Decolonizing One Petition at the Time: A Review of the Practice of Accepting Petitions and Granting Oral Hearings in the Fourth Committee of the UN General Assembly

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Abstract

The Fourth Committee of the General Assembly of the United Nations has extensively used the instrument of petitions as a tool of inquiry on Non-Self-Governing Territories (NSGTs). Despite a surge in recent years in the number of petitioners speaking on behalf of NSGTs, there has been no detailed investigation of the practice accepting petitions and granting oral hearings in the Committee. This study fills a gap in the literature by defining the legal framework and the shortcomings of the practice. It raises important questions about the usefulness of petitions as a tool of inquiry, and it shows how this practice has introduced a double standard on human rights within the UN system and created legal imbalances among member states of the Fourth Committee.

Keywords

Decolonization, Fourth Committee, Petitions, Revitalization of the General Assembly, United Nations

Introduction

The Fourth Committee of the General Assembly of the United Nations has played a pivotal role in the process of decolonization. Under its guidance, 750 million people from Non-Self-Governing Territories (NSGTs) have gained independence and over 80 territories have changed status to be recognized as decolonized accordingly to GA Resolution 742 (VIII).[3] The Fourth Committee has played over the years a crucial role in promoting dialogue among the Administering Powers and the people of the territories. This success is in part attributable to the modus operandi of the Committee, which has extensively relied on the practice of accepting petitions and granting oral hearings as an instrument of inquiry on the state of NSGTs. However, to date, the use of petitions has largely outgrown its scope and usefulness.

Despite the drastic reduction of NSGTs (today only 17 territories are listed as non-self-governing), the number of petitioners has significantly increased to the point in which oral hearings now occupy much of the time allocated by the Fourth Committee to the debate on decolonization. At the same time, the usefulness of the time spent hearing petitioners is very much questionable. The instrument of petition as envisioned by the Committee seems to be a relic of the past. Petitioners are still required to be available in person to give an oral statement in New York City during a given time in which the Committee meets. In an era of video conferences and emails, the requirement for petitioners to be available *in loco* is anachronistic, to say the least.

The vast majority of NSGTs' citizens is incapable of meeting the requirements posed by the Committee to be granted the right to petition. For most of them, a self-funded trip to New York is just not an option. The consequences of this hidden barrier to the right to petition are non-trivial. The people who have the means to afford the trip to the UN Secretariat do not constitute a representative sample of the population of NSGTs. Indeed, many petitioners appear to be spokesmen of associations already located in the USA or representatives of international organizations. Other petitioners, which seem to do not have any affiliation, are instead in conflict of interest for having received monetary reimbursements by member states to cover their travelling expenses to the Secretariat.[4]

Despite the relevance of the subject matter, scholars have not studied in much detail the use of petitions made by the Fourth Committee. Most of the publications on the topic are dated and very little research has been done to study the evolution of the practice after the 1960s. At the same time, the issue has found renewed relevance in recent years due to the sharp increase in the

[3] United Nations, "The United Nations and Decolonization," accessed on December 2, 2016, http://www.un.org/en/decolonization/index.shtml.

[4] During the 71st session, the author had the chance to interview several petitioners who disclosed having received funding from member states.

number of petitioners granted the floor during the meetings of Committee. Both member states and UN seem to be increasingly aware of the problem and have been trying to find a balance between time constraints and the necessity of granting oral hearings to all those who file petitions. Although a balance has not yet been found, the Ad hoc Working Group on the Revitalization of the Work of the General Assembly (AHWG) has recently started investigating the issue.

Overall, this paper fills a gap in the literature by providing a historical overview of the evolution of the practice of accepting petitions in the Fourth Committee and by describing the legal framework that regulates the instrument of petition. Moreover, this study investigates the shortcomings of the practice and proposes a course of action for the UN to reduce structural inefficiencies caused by the instrument of petition. Information was collected from primary and secondary sources. The former include General Assembly (GA) resolutions, Fourth Committee resolutions, interviews, and summary records. The latter consist of papers and essays. The Charter of the United Nations and the Rules of Procedures of the General Assembly (UN Doc. A/520/Rev.17) have also been extensively used as references. Data were also gathered by the author from multiple sources at various time points during the Seventy-First Session of the Fourth Committee.

The Origins of the Practice of Accepting Petitions and Granting Oral Hearings in the Fourth Committee

The only provision of the Charter of the United Nations on the use of petitions is contained in Chapter XIII, Article 87, which states that the General Assembly and the Trusteeship Council can accept petitions regarding *trust territories* and examine them in consultation with the administering authority "in conformity with the terms of the trusteeship agreements." The use of petitions was therefore envisioned by the Charter as an instrument of inquiry on the matter of trust territories at the sole disposal of the GA and the Trusteeship Council. Hence, the Fourth Committee's recourse to petitions and oral hearings on NSGTs goes beyond the provisions of the Charter. It is indeed the result of a customary practice that has evolved over decades of discussions and resolutions on the topic of decolonization among the Committee members.

The practice of granting oral hearings in the Fourth Committee started after the 15th session of the GA in 1960. However, the preceding period is worth being studied because it was foundational to the procedural changes occurred in the 1960s. During the first 15 sessions of the GA, the Assembly dealt for the first time with problems of efficiency caused by the high number of petitions received, then it expanded its role in dealing with colonial issues vis–à–vis the Trusteeship Council, and finally it carried out an important debate on the "right to petition."

Before the 15th session, the General Assembly took action on all those colonial disputes in which either the Trusteeship Council or the Security Council missed to act (David A. Kay 1967: 789). For instance, the Assembly bypassed the Trusteeship Council on several occasions granting oral hearings to petitioners of trust territories before the Council had the chance to take them into consideration.[5] In 1948, with GA Res. 321 (IV), the Assembly demanded the Council to take measures to facilitate and accelerate "the examination and dismissal of petitions." After that, with GA Res. 435(V) and 552 (VI), it recommended the Council to establish an Ad Hoc Committee on petitions to deal with the issue. In a different instance, the Assembly promoted the use of petitioners regarding the Question of South-West Africa, and in another occasion it debated whether the right to petition was to be considered as a fundamental human right.[6] As David A. Kay argued, "by the start of 1960 the Assembly through a decade and a half of active, probing concern with colonial problems had established for itself a dominant position in the Organization with respect to these problems" (Kay 1967: 789).

The period following the 15th session was instead marked by sharp changes regarding the scope of action of the Fourth Committee on the theme of decolonization. The vicissitudes that occurred during the 1960s can only be understood by taking into consideration the influx of new member states into the UN. In 1960, 17 new decolonized members joined the Assembly (Kay 1967: 786), and "between 1955 and 1965, almost fifty former colonial territories entered the world organization as members, providing postcolonial countries with the majority of votes in the GA" (Jan Eckel 2010: 119). The new states voiced against Chapter XI of the UN Charter, which they claimed to institutionalize "juridically organized colonialism" (Aurora A. E. Santos 2012: 251). They lamented the lack of an 'independence clause' for Non-Self-Governing Territories and argued that the General Assembly should not have limited itself to the sole role of monitoring the status of NSGTs, but instead it should have been proactive in pressuring the Administrating Powers to work toward granting independence to the subjugated territories.

GA Res. 1514 (XV), titled "Declaration on the Granting of Independence to Colonial Countries and Peoples," formalized the political shift occurring in the Fourth Committee. The Declaration demanded immediate action to grant independence to the people of trust territories and NSGTs *alike*. In addition, the Fourth Committee established with GA Res. 1654 (XVI) a Special

[5] See UN Docs A/RES/655(VII), A/RES/656(VII), A/RES/757(VIII), A/RES/758(VIII), A/RES/859(IX).

[6] On the Question of South-West Africa, see GA Res. 844 (IX). On the debate concerning the right to petition, see GA Res. 435 (V) and 552 (VI). Whereas an analysis of the debate on the right to petition goes beyond the scope of this research, it is worth noticing that the existence of this debate within the GA shows that there has always been a push to go beyond the provisions of Art. 87 of the UN Charter on the use of petitions, see UN Docs A/RES/217(III), E/CN.4/316, A/RES/435(V).

Committee on decolonization to monitor the implementation of the Declaration.[7] The Special Committee, subordinated to the General Assembly, was similar to the Trusteeship Council but with jurisdiction on the sole NSGTs. The Special Committee also adopted procedures on the use of petition similar to the one of the Council (Eckel 2010: 120).[8]

In sum, by adopting GA Res. 1514 (XV), the Fourth Committee set apart from the juridically organized colonialism of the 1950s and pursued a proactive aim of decolonization of all NSGTs. This new goal, however, required it to go beyond the provisions of the UN Charter, Chapter XI. The first practice to be affected by the changes of 1960 was the one related to the transmission of information under Article 73e of the Charter. Under the provisions of GA Res. 567 (VI) and 648 (VII), the General Assembly indicated that it was its competence to "establish a list of factors which should be taken into account in deciding whether a Territory has or has not attained a full measure of self-government" (GA Res. 742 VIII). These factors, drafted by an Ad-Hoc Committee on Factors and adopted with GA Res. 742 (VIII) in 1953, stated that a NSGT would reach a full measure of self-government by either 1) becoming independent, or 2) by associating to an independent state, or 3) by integrating into an independent state.[9]

Since there is only a blurred line between association/integration and other forms of colonial domination, the Assembly needed to receive timely and multiparty information about each NSGT to be able to determine eventual changes of status. For this reason, Article 73e, Chapter XI of the Charter of the United Nations, states that Administering Powers should "transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories." Article 73e did not require the transmission of political information. However, as Harold Jacobson pointed out, most Administering Powers voluntarily transmitted political information regarding the development of self-administration in the dependent territories (Jacobson 1962: 46).

The practice of transmitting political information, as it is often the case, eventually became a custom through its codification in resolutions.[10] First, GA Res. 1468 (XIV) affirmed in 1959 that the "voluntary" transmission of political information was in accord with the spirit of Article 73. Then, in 1960, GA Res. 1541 (XV) restricted the "voluntary nature" of the transmission of

[7] The committee is also known as "Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence of Colonial Countries and Peoples" or "C-24".

[8] It should also be noted that the Special Committee on decolonization took over the work of the Committee on Information from Non-Self Governing Territories and the Committee on South West Africa, see UN Doc. A/RES/1970(XVIII) for the former and A/RES/1805(XVII) for the latter.

[9] The three principles are summarised in UN Doc. A/RES/1541(XV) and in Oliver Turner (2013): 1195.

[10] On the codification of the transmission of political information in accord to Article 73e of the Charter of the United Nations, see UN Doc. A/RES/637(VII) and A/RES/848(IX).

information by granting the General Assembly the power of defining the parameters under which an Administering Power had to comply in transmitting information about the NSGT. Resolution 1541 (XV) was understandably controversial at the time because it increased the procedural discretion of the Committee and bounded member states to a new customary rule.

It took four years of debate in the General Assembly for Resolution 1541 (XV) to be approved. The question on the transmission of information was first presented in the 11th session when the representative of Iraq brought up the issue of Portuguese NSGTs (Edward T. Rowe 1964: 225). Portugal, who joined the UN in 1955, was ruling over several territories that were non-self-governing accordingly to the parameters set by GA Res. 742(VIII). However, the status of these territories had not been addressed before by the Fourth Committee since Portugal was not a member state of the UN. Moreover, Portugal had never recognized its overseas territories as NSGTs, and therefore it refused to comply with the transmission of information required by Article 73e.

The non-compliance of Portugal motivated Ceylon, Greece, Liberia, Nepal, and Syria to submit a draft resolution (L.467) to establish an Ad Hoc Committee of 8 members "to study the application of the provisions of Chapter XI of the Charter in the case of members newly admitted to the UN" (UN Doc. A/3531). In other words, these states were trying to affirm the right of the Fourth Committee to declare which territories were to be classified as NSGTs and which Administering Powers were obliged to transmit information to the General Assembly. The resolution did not reach the necessary votes due to opposition from Western European states and the USA during the 11th, 12th and 13th session (Rowe 1964: 225). Nevertheless, during the 14th session, the Soviet bloc and post-colonial member states reached a majority in the Committee and adopted GA Res. 1467 (XIV). Resolution 1467 (XIV), which was similar in scope to draft resolution L.467, set the ground for Resolutions 1541 (XV) and 1542 (XV).

Whereas GA Res. 1542 (XV) recognized Portugal as an Administering Power, Res. 1541 (XV), as previously explained, obliged it to transmit information under Article 73e.[11] Portugal, however, objected the resolutions and did not comply with the request of transmission of information. For this reason, during the 16th session of the General Assembly in 1961, the Fourth Committee discussed at length about the Portuguese non-compliance and sought for an alternative solution to the problem.[12] Draft resolutions L.704 and L.706 put forward the idea that the Committee could retrieve information on its own by accepting petitioners from the Portuguese territories. On the

[11] Resolution 1542 (XV) classified Portuguese NSGTs based on the work of GA Res. 742 (VIII)

[12] During the 16th session, the GA voted Res. 1699 (XVI) to condemn Portugal's non-compliance and to establish a Special Committee of seven members set to investigate and retrieve information on Portuguese's NSGTs in the context of Chapter XI. The Special Committee was allowed to accept petitions and grant oral hearings in order to gain accurate information.

matter, the Representative of the United Arab Republic stated during the 1189 meeting of the Fourth Committee that:

> Faced with Portugal's defiance of the General Assembly resolutions, the United Nations would have to consider what action to take in order to fulfill its obligations towards the peoples of the Non-Self Governing Territories under Portuguese administration before it was too late. [...] The Portuguese Government's attitude should not be allowed to prevent the General Assembly from supervising the administration of the Territories and collecting information on conditions there from every possible source. He therefore felt it important that petitioners from the Territories should be allowed to appear before the General Assembly. (UN Doc. A/C.4/sr.1198, ¶ 22)

The representative of Senegal took the initiative and proposed a vote on operative paragraph no. 5 of draft resolution L.704 to allow the Fourth Committee to begin accepting petitions and granting oral hearings during its meetings. The Senegalese proposal was adopted in 1961 during the 1208th meeting by 78 votes to 5, with one abstention (UN Doc. A/C.4/SR.1210). In its 1210th meeting, the Committee granted for the first time an oral hearing to a petitioner speaking on behalf of a NSGT.[13]

France, Portugal, and the United Kingdom opposed to the Senegalese proposal because they saw it as a breach of the UN Charter, which only envisioned the acceptance of petitions on the issue of Trust Territories, and not also on the one of NSGTs (UN Doc. A/C.4/SR.1208, ¶ 12 to 15, 60, and 64). As stated by the representative of Portugal:

> If the Senegalese proposal were adopted, his delegation would be obliged to draw two conclusions: firstly, either the decision to grant hearings would henceforth apply to all Non-Self-Governing Territories or else the action in question was clearly discriminatory; secondly, once a particular measure was applied to a special case a precedent was established and that would mean that petitioners from any Non-Self-Governing Territory or independent country might be heard in the Fourth Committee or other United Nations bodies. (UN Doc. A/C.4/SR.1208, ¶ 12 to 14)

An alternative position was taken by Australia, who voted in favor of resolution L.704 in the belief "that no precedent was being established and that the United Nations was dealing with a special case arising out of the failure by the Portuguese government to transmit information on the territories under its administration" (UN Doc. A/C.4/SR.1208, ¶ 16). Far from Australia wishes, the vote of 1961 set a precedent for a practice of accepting petitions and granting oral hearings that still lasts today.

[13] The petitioners were Mr. Henry LaMry and Mr. Jean Ko Gomis, representatives of the Mouvement de Liberation de la Guinee et du Cap-Vert (MLGC). Their request for hearings were distributed among member states with document A/C.4/504. See UN Doc. A/C.4/SR.1205.

The Evolution of the Practice of Accepting Petitions and Granting Oral Hearings

As John Carey (1966) wrote, "the extension in 1961 of the petition-and-hearing process to other than Trust Territories breached the dike" (p. 796).[14] However, it still took a few more years for the practice of accepting petitions to be codified and regulated. Only in 1963, during its 18th session, the Committee codified the rules of procedures for accepting petitioners while discussing on the "Question of procedure concerning the hearing of petitioners." Member states agreed that petitioners should have been heard as soon as they presented themselves to the Committee under the Agenda Item of "Information from Non-Self-Governing Territories" (UN Doc. A/C.4/SR.1433, ¶ 45 to 52). Moreover, they decided to set boundaries to the instrument of petition and agreed that only petitions regarding NSGTs should have been accepted.

A challenge to this limitation occurred a few years later during the 20th session of the General Assembly, when the Committee granted oral hearings to a petitioner on the Question of Oman. The UK, opposing the decision, stated that "since Muscat and Oman constituted a sovereign and independent State, a discussion of [the question of Oman] would be tantamount to interference in the domestic affairs of a country. The Committee should not risk setting a precedent by granting the request for a hearing" (UN Doc. A/C.4/SR.1518, ¶ 20). As it can be inferred, the critique moved by the UK was not against the use of petitions (as it had been the case in the 16th session), but only against the use of petitions for agenda items not concerning NSGTs.

By the 20th session of 1965, the practice of granting oral hearings started to be regarded as an established custom of the Fourth Committee. For instance, when Portugal complained once again about the legality of the practice, it was tersely reminded by the Chair of the Committee that it was up to the majority to decide on the matter and that, in this case, the majority had already decided to grant oral hearings (UN Doc. A/C.4/SR.1527, ¶ 4). Following the 20th session, only in few occasions states questioned the use of the instrument of petition. Delegates have at times argued against granting oral hearings to a specific petitioner due to contested political reasons, but never against the practice of petitioning *per se*.

For example, in the 31st session of the General Assembly, Mauritania and Morocco protested against the granting of hearings to a petitioner who was representing the Front Populaire pour la Liberation de Saguiet el-Hamra et du Rio de Oro (POLISARIO Front). Yet, in doing so, they reaffirmed that they "did not propose to resurrect the question of hearings of petitioners, which

[14] See UN Doc. A/C.4/SR.1481 and A/C.4/SR.1568. It should also be pointed out that Portugal, continued to voice his disagreement during the 17th and 18th sessions of the GA, see UN Doc. A/C.4/SR.1282, ¶ 70; A/C.4/SR.1290, ¶ 16.

was an established practice in the Fourth Committee" (UN Doc. A/C.4/31/SR.10, ¶ 25 to 26.). Instead, they contested that the Committee was not respecting the tradition of "not to take up questions relating to the Sahara without their prior submission for consideration by the African Group" (UN Doc. A/C.4/31/SR.10, ¶ 24).

In a similar case, during the 50th session of the GA, the Committee voted against granting an oral hearing to a petitioner who was said to be infringing the UN Staff Regulations. The case, also known as Frank Ruddy's case, is mostly known for having set a precedent in regard to the rejection of petitioners. This case also provides useful insights on the state of the practice of granting oral hearings in the Fourth Committee. As for the previous example, no member states disputed the legality of the practice while arguing against the granting of oral hearings to Mr. Ruddy.[15]

From the late 1960s, Committee members increasingly focused on working by the new rules instead of contesting the rules. In particular, they worked to organize the practice and set boundaries to it. In a more recent evolution of the practice, member states have tried to streamline the acceptance of petitioners to reduce inefficiencies. This new trend started with the establishment of the Ad hoc Working Group on the revitalization of the work of the General Assembly (AHWG) in the 62nd session in 2007. Thus far, the Working Group has commented on the use of petitions by the Fourth Committee on several occasions (see AHWG's reports from the 66th, 68th, 69th and 70th sessions).

Concluding this section, it can be said that the practice of granting oral hearings in the Fourth Committee evolved in a consistent way that fits the relevant standards and *opinion juris* for the purposes of the identification of customary rules. Administering Powers were required to transmit information to the General Assembly accordingly to Article 73e and GA Res. 1541 (XV). The non-compliance of Portugal motivated the Committee to independently retrieve information by hearing petitioners speaking on behalf of Portuguese NSGTs. Far from being an extraordinary measure, the Committee increasingly resorted to the use of petitions as an instrument of inquiry on all NSGTs. The practice remained contested and highly criticized on a legal basis by a minority of member states until the early 1970s. However, from the mid-1970s, member states stopped questioning the legality of the practice as a whole to instead use a case by case approach to the acceptance of each petitioner.

[15] The debate on the Frank Ruddy occurred between the 2nd and the 5th meetings of the 50th session of the Fourth Committee. See UN Doc. A/C.4/50/SR.2, A/C.4/50/SR.3, A/C.4/50/SR.4, A/C.4/50/SR.5, A/C.4/50/4/Add.2.

The Introduction and Codification of a Legal Double-Standard

Some of the critiques moved by the member states opposing to the introduction of the practice in the 1960s are still relevant today. As some states pointed out, the practice of granting oral hearings in the Committee introduced a double standard regarding the right to petition in the UN (UN Doc. A/C.4/SR.1208). As Carey explains, the "UN's double standard on human rights complaints meant simply that individuals' complaints could be publicly lodged with a United Nations body only when directed against colonial governments […], and not when directed by persons generally against their own domestic governments" (Carey 1966: 799). To make an example, if the human rights of a British citizen were to be violated by the local administration of Gibraltar, the citizen would be able to voice her complaints as a petitioner in front of the Fourth Committee. Conversely, if the same violation were to occur to her in London, the citizen would not be able to petition in any UN organization.[16] In other words, different administrative regions equal different rights to petition.

The double standard on the acceptance of petitions creates in turn procedural discriminations against member states of the Fourth Committee with dependent territories. Some might argue that this bias against Administering Powers is justified (if not even necessary) in the fight against colonialism. But this bias exists because of political calculations and not because of agreed-upon principles on decolonization. It should not be forgotten that it is up to the majority of the Fourth Committee to define what colonialism is and which territories are to be listed as NSGTs (see GA Res. 742 VIII and 1541 XV).

Politics defines what constitutes a Non-Self-Governing Territory. Principles on decolonization, human rights, self-determination are only tangential to the definition. And politics on the topic of decolonization, as Turner (2013) argues, has historically been driven by an outdated "North-South divide" between member states. Only from this perspective, it is possible to understand why, for example, the 49 citizens of Pitcairn can petition to the Fourth Committee while the thousands of Kashmir, Kurdistan, South Ossetia, and the Palestinian West Bank are left unheard.[17] Or, to make another example, why Gibraltar, the Falkland Islands (Malvinas), Guam, and Bermuda are still listed as NSGTs when all of them have shown their will for the status quo through various referendums.[18]

Shying away from a normative judgment of the work of the Fourth Committee, it should be pointed out that the Committee's reliance on politics over principles has been counteractive against

[16] This holds true as long as the violation is not related to the Question of Gibraltar.
[17] Census data on Pitcairn from Rob Solomon, Kirsty Burnett (2014). List of potential NSGTs from Turner (2013): 1199.
[18] Gibraltar held a referendum in 1967 and 2002, the Falkland Islands (Malvinas) in 2013, Guam in 1982 and Bermuda in 1995 (Turner 2013: 1204-5).

the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, which expresses "the desire the end of colonialism in all its manifestations" (UN Doc. A/RES/1514 XV). The narrow definition of NSGT adopted by the Committee is rooted in outdated concepts of territory and administration that miss to grasp the nuances of neo-colonialism, which is transnational and impersonal (Turner 2013: 1197). But, again, this narrow definition is the outcome of a codification process of a customary practice which found legitimization in the will of a political majority, and not in a shared consensus on political values.

The work of the Fourth Committee on NSGTs ultimately appears to be out of touch with the reality of modern forms of neo-colonialism because is still trying to fight colonialism as it was conceptualized in the 1960s. Such conceptualization is today anachronistic and irrelevant. Instead of focusing on only 17 NSGTs and their Administering Powers, the Fourth Committee should be invested in codifying a new legal framework to counter new forms of colonialism. Because the North-South divide between member states has lost much of its centrifugal force, it would be now easier than ever for member states to revise the scope of the Fourth Committee and try to eliminate the double standard on the use of petitions. However, thus far, no states have manifested their interest in doing so.

Quantity vs. Quality in the Practice of Granting Oral Hearings

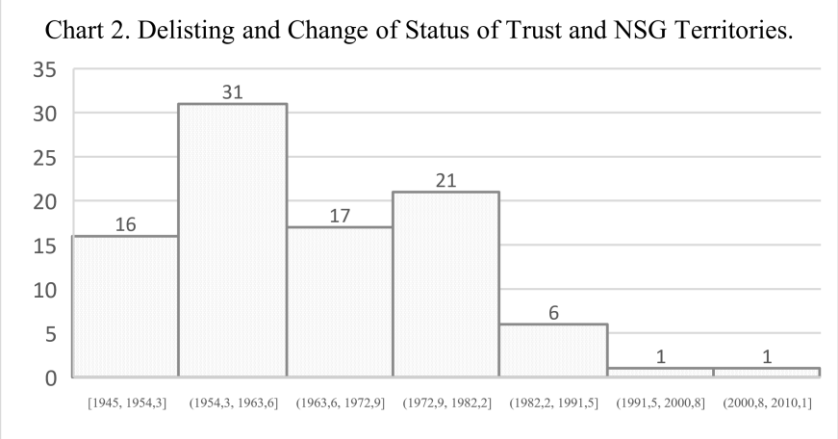
During the lifespan of the Fourth Committee, more than 80 territories numbering 750 million people have gained independence and changed status accordingly to GA Res. 742 (VIII) to be recognized as decolonized (see Tab. 2). To date, only 17 territories counting about 2 million people are still listed as non-self-governing (see Tab. 1). Despite the reduction of NSGTs, the Committee has seen a surge of petitioners in recent years, marking a record high in 2016 (see Tab. 3).

Chart 1. List of NSGTs and their Administering Powers per regional location.[19]

Atlantic and Caribbean	**Asia and Pacific**	**Africa**	**Europe**
Anguilla (UK)	American Samoa	Western	Gibraltar
Bermuda (UK)	(USA)	Sahara ([lvii])	(UK)
British Virgin Islands (UK)	French Polynesia		
Cayman Islands (UK)	(France)		
Falkland Islands/Malvinas	Guam (USA)		
(UK)	New Caledonia		

[19] Data retrieved from United Nations, "Non-Self-Governing Territories," accessed on December 5, 2016, http://www.un.org/en/decolonization/nonselfgovterritories.shtml#foot1.

Montserrat (UK) Saint Helena (UK) Turks and Caicos Islands (UK) United States Virgin Islands (USA)	(France) Pitcairn (UK) Tokelau (New Zealand)		



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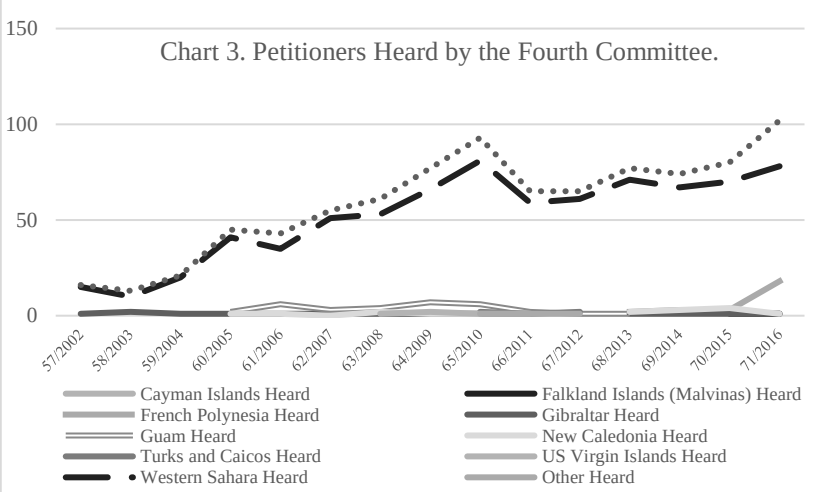

[21]

The increase in the number of petitioners has been primarily driven by the Question of Western Sahara. Western Sahara is the sole NSGT that does not have a well-defined Administering Power since Spain terminated its presence in the Territory in 1976 and informed the Secretary-General that thenceforth it was "exempt from any responsibility of any international nature in connection

[20] Data retrieved from United Nations, "The United Nations and Decolonization," accessed on December 2, 2016, http://www.un.org/en/decolonization/index.shtml.
[21] The data were retrieved from the UN Journal and from documents.un.org searching the tag "Request for hearings" among the documents of the Fourth Committee.

with the administration of the Territory."[22] The case of Western Sahara is not dissimilar to one of non-compliance of Portugal previously discussed. In both cases, the lack of an Administering Power transmitting information under Article 73e has required the Fourth Committee to seek information on its own via the instrument of petition.

From the figures of tab. 3 it appears that the Committee has been doing a good job in monitoring NSGTs by accepting dozens of petitioners each year. But in reality, the high number of petitioners has been posing a strain on the work of the Committee requiring additional days of hearings and reducing the time spent debating on decolonization. During the 71st session alone, three days of meetings were entirely dedicated to the hearing of petitioners.[23] Moreover, additional time was spent to accept and vet the various request for hearings.[24] Overall, member states spent more time hearing petitioners than discussing the item of decolonization.[25] In budgetary terms, three hours of the Fourth Committee costs approximately 77,000 USD in conference management expenditures.[26] Which means that for the 71st session alone, the Committee spent about 130,900 USD to hear the petitioners (100,100 USD alone for the Question of Western Sahara).[27] Peanuts in the overall budget of the General Assembly, but not so small to go unnoticed.

The Ad hoc Working Group on the revitalization of the work of the General Assembly (AHWG) has noticed the trend and has commented on the use of petitions on several occasions (see AHWG's reports of the 66th, 68th, 69th and 70th sessions). In particular, it expressed concern over the surge of petitions and stated that the number of oral hearings should be "synchronized" with the program of work of the Fourth Committee. In another instance, it requested the Committee to use a standard request form for all the petitioners to rationalize the workflow of the Secretariat (UN Doc. A/C.4/69/INF/4/Add.1). As of today, the Fourth Committee has yet to find a comprehensive solution to the problem. So far, it has only addressed the issue by reducing the

[22] "On February 26, 1976, Spain informed the Secretary-General that as of that date it had terminated its presence in the Territory of the Sahara and deemed it necessary to place on record that Spain considered itself thenceforth exempt from any responsibility of any international nature in connection with the administration of the Territory, in view of the cessation of its participation in the temporary administration established for the Territory. In 1990, the General Assembly reaffirmed that the question of Western Sahara was a question of decolonization which remained to be completed by the people of Western Sahara." United Nations, "Non-Self-Governing Territories," accessed on December 5, 2016, http://www.un.org/en/decolonization/nonselfgovterritories.shtml#foot1.

[23] 3rd, 4th and 5th meetings of the Fourth Committee, 71st session. See *Journal of the United Nations*, no. 2016/192, Wednesday, 5 October 2016; *Journal of the United Nations*, no. 2016/193, Thursday, 6 October 2016; *Journal of the United Nations*, no. 2016/194, Friday, 7 October 2016.

[24] The request for hearings were accepted at the 1st and 2nd meetings of the Fourth Committee, 71st session. See *Journal of the United Nations*, no. 2016/189, Friday, 30 September 2016; *Journal of the United Nations*, no. 2016/191, Tuesday, 4 October 2016.

[25] 71st session, General Debate under agenda items 54, 55, 56, 57 and 58.

[26] This expenditure figure is an approximate average of the conference management costs of Fourth Committee's meetings during the 71st Session of the GA.

[27] These figures are approximations based on the figure of the previous above. Overall, each petitioner has spoken for 3 minutes. In total, the Committee has spent 5.1 hours hearing petitioners, of which 3.9 were dedicated to Western Sahara's petitioners.

number of minutes at the disposal of petitioners for their statements. This solution, however, cannot accommodate a further increase in the number of petitioners because there is a practical limit to how few minutes petitioners can be given. For instance, during the 71st session, petitioners were given only 3 minutes each to speak, with the consequence that many of them went overtime and had to be interrupted by the Chair.[28]

More fundamentally, the problem regarding the instrument of petitions appears to be qualitative and not quantitative. Petitioners are required to speak in front of the Committee, which means that they are asked to travel at a given time at their own expenses to the UN Secretariat in New York City to attend a Committee's meeting. By tying petitions to oral hearings, the Fourth Committee has essentially imposed a hidden barrier to the right of petition. This barrier takes the form of impaired mobility, traveling expenses, visa requirement, etc. For many NSTGs citizens, filing a petition is simply too expensive. And for many others with restricted mobility, like those in the Sahrawi refugee camps, it is simply not possible.

Giving the floor to petitioners during the Committee meetings had a specific purpose, which was the one of allowing member states to have an interactive dialogue with the petitioner. However, the requirement of being available *in loco* can hardly be justified in today's era of video conferences and instant communications. And as long as this requirement will remain, the instrument of petition will fail to provide the Fourth Committee with timely and multiparty information of what is going on in the territories. Instead, it will only provide information via the voice of those who have the means to be heard. The procedures required to file a petition ultimately distort the image of NSGTs portrayed during the meetings and promote misuses by member states; which have been in several cases reported of sponsoring petitioners' traveling expenses to the UN Secretariat in exchange of a favorable oral statement.

In conclusion, the practice of granting oral hearings has proven to be problematic because it requires the allocation of significant resources to fight an outdated form of colonialism, while at the same time maintaining a dubious record regarding its effectiveness as a practice of inquiry on NSGTs. As explained in the previous section, the Committee has today a unique opportunity to revise and standardize the use of petitions. In doing so, it should seek for solutions aimed to democratize the practice and improve its outreach. The former Secretary-General Ban Ki-moon was reported saying in February 2010 that: "What we need now are creative solutions for the remaining Non-Self-Governing Territories. […] If the United Nations is to fulfill its obligations in supporting the legitimate aspirations of the peoples of these Territories, a pragmatic and realistic approach […] is most likely to lead to concrete results" (via Turner 2013: 1205). To start, a

[28] See webcast of the 3rd, 4th and 5th meetings of the Fourth Committee, 71st session.

"creative" response should follow the guidelines of GA Res. 285 (LV) on the Revitalization of the General Assembly, and implement ICT solutions to extend the right of petition to everyone, regardless of their availability to be *in loco* at a committee's meeting.[29]

Final Remarks

The use of petitions and oral hearings in the Fourth Committee goes beyond the provisions of the Charter and is the result of a series of ad-hoc decisions which have resulted in the establishment of a customary practice. This study has shown that the practice of hearing petitioners in the Fourth Committee started in 1961 as an extraordinary measure against the non-compliance of Portugal in transmitting information under Article 73e of the Charter of the United Nations. The research has also shown that this practice fits the relevant standards *opinion juris* for the purposes of the identification of customary rules and demonstrate that international organizations can contribute to the creation of customary rules of procedures and be bound to them.

This research has also raised important questions about the nature of the practice. The use of petitions was traced to be the root cause of a double standard on human rights within the UN system. One in which human rights violations are discriminated based on their perpetrators or place of origin. Likewise, the instrument of petitions has been recognized by this study as a source of imbalances and discriminations among member states of the Fourth Committee. Which in turn has created different obligations and rights among the Committee's members. Finally, the evidence gathered in this study suggest that the rules of procedures regarding the practice of accepting petitions and granting oral hearings create significant problems of efficiency and undermine the usefulness of petitions as a tool of inquiry on the status of NSGTs.

Taken together, these findings suggest that the use of petitions in the Fourth Committee should be drastically reformed and modernized. GA Res. 285 (LV), the work of the AHWG and the Secretariat have already paved a road for reforming the instrument of petition. Now it is up to member states to follow up and innovate the practice. Hopefully they will take the chance to change the rules of procedures and allow everyone, regardless of their location and economic means, to be able to file a petition. Even better would be to see a change in the scope of the practice to eliminate the existing double standard on human rights.

[29] It appears that the practice of accepting petitions falls in one of the "areas of the work of the Assembly in which the use of modern technology and information technology would contribute to enhancing efficiency in its working methods" (UN Doc. A/RES/55/285, ¶ 23 and 24).

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