

The New York Agreement was a bilateral agreement between the Indonesian Republic and the Kingdom of the Netherlands, but was tied, through Article 1 to the UNGA, and through Article XXV111 (2) to Article 102 of the UN Charter. It was adopted by the UNGA on 21 Sept 1962 (UNGA Res. 1752, XV11) despite obligations imposed on UN members—by way of Chapter 16 (Articles 102, 104); Chapter 11 (Declaration Regarding Non-Self-Governing Territories); and Chapter 12 (International Trusteeship System).

Ch 11 (e) requires parties to the agreement “to transmit regularly to the Secretary-General for information statistical and other information of a technical nature relating to the economic, social, and educational conditions in the territories for which they are respectively responsible”

Ch 12, all clauses, but especially (b) to publicise and explain the terms of the Agreement to, and inform the population concerning the transfer of administration to Indonesia.

Thomas Wainggai would have also been extremely concerned by the downplay of ‘self-determination’ in UNGA Res. 1752 (XV11) which places scant reference to GA Res. 1514 (XV) 1960 and GA Res. 1541 (XV) 1960.

1. New York Agreement: Article 1

After the present Agreement between Indonesia and the Netherlands has been signed and ratified by both Contracting Parties, Indonesia and the Netherlands will jointly sponsor a draft resolution in the United Nations under the terms of which the General Assembly of the United Nations takes note of the present Agreement, acknowledges the role conferred upon the Secretary-General of the United Nations therein, and authorizes him to carry out the tasks entrusted to him therein.

New York Agreement: Article XXV111

1. The present Agreement will enter into force upon the date of the adoption by the General Assembly of the resolution referred to in Article 1 of the present Agreement.
2. Upon the entry into force of the present Agreement, the Secretary-General of the United Nations will register it in accordance with Article 102 of the Charter.

New York Agreement: UNGA Resolution 1752 (XV11), 21 Sept 1962 (1127th plenary meeting)

The terms of this Agreement and its effect must be construed having regard to the provisions of Articles 102 and 104 of the UN Charter (Ch 16), the purposes and principles of the Charter and the principles of international law.

2. UN Charter, Chapter 16, Articles 102, 104

Article 102 (3). In the event of a conflict between the obligation of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

3. UN Charter, Chapter 11: Declaration Regarding Non-Self-Governing Territories"

Members of the United Nations, which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government are obligated to recognise the principle that the interests of the inhabitants of these territories are paramount, and to accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the ‘present Charter’, the well being of the inhabitants, and to comply with a range of conditions set out in the Article.

That Chapter applied to both Member State parties to the New York Agreement, the terms of which make no, or scant reference to the following conditions in Chapter 11 of the Charter:

"(a) to ensure with due respect for the culture of the peoples concerned, their political ... advancement, their just treatment, and their protection against abuses.

"(b) to develop self-government, to take due account of the political aspirations of the peoples and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement.

"(d) to promote constructive measures of development, to encourage research, and to co-operate with one another and, where appropriate with specialized international bodies with a view to the practical achievement of the social, economic and scientific purposes set forth in this Article; and

"(e) to transmit regularly to the Secretary-General for information, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to the economic, social, and educational conditions in the territories for which they are respectively responsible"