

Since the calendar for different phases of a popular consultation is an important factor in determining the freedom and impartiality of the exercise, the establishment of the calendar, particularly with regard to the political education programme and the political campaign, has often been the subject of controversy. Complaints about lack of time to carry out the various programmes have been made both to the organizing authority and to the United Nations representatives.

The United Nations for its part has always considered that adequate time and opportunity should be allowed for all phases of a popular consultation in order to enable the people to inform themselves fully on all aspects before making their choice.

2. Regulations for the consultation

Apart from the basic legislative order or enactment, the organizing authority may also issue regulations, orders or instructions to ensure the proper conduct of the consultation.

The United Nations has participated or has been consulted in the formulation of such regulations. The main concern of the United Nations in this respect has been to see that no undue restrictions are imposed, that the same opportunity is provided to all sides and that the regulations are drawn up in such a way as to ensure an impartial conduct of the consultation.

3. Ballot

In the case of a plebiscite or a referendum, the wording of the ballot assumes critical importance. The ballot is usually formulated by the Administering Authority in consultation with the territorial authorities. An appropriate organ of the United Nations may participate in its formulation. While in most cases the wording of the ballot has been accepted by all concerned, in some instances the formulation has occasioned controversy and reservations have been made on the question or questions put to the people.

The chief concern in drawing up the ballot has been clarity and the need to devise alternative questions in parallel terms. In all cases, the United Nations organs concerned have insisted that the question or questions to be asked should be clearly spelt out. Every effort has been made to avoid questions that could mislead the voter.

4. Franchise and registration of voters

In most cases, the eligibility to vote has been determined by the organizing authority and incorporated in a law or regulation promulgated by that authority. For consultations involving the United Nations, universal adult suffrage has been the norm. The organizing authority is responsible for the registration of voters, the drawing up of electoral boundaries, the establishment of local administrative bodies and the preparation of voting lists. The authority is usually empowered to make regulations in those matters and to establish procedures to deal with complaints regarding registration and voting lists. It also details any offenses in connection with registration and the penalties attached thereto.

The United Nations has established the practice of reviewing all of these arrangements closely with the organizing authority. On occasion, United Nations representatives have suggested modifications to such procedures.

5. Maintenance of law and order

The maintenance of law and order during the conduct of popular consultations has always been the responsibility of the organizing

authorities. They have issued orders or regulations to ensure an atmosphere of freedom and impartiality.

The United Nations has reviewed the arrangements with the organizing authorities in order to ensure that a peaceful atmosphere free of any intimidation or threats prevails. The United Nations has always regarded security as a very important factor without which it would not be able to perform its role in the consultations.

6. Political education programme

The organizing authority is responsible for ensuring that the population is made aware of the substance and import of the questions, options or choices on which it is being consulted.

The United Nations attaches considerable importance to the political education programme. It has insisted that sufficient time be allowed in order to permit all segments of the population to acquire information on all sides of the issue and on how the vote would affect the people or the Territory as a whole. It has also sought to ensure that the information disseminated under the political education programme is simply worded, clear and objective; that the information is provided in all languages spoken in the Territory, and that the media are encouraged to make time and space available to all viewpoints.

The contents of the political education programme, the means of financing the programme, the languages to be used, the impartiality of those assigned to conduct the programme and the issues connected with the use of the media have often resulted in extensive discussions and controversy.

From the point of view of the United Nations, the following are fundamental questions which should be answered satisfactorily:

- (a) What steps have been taken by the organizing authority to ensure that the inhabitants are completely familiar with the issues involved in the vote?
- (b) Have opinions both for and against been brought before the voters?
- (c) Are the publications objective and balanced and have they been widely distributed?
- (d) Have the media given equal time and space to all viewpoints?

(e) Has the time provided for political education been sufficient to allow the people to become familiar with the issues involved?

(f) Have the inhabitants been made fully conscious of the significance of the consultations?

7. Political campaign

As in the case of the political education programme, it is incumbent upon the organizing authority to ensure that an atmosphere of peace, freedom and impartiality prevails in which all parties participating in the political campaign are able to present their respective points of view. If the media are publicly owned, or even government licensed, equal time and space are normally allotted to all political parties. In some instances, financial provisions may have to be made, to the extent possible, to ensure that all parties concerned have equal opportunity to air their points of view on the various issues involved.

The United Nations closely follows the political campaign and can suggest modifications to the arrangements or other measures which it may deem necessary or which it may propose in response to any complaints by any of the parties taking part in the campaign.

8. The vote

The voting procedure for the consultation is set forth in the rules and regulations promulgated by the responsible authority. These rules and regulations provide not only for the actual method of voting but also for such matters as the duties and responsibilities of returning officers, presiding officers and scrutineers at polling stations and all other aspects of the vote.

The physical arrangements for voting include the establishment of an adequate number of polling stations; transportation of voters; access to and security arrangements at polling stations; access for representatives of the parties; arrangements for the secrecy of voting; the formulation, printing and delivery of ballot paper and the symbols or colors to be used, if any; and the security of the ballot boxes.

The United Nations representatives review the voting regulations and the physical arrangements in consultation with the organizing authority. They also carefully monitor the actual conduct of voting through the posting of observers at the polling stations and immediately bring to the attention of the organizing authority any malpractices or irregularities that may come to their attention.

In practice, United Nations experience in supervision and observation has covered many varying cultures and behaviour patterns dealing with the vote. The United Nations has therefore not insisted on any set pattern of arrangements so long as the basic requirements of peace, security and freedom of choice are adequately met.

9. Offences and penalties in connection with the vote

Procedures to deal with offences in connection with the vote are usually outlined in the regulations provided by the organizing authority. Offences include voting when unqualified, voting on two or more occasions and refusal to permit a qualified voter to cast a ballot. Any complaint of corrupt or illegal practice and the penalties attached thereto are set out in legislative or administrative orders. Trials may take place and offenders may be sentenced in accordance with the regulations governing the consultations. The United Nations takes cognizance of these arrangements.

10. Counting and tabulation of votes

The organizing authority establishes a committee to carry out the function of counting votes. As a rule, the counting of votes is conducted in public. The procedure for counting the votes is, on the whole, similar in all popular consultations. It is set out in rules and regulations concerning the consultations and generally comprises the following:

- (a) Opening the ballot boxes and verifying their contents. Each ballot box should contain a list giving the number of ballots received, the number used and the number unused, as well as the number of affidavits issued to persons not registered or enrolled;
- (b) Comparing the number of ballots and envelopes containing affidavits and ballots with the figures appearing in the list;
- (c) Verifying the validity of the affidavits;
- (d) Depositing all ballots in a central ballot box;
- (e) Tabulating the ballots;
- (f) Proclaiming the unofficial results.

As a rule, the United Nations presence is considered necessary at the time of the counting of votes in order to verify that all the procedures are correctly applied.

11. Declaration of results

The official results of the vote following a popular consultation are published in a special gazette or are publicly declared by the competent authority. If legally required, the results are officially transmitted to higher authorities for confirmation and notification.

In some consultations, votes are counted, verified and announced at the district level before transmission to headquarters for the final counting and declaration of results.

The official results are transmitted to the United Nations by the competent authority.

12. Appeals and review

An appeals and review procedure has been provided for in all popular consultations.

The primary task of the United Nations in observing investigations of alleged irregularities in the conduct of a popular consultation is to establish that the investigation is thoroughly and effectively conducted, that the investigation is made fairly and in an even-handed manner and that all those who wish to do so have an opportunity to give evidence or information to the organ created to investigate the alleged irregularities.

The matter of deciding whether the allegations of improper conduct are well founded is the task of the organ established to carry out the investigation.

D. Report of the United Nations

At the conclusion of the exercise of a popular consultation, the United Nations commissioner or mission, as the case may be, compiles a report to the relevant organ of the United Nations, containing an account of the visit to the Territory, observations on all aspects and phases of the consultation and conclusions and recommendations, if any (see Annex). The report is also transmitted to the Administering Authority.

II. EXAMPLES OF SUPERVISION

A. Plebiscite in the Trust Territory of Togoland under British Administration (1956)

1. Background

Land Area: 33,776 square kilometres
Population: 423,000 inhabitants (1954)

The Trust Territory of Togoland under British Administration had been administered by the United Kingdom as an integral part of the then-colony of the Gold Coast since 1920.

2. Determination of time and circumstances

At the ninth session of the General Assembly, in 1954, the United Kingdom Government stated 1/ that, when the Gold Coast achieved independence, it would no longer be practical for it, as the Administering Authority concerned, to administer Togoland under British administration as a separate entity and that, in its opinion, the progress of the inhabitants had been such that the objectives of the International Trusteeship System had been substantially achieved. It also suggested that it might be appropriate to terminate the Trusteeship Agreement at the time of the attainment of independence by the Gold Coast and to integrate the two territories into an independent state. The United Kingdom further asked the General Assembly, inter alia, to formulate a procedure for ascertaining the wishes of the inhabitants of the Trust Territory so that definitive arrangements for the future administration of the Trust Territory could be decided upon in the course of the eleventh session of the General Assembly.

In reply, the General Assembly, at the same session, requested the Trusteeship Council to dispatch a mission to the Territory.2/ In its report to the Trusteeship Council, the 1955 Visiting Mission stated that a plebiscite would be the most democratic, direct and specific method of ascertaining the true wishes of the people on the future of their Territory and included in its report detailed proposals for the arrangements for the holding of the plebiscite.3/

3. Legal framework

Following the recommendation of the Visiting Mission, the General Assembly, at its tenth session, adopted a resolution 4/ recommending (a) that the wishes of the inhabitants of the Territory be ascertained by plebiscite; (b) that the Administering Authority take steps "in consultation with a United Nations Plebiscite

Commissioner" to organize and conduct the plebiscite "under the supervision of the United Nations"; and (c) that the plebiscite be organized and conducted on the basis of the arrangements proposed in the report of the Visiting Mission, subject to such modifications as might be agreed upon between the Administering Authority and the United Nations Plebiscite Commissioner and such additional measures as might be proposed by the Commissioner to ensure "a free and neutral atmosphere for the plebiscite".

In the same resolution, the General Assembly decided to appoint a Plebiscite Commissioner "who shall exercise on behalf of the General Assembly the powers and functions of supervision defined by the Visiting Mission in its special report and who shall be assisted by observers and staff to be appointed by the Secretary-General in consultation with him". The Commissioner was requested to submit a report on the organization, conduct and results of the plebiscite to the Trusteeship Council for its consideration and for transmission to the General Assembly at its eleventh session (1956) "in order that the latter may, in consultation with the Administering Authority, assess the results and determine the further action to be taken on the attainment of independence by the Gold Coast".

In compliance with the resolution, the Government of the United Kingdom, the Administering Authority, proceeded to organize the plebiscite.

The basic instrument regulating the plebiscite, the Togoland under United Kingdom Trusteeship (Plebiscite) Order in Council, came into operation on 31 December 1955. The Order in Council, inter alia, gave the alternatives to be put to the voters; established the qualifications for applicants; and provided for registration, for an appeals procedure and for the appointment of Judges of Special (Election) Courts. Under section 11 of the Order, provision was made for the facilities to be given to the United Nations Plebiscite Commissioner and observers for the discharge of their functions.

In consequence of powers conferred on him by the Order in Council, the Governor of the Gold Coast, and therefore of the Trust Territory, issued three distinct regulations: the Togoland Plebiscite (Registration) Regulations, 1955; the Togoland Plebiscite Regulations, 1956; and the Togoland Plebiscite (Voting Petitions) Regulations, 1956. These regulations described in detail the registration and voting procedures and the functions and responsibilities of those responsible for the conduct of the plebiscite.

4. Appointment of the United Nations Plebiscite Commissioner;

On 15 December 1955, the General Assembly appointed Mr. Eduardo Espinosa y Prieto of Mexico as the Plebiscite Commissioner.

Thirteen observers from the United Nations Secretariat were subsequently appointed by the Secretary-General in consultation with the Commissioner.

5. Arrival of the United Nations team in the Territory

The Commissioner and his staff arrived in the Territory in the first half of January 1956, approximately four months in advance of the actual date of the holding of the plebiscite. Each of the 13 observers was assigned to a different area of the Territory for the duration of the mission.

6. Organization and conduct of the plebiscite

The conduct of the plebiscite was entrusted to a Plebiscite Administrator appointed by the Administering Authority, subject to any directions given to him by the Governor of the Gold Coast acting under the Order in Council. The Plebiscite Administrator maintained constant co-operation with the United Nations Plebiscite Commissioner in every stage of the conduct of the plebiscite, in particular the registration of voters, the planning for polling day, the forms used for polling, the actual voting and the counting of the results.

In accordance with the recommendations of the United Nations Visiting Mission, the Order in Council provided that the right to register and vote in the plebiscite should be accorded to every person who:

- (a) Was of the age of 21 years or older;
- (b) Had resided in Togoland under British administration for at least 12 months in the two years preceding registration;
- (c) Was residing at the time of registration in the ward in which he had applied to be registered;
- (d) Was not disqualified by such causes as conviction, insanity, etc.

In line with the recommendations of the United Nations Visiting Mission, the period of registration lasted for 35 days. United Nations observers were present in each electoral district at all stages of the registration process which was conducted by 60 registration officers from among overseas officers of the British Government. Tax receipts for the previous two years were regarded as the primary and normal but not compulsory manner of establishing residence. In their absence, other evidence such as identification by the chief or elders of a village was accepted.

Registration began on 10 January 1956. Polling was held on 9 May of the same year. Petitions to be investigated could be lodged with the Special (Election) Court from 10 to 23 May 1956.

It may be useful to recall here some special aspects of the plebiscite. First, Togoland under British administration had been administered as an integral part of the Gold Coast. It did not exist administratively as a unit. It had followed the same constitutional development as the Gold Coast and its political parties were either branches of those in the colony or were closely linked with them. The plebiscite had obvious implications on the Togoland unification problem and the prospect of Ewé unification. There was thus the danger of external influence mainly from the ruling party in the Gold Coast - which supported the first alternative - and from leaders of the Togoland unification movement in Togoland under French Administration. At the urging of the United Nations Commissioner, appeals were made to both parties jointly by the British administration and the United Nations Commissioner to keep external influences out of the plebiscite. Despite some incidents, such appeals were largely successful.

Secondly, the Territory, being a strip of land running 480 kilometres from north to south with a width of scarcely 65 kilometres and adjoining two Territories with which the alternatives of the plebiscite were closely connected, there was a natural fear of mass infiltration of applicants for registration coming from either of the neighbouring Territories to swell the ranks of Togolese who shared their political views. This fear turned out to be unfounded, despite the fact that the Administering Authority had not considered it feasible to enlist a sufficient number of men to police the border areas effectively. 5/

7. Ballot

The wording of the ballot aimed at ascertaining the wishes of the majority of the population in regard to:

- (a) The union of the Territory with an independent Gold Coast;
- (b) The separation of Togoland under British administration from the Gold Coast and its continuance under Trusteeship, pending the ultimate determination of its political future.

8. Political campaign

The early stages of the plebiscite were not distinguished by important rallies or printed publicity. The parties concentrated instead on getting great numbers of their followers registered

and in carrying out a door-to-door propaganda campaign; some vans with loudspeakers were used. By far, the most important and largest rally was that held by the Togoland Congress in Ho on 6 May 1956. Numerous chiefs entered the town in an impressive parade and a great number of lorries brought into town several thousand people.

The development of the plebiscite revealed a struggle in many parts of the northern section of the Territory which had not been foreseen earlier. It was known that the northern chiefs wanted immediate union with the Gold Coast and that their authority was acknowledged by tens of thousands of voters. It was thought that the vote there might go in a solid block for the first alternative (union with the Gold Coast). Numerous political complications developed, however. The concept of federation made great inroads in that area and as a result of a remarkable campaign conducted by the Togoland Congress, many votes were cast in the north for the second alternative.

9. Voting and declaration of results

The voting procedure was laid down in regulations enacted by the Administering Authority in conformity with the procedures recommended by the United Nations Visiting Mission. Special arrangements were made to ensure the secrecy of the voting.

The 80 returning officers were expatriate officers and some 1,500 Africans were employed to fill the posts of presiding officer and polling assistants at the 408 polling booths throughout the Territory. Following objections by the United Nations Commissioner, the Plebiscite Administrator had abandoned his plan of recruiting most of the personnel in the Gold Coast and instead most of the people appointed were native Togolese.

The voting, which took place on 9 May 1956, was closely observed by the United Nations observers, as was the counting which was done at 10 polling stations.

According to the declared results, out of the 160,587 votes cast, 93,095 (58 per cent) were in favour of the first alternative and 67,492 (42 per cent) were in favour of the second alternative.

10. Maintenance of law and order

The 1955 Visiting Mission, after reviewing the existing situation in the Trust Territory, had expressed the view that no special measures were necessary to ensure freedom of campaigning. The General Assembly nevertheless authorized the United Nations Plebiscite Commissioner to propose additional measures in order to secure a free and neutral atmosphere for the plebiscite.

The maintenance of law and order and the assurance of the basic freedoms continued to be the concern of the Cold Coast Government, which remained responsible for the normal administration of the Territory. Only the immediate conduct of the plebiscite came under the control of the Plebiscite Administrator.

11. Claims and objections

Only 210 claims and 435 objections were entered in the entire Territory. Of the 210 claims, 81 were accepted and 129 were overruled. The majority of the claims sustained were cases in which errors had been committed by the registration personnel or by typists. The objections referred mainly to insufficient length of residence, insufficient age or criminal records.

According to the report of the Plebiscite Commissioner, all the United Nations observers concurred that the presiding officers had shown wisdom, dignity and impartiality in dealing with their cases, and that no representations from the political parties had been recorded against them. 6/

12. United Nations observations

Neither the report of the Plebiscite Administrator nor that of the United Nations Plebiscite Commissioner 6/ reveal any major difficulty in maintaining order or in ensuring a free atmosphere for the plebiscite. On the contrary, both were in agreement in declaring that the campaign had been carried out in an atmosphere of freedom and fairness and in a manner which reflected great credit on the people of the Territory. A very few minor disturbances were reported.

The United Nations Commissioner submitted his report on the conduct and results of the plebiscite 6/ to the General Assembly through the Trusteeship Council so that the Council might, in consultation with the Administering Authority and in accordance with General Assembly resolution 944 (X), "assess the results and determine the further action to be taken on the attainment of independence by the Gold Coast in the light of all the circumstances and in accordance with the Charter of the United Nations and the Trusteeship Agreement".

B. Plebiscite in Western Samoa (1961)

1. Background

Land Area: Western Samoa is composed of two large islands, two small islands and several islets with a total land area of 2,932 square kilometres.

Population: 102,860 (1958)

In 1920, the League of Nations placed the Trust Territory of Western Samoa under a mandate conferred to His Britannic Majesty and exercised on his behalf by the Commonwealth of New Zealand. In 1946, the Government of New Zealand placed the Territory under the International Trusteeship System and administered it until its independence in 1962.

2. Determination of time and circumstances

In 1959, the New Zealand Government informed the United Nations Visiting Mission to the Territory 7/ that it was prepared to adopt a tentative time-table for the attainment of self-government or independence by Western Samoa, and that the General Assembly would be asked, at its fifteenth session, to make arrangements for supervising a plebiscite to be held in early 1961. The Mission, therefore, suggested that, as had been agreed to by both the Administering Authority and the leaders and representatives of Western Samoa, a plebiscite should be held at the appropriate time.

3. Legal framework

On 18 December 1960, the General Assembly, by its resolution 1569 (XV), recommended that the Administering Authority take steps, in consultation with a United Nations Plebiscite Commissioner, to organize, under the supervision of the United Nations, a plebiscite in Western Samoa. As a result, the Government of New Zealand enacted an Order in Council, entitled "The Western Samoa Plebiscite Order, 1961", which was published on 8 February 1961.

The time-table for the plebiscite provided a period of three months for the political education of the people.

4. Organization and conduct of the plebiscite

The Order in Council enacted by the Government of New Zealand, the Administering Authority, provided for the appointment of a Plebiscite Administrator and a Samoan Plebiscite Administrator. The General Assembly had appointed Mr. Najmuddine Rifai of the Syrian Arab Republic as United Nations Plebiscite Commissioner for Western Samoa on 18 December 1960.

In order to conduct the plebiscite on the basis of universal suffrage, it became necessary to compile a completely new register of voters. To ensure that registration would be as complete as possible, notices announcing the manner and places for enrolment were issued by the Plebiscite Administrators and the Registrar. The

register was published and made available for inspection by the public. By the time the United Nations Plebiscite Commissioner arrived in the Trust Territory, the register of voters had been completed.

On the recommendation of the Plebiscite Commissioner, provision was made for polling places in Auckland and Wellington for those who had enrolled on the register of voters but who were temporarily resident in New Zealand.

With respect to extension of the vote to those Western Samoans who had settled permanently in New Zealand and elsewhere, the authorities maintained that the residential qualification was an invariable prerequisite to a popular vote and that principle had been applied in all plebiscites held under the supervision of the United Nations.

At the suggestion of the Commissioner, a new clause was included in the Plebiscite Order (as Amendment No. 1) under which any person who was qualified, but had not registered, would be allowed to vote in the plebiscite by making a declaration, before the presiding officer at the polling station, of the particulars which he would have otherwise made to the registrar in an application for registration. Thus, a way was opened for every qualified Western Samoan, even though not previously registered, to take part in the plebiscite.

5. Political education campaign

A booklet containing a comprehensive set of questions and answers on the salient points of the Constitution and the issues involved in the plebiscite, was printed in Samoan and English, and distributed by the Government.

Government information parties were organized to travel throughout the Territory to inform the people about the issues involved and, in particular, to demonstrate how to record votes on the ballot paper.

The United Nations Plebiscite Commission was informed that on the adjournment of the Legislative Assembly, each member of the Assembly had returned to his constituency to campaign and enlighten the public. Two public meetings were held in Apia at which the Plebiscite Administrator and a representative of the Western Samoan Government explained the various aspects of the Constitution and the issues involved in the plebiscite and answered questions of those attending. The second meeting was broadcast by radio. A public debate on the issues involved took place in Apia and was also broadcast.

A total of 500 posters with four different texts in Samoan and English, urging the people to vote, were displayed on the sides of buses and in the main stores and public places throughout the Territory. Slides were shown on the screen in a theatre in Apia. Prior to the closure of registration, slides with texts in Samoan and English appealing to Western Samoans to register were shown, while from 24 April to 8 May 1961, the people were urged to vote.

A month prior to the plebiscite, a copy of the draft constitution in the Samoan language was distributed to each household on the island.

6. Ballot

As recommended by General Assembly resolution 1569 (XV), the following questions were put to the voters:

"Do you agree with the Constitution adopted by the Constitutional Convention on 28 October 1960?"

"Do you agree that on 1 January 1962, Western Samoa should become an independent State on the basis of that Constitution?"

7. Voting and declaration of results

The voting took place on 9 May 1961. Five United Nations observers covered the voting process in 14 polling stations.

The result of the voting showed that of the total registered voters who voted, 83 per cent voted "yes", and 13 per cent voted "no" on the first question and 79 per cent voted "yes" and 13.5 per cent voted "no" on the second question.

8. Objections and claims

The number of objections made by the Registrar to the register of voters totalled 147, of which 128 were accepted and the names thus removed, and 19 withdrawn after appropriate explanation. The grounds for objections included non-citizens, double registrations and disqualification by law.

No petitions for inquiry were submitted within the period established by the Plebiscite Order, which laid down the conditions for inquiry regarding complaints that a person who was not qualified to vote had voted, or that a qualified voter had been refused permission to vote, or cases of corrupt or illegal practice in any polling district.

9. United Nations observations

In his report to the Secretary-General, 8/ the United Nations Plebiscite Commissioner stated that the plebiscite was carried out with correct adherence to the law laid down in the Plebiscite Order, as amended, and that the plebiscite was fair and impartial. The official result showed that 31,426 people voted in favour of the Constitution and 29,882 in favour of the independence of Western Samoa.

C. Elections to the Legislative Assembly (1958) prior to termination of the Trusteeship Agreement in Togoland under French Administration

1. Background

Land Area: 55,000 square kilometres
Population: 1,111,068 (1957)

Formerly a German colony, Togoland under French administration was a League of Nations Mandate between 1922 and 1946. The French Government administered the Territory under the International Trusteeship System until its independence in 1960.

2. Determination of time and circumstances

The United Nations Mission to the Trust Territories of Togoland under British Administration and Togoland under French Administration, 1955, 9/ reported that, as far as the future of the French-administered Territory was concerned, the most effective method of ascertaining the wishes of the population would be to hold a plebiscite in which the people of the Territory would be asked to decide if they wished self-government within the French Union or independence. The General Assembly, after endorsing the conclusions of the Visiting Mission, recommended that the consultations of the population should be conducted, as in the case of Togoland under British administration, "under the supervision of the United Nations". 10/

In reply, the French Government requested the Trusteeship Council to appoint a "mission of observers" to follow the operation of a referendum, in which the voters of the Territory would be asked to choose between continuation of the Trusteeship and a new autonomy statute within the French Union.11/ The Trusteeship Council refused to do so on the grounds that the proposed referendum did not offer the choice of independence, as recommended by the 1955 Visiting Mission.

In the light of the outcome of the referendum which was, nonetheless, held in October 1956 in the absence of international observers and resulted in an overwhelming majority in favour of the new statute, 12/ the French Government requested the General Assembly to terminate the Trusteeship Agreement for the Territory. After some days of discussion in the Fourth Committee, in which many delegations manifested their opposition to the termination of the Agreement, France agreed to withdraw its request and decided instead to invite a United Nations commission to visit Togoland under French administration to study on the spot the conditions under which the provisions of the new statute were being applied. This invitation was accepted by the General Assembly. 13/

In its report, 14/ the Commission stated that, while the new statute constituted a very significant constitutional advance for the Territory, it nonetheless did not amount to full self-government within the meaning of Article 76 b of the Charter of the United Nations. The Commission therefore recommended the holding of elections to the Legislative Assembly on the basis of the new electoral law which provided for universal adult suffrage. With regard to the termination of the Agreement, the Commission suggested that a new popular consultation be undertaken "in full agreement with the United Nations" to ascertain the desires of the people regarding the future status of the Territory.

In the course of the twelfth session of the General Assembly in 1957, France announced its intention to hold elections to the Togoland Legislative Assembly in 1958, under United Nations supervision, and that the new Togoland Government that would issue from the elections would be asked to formulate proposals for the early attainment of the final objective of the Trusteeship System.

3. Legal framework

The General Assembly, by its resolution 1182 (XII) of 29 November 1957, accepted the invitation to make the necessary arrangements "in consultation with the Administering Authority, for supervision of the elections by the United Nations"; decided to elect a Commissioner who would supervise the elections and who would be assisted by observers and staff to be appointed by the Secretary-General, in consultation with the Commissioner; requested the Administering Authority and the Government of Togoland to make, "in consultation with the United Nations Commissioner, the arrangements for the organization and conduct of the elections to the Legislative Assembly", and requested the Commissioner to report to the Trusteeship Council and to the General Assembly on the organization, conduct and results of the elections. On 14 December 1957, the Assembly elected Mr. Max Dorsinville of Haiti United Nations Commissioner for the elections in the Trust Territory of Togoland under French administration.

The legal provisions for the organization and conduct of the elections were enacted by the Togoland Government prior to the arrival of the United Nations Commissioner and without consultation with him. The grounds given were the need to proceed with the elections before the start of the rainy season. The Commissioner deplored that fact, although expressing understanding for the desire of the French and Togoland Governments to avoid too long a period of "excitement" in the country if the elections were postponed until the end of the rainy season.

The Togoland Act. No 58-30 of 20 February 1958, which provided the main legal basis for the elections, laid down a system of a uninominal single ballot. This Act also contained provisions concerning the composition of the Assembly, the eligibility of candidates, the electoral system and the organization of the elections (declaration of candidature, the fixing of the date of the elections and the procedure for counting ballots and compiling returns). The elections were held under universal direct suffrage which had been introduced in the Territory in 1956.

4. Organization and conduct of the elections

The Territory was largely self-governing on all matters, except for external affairs, currency, foreign exchange and defence. The organization of the elections was thus in the hands of the Territorial Government and it was with it rather than with the French authorities that the United Nations Commissioner had to consult.

Responsibility for the actual organization of the elections was entrusted to a senior officer of the Togoland Government, who was assisted in each administrative district by an officer of the French Overseas Administration.

The Togoland Government also set up a co-ordination service for liaison between the various services of the Togoland Government and the United Nations Mission.

5. Registration

The system in force in Togoland was based on a series of French Acts and decrees originally intended for metropolitan France, and later extended with minor alterations to the overseas Territories. It provided for permanent electoral lists subject to annual revision every December. As a result, the registration of voters had been completed by the time of the arrival of the United Nations team. Since the system was based on the premise of a well-organized registration of births and deaths, non-existent in many parts of the

Territory, the electoral lists left much to be desired. Two additional requirements for registration were Togoland "nationality" and actual residence in an administrative "circonscription" (subdivision) of not less than six months.

These deficiencies in the registration system led to a deluge of applications in the two months prior to the vote. There were over 80,000 requests for registration, representing some 20 per cent of the electorate already registered. Of the total, over 46,000 were ordered to be registered by the magistrates who were responsible for examining the claims. Various procedures were utilized to establish proof of age, residence and nationality, such as baptismal certificates, tax receipts, police certificates and oral testimony by witnesses.

The requirements of proof of residence and nationality were due to fears of large-scale infiltration from neighbouring countries, the Government fearing infiltration from Ghana, and the opposition being concerned about an influx of people from Dahomey.

In order to prevent infiltration, the French authorities and the Togolese Government closed the frontier with Ghana several days before polling day. Despite a request by the United Nations Commissioner that the same measures be applied to the border with Dahomey, no such measure was adopted on the grounds that Dahomey, like Togoland, was a French Territory.

The United Nations Commissioner, though stating that there might have been some organized attempts at infiltration from Dahomey, reported that fears of large-scale infiltration from neighbouring territories had proved exaggerated.

6. Maintenance of law and order

The Plebiscite Commissioner reported that, because of the difficulties which arose in connection with emergency registration procedure and the distribution of voters' cards, tensions gradually increased as the polling day approached. The border with Ghana was closed and this step was not calculated to reduce prevailing tensions. Moreover, there was the threat of a general strike from the Togoland Federation of Trade Unions. Due in part to the intervention of the United Nations Commissioner, the strike did not take place on 23 April 1958 as forecast.

The Comité de l'unité togolaise (CUT) and the Mouvement de la jeunesse togolaise (Juvento) also complained, on the eve of the election, to the Commissioner about the manner in which it was being held. According to the Commissioner, those complaints also added to the feverishness of the day.

In its desire to maintain public order, the Government of Togoland took various steps which to some extent restricted freedom of assembly. Moreover, some authorities, particularly some of the traditional chiefs, did not fully accept the principle of freedom of assembly as applied to the opposition parties, and this gave rise to incidents.

In his conclusions, the Commissioner noted that, despite these and other difficulties which arose, it might be said that the election campaign had taken place in an atmosphere free enough to enable the candidates and political parties to put their case before the electorate.

7. Political education programme and the political campaign

The laws and regulations concerning the elections were published in the Journal Officiel of the Republic of Togoland, normally issued twice monthly. In case of need, special issues were published at 24 hours' notice. There were five special numbers during the campaign. Announcements and notices were circulated in the Bulletin quotidien d'information and in Le Togo Républicain, a bi-weekly publication. There were also radio broadcasts in French and in the principal local languages by Radio-Lomé, which reached an estimated 50,000 listeners, mainly in the capital. In order to ensure wider publicity, regulations directly affecting voters were posted on official notice-boards in various administrative circonscriptions and in the villages, at schools, customary courts or indigenous council houses. The village chiefs made arrangements to have the regulations proclaimed by the crier in the traditional manner.

Chefs de circonscription were instructed to tour the villages in their districts to explain the various procedures and the purpose of the elections to the people. However, despite these measures, the Commissioner found that many voters, although knowing that elections would take place on 27 April, were completely unaware of the principle of the secrecy of the ballot.

8. Electoral disqualifications

Electoral disqualifications were applied to candidates on grounds of conviction for any crime, undischarged bankruptcy and insanity. This question seemed to the Commissioner to be both difficult and unfortunate and he sought to find a solution to the matter since it had rendered the candidature of some of the undisputed leaders of the opposition impossible. His efforts were in vain, as the Togoland Government considered that nothing could be done before the elections. He felt that an amnesty, rehabilitation or amendment of the legislation might have contributed greatly towards a relaxation of the political atmosphere in Togoland.

9. Voting and declaration of results

The vote took place on Sunday, 27 April 1958. There were about 30 United Nations observers to cover some 544 polling stations, some of which were scattered in not easily accessible spots. Difficulties and incidents reported to the Commissioner related to delays in the opening of polling stations; delays in voting procedure; difficulties arising from defects in the arrangements for issuing voting cards and for last-minute registration orders; voting after the time fixed for the closing of the polls; intimidation with a view to preventing certain voters from casting their ballots; and fraudulent and multiple voting.

It was provided that counting should take place at each polling place immediately after the closing of the polls. The counting was carried out without disputes. In one case only, it was reported that, because of a threatening crowd, the chairman of the polling committee had the ballot box, as well as the committee members and candidates' agents, removed under police escort to another place, where the counting then proceeded without incident.

Once the counting operations were completed, the results were announced and clearly displayed in the voting rooms. The law provided that the general tabulation of the returns be carried out publicly in the Palace of Justice at Lomé, by a board headed by a judge. A representative of each candidate was present at the candidate's electoral circonscription while the Election Returns Board was engaged in this operation. The Board's decisions were taken by majority vote. The results had to be announced within 10 days by the Chairman of the Board. Upon completing its work, the Election Returns Board announced the election results.

The elections resulted in a victory for the main opposition party, which won 29 seats in the Legislative Assembly as against 13 for the two governing parties. In the view of the United Nations Commissioner, the outcome of the elections faithfully reflected the wishes of the people of Togoland.

10. Investigation of complaints

Provision was made for appeals to be filed with the Territory's administrative tribunal within three working days following the official announcement of the results of the elections. In six cases, the results were contested. In all of them, the appeals were rejected.

III. EXAMPLES OF OBSERVATION

A. Referendum in the Trust Territory of the Pacific Islands (1978)

1. Background

Land area: The three archipelagos which comprise the Trust Territory of the Pacific Islands, the Marshalls, the Carolines and the Marianas (excluding Guam) include more than 2,100 islands and atolls scattered over an area of some 7.8 million square kilometres of the western Pacific, north of the Equator. The islands and atolls have a combined land area of approximately 1,854 square kilometres.

Population: 132,929 (1980) distributed as follows: Truk, 37,488; Marshall Islands, 30,873; Ponape, 22,081; Northern Mariana Islands, 16,780; Palau, 12,116; Yap, 8,100; and Kosrae, 5,491.

In 1920, the League of Nations placed the three archipelagos under Japanese mandate. Japan remained in possession until 1944, when the United States armed forces occupied the Territory.

In 1946, the United States agreed to place the Territory under the International Trusteeship System as the only strategic Trust Territory under article 82 of the Charter of the United Nations. The Territory, also known as Micronesia, is the only remaining Territory under trusteeship.

2. Determination of time and circumstances

The need for a constitution suitable to the particular requirements of Micronesia was the subject of much discussion and numerous recommendations over many years by the Trusteeship Council and United Nations visiting missions. The 1967 Visiting Mission,^{15/} referring to the future pattern of constitutional development in Micronesia, pointed out that it was a matter to which the Congress of Micronesia should give close study and it suggested that the Congress give to one of its standing committees the duty of keeping the constitution under review and making any suggestions it deemed necessary.

Beginning in the early 1970s, the demand for a constitutional conference to prepare a constitution and propose the nature and form of a Micronesian Government gained momentum. At the special session of the Congress of Micronesia, held on Ponape in late 1972, a proposal was submitted for the holding of such a conference. The Congress was not able, however, to take a decision on the matter. Early in 1973, a further effort was made in this regard, but without success.

The 1973 United Nations Visiting Mission, 16/ noting that the formulation and adoption of a constitution drawn up by the Micronesians themselves would play an important part in Micronesia's advancement towards self-determination and independence, regretted the fact that work on such a constitution had not yet been started.

At its second regular session, in March 1974, the Fifth Congress of Micronesia passed an act (Senate Bill No. 38) calling for a constitutional convention for Micronesia and prescribing its powers, duties and functions. On 29 March 1974, that act was signed into law (Public Law 5-60) by the High Commissioner of the Trust Territory.

The convention was charged with the duty of drafting a constitution which would provide the legal framework of internal government for Micronesia following termination of the Trusteeship Agreement. It began its work on 12 July 1975, the tenth anniversary of the Congress of Micronesia, and concluded its task on 8 November 1975 with the signing of a draft constitution for a proposed Federated States of Micronesia.

In 1977, the Congress of Micronesia adopted an act, by which it directed the High Commissioner of the Trust Territory to set the date for a constitutional referendum on the proposed constitution of the Federated States of Micronesia. On 1 April 1977, the act was signed into law by the High Commissioner and it was decided that the referendum would be held on 12 July 1978.

Subsequently, at the forty-fifth session of the Trusteeship Council, the United States of America, as the Administering Authority concerned, invited the Council to dispatch a visiting mission to observe the referendum on the draft constitution. 17/ During the same session, the Council decided in principle to send such a mission. 18/

3. Legal framework

At its forty-sixth session, the Council adopted resolution 2165 (XLV) of 13 May 1978 by which it decided to send a visiting mission to observe the referendum, to begin on 13 June 1978 and to end as soon as practicable after the declaration of results, and directing the mission to observe the referendum, including the campaign and polling arrangements, the counting of ballots and the declaration of results. Mr. Robin A.C. Byatt of the United Kingdom was appointed Chairman of the Mission.

During its second regular session in 1978, the Congress of Micronesia passed an act which provided, inter alia, for the conduct of the referendum and established a Constitutional Referendum Board.

4. Organization and conduct of referendum

The Constitutional Referendum Board was made responsible for the over-all supervision and administration of the referendum, including the registration of voters.

In April 1978, the Board adopted regulations for the conduct of the referendum, including deadlines for certain procedures leading to the referendum and the subsequent counting of votes thereafter.

5. Franchise and registration of voters

A citizen of the Trust Territory was qualified to vote in the referendum if 18 years of age or older on the date of the referendum; fulfilled the residence requirements for registration under the regulations for the conduct of the referendum; was not under a judgement of mental incompetency or insanity; was not currently under parole, probation or sentence for any felony for which he had been convicted by any court of the Trust Territory or any court within the jurisdiction of the United States; and had registered to vote or was otherwise qualified to vote under the regulations. 19/

Each district referendum register was maintained by the district referendum commissioner concerned. It was open to public record or inspection for at least 60 days prior to the referendum.

6. Political education programme

The importance of developing a comprehensive programme of political education in Micronesia to engender amongst the people a sense of political consciousness and awareness of the various options and opportunities open to them in the process of self-determination was discussed in many reports of the Trusteeship Council and its various missions.

In the early 1960s and in subsequent years, United Nations visiting missions that toured the Trust Territory saw an urgent need for the institution of an energetic political education programme designed to provide the people of Micronesia with explanatory information concerning their future political status. The 1964 Visiting Mission, 20/ for example, stated that only Micronesians could choose their future political status and that they should be able to choose it based on real alternatives and thorough self-knowledge.

In August 1972, the Congress of Micronesia adopted legislation providing for the establishment of a joint Political Education Commission. Its task was to prepare the people of Micronesia for