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THE PROCESS OF DECOLONIZATION INTERNATIONAL LEGAL ASPECTS

Marion Mushkat†

Colonialism has existed since the time of Ancient Greece. It has proliferated then as now when peoples have found it necessary to extend their political boundaries beyond their own natural borders. Modern colonialism, which once flourished, has been in a process of decline, and its related institutions, such as slavery and political dependence, have been generally recognized as contrary to international legal principles. The United Nations has been the forum for the solution to this internationally recognized problem. Its progress has been significant, though not complete.

THE SITUATION UP TO WORLD WAR I

About seventy percent of the world’s population before the first World War was subject to foreign rule, either colonial or semicolonial. By 1964, however, only two percent could be regarded as lacking the right of self determination, the number of sovereign states having grown steadily 1

Decolonization in recent years (especially in Africa, where the main remnants of colonialism still exist2) has been given prominence in international legal systems and organizations partly because it is usually accomplished through United Nations arrangements or resolutions. While the method and forum is somewhat new the issue is old. the struggle to become free of political dependence.

Modern colonialism, which began to take shape in the fifteenth century at the time of the Spanish conquests in the Western hemisphere, often acted cruelly on the pretext of having a cultural or religious mission. It reached its greatest extent at the end of the nineteenth century when Africa was divided by the European powers. Its cruelest form was during Hitler’s rule in Europe. In the name of Christianity the colonizers killed at will, denied basic human rights and

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2. The number of sovereign states in Africa at the end of World War II was four (Egypt, Liberia, Ethiopia, and South Africa); in 1960 it was 16; and at the end of 1970, the number of African U.N. members totaled 41.
put an end to the national structures of the conquered in favor of their own.  

The European countries made agreements that territories without Christian rule were to be open to conquest and exploitation. In the fifteenth century, for example, a papal edict divided such areas between Spain and Portugal. The rise of colonialism became synonymous with slave hunting.

Whereas the number of slaves on the continent never exceeded several thousand, the mass extermination of the population with the establishment of colonial rule, beginning in 1492, necessitated the import from Africa of hundreds of thousands of workers to South America and the Caribbean. The increasing use of slaves was both a consequence of the large supply and the increased demand. Even though the slave trade had won the blessing of the Pope in the fifteenth century, as a new form of fighting paganism, the main attraction was the immense profitability.

Until its formal abolishment, the slave trade claimed the lives of an estimated 24 million people, including 9 million who died in transit between Africa and America as a result of the inhuman transport conditions. The banning of slavery was officially declared to be an international legal principle in 1815, at the Congress of Vienna.

Still, a lengthy struggle was ahead to achieve related laws and added international arrangements in different countries. Continuing into the twentieth century, the last convention adopted on this subject was on September 7, 1956. The contracting states agreed to take all practicable and necessary legislative and other steps to abolish and abandon such practices as debt bondage, serfdom, buying of brides and exploitation of child labor. This convention was necessary because slavery and similar institutions still existed in Saudi-Arabia and Africa.

Exploitation and discrimination in conquered areas and the institutions that evolved from these practices influenced the positive school of international law in the nineteenth century. The position of

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3. Demands for equality for all humans, regardless of the origins and beliefs, and for the right of all nations to be independent emerged from the educated strata of Spanish society in the sixteenth century. Held to be the dictates of God and nature, these demands later became the philosophical cornerstone of the school of natural law. See A. Nussbaum, A CONCISE HISTORY OF THE LAWS OF NATIONS 135, 147, 150, 156 (rev. ed. 1954); D. Schroeder, DIE Dritte Welt und das Volkerrecht 29-31 (1970).


7. For details regarding the discussions on this subject in the British Parliament, see: T. Clarkson, HISTORY OF THE RISE, PROGRESS AND ACCOMPLISHMENT OF THE ABOLITION OF THE AFRICAN SLAVE TRADE BY THE BRITISH PARLIAMENT (1939).


9. Id.
this school expressed the reality of a growing modern colonialism and imperialism. It disregarded the precedents of international cooperation and leaned on the precedent of aggression.

The territorial expansion of Africa, in the nineteenth century, was tied to economic considerations, mainly the search for raw materials and markets. England and France, the major contenders for the lucrative territories, tried unsuccessfully to assure a minimum of order in the race for control by establishing binding principles of effective occupation and notification. According to other principles, it could be maintained: (1) that occupation of the land at the mouth of the river is sufficient to bring under sovereignty the whole territory through which the river runs; (2) that occupation of the coastline gives legal title to the land extending up to the watershed of all its rivers; and (3) that occupation of a territory also extends sovereignty over neighboring territories as far as is necessary for the security of the land actually occupied.

The Berlin Conference of 1885 and the Brussels Conference of 1890 signaled the final division of Africa and its subjugation to European rule. Formally expressed in the form of friendly arrangements regarding commerce and navigation in African waterways, its intention was exploitation through a new colonial system.

In order to justify such control, the European countries found it necessary to establish an extralegal excuse for conquest and discrimination. The legal school of the positivists thus adopted the concept that: (1) regarded the Christian states as being superior and deserving of special privileges; (2) stressed cultural superiority; and (3) divided nations into two groups—civilized and uncivilized. International law was considered to be a European-Christian prerogative, and participation in the international community depended on consent of the European powers. The policy of conquest and discrimination remained in force—principally against blacks, the Africans, but also against South Americans and other non-European peoples, including whites.

THE BEGINNING OF CHANGES: THE MANDATE SYSTEM AND THE LEAGUE OF NATIONS

Neither the end of World War I, nor the founding of the League of Nations, which was supposed to advance the causes of peace and  

11. Although opposed, exploitation was brutally carried out. K. Knorr, British Colonial Theories 1570–1850, at 59 (1963).
13. Although the “opening” of China and Japan was done in the name of general commercial
justice, could weaken racist currents, the binds of colonialism or imperialist policies. While the covenant of the League stipulated that it was an obligation to respect the political sovereignty and territorial integrity of all member states, non-member states had no such official protection. In 1919, the League rejected a proposal that all races be declared equal.

The League became almost purely European in character. This situation was due in part to the United States, which did not join, and to the Soviet Union, which was not accepted until 1934 after the departure of the fascist countries. The organization fostered the supremacy of the European powers and their continued influence both within and without the continent. When fascist Italy attacked Ethiopia in 1936, Europeans used the term "colonial wars" instead of "aggressive wars" in order to justify the non-imposition of sanctions against the aggressor. Still, the League did influence changes in regard to colonialism, the most important of which was the system of mandates.

Article 22 of the Covenant of the League of Nations authorized special administrations to be set up in the former colonies of Germany and in certain regions formerly part of the Ottoman Empire. These colonies and regions were removed from the sovereignty of the defeated states and were entrusted to, but not annexed by, the victors for their administration on behalf of the League. That these areas were "not yet able to stand by themselves under the strenuous conditions of the modern world" was given as the official reason for the mandate system. In reality it was also the need to ease the conditions of dependence when it became clear that certain territories at the end of the war would no longer be part of their former states. Another consideration was that formal annexation would reduce the amount of reparations paid by the vanquished to the victors.

The nature of each mandate depended on the territory's stage of development, its geographical position and its economic conditions. The mandate system was subject to the supervision of the Council of the League, which was assisted in their task by the Permanent Mandates Commission, an advisory body on all matters connected with mandates.

The mandates were divided into three types:

Type A: Territories whose independent existence was recognized as being practicable in a comparatively short time, because of the high level of sophistication in the local population and administration—here, it was the duty of the mandatory power to give aid and advice in governmental procedures so that the local inhabitants might quickly attain complete independence. This type of mandate was established in
territories which had been in the Ottoman Empire: Iraq (British mandate), Syria and Lebanon (French) and Palestine (British).

Type B: Territories in which local administrations had to be developed—here, it was the duty of the mandatory power to guarantee freedom of conscience and religion, and to assure public order and morality by preventing such abominable practices as trading in slaves, arms and narcotics. This form of mandate was established in former German colonies in Central and South East Africa.

Type C: Backward territories in sparsely populated areas with few natural resources—it was decided that these should be administered under the laws of the respective mandatory powers, as integral parts of their own territories, but subject to safeguards in the interest of the indigenous population. These mandates were established in the former German colonies in South West Africa (mandates of the Union of South Africa), in the Island of Nauru (joint mandate of Britain, Australia and New Zealand), in the Samoan Archipelago (New Zealand), and in a number of islands in the Pacific, south of the Equator (Australia) and north of it (Japan).

As the mandate system (particularly types B and C) distinguished between civilized and non-civilized peoples, was selective in forms of political and economic dependence, and practiced social discrimination, it retained features of colonial rule. The mandatory powers were not, however, allowed to establish military bases, nor were they to restrict the financial and commercial dealings that the other members of the League might have with the territories. Still, the mandates were established for the benefit of the local population and not for the enrichment of the conquerors and were an improvement over colonialism. The right of the League to supervise the administration of the mandates with regard to human rights, economic development, and the social and political progress of the local population later helped such territories to achieve independence. The changeover of these territories from dependence to independence began the period of decolonization that is still going on today.

DEclarations in the Charter: Non-Self-Governing Territories and the Trusteeship System

After World War II and the Nazi holocaust, it became evident that the future of peace depended on translating the theory of human rights from theory into practice, thereby insuring the right of all peoples to freedom and equality. This principle, together with related goals, found

16. The first mandated territories to win independence was Iraq (1924), Syria and Lebanon (1944), and Palestine (1948).
17. For facts about the transfer of different territories from dependence to sovereignty; see F. Mansur, Process of Independence (1962).
its way into many parts of the U. N. Charter, and later into other documents. Those parts of the charter that incorporate the principles of freedom, equality, and self-rule are: the Preamble and Article 1—formulation of purposes and principles; Article 55—the principles of international cooperation in the spheres of economics and society; Articles 73 and 74—a declaration of non-self-governing territories; and Articles 75-91—the arrangements for a system of international trusteeships to replace the mandates. The guiding principle in the Charter regarding trusteeship was that sovereignty must ultimately be achieved. The Secretary-General, in 1947, remarked that the Trusteeship Council had the role of causing its own elimination.

Article 76 of the Charter states the basic objectives of the trusteeship system to be:

1. the furthering of international peace and security;
2. the promotion of the political, economic, social and educational advancement of the inhabitants;
3. the advancement of self-government and gradual preparation for sovereignty—as appropriate for the circumstances of each territory and its peoples, according to the freely expressed wishes of the people concerned and the specifications of the trusteeship agreement;
4. the encouragement of respect for fundamental human rights without distinction as to race, sex, language or religion; and the encouragement of recognition of the interdependence of the peoples of the world; and
5. the insurance of equal treatment for all the member states of the U.N. and their nationals in social, economic and commercial matters, and equality in the administration of the law without prejudicing the purposes of the trusteeship.

Article 77 of the Charter stipulates three forms of trusteeships:

1. Territories formerly under mandates of Type B or C (mandates of Type A have become independent states and members of the U.N.). Early in 1946, Australia, Great Britain, Belgium, New Zealand and France officially announced that they were converting the mandated territories still under their authority into trusteeship territories. The mandated territories of Japan were handed over to the trusteeship of the United States. Only the Republic of South Africa refused to place its mandate territory (South West Africa) under a trusteeship regime. This was in opposition to the stand taken by the majority of the U.N. member states, the recommendations of the General Assembly and the Security Council and the opinion of the International Court of Justice of August 11, 1950. South Africa claimed that since the League of Nations Covenant arts. 73-74. Articles 73 and 74 recognize the interest of the inhabitants as paramount and the political aspirations of the population.

18. League of Nations Covenant arts. 73-74. Articles 73 and 74 recognize the interest of the inhabitants as paramount and the political aspirations of the population.
Nations, which had granted her the mandate over South West Africa, had been dissolved, she had a right to annex the territories without being required to sign an agreement with the U.N.

The issue was again brought before the International Court by Ethiopia and Liberia, and a verdict was given on August 18, 1966. Although the court dismissed the case on the technicality that Ethiopia and Liberia had no right to present this issue, it did not budge from the basic position, previously ratified, that South Africa was subject to U.N. control in her mandate territory of South West Africa, and could not independently change the territory’s status—a position strengthened by the advisory opinion delivered on June 21, 1971.

(2) Territories severed from enemy states in the aftermath of World War II, e.g., Italian Somaliland, which became an Italian trusteeship.

(3) Territories transferred voluntarily to the trusteeship system by the states responsible for their administration. So far, no state controlling foreign territories has resolved on such a trusteeship.

Of the eleven territories over which a trusteeship was placed, nine achieved independence or chose to become part of an existing state. When the Trusteeship Council began examining the yearly review on May 26, 1970, only two problems still existed: that of New Guinea, under an Australian trusteeship, and the Pacific Islands, under the trusteeship of the United States. The main difficulties in the latter issue are the poverty of the population and its location—7000 square miles of land spread out over 3,000,000 square miles of ocean. The solution to these two problems will mark the end of U.N. responsibilities in this field.

Many international documents express the view that decolonization is vital to world peace. The U.N. Charter makes this point in several articles and it is emphasized by resolutions passed by almost all of the U.N. bodies starting with the General Assembly 1946 Resolutions that ratified the trusteeship agreements. Another milestone in U.N. actions to abolish colonialism was the 1965 resolution on South Africa. This declared that the conditions of the natives and the policy of apartheid are threats to world peace and crimes against humanity.

As the composition of the U.N. changed, so did its activities. During the early years of the organization, when pressure on decolonization came only from Pan-African Congresses and other movements, the
resolutions were hesitant and carefree. But in the 60's, when membership was achieved by tens of countries that had been under foreign rule or trusteeship, the resolutions became stronger. The most important of these was the Declaration of December 14, 1960, on the abolishment of colonial regimes.\textsuperscript{2,7}

**DIRECTIVES REGARDING THE ABOLISHMENT OF COLONIALISM**

When the 1960 declaration was adopted, no one in the United Nations protested against the idea that freeing all peoples from foreign rule was vital for the advancement of human rights and basic freedoms and for the strengthening of world peace and international security. The initiators of the resolution saw its importance in the struggle against colonialism as well as in the struggle against neo-colonialism.

Neo-colonialism developed from agreements between the former colonial powers and their former colonies. The independent colonies were, nevertheless, placed in a position of inequality through economic or military dependence. This eliminated the true meaning of independence and emptied the declaration on decolonization of all practical value.

The declaration's support for civil equality and democratic principles is tied to the belief that these are preconditions for achieving the right of self-determination.\textsuperscript{2,8} Although only a recommendation and mainly of moral value, the vote was unanimous. Nine states abstained for different reasons but without doubting its just basis.\textsuperscript{2,9} The difficulties that arise when attempts are made to implement the resolution are largely because of economic interests.\textsuperscript{3,0}

The declaration established a legal foundation for the termination of colonial rule. It deals with complete independence, freedom, sovereignty and self-determination. By referring to trusteeship territories, territories lacking self-rule, and other territories lacking complete independence, the declaration removed the foundation for any type of foreign rule. It turned the process of colonial independence by political and/or military struggle into an obligation. It does not permit any justification for the denial of political independence.

The declaration ended the assumptions of the positivist school of international law: that there are civilized nations and uncivilized ones; nations with a right to enjoy sovereignty and nations which need the

\textsuperscript{28} 15 U.N. GAOR 1110 (1960); 15 U.N. GAOR 1256 (1960).
\textsuperscript{29} The abstaining countries were: Australia, England, United States, Belgium, Dominican Republic, South Africa, Spain, Portugal, and France.
guardianship of strangers; peoples which can be subjects and peoples which can be only objects of international law.\textsuperscript{3.1}

But even the modern schools of thought in international law and international relations do not supply an exact interpretation of the right to self-determination. During the 1963 debates on Angola, the Portuguese foreign minister argued that self-determination was achieved when the people consented to a certain regime and were allowed to take part in the administration and politics. Rejecting this, the African representatives stressed that self-determination includes the right of the local population to determine its current and future relations with the colonial power itself.\textsuperscript{3.2} The Africans’ approach was entirely sound in light of the 1960 declaration which did not permit any circumscription whatsoever of the free will of the local population including the use of force and reprisals.

A complementing document, the Declaration of December 14, 1962, called for permanent sovereignty over natural resources\textsuperscript{3.3} and international cooperation in their development. A breach of sovereign rights was to be considered a threat to peace. The newly independent and underdeveloped countries expressed their concern that exploitation of their natural resources should serve their needs as well as the needs of foreign investors. The document manifests an obligation to develop resources for the benefit of the local inhabitants and favors the idea of mutual control under national and international arrangements. Where foreign property is nationalized, the owners are to be compensated according to contractual obligations and requirements under international law.

Another important document, the Declaration of December 21, 1965, in order to protect their independence and sovereignty,\textsuperscript{3.4} banned intervention in the internal affairs of states. Although this is a repetition of the Charter’s principles, the intervention in so many countries after the founding of the United Nations made it necessary to reemphasize the principle of nonintervention and widen its legal meaning. The original draft of the declaration was presented by the Soviet Union; its final formulation was prepared by 57 African, Asian and South American States. It expressed their fears, experiences and demands and aimed at making nonintervention a legally binding obligation accepted without restrictions by all states.

Other directives expressed the right to self-determination, sovereignty, freedom and equality: the Declaration on Social Progress and Development;\textsuperscript{3.5} the Declaration on Principles of International Law

\textsuperscript{31} Mushkat, \textit{On the Factors Influencing the Emergence and Evolution of International Law}, 4 \textsc{Netherland Int’l L. Rev.} 341 (1961); Lacks, \textit{Nakaz Petnej Likwidacji Kolonializmu}, \textsc{Panstwo i Prawo} Nos. 8–9 (1961).

\textsuperscript{32} Nawaz, \textit{The Meaning and Range of the Principles of Self-Determination}, 1965 \textsc{Duke L. J.} 97.


Regarding Friendship and Cooperation; the Guidelines for U.N. International Strategy in the Second Decade; and the Declaration on the Occasion of the 25th Birthday of the United Nations. These documents were ratified at a ceremonial meeting of the General Assembly on October 24, 1970. Another document, the Declaration Granting Independence to Colonial Countries, stipulated that colonialism was an international crime and required the Security Council to take action against all forms of persecution directed against colonial peoples.

Although the aforementioned directives are simply programs for international relations and not norms of action that are being smoothly carried out, they express an inevitable development toward the final ending of colonial regimes. They indicate the distance traversed in this direction during which most of the territories without self-rule have achieved sovereignty.

THE CHANGEOVER TO INDEPENDENCE BY THE TRUSTEESHIP TERRITORIES

The Charter specified three kinds of territories for trusteeship regimes: former mandates; areas previously under enemy rule; and areas chosen by the powers to be under trusteeship regimes.

While Article 77 provided for the transformation of mandates into trusteeships, Articles 83 and 84 provided for their administration. The affairs of the strategic trusteeship areas were within the jurisdiction of the Security Council and not with the mandatory power as claimed by South Africa. The affairs of the trusteeship areas were referrable to the General Assembly which was assisted by the Trusteeship Council. The mandatory states were obliged to reach agreements with the U.N. on trusteeship conditions. As for those territories taken away from enemy countries, Article 157 stated, though not clearly, that the question of forming a trusteeship regime was tied to the will of the states which carried the burden in World War II. Finally, the status of the third group as trusteeship territories depended exclusively on the will of the administering countries.

When South Africa refused to transfer her mandate in South West Africa to a trusteeship, the International Court of Justice was asked to

36. See also L. Oppenheim, 1 International Law 224 (H. Lauterpacht ed. 1955).
give an opinion. The court, on July 11, 1950, established that while technically the mandate was still in existence, the U.N. had replaced the League of Nations and control over the mandate had passed to the U.N. The court pointed out that South Africa could not change the status of the mandate on her own and that Chapter 12 of the Charter was the applicable provision for the change. Since an agreement between South Africa and the U.N. was required in order to change the mandate into a trusteeship, and South Africa did not agree to the trusteeship, this formal approach made it more difficult to find a solution to the problem.

In their dissent to the formalistic view of earlier decisions some judges stated that the article on the trusteeship system would be invalidated by the interpretation that requires agreement by former mandatory powers for the transfer of a mandate into a trusteeship. In its advisory opinion on the legal consequences of the continued presence of South Africa in Namibia (South West Africa), notwithstanding Security Council Resolution 276, of 1970, the court established: (1) by 13 votes to 2 the illegality of the continued presence of South Africa in Namibia, the former under an obligation to withdraw its administration; (2) by 11 votes to 4 that members of the U.N. were under an obligation to recognize the illegality of South Africa's acts; and (3) that members of the U.N. were to lend their assistance in the action taken by the U.N. with regard to Namibia.

Most Type A mandates won their independence before the United Nations was formed, or a short time later. The last of this type were Jordan and Israel, which won their sovereignty and U.N. membership in 1948, after the League had ended and the Charter had come into force. In the cases of the other mandated territories, the states that possessed them, with the exception of South Africa, declared their readiness to open negotiations for transferring them to trusteeship regimes. Preparation of the trusteeship agreements started at once; they were reviewed by the General Assembly at its second session on December 13, 1946. These agreements applied to: New Guinea which was placed under an Australian trusteeship; Ruanda-Urundi (Belgium); French Cameroun and French Togo (France); West Samoa (New Zealand); Tanganyika, British Togo and British Cameroun (Great Britain). On November 1, 1947, a new trusteeship agreement was ratified transferring Nauru to a joint trusteeship under Australia, Great Britain and New Zealand.

41. Id. at 138.
42. In 1966, the vote was decided by a margin of one; the President used his decisive vote.
44. In article 25 of the mandate for Palestine (July 22, 1922), Trans-Jordan is spoken of as a separate entity. It is for this reason that Great Britain granted sovereignty to this territory even before the future of Western Palestine was decided upon and Israel's independence was declared.
Italy gave up Libya, Eritrea and Somalia in the peace treaty of February 10, 1947. On November 21, 1949, the General Assembly decided on future sovereignty for Libya and a ten year trusteeship regime for Somalia. Libya achieved her independence in 1952; Italian Somalia and British Somalia won their independence in 1960. The Union of Eritrea with Ethiopia as an autonomous independent state was decided upon in 1950.

In British Togo, where opposing factions existed in the population, the U.N. held a referendum on May 9, 1956. The trusteeship regime had ended and this area became part of the Gold Coast, the future Ghana which won her independence on March 7, 1957.

In French Togo, following a referendum held to determine whether the population wanted a new status suggested by France or a continuation of the trusteeship, France declared that the trusteeship had terminated upon the founding of an autonomous republic with ties to France. The United Nations, in deciding not to accept this solution, sent a committee to investigate and a representative to control affairs at elections. The majority chose full independence which was granted on April 27, 1960.

The trusteeship in French Cameroun came to an end on June 1, 1960. In British Cameroun two separate plebiscites took place, one in the North and one in the South, under the supervision of a U.N. representative. In view of the former common administration, the population of British Cameroun was asked whether it preferred unification with Nigeria or a tie with independent Cameroun. When the population of the Northern region chose to join Nigeria, the Cameroun Government appealed to the General Assembly and the International Court, claiming that the breaking off of the Northern region and its unification with Nigeria were contrary to the trusteeship agreement. But the appeals were rejected.

The trusteeship in Tanganyika was terminated by a resolution of the General Assembly on December 9, 1961. On April 26, 1964, Tanganyika and Zanzibar united to form the United Republic of Tanzania.

The trusteeship in Ruanda-Urundi ended July 1, 1962. As a result of U.N. efforts to appease tribal rivalries, two separate states of Ruanda and Burundi were formed following plebiscites in both countries. There are no longer any trusteeships in Africa.

As has been mentioned, the only existing trusteeships today are in New Guinea and a number of islands in the Pacific Ocean. The trusteeship regime in Western Samoa came to an end upon its declaration of independence on January 1, 1962. The trusteeship in

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Nauru will end with gradual transfers of its population to Australia, New Zealand and Great Britain, the trusteeship states.

No state ever raised the issue of forming trusteeships in those areas not considered mandates or enemy territory. These were colonies in fact, but were never included in the United Nation’s list of territories lacking self-rule. Most of these areas changed their status from dependence to independence without passing through an interim status.

Algeria won her independence from France in 1962, after a hard struggle; West Irian, another example, was united with Indonesia on May 1, 1963, after being governed for a short time by the U.N. But other such territories have not gained independence nor have they become trusteeships. These include South West Africa, the Portuguese colonies, South Africa and Rhodesia. A suitable method has yet to be found for their population to achieve self-determination and equality.

CHANGES IN THE STATUS OF COLONIAL TERRITORIES

As there have been attempts to deny legal efficacy to the decolonization doctrine of 1960 and other documents dealing with the right of self-determination, there were also efforts to deny legal force to the Declaration Regarding Non-Self-Governing Territories, Chapter XI of the Charter. The arguments by the opponents of self-rule have been rejected by respected commentators on the Charter, who assert clearly defined obligations, and by the General Assembly itself in its discussion on the Charter’s articles and relevant declarations. Articles 73 and 74 make it clear that under discussion are territories, outside the metropolitan areas, which have yet to achieve complete self-rule. It follows that the typical feature of these territories is their dependence and the absence of the right of the local population to freely choose its own form of government and foreign policy.

The granting of independence means the abolition of inequality and dependence in administrative, political and economic areas, and the according of a status of sovereignty, a basic condition for acquiring membership in the U. N. The degree to which this duty has been fulfilled has served as the basis for a list of non-self-governing territories. The U. N. prepared this list according to the aspects defined in the 1960 declaration, the appendix to which was the list according to the situation in 1960. In order to prepare these lists, the U. N. has demanded information and reports regarding the conditions of all territories having a colonial character, that is, separated from the

metropolis geographically or differing from it ethnically and culturally, but dependent upon it for its administration, economics and law.

With the notable exceptions of Algeria, South West Africa and South Rhodesia, the list included in the first General Assembly resolution on December 14, 1946 named 74 territories under colonial rule: (1) Papua—under Australia; (2) Alaska, Samoa, Guam, Puerto Rico, Hawaii, several areas near the Panama Canal (claimed by Panama) and part of the Virgin Islands—under the United States; (3) Congo—under Belgium; (4) Aden, the Bahamas, Barbados, Basutoland, Bechuanaland, Bermuda, North Borneo (a protectorate), Brunci, Cyprus, Dominica, Falkland Islands (Argentina has claims over these islands), British Guiana and British Honduras (Guatemala claims sovereignty over British Honduras), Fiji, Gambia, Gibraltar, Grenada, Hong Kong (leased from China), Jamaica, Kenya, Malaya, Malta, Mauritius, Nigeria, Northern Rhodesia, Nyasaland, Pitcairn, Gilbert Islands, Ellis and Windward Islands, Gold Coast, St. Helena, St. Lucia, St. Vincent, Sarawak, Sechelles Islands, Sierra Leone, Singapore, Solomon Islands, British Somaliland, Swaziland, Trinidad and Tobago, Uganda and Zanzibar—under Great Britain; (5) Greenland—under Denmark; (6) Dutch Indies (although the establishment of the Indonesian Republic had already been proclaimed on Aug. 17, 1945), Curacao and Surinam—under Holland; (7) Cook Islands (although they are administered as an integral part of New Zealand), Niue and Tokelau—under New Zealand; (8) Equatorial Africa, French West Indies, French possessions in the Pacific, French Guiana, French Somaliland, French West Africa, Guadeloupe, Indo-China (although the establishment of the Vietnamese Democratic Republic had already been proclaimed on Sept. 22, 1945), Madagascar, Martinique, Morocco, New Caledonia, New Hebrides (in a condominium with Britain), Reunion, St. Pierre, Miguelon and Tunisia—under France.

When both Portugal and Spain were admitted to the U. N. in 1955, there arose the question of additions to the list. Portugal claimed that according to her constitution and the Laws of 1951, her overseas territories constituted an inseparable part of the state.\(^5\) Accordingly, Portugal refused to submit reports regarding these territories to the U. N. Acting under its own authority, the General Assembly put the following territories on the list: Cape Verde Islands, Guinea, the Islands of San Thomas and the Princesses, Fortress of Saint John the Baptist, Cabinda, Angola, Mozambique, Portuguese possessions in India, and Macao and Timor in the Pacific.

Spain similarly declared her territories in the Sahara, Fernando Po, Ifni and Rico Moni to be part of the Metropolis and under Spanish sovereignty.\(^5\) In the resolution which included the list of Portuguese

53. Djermakoye, supra note 23, at 41.
additions, the U.N. took note of Spain’s commitment to report but did not specify the territories. South Rhodesia was added to the list in the resolution of June 28, 1962.

Most of the territories on the 1946 list have long since gained their independence and have become U.N. members. Many of the territories which should have been included on the list, but were not, have also won their independence, either separately or by joining sovereign states. In 1971, there remained 45 territories with 28 million people lacking self-government: 18 in Africa and 10 in all other territories.54

Through a series of resolutions during the years 1951-1953, the General Assembly established a number of tests to evaluate the degree of independence achieved without being misled by the external appearance of the regime.55 The 1960 declaration and the 1970 plan for carrying it out (Declaration Granting Independence to Colonial Countries)56 aided the examination of formal and substantial aspects of the colonial system and the advances in the process of decolonization.

Areas which had to be reported upon on the eve of the 1970's included many “small territories.” International law, however, does not distinguish between small and large states, the claim to self-determination being the right of all peoples. This position is made clear by the activities of a special committee established to take care of these territories and advance them toward political dependence.57

There are three ways in which an area can achieve independence: (1) by founding a new sovereign state; (2) by integrating with an existing

56. See U.N. MONTHLY CHRONICLE, Vol. VII, No. 1, at 120 (1970), for a list of all the small territories, including all those which appeared in the 1945 list. The political futures of the small states are uncertain because of their size or the danger of their being dispersed, the size of the population, or the economic situation. The territories which were under British rule in Africa and Asia, and which won independence during the past 15 years, are: Ghana (the Gold Coast) in 1957; Nigeria, 1960; Sierra Leone, 1961; Uganda, 1962; Zanzibar and Kenya, 1962; Malawi and Zambia, 1964; Gambia and the Maldives Islands, 1965; Lesotho and Bechuanaland, 1966; Mauritius, 1968; Fiji, 1970. On May 11, 1970, the Security Council adopted the report regarding the preparation of Bahrein for sovereignty; this country, together with Oman, will gain full independence when the British depart from the Persian Gulf. In the former French territories the following gained independence: Morocco, Tunisia and Guinea, 1956; the Mali Federation (which broke up after Senegal departed on Sept. 22, 1960; the former French Sudan now uses the name Mali); Madagascar, Dahomey, Niger, Upper Volta, Ivory Coast, Chad, Central African Republic, Congo Brazzaville, Gabon, Mauritania—all in 1960; the Belgian Congo (Zaire) also won her independence in 1960. With regard to other territories without self-rule, one should mention the Fortress of St. John the Baptist, which was a Portuguese enclave in Dahomey and became part of Dahomey in 1961. France stopped reporting to the U.N. about Comores and Somalia in 1959 (U.N. Doc. A/4096) upon turning them into her overseas provinces. With regard to Spain’s colonies: Equatorial Guiana won her independence in 1968, and Fernando Po became part of Equatorial Guiana after the last Spanish troops left the area in 1969. According to the Paz agreement of Jan. 4, 1969, Spain undertook to return Ifni to Morocco; in regard to Spanish Sahara, a special committee was formed, (U.N. MONTHLY CHRONICLE, Vol. VI, No. 5 at 23 (1969), and Spain was required to report about this area.
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souvern state; or (3) by joining up with such a state. The latter two methods would suit the interests of tiny areas, while the first might facilitate the growth of artificial sovereign bodies reliant upon the benevolence of neo-colonial policies. It was this fact which raised doubts regarding the U.N. membership of tiny states, like the one comprised of 2,000 Maladive Islands of which 300 where occupied by a population of 90,000 in 1961. They were, nevertheless, accepted by the U.N. in 1965. This trend has continued, but it has raised doubts about the value of the sovereignty and the actions within the U. N. of such tiny and feeble states.

Because of the experiences of micro-states, there is a growing opinion that the most proper road to freedom for small areas might be their integration with or joining up with sovereign states. This must be accompanied by complete equality in all fields between the people of these areas and the people of the states of which the tiny areas become part. The way to advance such a solution is by establishing home rule, before integration or joining up, in order to enable the local population to freely express its will and democratically decide its fate.\(^5\)\(^8\) In this manner, Alaska and Hawaii were made part of the United States in 1959; they later became the 49th and 50th states. Based on plebiscites and agreements between India and France on June 19, 1949, and October 21, 1955, small French territories in the Indian subcontinent similarly became an integral part of India. The integration of British Somalia with Italian Somalia was completely different. On the basis of a General Assembly resolution the two countries formed, on July 1, 1960, the independent state of Somalia. The integration of Greenland with Denmark, on the other hand, was done in a constitutional manner.

There have been many doubts about the legality of France’s unilateral decision to include under her sphere of control Saint Pierre, Mikelon, New Caledonia, French Guiana, Guadeloupe, Martinique, Reunion and the Commores Islands, since the local people in these places were not consulted. The question of granting them home rule has only recently been raised in France. These doubts, however, cannot disqualify the principle of integration as a solution to the question of political freedom for small territories. Nor can the system of joining up be denied as a solution when it: (a) permits a free and democratic expression of the will of the population; (b) enables the population to establish a special regime; and (c) allows the status to be changed later in order to establish a completely independent entity. The tying of Puerto Rico to the United States and the Antilles and Surinam to Holland raised criticism, however, since the above conditions were not properly preserved, and the remnants of subjugation were not completely erased.\(^5\)\(^9\) As a positive example, the Cook Islands joined up with New Zealand in 1965, after holding free elections under U.N.

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58. Such conditions were discussed in the declaration on decolonization. The United Nations was put in charge of their supervision.

supervision to decide the issue. Though joining up may sometimes be an interim solution, it can also be the final form of freedom for the population of a small area.

Small states are eligible for U. N. membership. The charter stipulates that a state admitted must be peace loving, have an interest in taking on all responsibilities demanded by the Charter and be able to do so. It is clear that any attempt to use these conditions for screening prospective members might be dangerous and cause discrimination. It is equally clear that if all tiny states were to become U. N. members, they would be able to use their collective numerical advantage to achieve a voting position wholly out of proportion to their ability to act responsibly in the international arena, and thus empty all meaning from U. N. resolutions.

The United States was the first to suggest consideration on this matter. It raised the possibility of granting special status to small states, status that would demand fewer obligations and grant fewer voting rights. A special experts committee began dealing with the subject in order to present recommendations; the idea of granting some form of common membership to a block of mini-states was put forward. The Secretary-General referred to this issue in his yearly reports for 1967 and 1968 and in 1969, at the suggestion of the United States, the Security Council took up the issue. As the assignment of limited obligations and rights to a "small state" is contrary to the terms of the Charter, it will not be easy for the committee, which began its deliberations in September 1969, to reach conclusions acceptable by all.

Just as the articles dealing with trusteeships are becoming outdated as the process of decolonization advances, so is the chapter dealing with foreign rule. There is a need for new tools and appropriate directives to solve the problem of small states, a problem not foreseen when the U.N. was founded. Channels are also needed for the social and economic advancement of territories which are still awaiting full dependence, or which have achieved de jure but not de facto sovereignty.

These tools might replace the Trusteeship Council, the special committee for dealing with territories without self-rule, and other Committees and institutions in the field of development. Regional institutions can be formed and authorized to supervise the social, economic and cultural advancement of the local population. They would also supervise the gradual improvement of the regime toward home rule and help create the needed conditions for deciding the final political status of territories still under foreign rule. These institutions can also help improve the situation in territories which have gained only de jure sovereignty.

The Process of Decolonization

No specific date for ending dependency has been set by the U. N. Charter, the 1960 Declaration Granting Independence to All Dependencies, or complementing documents. Reality requires that no such date be set, not only because strong elements have an interest in the continuation of dependency which are hard to overcome in the present world arena, but also because there are problems which independence cannot solve.

There are constant factors in the transition from dependence to independence which appear in all territories, no matter what their size, population or natural resources. They include: the formation of local groups which demand freedom; the confrontation of the local groups with the ruling power; the formation of the platform which deals with the struggle against the foreign rulers, and which includes a constitutional basis for the future regime; and the crystallization of political parties and movements during the struggle for freedom.\(^6\)\(^1\)

This process of rational liberation grows on a special background and requires certain conditions without which the results would have no immediate economic or social meaning. The process can be held back by the lack of such background, but not stopped altogether. The more the basis is prepared, the greater the meaning of independence, although it usually crystallizes under conditions of political freedom. While the achievement of this freedom often depends on the political awareness of the population and the struggles of its movements, it also relies on outside factors, e.g., the international situation, and the possibility of suppressing colonial factors which act within all powers, regardless of their regime or political ideology.

The problems of the “mini-states” are complicated, but they are not the major preoccupations of the efforts to advance decolonization. The “small states” are not among the colonial countries in which the struggle for human rights, racial equality and national freedom is becoming more intensive. Evidence of this struggle is seen in South Africa, including South West African territories annexed by her, Rhodesia and the Portuguese colonies.

Portugal is the last, most stubborn and weakest remnant of classic colonialism. Portugal not only maintains her rule over enormous areas, but also attempts to intervene in the affairs of independent former colonies, as in the confrontation in Guinea in December, 1970. In the two largest Portuguese colonial territories, Angola and Mozambique, bloody battles for liberation have been fought for a long time.\(^6\)\(^2\) The Organization for African Unity, and the world as a whole, have declared their support for the freedom fighters and the U. N. has decided to use

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\(^6\) F. MANSUR, supra note 17, at 111, 132.

\(^1\) The General Assembly Committee on Trust and Non-Self-Governing Territories has provided that representatives of insurgent movements in Portugal’s African territories be allowed to attend sessions as observers. N.Y. Times, Oct. 3, 1972, at 9, Col. 1.
sanctions. Still, the suppressive regime continues as Portugal claims the fate of her colonies to be wholly her internal matter.

Many resolutions on this subject have been adopted by the U.N. and the Organization for African Unity. However, only the military operations for the liberation of the Portuguese territories in the Indian subcontinent, by the government of India, have succeeded in ending Portuguese rule. Perhaps this proves that in Africa, too, there is no prospect for freedom without the use of force.

The continuation in colonialism is caused above all by the strange situation in international affairs: the rivalries of the great powers; the weakness and disunity of the African states; and the social and economic backwardness and political instability on the black continent. Africa's complicated human, social, economic, cultural and political problems, and her multi-faceted efforts to put an end to foreign rule, have placed the issues of the continent on the agenda of different forums. But an effective contribution has not always been made towards solving them. There is still a long way to go before post colonial and imperialist forms of subjugation and neo-colonialism will weaken and come to an end.