

SUB-SAHARAN AFRICA: THE RIGHT OF INTERVENTION IN THE NAME OF HUMANITY

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The importance of Africa in international law and international relations dates largely from 1960, the year world opinion began to focus on the liberation movements in Southern Africa. On March 21, 1960, what began as a peaceful protest against South Africa's pass laws ended with 69 Africans killed and 178 wounded in what has come to be known as the Sharpeville "massacre." In the aftermath, the South African government, acting under color of law, arrested over 18,000 Africans in a repressive move against indigenous political activity. After 1960, the Africans' lack of means of lawful opposition to the South African government resulted in the creation of underground liberation movements throughout the country.¹

Also, in 1960, some seventeen new African nations applied for membership in the United Nations. In less than a decade the newly independent nations of Africa had assumed a position from which they could challenge the preexisting world view of law and relations among nations. Together with the new Asian nations, Africa came to play an important role in the organization which had contributed greatly to early independence.

With the African and Asian countries entering the United Nations, the attention of that world body began to focus more on the problems of the developing areas of the world. The issues of colonialism, self-determination, human rights, and nationalism have now become very real points of concern in international policy-making. Although some nations may consider the issues to be somewhat abstract, it is on these issues that the African nations exhibit highest cohesion in their U.N. voting patterns.² As a result of their intense pursuit of such policies the African nations frequently find themselves at odds with traditionally accepted norms of international behavior.

The nations of Africa joined a world community shaped by forces over which they exerted no control and governed by a rule of law developed to deal with situations largely alien to the African experience. The newly independent nations were expected to accept and abide by a body of law not of their making. As a result the nations of Sub-Saharan

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¹See L. THOMPSON, *POLITICS IN THE REPUBLIC OF SOUTH AFRICA* 179-80 (1966).

²See Dodge, *Africa Voting Cohesion in the U.N.*, 12 *AFRICA REPORT* 58 (Oct. 1967).

Africa have maintained that many aspects of international law do not adequately confront situations they consider unique to the newer nations of the world.³

The African emphasis on human rights, self-determination, decolonization, independence, and nationalism has led to conflict between policy considerations and previously accepted norms of international behavior. This conflict has had its most obvious physical manifestation in the support of black Africa for the liberation movements in Southern Africa.

The support for liberation movements dates from the First Conference of Independent African States, held in Ghana during April 1958. The participating governments agreed to provide assistance to the people in the dependent territories during their struggle for independence.⁴ The series of All-African Peoples Conferences also offered support to the independence movements. The two major themes of these conferences were an expressed desire for Africans to obtain political power throughout the continent and a condemnation of the treatment accorded Africans in South Africa, Rhodesia, and the dependent territories under Portuguese rule. These themes became quite explicit at the Third All-African Peoples Conference in Cairo. The participating states voted to support the liberation of all African colonies and established a committee to aid in the coordination of the various liberation movements.⁵

The resolutions passed during additional conferences in the early 1960's were an indication of what was to follow. One of the first actions taken by the Organization of African Unity at its inaugural in May 1963 was the creation of an African Liberation Committee with headquarters in Dar es Salaam. The Liberation Committee was assigned the task of coordinating the financial support for the liberation movements. Further assistance was provided by aiding in the securing and training of volunteers for the various independence movements.⁶ This position was reaffirmed in Cairo at the First Assembly of the Heads of State and Government of the O.A.U. The participants were urged to provide

³For an interesting discussion of the view of the law held by the new states, see Anand, *Attitude of the Asian-African States Toward Certain Problems of International Law*, 15 INT'L & COMP. L.Q. 55 (1966).

⁴For a discussion of this and following conferences of a similar nature, see Johnson, *Political and Regional Groupings in Africa*, 16 INT'L ORGANIZATION 426 (1962). See also C. LEGUM, *PAN-AFRICANISM: A SHORT POLITICAL GUIDE* 157-308 (1965). Legum has provided an excellent review of the major conferences in Africa including the texts of the major resolutions.

⁵*Resolution on the Liberation of Dependent Countries*, All-African Peoples Conference, Cairo, March 1961, reprinted in C. LEGUM, *supra* note 4, at 265.

⁶Resolution No. CIAS/Plen./Rev./2(A), Assembly of Heads of State and Government, Addis Ababa, May 25, 1963, reprinted in C. LEGUM, *supra* note 4, at 294.

material support of both a financial and military nature to the liberation efforts in Southern Africa.⁷

The resolutions passed by these conferences proved to be more than rhetoric. Definite actions have been taken by independent African states. In addition to contributions to the African Liberation Committee, several states have provided considerable support. For example, Tanzania has served as a base for liberation groups from the Portuguese territories, and the Congo (Kinshasa) has provided military bases for Angolan liberation efforts. Additionally, the supply lines for all of the liberation groups pass through independent African states and operate with the blessings of those states as long as domestic political activity is avoided.⁸

The African members of the United Nations have achieved a significant degree of cohesion and success in bringing items related to African independence before the world body. The General Assembly has passed a series of resolutions condemning the practices of the white rulers in Rhodesia, South Africa, and the Portuguese territories. These resolutions are quite similar in content to those approved at the various African conferences referred to earlier. They contain rather harsh language in their condemnation of the separatist policies of these governments and call upon the membership of the United Nations to support the liberation movements.⁹

Through reliance upon a combination of actions taken by various African conferences, General Assembly resolutions, and articles 55 and 56 of the United Nations Charter, the African nations have provided a sense of legitimacy for the liberation movements and their active support of such movements. A major by-product of this activity has been the structuring of international discussion on the non-African ruled territories of Southern Africa to the disadvantage of the ruling white minorities. International discussion and action have been quite supportive of the ideological and policy inclinations of independent African leadership. However, the African approach to the liberation question

⁷Resolutions, First Assembly of the Heads of State and Government of the O.A.U., Cairo, July 21, 1964, *reprinted in* C. LEGUM, *supra* note 4, at 303.

⁸Houser, *Nationalist Organizations in Angola*, in *SOUTHERN AFRICA IN TRANSITION* 157 (J. Davis & J. Baker eds. 1966). *See also* Whitaker, *Arms and the Nationalists*, 15 *AFRICA REPORT* 12 (May 1970). Both authors discuss the supply of the liberation movements.

⁹*See* The policies of *apartheid* of the Government of the Republic of South Africa, G.A. Res. 2054, 20 U.N. GAOR Supp. 14, at 16, U.N. Doc. A/6014 (1965); Question of Territories under Portuguese Administration, G.A. Res. 2107, 20 U.N. GAOR Supp. 14, at 62, U.N. Doc. A/6014 (1965); Southern Rhodesia, G.A. Res. 2151, 21 U.N. GAOR Supp. 16, at 68 U.N. Doc. A/6316 (1966). Note also the Security Council's recognition of the independence struggle in Rhodesia as being legitimate in 21 U.N. SCOR, 1277th meeting 5 (1966).

can be considered contrary to traditional views of intervention, strict interpretations of national sovereignty, and article 2 of the United Nations Charter. This conflict could force the African states into a situation requiring that their actions be rationalized in terms of interpretations of international law.

Although somewhat devoid of the absolutist characteristics of the Soviet leadership, leaders of Sub-Saharan Africa share some of the ideology-action orientations attributed to the Soviet hierarchy by Brzezinski.¹⁰ For the African leaders there is more than an interaction between ideology and action. A consideration of law and policy appears to be combined with an action-oriented commitment to the Pan-Africanist ideal of a totally independent black Africa. However, it is difficult to determine which of the contributing factors brings about a given action or policy statement due to the high degree of interdependence between the processes of prescription and rationalization.

At one point in time a given action may appear to be prescribed by law and rationalized in terms of the ideology. At the same time, another action might be prescribed by the ideological orientations of the leadership and, out of necessity, rationalized in terms of the law. However, if there is a conflict, which is perceived as a conflict by the leadership, between a particular course of action and either the ideology or the law, pragmatic considerations of policy will more than likely prove to be the determining factor. The conflict with the law can then be rationalized by maintaining the law is inapplicable because the situation is unique or because another interpretation of the law is more harmonious with the leadership position.

Nowhere is this prescription/rationalization process more apparent than in the relations between the black-ruled African countries and the white-dominated areas of Southern Africa. This volatile conflict is considered by at least one observer to present the continent with its most critical international problem.¹¹

Whereas the practices in the Portuguese territories of Angola and Mozambique can be considered colonialist in the normal sense, the practices in Rhodesia and South Africa might be referred to as "domestic colonialism," which Carter defines as a situation in which "those in control . . . live side by side with those they dominate."¹² Whether we consider the practices in Southern Africa to be domestic colonialism,

¹⁰Z. BRZEZINSKI, *IDEOLOGY AND POWER IN SOVIET POLITICS* 66-71 (rev. ed. 1967).

¹¹Carter, *Confrontation in Southern Africa*, in 1 *THE AFRICAN EXPERIENCE* 568 (J. Paden & E. Soja eds. 1970).

¹²*Id.* at 569.

colonialism in the normal sense of the word, or some other type of rule is probably immaterial. Regardless of classification, it is these territories that have been the target of indigenous liberation efforts. As Falk has noted, such revolutionary internal action often invites intervention.¹³ It has received continual support from independent states within Africa and from sources external to the continent.¹⁴

Zartman has discussed in some detail the various techniques of foreign-policy intervention found in Africa.¹⁵ There is little doubt that the techniques which involve the use of coercion and/or compulsion adopted by the African states would normally constitute illegal interventionist activity. This view is consonant with Friedmann's comment "that any organized activity designed to overthrow an incumbent government . . . is illegal."¹⁶ Rosenau's definition appears to be equally flexible. According to Rosenau, intervention occurs "whenever the form of behavior constitutes a sharp break with then-existing forms *and* whenever it is directed at changing or preserving the structure of authority in the target society."¹⁷ This certainly encompasses the position that a government that does not make every effort to prevent armed groups from organizing within its territory to attack another state is responsible for illegal action.¹⁸ The state has a legal obligation to prevent illegal acts against a foreign state by persons within its territory. If we accept this view, the African states are quite obviously involved in illegal interventionist activity. However, since the rules regarding intervention have undergone a good deal of modification in the newly independent areas of the world, such a posture can no longer be steadfastly maintained with regard to these emerging nations.¹⁹

In accordance with their policy goals of decolonization, self-determination, and independence, the independent states of Africa have

¹³Falk, *Revolutionary Nations and the Quality of International Legal Order*, in DYNAMICS OF WORLD POLITICS 142 (L. Miller ed. 1968).

¹⁴See Whitaker, *supra* note 8.

¹⁵I. ZARTMAN, INTERNATIONAL RELATIONS IN THE NEW AFRICA 87-142 (1966). For a similar discussion, see LeVine, *The Course of Political Violence*, in FRENCH-SPEAKING AFRICA 58-79 (W. Lewis ed. 1965).

¹⁶Friedmann, *Intervention, Civil War and the Role of International Law*, 1965 A.S.I.L. PROCEEDINGS 67, 69.

¹⁷Statement of James N. Rosenau at a regional meeting of the American Society of International Law at Princeton University, fall 1967, as quoted in McNemar, *Intervention and the Developing States*, 63 A.J.I.L. 306, 307 (1969).

¹⁸M. GARCIA-MORA, INTERNATIONAL RESPONSIBILITY FOR HOSTILE ACTS OF PRIVATE PERSONS AGAINST FOREIGN STATES 30-32 (1962). See also 2 L. OPPENHEIM, INTERNATIONAL LAW 60 (6th ed. H. Lauterpacht 1952); Wright, *The Prevention of Aggression*, 50 A.J.I.L. 514, 527 (1956).

¹⁹See Bowett, *Self-Determination and Political Rights in the Developing Countries*, 1966 A.S.I.L. PROCEEDINGS 129, 132-33.

chosen to ignore the previously stated views of intervention and, instead, have openly advocated intervention in the white-ruled areas of Southern Africa. Such activity is classified as humanitarian intervention, which may be defined as that intervention intended to stop or prevent *what is perceived to be inhumane treatment* by a governing authority of all or some of its nationals and/or territorial residents. As a prescription for action in Africa, such a definition finds its base of support in the issues of colonialism, racial discrimination, and self-determination. And, as noted earlier, the action finds legitimacy by reference to the resolutions of various international conferences and organizations and the United Nations Charter.

The African nations contend that the treatment accorded the indigenous population by the ruling white minorities in Southern Africa is not consistent with principles of human dignity and self-determination, and therefore constitutes inhumane treatment. This, in turn, justifies intervention in the name of humanity. Such a position is supported by McDougal and Reisman. They have maintained that the policies practiced by the white governments in Southern Africa are such as to justify "coercive strategies of humanitarian intervention."²⁰ In view of the various resolutions adopted by the General Assembly, one might be willing to state that the practices of the white governments go beyond mere justification for humanitarian intervention. It might be contended that intervention is required in such instances. A state which does not act to restrain the practices of Portugal, South Africa, and Rhodesia could be viewed as having failed its U.N. Charter obligations.²¹

CONCLUSIONS

Two rather broad, concluding comments may be made regarding the problem of intervention in Africa. First, adoption of the position of humanitarian intervention may cloud the issue. But such a position is in accord with the very real African concerns over such concepts as freedom and self-determination. Bowett notes that self-determination may become the key factor in determining the legality of a particular interventionist act in the future.²² This, of course, does not reconcile completely the conflict between the traditional view of intervention and the African approach to the problem.

The second comment is related somewhat to the first. It may be that international law simply is not capable of dealing with situations such

²⁰McDougal & Reisman, *Rhodesia and the United Nations*, 62 A.J.I.L. 1, 10-11 (1968).

²¹See Woetzel, *Political Rights in Developing Countries*, 1966 A.S.I.L. PROCEEDINGS 141, 142.

²²Bowett, *supra* note 19, at 133.

as that found in the liberation movements in Southern Africa. This is true for three primary reasons. Where the law might be applicable, there is a conflict between differing aspects of the law. Second, the liberation movements and the conduct of their actions are unique to the newly independent areas of the world and the present day. Finally, and most importantly, policy based upon the African concern for self-determination and freedom, rather than recognized norms of international law, is the key consideration in understanding the actions taken by the African states.²³ So long as ideologically based policy remains the determining factor in such state action, the law will be unable to cope with African intervention in support of liberation. This will be the case regardless of the interpretation of the rules of intervention one cares to select.

²³See Friedmann, *supra* note 16, at 74-75. As Friedmann notes, this position may not offer a solution to the problem, but it is a realistic assessment of the situation. *Id.* at 75.