ABSTRACT

Much of the colonial world has already seen the dawn of independence by now, yet colonialism lingers on in certain pockets of African continent such as Angola, Mozambique, part of Guinea-Bissau and South West Africa (now called Namibia by the United Nations). The liberation of colonies must be deemed to be one of the landmarks of the twentieth century. Such a phenomenal development was preceded by a gradual change in the outlook of the Colonial Powers themselves whose conscience had awakened so much so that they began to appreciate that it was their solemn responsibility and duty to bring about moral as well as material well-being of the subjects in their colonies and not to exploit them for their own benefit or to subject them to oppression, cruelty and indignities as they used to do in the past. They realized that they should assume the role of a guardian and treat their subjects as minors or wards who needed their help to be able to stand on their feet. This guardian-ward relationship between the rulers and the ruled found its first practical application on a limited scale in the creation of the Mandates System under the League of Nations and later, on a bigger and wider scale, in the Trusteeship System under the United Nations.

As in the case of the Mandates System, the two pillars of the Trusteeship System also are: (a) international accountability of the Mandatory for the administration of
the Territory under its charge, and (b) the performance by it of certain duties towards, and in respect of, the natives of that Territory. In the performance of its duties the Mandatory has to act as a "Trustee" on behalf of the world community of Nations.

South West Africa is one of the several colonies which were recovered from the vanquished Powers at the end of World War I. After the war these colonies were allowed to be retained by the victorious Powers as mandate territories to be administered by them as "trust" and not as spoils of war, since the policy of territorial aggrandizement had been rejected by the leaders of those Powers.

South West Africa was placed in 'C' category in a three-tiered mandate system. Article 22 of the Covenant explicitly mentions independence as a goal for only 'A' category of mandates while it is silent about the future of the other two categories - 'B' and 'C'. Article 22 further lays down that the 'C' category of mandates are to be administered "as integral portions" of the Mandatories' territories. This expression has not been used in respect of 'A' and 'B' class of mandates. Taking advantage of such a situation, the Union Government, during the days of the League, tried to incorporate South West Africa into her own territory in an indirect and piecemeal fashion but the permanent mandates commission, ever watchful of such
clandestine attempts, thwarted the aims of the Union Government. Then the demise of the League of Nations in 1946 gave another pretext to the Union Government to incorporate South West Africa. Favourable to the Union Government were two additional factors; firstly, the resolutions adopted by the League of Nations at its last winding up session nowhere explicitly mentioned as to how and by which authority the functions of the League in respect of the Mandates would be exercised after its demise; secondly, the Charter of the United Nations is also silent about it. In addition, the Charter also does not specifically mention that the United Nations is competent to perform the functions of the League in respect of the Mandates. These ambiguities were fully exploited by the Union Government for the realization of her desire to incorporate South West Africa into her own territory. While all the other mandate territories of the League of Nations were placed under the Trusteehip System after the setting up of the United Nations, South West Africa has been so far the solitary exception because the Union Government refuses to subscribe to the view that the placing of a mandate territory under trusteeship is obligatory on the part of a Mandatory under the Charter. The claims that independence was never visualized as a goal for 'C' class Mandates at the Paris Peace Conference in 1919 and that the United Nations is not heir to the League. The Union Government has firmly declined so far to follow in the footsteps of other
mandatories who have already placed their mandate territories under trusteeship, saying that the case of South West Africa is different from them. The Union Government has so far successfully resisted all pressures from the United Nations for placing the territory of South West Africa under trusteeship. The United Nations has now changed its objective also in respect of South West Africa due to the persistent defiance of the Union Government. It now wants the South African Government to quit the Territory leaving it to be administered in the manner the United Nations decides upon.

This thesis deals with the struggle briefly mentioned above. Since the struggle is still going on, the period chosen for the study is stretched from 1946 to 1971. On behalf of the United Nations the problem has been mostly handled by the Fourth Committee of the United Nations General Assembly. From 1969 onward the problem has found its way into the agenda of the Security Council also.

The thesis is divided into five Chapters preceded by an 'Introduction' and followed by 'Conclusion'. In the 'Introduction' the growth of the concept of trusteeship from the 17th century down to the twentieth has been briefly traced, mentioning at the same time the fundamental ideas underlying the concept of "sacred trust". A general understanding of the growth and evolution of this revolutionary concept is necessary for judging whether or not the stand of
the Union Government in respect of South West African dispute has been in conformity with the basic and fundamental concept of trusteeship.

Chapter I is, to a great extent, historical almost in continuation of the 'Introduction'. It gives information about the territory, the people and the economic resources of South West Africa, traces the history of how the Union Government acquired control over it, briefly surveys the efforts that she made to incorporate it under the League of Nations and the matching efforts which the Permanent Mandates Commission made to thwart that aim, describes the manner in which, and the institutions through which, supervision of the Mandatory's administration of the said territory was exercised under the League of Nations and also mentions the provisions in the Charter of the United Nations relating to the Trusteeship System into the framework of which South West Africa was sought to be adjusted. This chapter also highlights the important omissions and ambiguities in the Covenant of the League of Nations, the Mandate for German South West Africa, the winding up resolution adopted by the League of Nations on 18 April 1946 and the Charter of the United Nations which created complications for the United Nations when it tried to apply Chapter XII of the Charter to South West Africa. The problem of South West Africa as it evolved under the United Nations can be best understood only if the information furnished in this
Chapter is available to the reader because the problem is rooted deep into the past. In fact, several problems, mostly connected with the supervision of the Mandatory's administration of South West Africa, arose when the Fourth Committee tried to devise new supervisory procedure and institutions especially for South West Africa and none of those problems can be properly appreciated without first knowing the past along with present practice, procedure and provisions in the Covenant and the Charter.

Chapter II deals with the South African case at length for rejecting the request of the Fourth Committee to place South West Africa under trusteeship and its own request to the United Nations to sanction and approve the incorporation of the Territory into the Union Territory. The speeches cited in this chapter reveal the extent to which there was divergence of interpretations of various provisions of the Charter relating to the Trusteeship system with the result that an Advisory opinion of the International Court of Justice was sought to have the most authoritative judicial interpretation. The main questions that had troubled the members of the Fourth Committee were whether placing of South West Africa under trusteeship was obligatory on the part of the Union Government and whether the United Nations was competent to exercise supervision of the Mandatory's administration of the Territory. The Advisory opinion tendered by the Court in 1950 is also dealt with in this chapter.
Chapter III discusses steps taken by the Fourth Committee to implement the Advisory Opinion of the International Court of Justice. It deals with the prolonged negotiations that were held between the Union Government and the Committees set up by the Fourth Committee to work out the steps required for the implementation of the Advisory Opinion. The proposal and counter-proposal offered by the two parties have been examined at length, and the analysis shows that the Union Government has been unresponsive to the appeals of the international community and that she put forward impossible demands to block a reasonable, just and equitable solution of the problem. She refused to accept any solution of the problem which involved the United Nations as a second party to the proposed agreement or as a supervisory authority. This chapter also deals with two more advisory opinions of the International Court of Justice which were sought to clear doubts of legal nature in connection with the question of the supervision of the Territory.

Chapter IV describes further efforts by the Fourth Committee to arrive at a negotiated settlement of the problem and covers an account of some proposals advanced by one party and rejected by the other. Members of the Fourth Committee were exasperated over the persistent defiance of the Union Government and her refusal to accept every reasonable proposal which was advanced by various committees set up for negotiating a settlement. A contentious case, after
a thorough study of the legal action open to the Members of the United Nations, was launched by Liberia and Ethiopia against the Union of the South Africa in 1960 in order to attract the application of Article 94 (2) of the Charter which provided for enforcement measures by the Security Council against any State that refused to comply with the judgement of the International Court of Justice. Secondly, the Chapter deals briefly with the multi-dimensional activity of the Fourth Committee, that is, the activity relating to the cultural, economic and political development of the Territory which was utterly neglected by the Union Government. These activities show that the Fourth Committee concerned itself not only with the political problem of South West Africa but also with other related problems. Thirdly, this Chapter also deals with the unsuccessful efforts of the Fourth Committee to make a sort of forced entry into the Territory with a view to establishing an United Nations presence there. The attitude of the Fourth Committee had hardened due to the intransigence of the Union Government and this Chapter reflects such an attitude of the Fourth Committee.

Chapter V mainly deals with the revocation of the Mandate and its aftermath after the International Court of Justice had refused to adjudicate upon the subject-matter of the contentious case filed by Ethiopia and Liberia. Most of the activities of the Fourth Committee and later of the
Security Council covered in this Chapter were connected with the problem of dislodging the Union Government administration from South West Africa. Short of military measures and mandatory economic sanctions which alone could compel the Union Government to comply with United Nations resolutions, all other measures were taken but they produced no result. A Council to administer the Territory was also set up but it could not function effectively because it failed to acquire control of the Territory due to lack of supporting action on the part of the Security Council. This Chapter deals with all these efforts, in short, with the efforts for the implementation of the revocation of the mandate.

Coming to the role of the Fourth Committee, as disclosed by the study, it might be pointed out that this Committee is a subsidiary body of the General Assembly and, therefore, its recommendations on any subject, be it South West Africa or any other, are bound to be within the framework of the powers enjoyed by the General Assembly itself under the Charter. Keeping this in mind, it can be emphatically stated that the Fourth Committee performed its role, as a subsidiary body of the General Assembly, in an admirable manner, which is obvious not only from the number of resolutions adopted by the General Assembly on its recommendations but also from the nature of those resolutions. Through these
resolutions the fourth Committee tried all possible means to solve the problem of South West Africa. Its attitude was all along accommodating even after it had adopted somewhat a tough posture necessitated by the totally negative response of, and stubborn defiance of the United Nations' authority by, the Union Government. The Fourth Committee always showed preference for a negotiated settlement. Its recommendations were of political, legal-cum-political and economic nature. All along, the stress of the Fourth Committee was on political settlement of the problem. It sought frequent help from the International Court of Justice only to make sure for itself that it was not following a line which was legally questionable and, at the same time, to weaken the resistance of the Union Government on legal grounds. The Fourth Committee never deviated from the advisory opinions of the Court even where they went partly against the United Nations. When this approach also did not bear fruit, it began to adopt tougher line. Among the measures recommended by the Fourth Committee at this stage were those of economic nature, the idea being that if the Union Government was denied the economic benefits it was reaping from its control over South West Africa, was made to suffer loss in foreign exchange earnings and was also denied essential commodities for which she depended mostly on imports, she would be compelled to adopt an accommodating attitude.
However, all efforts of the Fourth Committee failed. This failure can not be attributed to any mistake on the part of the Fourth Committee. The real reason for the failure of the Fourth Committee to solve the problem of South West Africa was that the Western Powers, while disapproving of the racial policies of the Union Government and also criticizing her for her unwavering attitude, never supported measures of compulsive measures against her. All such recommendations of the Fourth Committee were ignored by the Western Powers; for example, the recommendation that all powers should stop the sale of petrol, petroleum products, arms and ammunition to South Africa was not complied with by the Western Powers besides a few others. As the study reveals, the multi-national companies and corporations, the Western Powers and the Union Government were all equally interested in maintaining the status quo in respect of South West Africa as far as possible so that they did not lose the profits flowing to them from there. The unhelpful attitude of the Western Powers due to their unwillingness to sacrifice the economic benefits from the South African control over South West Africa was the main cause of the failure of the Fourth Committee to solve the problem of South West Africa.

The Soviet Union and her allies too were not favouring a resort to the military measures by the United Nations to wrest control of South West Africa from South African Government. They desired such action to be taken by the organisation
of African Unity or by the liberation movements within the Territory.

In view of the attitude of the big powers, as a whole, the study brought forth the inevitable conclusion that the solution of the problem of South West Africa lay outside the United Nations.

The study made in this thesis is the first comprehensive study of the handling of the problem by the Fourth Committee of the General Assembly, covering a period of twenty-six years from 1946 to 1971.