

ROLE OF THE UNITED NATIONS IN INTERNAL CONFLICTS

*Paul C. Szasz**

I have been asked to address today the dual question of what is the United Nations definition of an "internal" conflict and what, if any, role the United Nations may have to play in such conflicts.

To put this problem in context, it may be useful to present some illustrative examples: Was India justified in characterizing the question of Hyderabad as a purely internal one after it had completed its occupation of that princely state in September 1948, so as to preclude further Security Council consideration of the Nizam's complaint? Could the United Kingdom claim that its bombing of Stanley airport was an internal matter, as the Falkland Islands are a British possession?

Actually, the term "internal" is not one used in the Charter. Rather, that instrument refers to the "domestic jurisdiction" of a state. The provision in which this expression appears is article 2, paragraph 7, which reads in full as follows:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.¹

What, then, has been the practice of the United Nations in interpreting the clause "essentially within the domestic jurisdiction of any state"? The brief time available here will not permit a review of all aspects of this question. Instead, I will examine only one: can or must a conflict within a state, that is one that does not pit two nations against each other, be a matter entirely within that state's domestic jurisdiction, as these terms are used in the Charter? This issue has actually arisen fairly frequently in the sense that over the years a number of conflicts were brought to the at-

*Principal Officer, Office of the United Nations Legal Counsel. The views expressed herein do not necessarily represent those of the United Nations.

¹ U.N. CHARTER art. 2, para. 7.

tention of one or more organs of the United Nations (usually the General Assembly and/or the Security Council), over the objection of the state primarily concerned that the matter fell entirely within its domestic jurisdiction and could therefore not be examined by any United Nations organ. In some cases these objections were accepted; in many others they were not. An analysis of these two lines of decisions might therefore lead to an inductive definition of "domestic jurisdiction."

In some instances in which a conflict was brought to the attention of the General Assembly or the Security Council with the request that these organs take some steps with regard to it, and the state primarily concerned argued that the matter was a domestic one, the counter-argument was that the mere fact that the conflict had engaged the attention of the international community to the extent that action by a United Nations organ was under consideration indicated that the conflict could not be considered to be essentially domestic, *i.e.*, purely internal. Of course, such an extensive interpretation—a Donne-ian statement that no country is a figurative island—would make nonsense of the restriction in article 2(7) of the Charter. Certainly, such an extreme reductionist argument does not aid legal analysis any more than a diagnosis of mental illness can be based on the mere fact of a visit to a psychiatrist.

A more respectable variant of this argument, which cannot, however, be applied to all conflicts, is that certain of them may constitute a threat to international peace and security. In effect, it is said that even if the conflict by its nature is essentially domestic, the very fact that it is taking place in some way threatens the security of others and the good order of the international community. This, for example, has been claimed with respect to the racial conflict in South Africa: not only does apartheid constitute a major violation of human rights, but systematic behavior or a particular event² that makes the blood of other men boil constitutes or may result in a threat to the peace, and thus convert an ostensibly domestic conflict into an international one. From a narrow analytical point of

² The Sharpeville massacre would represent such an event. On March 21, 1960, South African police opened fire on a large crowd of natives moving toward the police station at Sharpeville. An inquiry showed that many of the dead and wounded were struck from the rear. The judicial report found that the shooting had not been justified by the attitude of the crowd. For an account of the massacre and related events, see J. HOAGLOND, *SOUTH AFRICA—CIVILIZATIONS IN CONFLICT* (1972); see also W. FRYE, *IN WHITEST AFRICA: THE DYNAMICS OF APARTHEID* (1968).

view it may either be said that a threat to international peace by definition cannot be a matter essentially within the domestic jurisdiction of a state or that the reference to Chapter VII enforcement at the end of article 2(7) of the Charter creates a specific exception for situations that constitute such threats, whether or not they are essentially domestic. However, the practical effect of these alternative interpretations is not identical, for the former would presumably apply to any threat to the peace, and the latter only to those for which the Security Council has decided on enforcement action—a much more restricted category.

Obviously, one aspect of a purportedly domestic conflict that must be taken into account in deciding whether it conceivably constitutes a threat to international peace is its size and intensity. Thus, a small riot in a limited area and for a short period of time could hardly justify international concern or intervention. However, major and continuous civil disorders—for example such as occurred in Poland during recent times—by their very volume and duration may be of international concern. On the other hand, we also know that during the past decades there have been violent domestic upheavals resulting in thousands and perhaps millions of deaths—such as the post-partition riots on the Asian subcontinent, the Cultural Revolution in the Peoples Republic of China, and the anti-communist purges in Indonesia—which never provoked any serious proposals for United Nations intervention. In other words, while size and intensity are obviously relevant as to whether a conflict is still “domesticated,” they must be considered in combination with other factors to determine whether a particular conflict is international.

One significant factor is that of outside intervention. Thus, the upheavals just referred to, those in India, Pakistan, China and Indonesia, were on the one hand almost entirely domestically generated and resulted in no significant foreign involvement; in contrast, extensive accusations of foreign intervention have been made with respect to the recent events in Poland. In deciding, however, whether such intervention necessarily internationalizes a conflict, a difficult legal-political question is put at issue: If the outside involvement is entirely invited by the government of the state concerned, does such involvement internationalize the conflict? The inviting government and those that assist it will normally argue that it is an entirely internal matter for each state to decide whether to request or to grant transnational assistance, be it of an economic, political, technical, or military nature, and as long as no

third states are unwillingly involved, the conflict for which the assistance is granted is not thereby internationalized. On the other hand, the same governments are likely to argue that if the external assistance is not requested by or granted to the government of the state in whose territory the conflict is taking place, but is received by an unauthorized or illegal political entity (e.g., a group of insurgents), then the conflict may thereby be rendered international. The difference, of course, is that assistance to an insurgent group by a foreign government places that government in conflict with the government of the state concerned, thereby creating an inter-governmental, and thus, an interstate conflict. By this reasoning, which is still implicitly widely accepted, although not necessarily explicitly endorsed, the crucial factor in characterizing an externally assisted conflict as domestic or international is whether the assistance is rendered to "legitimate" or "illegitimate" authorities.

A conflict may, of course, be internationalized if it or its consequences actually overflow the borders of the state primarily concerned. The most common spillover from an otherwise essentially domestic conflict is a flow of refugees. In recent years there unfortunately have been several examples of such flows that have been so massive as to internationalize a conflict. For example, during the 1971 East Pakistan war of independence, which resulted in the creation of Bangladesh, so many Bengalis took refuge in India that the intervention of that country became almost inevitable. More recently, the massive flows of refugees from Kampuchea into Thailand and from Afghanistan into Pakistan have been among the principal reasons why the United Nations has considered the conflicts within Kampuchea and Afghanistan not to be purely domestic.³

With or without such a flow of refugees, an otherwise domestic conflict may spill over borders in the form of military actions. This was constantly one of the important aspects of the so-called Second Indochina War, in which the United States was involved, and is now a factor in the conflicts within several Central American countries. Related to such military spillover, there may be flows of external assistance to one or more of the parties to the domestic conflict. Indeed, the purpose of military actions outside the primary state may be to interdict such assistance, or perhaps to in-

³ The other reason, of course, was that in each of the conflicts there was also an intervention by a powerful neighbor invited by a government whose independence, and thus legitimacy, could be questioned.

hibit the flow or activities of refugees. .

Having pointed to certain characteristics of a conflict that may result in internationalizing it, I would now like to call attention to the fact that the subject matter of a conflict may have the same effect.

Over the decades since the end of the Second World War, a significant political, but by now really a legal, change has occurred in the characterization of colonial conflicts, *i.e.* those involving a territory whose people are essentially non-self-governing. In the early days of the United Nations these conflicts were considered to be essentially domestic; whatever a colonial power did in a territory under its control was treated as its own business. Naturally, the mandate system established under the League of Nations had already constituted a deviation from this principle, for mandated territories were not considered to be domestic, and conflicts within them were of international concern by definition.⁴ The same reasoning naturally applied to the United Nations trusteeships that succeeded the League mandates.⁵ However, in other dependent territories, change occurred more slowly. Thus, several metropolitan powers, in particular France and Portugal, took the attitude that certain of their overseas territories constituted integral parts of the mother country and consequently revolts (now called wars of national liberation) in these overseas dominions were merely of domestic concern. On this ground, United Nations consideration of the conflicts in Morocco, Tunisia, Algeria, Angola, and Mozambique were successfully resisted for some years. Nevertheless, as these conflicts persisted, their characterization as purely domestic became less and less tenable, and less and less accepted. Gradually each of these conflicts was exposed to increasingly intensive scrutiny by the United Nations—a scrutiny that surely accelerated the attainment of independence by these territories. With the adoption by the General Assembly in 1960 of its crucial decolonization resolution,⁶ the possibility of any United Nations organ char-

⁴ Every mandate charter contains the following provision:

The Mandatory agrees that if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the Mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League.

Terms of League of Nations Mandates (UN Document A/70, Oct. 1946).

⁵ See U.N. CHARTER arts. 75-91.

⁶ G.A. Res. 1514, 15 U.N. GAOR Supp. (No. 16) at 66, U.N. Doc. A/4684 (1960) (this

acterizing a colonial conflict as domestic disappeared. By now it can probably be asserted as a matter of international law that a "colonial" situation or conflict is not an essentially domestic one, though of course to some extent this merely shifts the argument to whether a particular situation is colonial.⁷

Another aspect of a conflict that may result in internationalization is the occurrence of significant human rights violations. This is particularly so when the violations are the essence of the conflict, as in the apartheid regime in South Africa. The United Nations concluded long ago that the very maintenance of a forced system of racial separation and oppression is contrary to the Charter, and therefore is of international concern by its very nature—as are any conflicts arising out of attempts to maintain or overthrow such a system.⁸

In many conflicts, however, the human rights violations are not of the essence; rather, they are by-products of violent struggles in which atrocities are committed by all parties, but often most prominently by the government. In light of the increasing sensitivity of the international community toward human rights violations of all kinds, these instances may also attract the attention of United Nations organs, including the General Assembly, toward an otherwise purely internal conflict (such as that some years ago in Chile), and these instances may be used to justify a measure of intervention by the organization.

It goes almost without saying that an otherwise internal conflict may be internationalized if some of its aspects are subject to an international agreement or involve some foreign interests. Thus, the initial concern of the General Assembly for conditions in South Africa was focused on the treatment by that country of persons of Indian descent, before apartheid had become the official governmental policy and before human rights issues were recognized by the world organization as almost automatically having transnational implications. The natural interest of the Indian Government, whether based on certain treaties or on ties of nationality or

resolution proclaimed the necessity of ending colonialism in all of its forms). *See also* G.A. Res. 1654, 16 U.N. GAOR Supp. (No. 17) at 65, U.N. Doc. A/5100 (1961) (this resolution set up a special committee to oversee the application of Resolution 1514).

⁷ To see that this question is not an easy one, it is only necessary to contemplate the situation of Puerto Rico, which the United States and the great majority of Puerto Ricans consider to be a self-governing commonwealth, but which many countries and a few Puerto Ricans consider to be an oppressed colony.

⁸ *See* G.A. Res. 721, 8 U.N. GAOR Supp. (No. 17) at 6-7, U.N. Doc. A/2630 (1953).

race, was considered sufficient by a majority of the General Assembly to de-domesticate the issue. Similarly, the treatment by Italy of the German-speaking population in the Alto-Adige (Süd Tyrol) was for some years the subject of General Assembly consideration, which was justified in part by the agreement relating to this subject that Austrian and Italian officials had concluded in Paris some years earlier.

Members of this distinguished audience may have noted, perhaps with some unease, that the foregoing analysis was somewhat longer on description than on precision, thus suggesting that the Charter's article 2(7) ban on United Nations intervention in domestic matters, when applied to internal conflicts, depends on vague concepts such as perceived threats to peace and security, the magnitude and persistence of a conflict, and the extent to which it has significant human rights aspects. Indeed, it must be admitted that the factors I presented have largely been subjective rather than objective, political rather than legal, vague rather than precise.

The reason for this approach does not lie entirely in the notorious, but sometimes exaggerated, indefiniteness of public international law, but mostly in the fact that the interpretation of this Charter provision has been left almost entirely to the most highly political organs of the United Nations: the General Assembly and the Security Council. The International Court of Justice has never yet been faced squarely with an article 2(7) issue—which, presumably, could hardly arise out of its jurisdiction over contentious cases to which the United Nations itself cannot be a party, but might arise out of the exercise of its advisory function—though it has had occasion to give it peripheral consideration in half-a-dozen cases.⁹ The Secretary-General himself is also constrained by the Charter provision, and thus, must consider its interpretation; but in practice most such issues arise in the context of his article 98 task of performing functions entrusted to him by the representative organs, which leaves it for those organs to decide on the limits of the organization's competence.

⁹ See, e.g., *Aegean Sea, Continental Shelf (Greece v. Turk.)*, 1978 I.C.J. 3, 71 (Judgement of Dec. 19); *Western Sahara*, 1975 I.C.J. 12, 145 (Advisory opinion of Oct. 16); *Nuclear Tests (Austl. v. Fr.)*, 1974 I.C.J. 253, 311, 377, 383 (Judgement of Dec. 20); *Fisheries Jurisdiction (W. Ger. v. Ice.)*, 1974 I.C.J. 175, 226 (Judgement of July 25); *Nuclear Tests (Austl. v. Fr.)*, 1973 I.C.J. 99, 130 (Judgement of June 23); *Certain Expenses of the United Nations*, 1962 I.C.J. 151, 196, 297, 298, 302 (Advisory opinion of July 20); *Conditions of Admission of a State to Membership in the United Nations*, 1948 I.C.J. 57 (Advisory opinion of May 28).

In attempting to interpret and analyze the decisions of the United Nations political organs on these questions, care must be taken not to misinterpret a lack of action by the organization regarding a particular conflict as implying a conclusion that such action was barred by article 2(7) of the Charter. Unlike Sherlock Holmes, who could base a valid conclusion on the silence of a hound, international lawyers would be remiss if they tried to apply the same reasoning to this article. If the organization fails to act in respect of some matter, such as the Viet-Nam War, it is unlikely that such abstention is based on a unanimous conclusion that it is essentially domestic. More realistically, it may have been generally concluded that there was no useful way in which it could intervene at all, under the circumstances and given the nature of the parties—that is, considering the practical rather than the legal constraints on the United Nations.

Contrariwise, whenever the United Nations does intervene in an apparently internal conflict, and does so over the objection of the state primarily concerned, it is possible to deduce that the competent representative organ must have concluded that there is some reason why article 2(7) of the Charter was not applicable—that is, that there are some features that justify attributing some international aspects to that conflict.

Having thus outlined at least the principal considerations relevant to deciding when the United Nations considers a conflict to be "internal," I would now like to touch, albeit only most briefly, on what role, if any, the world organization can play with respect to such conflicts.

First of all, it is clear that if it is concluded that a particular conflict is internal (that is, "essentially within the domestic jurisdiction of any state"), then the United Nations may not "intervene" therein. Although the final clause of article 2(7) of the Charter would appear to create an exception for those situations where enforcement measures under Chapter VII of the Charter are undertaken, these situations cannot be characterized as purely domestic since, under article 39, the Security Council may only resort to Chapter VII enforcement measures after it has determined "the existence of any threat to the peace, breach of the peace, or act of aggression." Consequently, the apparent exception is not one at all, but merely a derivation from the basic definition of what is essentially a domestic matter.

This conclusion, however, immediately raises the question of what is an "intervention" prohibited by the Charter. This, too, has

been much debated in the political organs of the United Nations. Time does not allow the presentation of even a summary of these debates, but I will list some of the actual or proposed actions with respect to which this question has been raised.

Clearly, the taking of any action within the territory of the state concerned, such as the introduction of troops, or even of officials, indubitably constitutes intervention. Less clear is the situation in which all actions taken are entirely outside of the state concerned, such as caring for persons who have fled that state and who may claim to be refugees, even though their own country accuses them of being escaped criminals.

Some actions taken may, of course, have no physical manifestation at all; they may consist of recommendations addressed to the state concerned or to other states, or consist of an offer of good offices, which may be considered objectionable because of the legitimization of the other party implied thereby.

What if the steps taken have no direct manifestation outside of the United Nations itself, that is, they involve no more than the establishment of an organ to consider and to report on a conflict? Indeed, the steps might be confined to the principal organ itself: a decision to place a matter on the agenda, to hear petitioners or delegations, or merely to receive written communications referring to a conflict. As to some of these, it may be said that they constitute the minimal consideration the organization must give to an issue brought to its attention in order to determine whether the "domestic" exception applies at all. Obviously, these are questions of threshold, but they are by no means trivial, as France recognized when it resisted, with steadily diminishing success, the placement on the agendas of successive regular sessions of the General Assembly of the Moroccan and Tunisian questions, and later, the Algerian question, until it was faced with a drumbeat of ever more critical and intrusive resolutions.

There is yet another question that must be asked about the definition of intervention. Can it be said that if the state concerned specifically invites, or at least does not object to, the organization's concern, the latter is not "intervening" at all? That is, does consent vitiate intervention, as in private law it may vitiate an otherwise actionable tort? Alternatively, it may be considered that a government's consent legitimizes the intervention in spite of the Charter prohibition, or that it at least estops the government from complaining. This approach is, however, a potentially more dangerous one, for it may be argued that if a particular course of action

does constitute an intervention, then the organization is precluded from following it as a matter of its own constitutional law, regardless of a particular state's consent. Indeed, even if the government primarily concerned consents to United Nations action with respect to a domestic conflict, other parties thereto might object to such action and claim that it constitutes an illegal intervention.

In practice, what actions can and has the United Nations taken in respect of internal conflicts, or in those conflicts that have not been characterized as internationalized? For the most part, such actions have been restricted to the grant of humanitarian assistance through organs such as UNICEF, the High Commissioner for Refugees, the Disaster Relief Co-ordinator, and the World Food Program. Economic assistance has also been granted through some of these organs as well as others such as the United Nations Development Program or the regular program for technical co-operation. However, it should not be forgotten that the organization can also provide military assistance in a primarily internal conflict, as it did at the request of the Congo (now Zaire).

Article 2(7) has sometimes been characterized as a "cornerstone" of the United Nations Charter in the sense that but for such a limitation, many, if not most, states would not have joined the organization. Possibly a more accurate description is that the provision constitutes a boundary marker indicating the limit of legitimate United Nations concerns. As with any living institution, such markers are not entirely immutable, but through their gradual movements they reflect the health and vigor of the international organization, and thus of the world community.