
William B Weiss, Ashland University

Available at: https://works.bepress.com/william_weiss/1/
APARTHEID AND THE UNITED NATIONS:  
A STUDY OF AMERICAN ATTITUDES

by
William Bernard Weiss

A thesis submitted in partial fulfillment of the requirements for the degree of Master of Arts  
in the Department of Political Science  
in the Graduate College of the  
University of Iowa

August, 1966

Chairman; Professor Vernon Van Dyke
ACKNOWLEDGMENT

I wish to express my sincere thanks to Dr. Vernon Van Dyke whose assistance and encouragement in the preparation of this paper is gratefully acknowledged.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACKNOWLEDGMENT</td>
<td>11</td>
</tr>
<tr>
<td><strong>I. INTRODUCTION AND BACKGROUND</strong></td>
<td>1</td>
</tr>
<tr>
<td>Apartheid: Its Enforcement and its Critics.</td>
<td>5</td>
</tr>
<tr>
<td>Apartheid and its Consequences</td>
<td>9</td>
</tr>
<tr>
<td>A. Repressive Measures to Ensure</td>
<td></td>
</tr>
<tr>
<td>Apartheid Policies</td>
<td>9</td>
</tr>
<tr>
<td>B. The Danger of Violent Internal Conflict</td>
<td>11</td>
</tr>
<tr>
<td>C. International Dangers</td>
<td>13</td>
</tr>
<tr>
<td>D. Demands for Positive Action</td>
<td>14</td>
</tr>
<tr>
<td>Against South Africa</td>
<td></td>
</tr>
<tr>
<td><strong>II. THE ISSUE OF COMPETENCE</strong></td>
<td>19</td>
</tr>
<tr>
<td>South Africa's Interpretation of Article 2(7)</td>
<td>21</td>
</tr>
<tr>
<td>United States' Interpretation of Article 2(7)</td>
<td>23</td>
</tr>
<tr>
<td>The Opinion of Jurists and Experts on Article 2(7)</td>
<td>26</td>
</tr>
<tr>
<td>The International Court of Justice and the Interpretation of the United Nations Charter</td>
<td>30</td>
</tr>
<tr>
<td><strong>III. THE UNITED NATIONS: A FORUM OF WORLD OPINION</strong></td>
<td>34</td>
</tr>
<tr>
<td>Apartheid as Part of a World Problem</td>
<td>35</td>
</tr>
<tr>
<td>Expression of World Conscience vs. Condemnation</td>
<td>37</td>
</tr>
<tr>
<td>The Goal: Peaceful Solution or Ideological Triumph?</td>
<td>40</td>
</tr>
<tr>
<td>Is There a Double Standard?</td>
<td>43</td>
</tr>
<tr>
<td><strong>IV. UNITED NATIONS STUDY AND RECOMMENDATION ON Apartheid</strong></td>
<td>48</td>
</tr>
<tr>
<td>Chapter</td>
<td>Page</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>V. THE UNITED NATIONS ROLE IN ENCOURAGING COMMUNICATION, COOPERATION</td>
<td>59</td>
</tr>
<tr>
<td>AND COMPROMISE</td>
<td></td>
</tr>
<tr>
<td>Treatment of the Indian Minority in</td>
<td>60</td>
</tr>
<tr>
<td>South Africa</td>
<td></td>
</tr>
<tr>
<td>Racial Conflict Resulting from Apartheid</td>
<td>65</td>
</tr>
<tr>
<td>Policies</td>
<td></td>
</tr>
<tr>
<td>Reaction against American Proposals</td>
<td>69</td>
</tr>
<tr>
<td>VI. THE APPLICATION OF COERCIVE MEASURES</td>
<td>73</td>
</tr>
<tr>
<td>Assembly Recommendation of Coercive Measures</td>
<td>75</td>
</tr>
<tr>
<td>Security Council Endorsement of Coercive Measures</td>
<td>81</td>
</tr>
<tr>
<td>Mandatory Enforcement of Coercive Measures</td>
<td>84</td>
</tr>
<tr>
<td>under Chapter VII of the United Nations Charter</td>
<td></td>
</tr>
<tr>
<td>VII. SOME CONCLUDING REMARKS</td>
<td>93</td>
</tr>
<tr>
<td>APPENDIX</td>
<td>101</td>
</tr>
<tr>
<td>BIBLIOGRAPHY</td>
<td>103</td>
</tr>
</tbody>
</table>
CHAPTER I

INTRODUCTION AND BACKGROUND

Race conflicts are matters for wise diplomacy, both nationally and internationally. Passions aroused by the nature of the problem and feelings generated by even the most sincere efforts to confront it make rational policy making difficult. However, the dangers inherent in racial conflict make rational policy making imperative. Such is the case for American efforts in confronting apartheid before the United Nations.

As world attention focuses on the tensions within South Africa, as evidence mounts that internal developments are not likely to culminate in the peaceful resolution of her racial policies, and as demands for more forceful and coercive measures under United Nations direction increase, American interest in the issue grows.

This study is an attempt to describe American strategy in confronting apartheid at the United Nations, to determine the rationale behind its position, and to determine the success of its efforts. This study might best achieve its objective by exploring some of the issues which have developed in the United Nations over the
apartheid question. An examination of these issues may clarify American strategy on apartheid and, more basically, its attitude on United Nations concern for all questions of human rights.

The issue of competence is the first to be examined, since American strategy depends on whether the United Nations is judged competent to consider apartheid. If apartheid is determined to be of legitimate concern, an issue still remains as to what measures (persuasion, condemnation, recommendation or coercion) the United Nations is competent to take. Successive chapters will, therefore, deal with American attitudes on the role of the United Nations in dealing with apartheid. Chapter III will consider the United Nations role as a forum of world opinion. Chapters IV and V will deal with its role as an international organ of investigation and recommendation. Chapter VI will concern itself with the United Nations role as a coercive body enforcing the consensus of a majority of its members. A final chapter will offer a few conclusions as to the principles underlying American strategy on apartheid.

United Nations agenda items concerned with South Africa's racial policies have assumed three general forms. From 1946 to 1952 the General Assembly concerned itself with the treatment of people of Indian origin in the Union of
South Africa. General Assembly consideration was based on a complaint by the Indian delegation that the South African Government had enacted legislation discriminating against South Africans of Indian origin and that it had violated certain international obligations. In 1952, at the Seventh General Assembly session, a group of thirteen non-white Member States asked that the wider question of racial conflict in South Africa arising from the Government's policies of apartheid (racial segregation) also be placed on the Assembly's agenda. In making its request, the group noted that

the race conflict in the Union of South Africa resulting from the policies of apartheid of the South African Government is creating a dangerous and explosive situation, which constitutes both a threat to international peace and a flagrant violation of the basic principles of human rights and fundamental freedoms which are enshrined in the Charter of the United Nations.¹

In 1962 following agreement by India and Pakistan the two items were combined under one title in the agenda of the Seventeenth Session of the General Assembly in the form: "The policies of apartheid of the Government of the Republic of South Africa: a) Race conflict in South

¹Official Records of the General Assembly (GAOR), Seventh Session, Annexes, agenda item 66, document A/2183.
Africa; b) Treatment of people of Indian and Indo-Pakistan origin in the Republic of South Africa." The third form in which apartheid has been discussed concerns the administration of South Africa's mandate territory, South West Africa. South Africa's right to administer this territory and her right to practice apartheid within it have repeatedly been challenged in the United Nations. A judgment by the International Court is soon expected.

This paper will concern itself primarily with the question of race conflict resulting from the apartheid policy of the Government of South Africa. Questions concerning South West Africa remain a separate issue and like the Indian question will be considered only as related to the central question of race conflict resulting from the practice of apartheid.

Apartheid has been considered in the principal organs of the United Nations and in those specialized United Nations agencies of which South Africa is or was a member. Consideration in these specialized agencies has been significant. The apartheid issue has caused South Africa to withdraw from UNESCO, the Food and Agriculture Organization and the International Labour Organization. South Africa has also been suspended from the Economic Commission for Africa. For the purposes of this paper, however, only two
of the principal United Nations organs will be considered—the General Assembly which has held debate on apartheid since its first session, and the Security Council which first considered the issue following the Sharpeville race riots of March, 1960.

Before inquiring into the United States confrontation of apartheid, it would be wise to examine more fully the concept of apartheid and its application in South Africa. An examination of the importance and urgency of the apartheid issue may offer some justification for this study.

**Apartheid: Its Enforcement and its Critics**

Apartheid is an Afrikaans expression of recent coinage. The expression was adopted after the Nationalist Party victory in 1948 as a substitute for the previously current term, segregation. The Afrikaner define the expression to mean separation or more specifically, the separate development of races. According to the Afrikaans language dictionary, apartheid is defined as:

A political tendency or trend in South Africa based on the general principles (a) of a differentiation corresponding to differences of race and/or colour and/or level of civilization; as opposed to assimilation; (b) of the maintenance and perpetuation of the
individuality (identity) of the different colour
groups of which the population is composed, and of
the separate development of these groups in acord-
dance with their individual nature, traditions and
capabilities as opposed to integration.2

The enforcement of apartheid is accomplished through
various means. Physical separation is assured by regula-
tions regarding such things as residential zones, public
utilities, transportation and entertainment. Political
separation is assured by reserving the franchise for whites
only. The recent parliamentary election in 1966 was the
first general election since the formation of the Union of
South Africa in which no non-whites whatsoever have parti-
cipated. Previously the non-whites of Cape Province had
enjoyed a limited and disproportionate franchise, but in
1959 under the Promotion of Bantu Self-Government Act, the
Government abolished the last pocket of African representa-
tion in parliament consisting of three members in the House
of Assembly and four in the Senate. Territorial separation
is guaranteed by the existence of territorial reserves for
the exclusive use of single racial groups. The policy of
separate development is applied without distinction to

2Report of the UN Commission on the Racial Situa-
tion in the Union of South Africa (GAOR: Eighth Session,
supplement no. 16), p. 53.
each of the four major population groups in the Republic.³

While the South African Government can supply many ideological justifications for its racial policies, there exists widespread opposition to the theory and practice of apartheid outside the Republic of South Africa. Opponents of apartheid attack it as an affront to the ideals of humanity and democracy found in the United Nations Charter and in the Universal Declaration of Human Rights. Under present South Africa law, the native African is denied basic human rights and fundamental freedoms. Under the pretext of separate development, the native African cannot vote in national or provincial elections; he cannot serve in Parliament, and his right to peaceful protest and demonstration is denied. A native’s movements are regulated by arbitrary pass laws and his rights to collective bargaining and equal employment opportunities are also denied.

Critics find apartheid impractical as well as unjust. Many find it inconceivable that the non-white majority will much longer tolerate such oppression. These critics fail to see the Bantustan plan, sometimes called "positive

³Results of the 1960 census showed a population of 15,841,128. (Africans, 68%; Europeans 19%; Coloureds 10%; and Asians 3%.)
apartheid," as a means of pacifying African resentments. The Bantustan plan, a plan to initiate "self-government" in a number of native reserves in which political participation is reserved for non-whites, is seen as an insincere response to world demands for a more active political role for South Africa's non-white majority. Even the most developed of these Bantustans, the Transkei, is far from self-governing when it lacks legislative control over areas of defense, external affairs, internal security, transportation, immigration and currency. Educational programs are still supported by the White Government, and revenues raised from Transkei residents have been insufficient in making that territory self-supporting. The majority of the Transkei's legislative body is appointed by the South African Government, and laws passed by the Transkeian Government must be approved by South Africa's president. There is growing conviction that the non-white majority in South Africa will not be satisfied with an "imposed, limited and fundamentally controlled facsimile of independence which is what the Bantustan concept offers."4

---

Apartheid and its Consequences

South Africa's racial policies have given rise to serious questions, the answers to which may affect American efforts in confronting apartheid at the United Nations. Has the South African Government enacted repressive measures to ensure the continuation of its apartheid policies? Has the tense situation, resulting from apartheid, increased the dangers of violent internal conflict? Will racial conflict, if left unresolved in South Africa, give rise to regional, even global racial conflict, and will such conflict become a threat to international peace and security? These questions hint at the importance of the apartheid issue and the need for a clear understanding of American attitudes in confronting it before the United Nations.

A. Repressive Measures to Ensure Apartheid Policies

To assure that its apartheid policies could be carried out effectively and with a minimum of opposition, the South African Parliament passed the General Law Amendment Act in June, 1962. Opponents of apartheid claim it to be a series of amendments to existing laws meant to establish and maintain white supremacy in South Africa. Under this act the Government is given greater powers of
detention and censorship. Courtroom practices are amended so that trials may be held without pre-trial examinations or juries. Persons acquitted may be retried under the same law, and the burden of proof of innocence is on the accused. When this legislation (also known as the Sabotage Act) was introduced in 1962, the International Commission of Jurists commented:

In a country which does not claim to be in a state of war, the Government of the Republic of South Africa has secured the passage in the House of Assembly of a bill known as the Sabotage Bill which reduces the liberty of the citizen to a degree not surpassed by the most extreme dictatorships of the Left of the Right. This measure is a culmination of a determined and ruthless attempt to enforce the doctrine of apartheid, and is not worthy of a civilized jurisprudence.\(^5\)

The intensification of apartheid policies did not stop with the Sabotage Act of 1962. This act has since been supplemented by the General Law Amendment Act of 1963 which provides for indefinite detention without trial. The Bantu Laws Amendment Act of 1963 reduces the non-white population to a migratory labour force with everyone subject to summary removal whenever his labour is no longer required. Finally, under the Group Areas Acts, residential segregation is enforced, and Africans are excluded from the

more rewarding work categories reserved for whites.

These intensified measures, aimed at enforcing the partition and "separate development" of racial groups within South Africa, have led the Group of Experts, commissioned by the United Nations in 1964, to conclude that "no line of partition could be established by agreement, and an imposed partition would create a long frontier of continuing conflict. . . . Partition would not solve but would intensify and aggravate racial conflict." 6

B. The Danger of Violent Internal Conflict

There seems no doubt that the racial tensions resulting from the policies of apartheid increase the danger of violent conflict among racial groups in South Africa. Perhaps the White Government's effective monopoly of military force has prevented such tensions from often erupting into open acts of violence. There have been exceptions however, and there is no reason to believe that open acts of violence will not increase. The best known example of open violence resulting from apartheid policies is the Sharpeville riot of 21 March, 1960. On that date demonstrations had been called to protest the Union Government's

6 Ibid., paragraph 26.
plan to tighten its enforcement of discriminatory pass laws. As a result of the subsequent rioting scores of Africans were killed and many more arrested.

The South African defense budget, when presented to the House of Assembly in March, 1965, called for an estimated expenditure of $321,160,000 for defense. This represents an increase of five and a half times the defense expenditures for 1959-60, the period in which the Sharpeville riots took place. The South African Government maintains that the increase in defense spending is necessitated by threats of foreign aggression. South Africa is, indeed, "a lonely little republic at the foot of turbulent Africa," and threats of sabotage, subversion and invasion from the overwhelmingly hostile Black governments to the north cannot simply be dismissed. Yet many feel that the increase in defense spending is aimed more directly at the Government's need to prevent internal dissension and subversion rather than to discourage external aggression.

For whatever reason, South Africa's massive defense preparations increase the possibility that future racial conflicts will be violent and costly. As the intensification of apartheid policies continues to deny the non-white

---

7This was how the Cape Times described the new Republic of South Africa after its break with the British Commonwealth on 15 March 1961.
majority peaceful means of protest and demonstration, violence becomes an increasingly obvious mode of dissension. For the time being, the White Government's monopoly of physical force may have kept the number of violent incidents to a minimum. The situation in South Africa is not static, however, and mounting tensions of racial conflict may still produce another Sharpeville.

C. International Dangers

Far more than the peace of South Africa is threatened by the racial tensions resulting from apartheid policies. The tensions in South Africa are indicative of the tensions existing in all countries with racial problems. The resolution or non-resolution of racial problems in South Africa may well affect the resolution of racial problems throughout the world. Questions of racial injustice, especially when left unresolved, are quick to arouse passionate responses. As Secretary-General U Thant warned in addressing the Algerian House of Assembly on 3 February 1964,

there is the clear prospect that racial conflict, if we cannot curb and finally eliminate it, will grow into a destructive monster, compared to which religious or ideological conflicts of the past and present will seem like small family quarrels.8

The group of experts established in pursuance of the Security Council resolution of 4 December 1963 recognized the international dangers of racial conflict:

Violence and counter-violence in South Africa are only the local aspects of a much wider danger. The coming collision must involve the whole of Africa and indeed the world beyond. No African nation can remain aloof. Moreover, a race conflict starting in South Africa must affect race relations elsewhere in the world, and also, in its international repercussions, create a world danger of first magnitude.\(^9\)

The General Assembly has recognized this same threat and has noted its conviction that "the policy of apartheid constitutes a grave threat to the peaceful relations between ethnic groups in the world."\(^10\)

D. Demands for Positive Action against South Africa

We begin to see that the South African Government has resorted to repressive measures to ensure the continuation of its apartheid policies. This in turn may have increased the danger of violent conflict within South Africa and also the danger that racial tension in South Africa might increase world tensions among racial groups.

\(^9\)Ibid., paragraph 31.
\(^10\)General Assembly Resolution 820 (IX), 14 December 1954.
These dangers have stimulated United Nations consideration of apartheid and demands for more positive action from some of its members.

In 1962 the General Assembly passed a resolution by a vote of 67 in favour, 16 against and 23 abstentions calling on member states to impose diplomatic and economic sanctions against South Africa. It was the first time such a resolution had passed the General Assembly with more than a two-thirds vote. During 1963 the Security Council and the General Assembly passed further resolutions calling for an abandonment of apartheid, the liberation of political prisoners, the cessation of the political trials against opponents of apartheid and the termination of the sale of armaments and ammunition to South Africa.

Denunciation of apartheid has become increasingly severe, even from those having close links with South Africa. In 1961 South Africa became a republic and withdrew from the British Commonwealth. Since then United Kingdom representatives to the United Nations have denounced apartheid as "evil, totally impracticable, [and leading] eventually but inevitably to disaster in South Africa." Similarly United Kingdom delegates have denounced apartheid

---

as "morally abominable, intellectually grotesque and spiritually indefensible."\(^{12}\)

The newly independent African states have made particularly strong demands for the immediate imposition of sanctions against South Africa. In February, 1964, the African Foreign Ministers, meeting in the Council of Ministers of the Organization of African Unity, declared that

in as much as the Government of South Africa has disregarded all peaceful efforts to secure the abandonment of the policies of apartheid, sanctions of every kind represented the only remaining means of peacefully resolving the explosive situation in South Africa.\(^{13}\)

The International Conference on Economic Sanctions against South Africa held in London during April, 1964, also recognized the explosive danger in South Africa and concluded that

international intervention was necessary and inevitable if the South African crisis was to be resolved without continental or even world wide racial war, and economic sanctions seemed likely to produce this resolution at the smallest reasonable cost.\(^{14}\)


The growing sense of urgency over the resolution of South Africa's racial conflict seems sufficient reason to enquire into American strategy in confronting apartheid, the rationale behind its strategy and the success of its efforts.
CHAPTER II

THE ISSUE OF COMPETENCE

If apartheid is viewed as a question of racial discrimination, and racial discrimination as a violation of human rights, there appears ample justification for United Nations concern with this question. Article 1 of the United Nations Charter states that one of its purposes is to

achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.

Article 55 reaffirms the promotion of "universal respect for, and observance of, human rights and fundamental freedoms for all" as one of the "basic conditions of stability and well being which are necessary for peaceful and friendly relations among nations." Three principal organs of the United Nations—the General Assembly, the Economic and Social Council and the Trusteeship Council—are each given responsibilities under the Charter with respect to human rights.¹

¹United Nations Charter, Articles 13, 62 and 76.
A United Nations Commission on Human Rights was established in 1946, and on 10 December 1948 the General Assembly adopted the Universal Declaration of Human Rights. Articles 1 and 2 of that declaration state that "all human beings are born free and equal in dignity and rights" and are entitled "to all the rights and freedoms set forth in this Declaration without distinction of any kind such as race, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."\(^2\)

During its first session the General Assembly adopted a resolution declaring that "it is in the higher interests of humanity to put an immediate end to religious and so called racial persecution and discrimination" and called upon all Governments "to conform both to the letter and to the spirit of the Charter of the United Nations, and to take the most prompt and energetic steps to that end."\(^3\)

Since its first session, racial discrimination has been of continuing concern to the Assembly. In 1962 the campaign against racial discrimination in general and apartheid in particular was begun in earnest. By Resolution 1779 (XVII) of 7 December 1962, the Assembly stressed

\(^2\)General Assembly Resolution 217 (III), 10 Dec. 1948.

\(^3\)General Assembly Resolution 103 (I), 19 Nov. 1946.
the importance of using education and information media to combat prejudice and asked the Secretary-General to report on compliance with the resolution. At its Eighteenth Session the Assembly adopted the United Nations Declaration on the Elimination of All Forms of Racial Discrimination.\(^4\) Article 5 of that declaration calls for putting an end "without delay" to governmental "and other public policies" of racial segregation and "especially policies of apartheid." The Twentieth Assembly will have before it a draft Convention on the Elimination of All Forms of Racial Discrimination.\(^5\) Article 3 of this convention condemns discrimination and apartheid and extends to all territories subject to the jurisdiction of those supporting the convention the obligation to eradicate discrimination.

It appears certain that the United Nations feels competent to deal with questions of discrimination in general and apartheid in particular. Why then has the South African Government consistently denied the United Nations competence to question its racial policies?

\(^4\) General Assembly Resolution 1904(XVIII), 20 Nov. 1963.

South Africa's Interpretation of Article 2(7)

South Africa's standard answer to this question rests on its interpretation of Article 2, paragraph 7 of the United Nations Charter. Article 2(7) states that

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.

The interpretation of this article differs according to the meaning one ascribes to the word "intervene" and the phrase "essentially within the domestic jurisdiction of any state." South Africa has interpreted the word "intervene" in its widest sense to include all forms of interference. Its argument is that the United Nations has no competence whatsoever in this area, and that all United Nations activities, whether discussion, recommendation, condemnation or coercion, are forms of interference and therefore illegal intervention.

South Africa has also interpreted the word "essentially" in the phrase "essentially within the domestic jurisdiction" in its widest sense insisting that the word "was used in order to widen, not to narrow, the scope of
domestic jurisdiction." The South African delegation will readily point out that one of the proposals which failed to be adopted at San Francisco was the Charter paragraph insisting that those paragraphs relating to the pacific settlement of disputes "should not apply to situations or disputes arising out of matters which by international law were solely within the domestic jurisdiction of the State concerned."  

The Covenant of the League of Nations contained a similar provision, which read as follows:

If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.  

South Africa maintains that the framers of the United Nations Charter fully recognized the threat to the sovereign autonomy of member states in their internal affairs and, therefore, made the change in phraseology from "solely" to "essentially." Since it regards its

---


8League of Nations Covenant, Article 15(8).
racial policies as "essentially" within its domestic jurisdiction, South Africa denies United Nations competence in this area.

Concerning the argument that Article 55c allows United Nations consideration of matters affecting human rights regardless of origin, South Africa reaffirms that the first six words of Article 2(7)—Nothing contained in the present Charter—are clear and unquestionable and that they "had been inserted in order that some other provision of the Charter should not be adduced as a pretext for intervention in the internal affairs of a Member State."\(^9\)

With regard to Articles 55 and 56, South Africa does not consider the obligation under Article 56 as legally binding since neither the Charter nor any other binding international instrument defines the term fundamental human rights.

---

**United States Interpretation of Article 2(7)**

The United States, along with the majority of other Member States, does not consider United Nations concern for questions of human rights as a violation of Article 2(7).

However, the United States has had difficulty in deciding at what point United Nations activities, resulting from this concern, constitutes intervention and the violation of Article 2(7). General Assembly resolutions have, at times, requested South Africa to cease from implementing specific national legislation or to abandon certain judicial action. The United States has recognized such requests as unwarranted intervention in domestic affairs and has gone against majority opinion in refusing to support them.

In 1950 the United States delegation voted against the second part of operative paragraph 3 of General Assembly resolution 395(v), calling upon South Africa to refrain from the implementation and enforcement of the Group Areas Act. While the United States recognized this act as legislation designed to arbitrarily segregate the residential zones of racial groups in South Africa, it regarded the act as domestic legislation beyond the competence of the Assembly's resolution.

More recently, as world attention has focused on the trials of political opponents of apartheid in South Africa, both the Assembly and the Security Council have passed resolutions condemning these trials. In 1963 the General Assembly passed a resolution calling upon the Government of South Africa
to abandon the arbitrary trial now in progress and forthwith to grant unconditional release to all political prisoners and to all persons imprisoned, interned or subjected to other restrictions for having opposed the policy of apartheid.10

While supporting the resolution as a whole, the United States delegation abstained on the operative paragraph above as it questioned,

whether any Member State here represented would feel that it was appropriate for any other State or for any international organization to interfere with its own sovereign right to conduct, under proper legislative safeguards for the prisoners, its defense against criminal violence that will hurt all its citizens.11

It would appear then that the United States does recognize some limits on United Nations activities imposed by Article 2(7). However, its interpretation of this article is far less restrictive than South Africa's. In American eyes, the prohibition against intervention in Article 2(7) does not apply to a mere discussion and study of racial discrimination. The American delegate explained in 1952 that

The exercise of the right of discussion did not contravene Article 2, para. 7 of the Charter; the


legal restriction contained in that Article should not prevent adequate consideration of the vital question of human rights in a dynamic world.\textsuperscript{12}

Neither can the United States accept South Africa's argument that its racial policies are "essentially" within its domestic jurisdiction and therefore beyond the realm of United Nations concern. The American delegation has declared that while the problem of race relations concerned South Africa most directly, it was nevertheless part of the general problem of human rights which concerned all the Members of the United Nations. "Without prejudice to the provisions of Article 2(7) of the Charter, the United Nations had the right and the obligation to concern itself with national policies when they affected the world community."\textsuperscript{13}

**The Opinions of Jurists and Experts on Article 2(7)**

In its second report to the General Assembly, the United Nations Commission on the Racial Situation in the Union of South Africa quoted certain jurists and experts on their interpretation of Article 2(7). Some of these


\textsuperscript{13}GAOR: 13th Session, 778th plenary meeting, 30 October 1958, p. 24.
opinions are worth noting below.

Professor H. Lauterpacht refutes South Africa's definition of intervention and defines the term as "dictatorial interference in the sense of action amounting to a denial of the independence of the State." In 1947, Lauterpacht explained that in prohibiting intervention, the Charter does not authorize compulsive legal processes on the part of the Organization. It does not authorize peremptory demands, accompanied by enforcement or threat of enforcement, in case of non-compliance, for this is the accepted meaning of intervention.

He went on to explain that Article 2(7) did not prevent the Assembly from discussion and investigating situations arising from complaints of violation of human rights. It does not preclude a general recommendation addressed to Members of the United Nations. . . . Neither does it rule out a specific recommendation addressed to the State directly concerned and drawing its attention to the propriety of bringing about a situation in conformity with the obligations of the Charter. None of these measures constitute interference. None of them amount to legal compulsion.

The commission also cited the opinion of Professor


15 Quoted by Indian delegate, GAOR: Third Session, 2nd Part, 212th plenary meeting, 14 May 1949, p. 453.
Rene Cassin that "in the field of human rights Article 2(7) only forbids 'intervention' that is to say interference in the technical sense, the imperative nature of such action taking the onward form of injunctions or orders."\(^{16}\)

Agreeing with the opinions of Lauterpacht and Rene, the commission also accepted the conclusion of Bentwich and Martin that intervention must be defined as "dictatorial interference by a State in the affairs of another State"\(^{17}\) and concluded that the study of a problem, or an inquiry into it, or even a formal recommendation, cannot be regarded as "intervention."

In answering South Africa's argument that Article 56 presents no legal obligation since there exists no internationally agreed upon definition of fundamental human rights, the commission noted that there were other equally vague terms in the Charter, such as "international peace and security," "threats to the peace," "breaches of the peace" and "acts of aggression" which certainly did involve obligations on the part of Member States. The Commission noted that the protection of human rights should be no exception. It reaffirmed its conviction that the principles

\(^{16}\)United Nations Commission on the Racial Situation in the Union of South Africa, ibid., p. 17.

\(^{17}\)Ibid.
of the Universal Declaration of Human Rights and the principles of the Charter itself were a sufficient definition of a Member’s obligations concerning human rights.

The Commission was also able to cite expert opinion contrary to South Africa’s contention that its racial policies were essentially matters of domestic jurisdiction and, therefore, beyond United Nations concern. According to Rene Cassin, all questions of human rights and fundamental freedoms are brought within the international field. Only those questions for which the United Nations does not call for the cooperation of its Members under Articles 55 and 56 are excepted and classified as reserved.18 Traditionally matters such as nationality, immigration laws, and tariffs have been classified as reserved and within the domestic jurisdiction of a member state. However, some authorities have submitted the view that even such matters may, in certain circumstances, assume an international character.19

Lauterpacht agrees that human rights are no longer a reserved question and adds that

matters essentially within the domestic jurisdiction of a State do not comprise questions which could become the subject of international obligations by custom or treaty, or which have become of international concern

18 Ibid., p. 18.
19 Ibid., p. 20.
by virtue of constituting an actual or a potential threat to international peace and security. 20

While some authorities feel that the Charter is silent on the exact criteria for determining which matters fall within domestic jurisdiction and which do not, the Commission noted that there is little doubt that the principal United Nations organs were free, within the sphere of their respective jurisdictions, to decide in each specific case whether or not a matter falls within the domestic jurisdiction of a State.

The International Court of Justice and the Interpretation of the United Nations Charter

The interpretation of the United Nations Charter is a difficult task, but a task which the principal organs of the United Nations have guarded for themselves. An attempt was made at the San Francisco Conference to grant the International Court of Justice the power to decide whether or not a situation or dispute arose out of matters that under international law fell within the domestic jurisdiction of the State concerned. In objecting to this proposal, the American delegate to the Conference noted that

20 Ibid., p. 18.
international law was subject to constant change and therefore escaped definition. It would, in any case, be difficult to define whether or not a given situation came within the domestic jurisdiction of a state. In this era the whole internal life of a country was affected by foreign conditions. 21

He went on to infer that the Charter must be flexible enough to allow for changes in interpretation which the development of any constitutional organization necessitates. Referring to the constructive changes made possible by the non-restrictive nature of the American constitution the American delegate "foresaw that if the Charter contained simple and broad principles future generations would be thankful to the men at San Francisco who had drafted it."

Wide powers of interpretation were not granted the Court at San Francisco and since then the convention has developed that United Nations organs are free to interpret the Charter for their own purposes and in light of the functions assigned to them by the Principles and Purposes that it affirms. It has also been noted that the Court itself appears to approve the principle that "until such time as the Court indicates the contrary on any given dispute, the United Nations organs act legally when they engage in a practice over a period of years, which is

supported by the prescribed majorities.\footnote{22}

When the Indian delegation first raised its complaint of discrimination against Indians in South Africa and South Africa's violation of international agreements, South Africa asked that the International Court of Justice be requested to give an advisory opinion as to whether the complaints raised by India concerned matters which were essentially within its domestic jurisdiction. In making the request, South Africa claimed for itself the "fundamental right to have its international obligations determined by the Court and not by a mere political forum."\footnote{23}

South Africa's request was rejected on the grounds that the Assembly was competent to make its own determination on the interpretation of Article 2(7), and the Assembly proceeded to adopt a resolution declaring that the treatment of Indians in the Union should be in conformity with the international obligations under the agreements concluded between the two Governments and the relevant provisions of the Charter.\footnote{24}


\footnote{23}GAOR: First Session, 2nd part, 50th plenary meeting, 7 December 1946, p. 1009.

\footnote{24}General Assembly Resolution 44(I), 8 December 1946.
The United States delegation voted against this resolution and in favour of South Africa's request for an advisory opinion by the Court. The American action must not be misinterpreted however. It was not a denial of the Assembly's right to its own interpretation of Article 2(7)—a right which the United States has always endorsed. The United States requested an advisory opinion simply on a point of law which it felt the Court most capable to determine, and which if left unsettled would only encourage further evasiveness from the Union of South Africa. The American delegate explained that the resolution if passed "would constitute a finding on the part of the General Assembly that international obligations did exist under the agreement concluded between the two Governments. The existence of such obligations is in doubt." Since this was a question of law the United States felt that an advisory opinion was "eminently proper" and that it was the "wisest next step to take."

Such action was not taken and the possibility remained that the Union of South Africa would use the lack of any legal judgment on the matter as an excuse for continuing non-cooperations with the United Nations.

---

25 GAOR: First Session, 2nd part, 50th plenary meeting, 7 December 1946, p. 1010.
CHAPTER III

THE UNITED NATIONS: A FORUM OF WORLD OPINION

The competence of the United Nations to consider apartheid has been established more by precedent than by legal decree. No member state, with the possible exception of Portugal, now maintains that consideration of apartheid is a violation of Article 2(7). The issue of competence is for all practical purposes a dead letter. While the United Nations seems to concern itself with whatever a majority of member states are determined to consider, an issue still remains as to the best means of expressing its concern.

Should the United Nations single out South Africa for its racial policies, or should it recognize apartheid as part of a larger world problem of racial discrimination and discuss it as such? Will a sympathetic presentation of world opinion be more effective than angry condemnation of South African policies? Is the General Assembly well-suited for the peaceful resolution of racial conflict, or has it become an ideological battleground with little hope for compromise based on trust and good-will? This chapter will examine the American position on these three questions.
Apartheid as Part of a World Problem

The United States has had to deal with its own racial problems at home and has felt the weight of world attention in places like Little Rock, Nashville and Birmingham. Perhaps because it might be next, the United States had hoped to avoid singling out any particular state suffering from racial tensions. In the early years of discussion, United States delegates had discouraged Assembly resolutions condemning South Africa for racial discrimination when it existed on a much wider scale. In 1957 the American delegate expressed this quite clearly.

The Government of the United States, while deploiring the apartheid policies practiced in South Africa, felt that since other Governments also deliberately deprived their citizens of basic human rights and freedoms, the best way for the United Nations to tackle the problem would be to consider the larger problem of race relations throughout the world.¹

When the question of race conflict in South Africa first appeared on the Assembly's agenda in 1952, the Assembly considered and passed two resolutions on the item. The United States voted against the first² for two

²General Assembly Resolution 616A (VII), 5 Dec. 1952.
reasons. It disapproved of the investigatory commission established, and it questioned the wisdom of isolating one country for its discriminatory policies when many countries were guilty of racial discrimination. The United States delegation much preferred and voted in favour of a second resolution which considered racial discrimination as a world-wide problem declaring that

in a multi-racial society harmony and respect for human rights and fundamental freedoms and the peaceful development of a unified community are best assured when patterns of legislation and practice are directed towards ensuring equality before the law of all persons regardless of race, creed or colour, and when economic, social, cultural and political participation of all racial groups is on the basis of equality.  

The resolution affirmed that governmental policies which perpetuate or increase discrimination are inconsistent with Article 56 of the Charter and called upon all members "to bring their policies into conformity with their obligation under the Charter to promote the observance of human rights and fundamental freedoms."

South Africa's opponents were not to be content, however, with extolling the virtue of racial equality in multi-racial societies and calling upon all members to honor their Charter obligations. It can be argued that

---

3General Assembly Resolution 616B (VII), 5 Dec. 1952.
the Assembly cannot seriously concern itself with racial discrimination without some effort to identify and isolate the offender. The United States has not abandoned its argument that apartheid is part of a general problem of world-wide racial discrimination, but it has acceded to majority demands that apartheid merits special consideration.

The United States has been forced to admit that racial discrimination in South Africa has become an official government policy whereby the violation of human rights is buttressed and sanctified by statute. While discrimination existed in many nations, its application in South Africa appeared unique.

In the case of racial conflict in South Africa . . . discrimination was imposed and buttressed by law, which prevented the educational process toward respect for human rights from functioning at all. It elevated to the level of official sanction a practice which threatened good international relations.4

Expression of World Conscience vs. Condemnation

South Africa's racial policies are offensive to all members of the United Nations. The majority have chosen to respond with strong condemnation against the South

African Government. The United States had at the beginning expressed its reservation on the Assembly's right to condemn a member state for its racial policies and had questioned the effects of such action. Certainly the frustration felt by member states in South Africa's refusal to comply with repeated recommendations was understandable, and the Assembly was proper in expressing its regret and concern that the South African Government had not responded to Assembly appeals. However, to condemn the South African Government for its recalcitrance was questionable. Condemnation might only increase South Africa's determination to ignore Assembly resolutions. The American position on condemnation was voiced during the Thirteenth Assembly session.

The delegation of the United States did not believe that condemnation would facilitate the solution of the problem, which could only be approached constructively in a spirit of co-operation.

Quite the opposite from condemnation, the United States was endorsing sympathetic understanding for the South African Government.

Moreover, the force of world opinion should not be underestimated. Just as hostile public opinion could serve to isolate those who rejected humanitarian standards, so a sympathetic public opinion
could help a Member State overcome a problem.  

Hostile public opinion had in fact isolated the South African Government from the United Nations organization. On 27 November 1956, the South African delegate announced that his Government would boycott the Eleventh Assembly session declaring that:

until such time as the United Nations shows that it is prepared to conform to the principles laid down by the founders of the Organization in Article 2 paragraphs 1 and 7 of the Charter, the Union of South Africa . . . will in future maintain only a token representation . . . at the meetings of the Assembly and the Headquarters of the Organization.  

But it was also hostile public opinion which brought the South African delegation back to the United Nations. In 1958 Foreign Minister Eric H. Louw returned to the United Nations rostrum, and the South African delegation has continued to defend itself against accusations voiced and led by a growing African membership in the United Nations.

The United States has not been anxious to condemn and denounce the South African Government, but it has

---


given voice to the increasing cry of condemnation. Apparently abandoning its policy of "sympathetic public opinion," American representatives have described racial discrimination in South Africa as a "blight" and a "disease" and the South African Government as one which "persists in seeing the disease as the remedy, prescribing for the malady of racism the bitter tonic of apartheid."7 American condemnation of apartheid has not been as intense as the Afro-Asian's, but it has followed the precedent set by South Africa's more adamant opponents.

The Goal: Peaceful Solution or Ideological Triumph?

It has been questioned whether the General Assembly provides the proper setting for the peaceful solution of racial conflicts. Judging by the actions of some of its members, it might appear that the Assembly has been used more as a stage on which to dramatize a member’s abhorrence of racial discrimination than as a forum for constructive suggestions as to its elimination. The motives of member states in bringing the issue of apartheid before the Assembly may rightly be questioned. Has the apartheid issue been brought before the Assembly, year after year,

---

7 SCOR: Eighteenth Year, 1052nd meeting, 2 August 1963, p. 12.
in hopes of achieving a workable solution or in hopes of achieving a propaganda victory? Inis L. Claude has concluded that in the case of the Indian issue the latter is more to the point. "The record in this case is dominated by the fact that India brought its problem to the United Nations not to achieve a settlement but to score a victory; it invoked not the conciliatory skill of the organization but its denunciatory capacity."³

The same could be said of the African states' treatment of the apartheid issue. In view of the hostility, generated in part by Assembly statements, between South Africa and her neighbors to the north, few would hope for a genuine solution from recent Assembly proceedings. Diplomatic courtesy has been hard pressed. African, Asian and communist delegates have walked out during South African speeches in the Assembly and accused its speakers of being imposters and unworthy representatives of the real South African majority.

A typical example of such discourteous tactics occurred during the Sixteenth Assembly session. The South African delegation had since returned from its self-imposed

exile and its foreign minister had delivered a lengthy statement justifying apartheid as a legitimate racial policy. Following his address, the Liberian delegate moved that his speech be deleted from the records, referring to it as "an insult to every African here, and not only to every African, but to every man of intelligence." If passed the motion would have established the precedent that a statement of a member state could be expunged merely because there was majority opposition to it. Later the motion was withdrawn, but a new motion of censure was presented and adopted by 67 votes to 1 with 20 abstentions. The United States did not participate in the voting, but in a subsequent press release Adlai Stevenson voiced his Government's objection to the motion arguing that "the United Nations was established as a forum for free and untrammeled speech. Through its history speakers have been permitted the widest range of expression and comment," and added that while rejecting apartheid, "we resolutely support his [Foreign Minister Louw's] right—and the right of every speaker before the Assembly—to state his views."  

---


The hostile expressions of recent Assembly debates on apartheid seem to support Claude's contention that "to a very large extent, the Assembly has become a battlefield rather than a peace conference." 11

**Is There a Double Standard?**

South Africa has responded in two ways to United Nations condemnation of its racial policies. First, it denies that apartheid is a system of racial discrimination and insists that human rights and fundamental freedoms are guaranteed under its system of separate development. Secondly, it charges that those countries which accuse South Africa of violating human rights are themselves guilty of the charge but are never held accountable. In short, South Africa charges the existence of a double standard, i.e., "one standard for the strong, and another for the weak; or more often, one standard for a particular group of states, and a different standard for another group." 12

The double standard may be applied morally and legally. Morally it is applied when the United Nations condemns the actions of one state as immoral and contrary

---

11 Claude, p. 219.

to the Charter, but regards similar acts by another member state as moral and in conformity with the Charter. If a double standard is not being applied, South Africa asks why has the United Nations not taken prompt action against Ghana, where human rights were trampled on; against Saudi Arabia, which engaged in the slave trade; against the United Arab Republic, which had recently been charged by Syria with tyranny, terrorism and arbitrary imprisonment; and against the USSR . . . because of its aggression against the people of Hungary. . . .

If the personal integrity of Prime Minister Verwoerd is to be questioned, why isn't the integrity of Nasser and Nkrumah also questioned? The answer, according to South Africa, is made clear in the recognition of a double standard.

Legally the double standard is applied when Article 2(7) is honored in one instance and not in another. South Africa finds it difficult to explain how some delegations can be in sympathy with Article 2(7) in some instances but not in others. The Cuban question at the Fifteenth Assembly session provides a case in point. A resolution was proposed declaring that the "principle of non-intervention in the internal affairs of any State imposes an obligation on Members of the United Nations to refrain from encouraging

---

or promoting civil strife in other States."\(^{14}\) South Africa protests that this resolution "obtained the affirmative votes of the very same delegations that were in the habit of interfering in the internal affairs of South Africa."\(^{15}\)

A more convincing example of the double standard may be found in the United Nations reaction to India's invasion of Goa. The issue was brought before the Security Council by Portugal on 18 December 1961, with a request for an immediate ceasefire. A Western sponsored resolution calling for the cessation of hostilities was defeated by a Soviet veto, but more significantly it was opposed by all three Afro-Asian members of the Council. Could the existence of a double standard explain the Council's failure to confront this act of aggression? "In the present United Nations context," one observer has written, "there is one crime which in certain circumstances may be judged to outweigh the crime of aggression—namely, colonialism."\(^{16}\) If South Africa's accusation of a double standard is correct, it seems safe to conclude that Portugal has joined the small

\(^{14}\text{GAOR: 15th Sess., Annexes, agenda item 90, document A/4744, para. 6.}\)


group of states against which it has been applied.

It is difficult for the United States to refute the assertion of a double standard. American delegates may argue that racial problems are widespread and are creating conflict in many countries, but they cannot deny that they have joined in condemnation singling out South Africa for its violation of human rights. The United States may argue the violation of human rights in South Africa is overt and sanctioned by law and, therefore, of unique and immediate concern. South Africa's reply is that apartheid is a bold experiment designed to protect the human rights, as well as the racial integrity, of all its people.

American delegates may argue that the Assembly was designed as a forum and not a battlefield, and that Charter principles are best served by sound diplomacy rather than harsh indignations sounded mostly for home consumption. The United States cannot deny, however, that it too, at times, has used the Assembly platform more in the interest of national pride than of international harmony.

Undoubtedly, many of South Africa's accusers are guilty of racial prejudice. If South Africa is demanding some sort of moral purity among its condemners it obviously has a case. This however is not the point. Member States need not be free of the taint of racial discrimination to
recognize and condemn its flagrant excesses in South Africa.

Nevertheless, a double standard is a distinct possibility, and it is a problem which must be lived with rather than solved.
CHAPTER IV

UNITED NATIONS STUDY AND RECOMMENDATION ON APARTHEID

If the United Nations could do no more than condemn a member for practicing racial discrimination, its usefulness as a conflict resolving body could seriously be doubted. Clearly, the United Nations must have more positive means of confronting apartheid. It is to these positive alternatives that we now direct our attention.

The investigation of racial discrimination and subsequent recommendations for its elimination is one positive step which the United Nations has taken regarding apartheid. United Nations authority to investigate and make recommendation on racial discrimination is provided in its Charter. Article 13 provides that

the General Assembly shall initiate studies and make recommendations for the purpose of . . . assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

Articles 62 and 63 provide that the Economic and Social Council "may make recommendations for the purpose of promoting respect for, and observance of human rights and fundamental freedoms for all," and that it "shall set up
commissions in economic and social fields and for the promotion of human rights and such other commissions as may be required for the performance of its functions." The International Labor Organization has issued reports on the practice of apartheid in South Africa and its effect on labour conditions. Committees have also been established to study conditions in South West Africa and South Africa's administration of that territory. We shall consider here only those studies commissioned by the Assembly and the Council and concerned with the question of apartheid.

The United Nations Commission on the Racial Situation in the Union of South Africa was established by Assembly resolution 616A (VII) on 5 December 1952. The three man commission made annual reports to the Eighth, Ninth and Tenth Assembly sessions, but was discontinued by the Tenth Assembly when it refused to pass a paragraph of resolution 917 (X) asking the Commission to continue its work.

At its Seventeenth session, the General Assembly adopted resolution 1761 (XVII) on 6 November 1962 establishing The Special Committee on the Policies of Apartheid of the Government of the Republic of South Africa. The Committee was instructed to keep South Africa's racial situation under review between Assembly sessions so that continued attention might be given to the problem. The
eleven member committee continues to function and has issued regular reports to both the Assembly and the Council.

On 4 December 1963, the Security Council requested the Secretary-General to establish

a small group of recognized experts to examine methods of resolving the present situation in South Africa through full, peaceful and orderly application of human rights and fundamental freedoms to all inhabitants of the territory as a whole,

and invited South Africa to avail itself of the assistance of this group to bring about a peaceful and orderly transformation. The recommendation of the group of experts will be explored in Chapter V.

On 18 June 1964, the Security Council established an expert committee composed of representatives of each member of the Security Council to undertake a technical and practical study, and report to the Security Council as to the feasibility, effectiveness, and implication of measures which could, as appropriate, be taken by the Security Council under the United Nations Charter.²

Since this expert committee was to concentrate on coercive measures as its frame of reference, its conclusions will

---


²SCOR: 19th Year, Supplement for April, May and June 1964, document 8/3773.
be considered in Chapter VI.

How have South Africa and the United States regarded these investigatory commissions, committees and groups of experts? How have they responded to their recommendations? As might have been expected, South Africa regarded all investigations into her racial policies as unwarranted interference in her domestic affairs and a violation of Charter principles. It follows, *a fortiori*, that, since South Africa regarded United Nations studies as illegal and unconstitutional, it felt no obligation to consider or adopt its recommendations.

The United States has had a more ambiguous attitude towards formal investigations of South Africa's racial policies. If a commission could be established to study the racial situation in South Africa, a precedent would be set whereby future commissions could probe into American racial policies. The United States could appreciate South Africa's sensitivity to United Nations investigation, especially when a majority of its members were already openly hostile to the theory and practice of apartheid.

At its Seventh Assembly session, the United Nations Commission on the Racial Situation in the Union of South Africa was first proposed. The United States doubted the efficacy of such a commission and voted against it. Doubt-
ing that the Commission could effect any change in South Africa's racial policies, the American delegate suggested that the Commission might only increase South Africa's determination to oppose Assembly efforts. The United States questioned both the practicability and the proposed purpose of the Commission. Practically speaking, "the proposed commission ... could add little to the already well-known facts of the situation." More importantly, however, the commission would violate a principle upon which the Assembly rested. The Assembly could not enforce change; it could only seek to influence and persuade. The appointment of a fact finding commission was not a practical means of exerting influence on the South African Government to moderate its policy and might only serve to stiffen its resistance to persuasion.3

It appears that the American delegation had not clearly determined whether Article 2(7) permitted formal investigations of a member's racial policies. The Seventh session was the first in which an item specifically referring to racial conflict resulting from apartheid appeared on the agenda. Previously only the problem of the Indian minority and South West Africa had been discussed. France and Britain opposed considering South Africa's racial

policies on the grounds that such consideration would violate Article 2 (7). For similar reasons they abstained on Assembly resolution 616A (VII) establishing the United Nations Commission.

French and British positions were clear and unequivocal. The French delegation considered that in approving the Commission the Assembly would go beyond the limits set by the Charter on its activities and initiatives and impinge on a matter which the authors of the Charter intended to reserve for the sovereignty of State Members of the United Nations. The policy practiced by the government of any Member State towards its own nationals, within its own frontiers, is an intrinsic part of the sovereign rights reserved for the jurisdiction of each State. . . . 4

Britain likewise opposed the Commission and considered placing the apartheid issue on the agenda a violation of Article 2(7). Quoting Sir Anthony Eden, the British delegate warned of the dangers of violating Charter principles.

If we attempt to stretch the meaning of the Charter and extend the areas in which the United Nations has jurisdiction, we run grave risks—unless we carry all our fellow Members with us—of weakening the very structure of the United Nations. 5

The American position was ill-defined. Unlike France

5Ibid., p. 334.
or Britain, the United States had affirmed the Assembly's right to consider racial discrimination against South Africa's Indian minority at earlier sessions. It could not easily deny the Assembly's right to consider racial discrimination when it affected the majority of South Africa's population. To express its concern over racial discrimination was one thing, but to commission a formal investigation, against which South Africa was completely opposed, was another matter. The ultimate American position was finely drawn.

The exercise of the right of discussion did not contravene Article 2, paragraph 7 of the Charter. ... On the other hand, it would be unwise to leave the door open to every kind of proposal. ... the United States felt that the General Assembly should steer a middle course and continue ... to feel its way in dealing with the legal aspects of such difficult problems as the racial situation in South Africa. The role of the United Nations was considerably limited. It was not a super-government and could not intervene in matters essentially within domestic jurisdiction of States.  

Steering a middle course, in this instance, did not permit an investigatory commission, and the United States abstained on Assembly resolution 616A, creating one. Nevertheless, the resolution was adopted and the Commission appointed.

---


7 Adopted by 35 votes to 1 with 23 abstentions.
In retrospect, the recommendations of the United Nations Commission seem quite mild. Its suggestions for a peaceful settlement of South Africa's racial problems were three-fold. First, it recommended an increase in interracial contacts and conferences between different ethnic groups. Secondly, it suggested ways of assimilating South Africa's non-white population so as to insure full social, economic and political participation in a peaceful multi-racial society. Social and economic assimilation would include the ultimate elimination of migrant Bantu labour, pass laws, discrimination in employment and education, and the right of all groups to settle in cities and own urban property. Political assimilation would aim at associating the non-white masses to an ever increasing extent in the political management of South Africa's national community, of which they form an indispensable, irreplaceable and inseparable part.

Thirdly, the Commission suggested ways in which the United Nations might assist South Africa in creating a multi-racial society.

Any hopes that the Commission's work might be of some benefit were destroyed by South Africa's refusal to

---

8 See GAOR: 9th Sess., Supplement No. 16 (A/2719), paras. 368-94.

9 Ibid., para. 383.
cooperate with the Commission or even allow it to enter its territory. The apparent failure of the Commission had little effect on the growing United Nations majority determined to investigate and publicize the situation in South Africa. An increasing African membership, determined to expose racial discrimination, may have affected Western reservations on considering apartheid. Western members gradually abandoned their argument that United Nations concern with apartheid was a violation of Article 2(7). In 1961 the British delegate conceded that

While the importance attached by the United Kingdom to Article 2, paragraph 7, of the Charter remained undiminished, it regarded apartheid as being now so exceptional as to be sui generis, and his delegation felt able to consider the [draft resolution under discussion] on its merits.10

In 1958 the United States first began voting in the affirmative rather than abstaining on apartheid resolutions, indicating it no longer had reservations on the legality of these resolutions. In 1959 the Netherlands, although it continued to abstain, expressed the opinion that "the longer [apartheid] was continued, the more it tended to move away from the forbidden sphere of domestic jurisdiction."11

As apartheid continued and intensified, more Members dropped their legal objections to placing it on the Assembly's agenda. By 1961 Portugal was the only member to vote against an Assembly resolution deploiring South Africa's "determined aggravation of racial issues" and affirming that the racial policies of South Africa were "a flagrant violation of the Charter of the United Nations and the Declaration of Human Rights and are inconsistent with the obligations of a Member State." The resolution also noted with "grave concern" that South Africa's racial policies had "led to international friction and that their continuance endangers international peace and security."\(^{12}\)

The adoption of resolution 1598 (XV) by a vote of 95 to 1 with no abstentions\(^ {13}\) indicates the disappearance of former doubts concerning Article 2(7) and the apartheid issue. Opposition to investigatory commissions was also decreasing and there was less opposition to the Special Committee on the Policies of Apartheid of the Government of South Africa established in 1962. Since the United States agreed with the Assembly majority that the situation in South Africa had led to "international friction," and if continued might endanger international peace and security,

\(^{12}\)General Assembly Res. 1598(XV), 13 April 1961.

\(^{13}\)South Africa was absent from the voting.
it could not question the propriety of Assembly investiga-
tions of apartheid. While the United States approved of
the Special Committee, it had strong reservations on its
subsequent recommendations. Discouraged by South Africa's
intransigence, the Special Committee's recommendations were
coercive rather than conciliatory and must be dealt with
in later chapters.
CHAPTER V
THE UNITED NATIONS ROLE IN ENCOURAGING COMMUNICATION, COOPERATION AND COMPROMISE

Thus far we have noticed the lack of enthusiastic American support for the proposals advanced to confront apartheid. The United States has acknowledged the United Nations' duty to concern itself with apartheid when it appears to violate human rights and fundamental freedoms. However, American delegations have not been eager to condemn the South African Government, nor have they been anxious to investigate and expose the racial situation in South Africa. In both cases, the United States has doubted whether these actions would relieve racial tension but has yielded to anti-colonial demands for their implementation.

One might ask if the United States has advanced any proposals of its own as to the best use of the United Nations in relieving South Africa's racial tensions. If so, have these proposals been tested and with what success? Finally, how have other member states responded to such proposals?

As a prerequisite for racial harmony, the United States has often pointed out the necessity of a genuine
desire among racial groups for communication, cooperation and compromise. It is towards this end, the encouragement of trust and confidence among racial groups, that the United States has felt the United Nations should direct its efforts.

Racial tensions cannot be alleviated unless there is a genuine desire among racial groups to do so. The United Nations cannot force but can only encourage this desire. Once South Africans, black and white, have shown an initiative to achieve racial harmony, the United Nations should continue its encouragement and offer its good offices to facilitate the communication, cooperation and compromise which would follow. Therefore, the United Nations serves its most useful function not by condemning and exposing South Africa's racial policies but by encouraging racial harmony and South Africa's own efforts to achieve it.

The United States has championed these ideas in confronting the Indian minority issue and that of racial conflict resulting from the policies of apartheid. How it has done so and the success or failure of its efforts is the subject of this chapter.

Treatment of the Indian Minority in South Africa

The General Assembly first considered the discrimina-
tion against the Indian minority in South Africa at its first session in 1946. The Indian delegation complained of discriminatory legislation in South Africa which violated the Charter's human rights provisions and the Cape-Town agreements between India and South Africa. Expressing its opinion that

the treatment of Indians in the Union should be in conformity with the international obligations under the agreements concluded between the two Governments and the relevant provisions of the Charter.\(^1\)

the Assembly requested that the two Governments report further developments at the next Assembly session.

Hopes for any sort of solution were soon dispelled. South Africa denied that the Cape Town agreements had given rise to international obligations. It denied that it had broken the agreements or violated Charter principles. Lastly, it denied the Assembly's competence to consider these matters on the ground that they were essentially domestic affairs. India's insistence that South Africa accept the Assembly's resolution as the basis of future discussion guaranteed the stalemate that followed.

Nevertheless, at its Third session, the Assembly invited India, Pakistan and South Africa to hold a round

\(^{1}\)General Assembly Res. 44(I), 8 December 1946.
table discussion "taking into consideration the purposes and principles of the Charter and the Universal Declaration of Human Rights." 2 The United States favoured the resolution and its objective of encouraging direct negotiation and voted in its favour. A preliminary agenda for the round table conference was arranged, but India declined to attend on the ground that South Africa had resorted to new discriminatory legislation and South Africa continued to argue that this was a matter of domestic jurisdiction.

At its Fifth session, the Assembly again recommended a round table conference and decided that in the event of failure to hold the conference within four months or to reach agreement within a reasonable time a three member commission would be established to assist the parties in carrying out negotiations. 3

Negotiations again failed to take place and arrangements were made at the Sixth Assembly session for a three-man commission; one member to be nominated by South Africa, one by India and Pakistan and a third member to be the mutual choice of all three parties. 4 South Africa refused to cooperate claiming that previous Assembly action had

2 General Assembly Res. 265 (III), 14 May 1949.
3 General Assembly Res. 395 (V), 2 December 1950.
4 General Assembly Res. 511 (VI), 12 January 1952.
violated Article 2(7), and India refused to proceed until South Africa recognized the legitimacy of previous Assembly resolutions. The situation appeared hopelessly deadlocked.

Nevertheless, on 5 December 1952, the Assembly created a United Nations Good Offices Commission with Cuba, Syria and Yugoslavia appointed as members

with a view to arranging and assisting in negotiations between the Government of the Union of South Africa and the Governments of India and Pakistan in order that a satisfactory solution . . . may be achieved.\(^4\)

The American delegation voted for the Good Offices Commission and previous resolutions leading to its creation. Most Western members, however, abstained rather than interfere in what they considered essentially a domestic issue.\(^5\)

The Good Offices Committee reported to the Eighth and Ninth Assembly sessions that because of South Africa’s refusal to recognize or meet with the Committee it had been unable to discover any new procedures whereby it could arrange negotiations between the parties concerned. Neither could it submit any proposals likely to lead to a peaceful settlement.

\(^4\)General Assembly Res. 615 (VII), 5 December 1952.

\(^5\)The following members abstained on Assembly res. 615 (VII): Argentina, Australia, Belgium, Canada, Columbia, Dominican Rep., France, Greece, Luxembourg, Netherlands, New Zealand, Peru, Turkey, United Kingdom, and Venezuela.
of the problem.

In spite of the Committee's failure, the General Assembly suggested at its Ninth session that the Governments of India, Pakistan and the Union of South Africa seek a solution of the question by direct negotiations, and designate a government, agency or person to assist them in settling the dispute. The United States continued to support the encouragement of direct negotiations and voted in favour of the resolution. However, in a separate roll-call vote, it abstained on operative paragraph 4 whereby the Assembly decided that if an agreement failed to be reached between the parties concerned, the Secretary-General should designate a person to assist them in settling the dispute. Apparently, the United States had concluded from the failure of the Good Offices Committee that, while the Assembly must continue to offer its good offices to facilitate negotiations, it was futile to force them upon a reluctant member.

Assembly resolutions from the Tenth through the Sixteenth sessions continued to express regret that negotiations had not been pursued, continued to urge negotiations and invited member states to use their good offices to bring them about. At the Seventeenth session it was

---

6General Assembly Res. 816 (IX), 4 November 1954.
agreed that the question of the Indian minority would be dropped as a separate agenda item and included in the broader agenda item of racial conflict resulting from the policies of apartheid.

American delegates supported resolutions encouraging direct negotiation to the very end, but their effort to employ the United Nations to this end was an unquestionable failure. This failure, however, tends to support the contention that negotiations, encouraged and facilitated by the United Nations, can come about only when there is first a genuine desire for communication, cooperation and compromise. Neither the Governments of South Africa nor India and Pakistan indicated such a desire.

**Racial Conflict Resulting from Apartheid Policies**

The United Nations had failed in encouraging trust and confidence between the Governments of South Africa, India and Pakistan. Perhaps it would be more successful in encouraging a fruitful dialogue between the racial groups in South Africa itself. From the American point of view, the United Nations' success in this endeavour was crucial, because, in the long run, South Africa's racial tensions had to be resolved by South Africans themselves. They must be resolved voluntarily from within rather than
forcefully from without.

American experience had shown that racial harmony required an integrated multi-racial society. Therefore, the United States had endorsed for itself

a national policy of attempting steady progress towards removal of discriminations which the Charter condemned and considered that no lasting solution of racial problems could be attained short of full participation of all races in the life of a nation.\footnote{GAOR: 7th Sess., Ad Hoc Pol. Committ., 17th Mtg., 15 November 1952, p. 90.}

It was towards this end—the encouragement of a fruitful dialogue among racial groups aimed at securing the full participation of all races in the life of South Africa—that American delegates felt the United Nations should direct its efforts in confronting apartheid.

On 4 December 1963 Adlai Stevenson repeated one of the principles upon which his Government intended to deal with the apartheid question.

An enduring solution cannot be imposed from the outside for, in the last analysis, the change must be brought about primarily by the South Africans themselves, white and black.\footnote{SCOR: 16th year, 1078th Mtg., 4 Dec. 1963, p. 12.}

The United States therefore enthusiastically supported the Group of Experts recommendation that a National Convention,
fully representative of all the people of South Africa, be convened and that "all the people of South Africa should be brought into consultation and should thus be enabled to decide the future of their country at the national level."^9 Adlai Stevenson, in voicing his Government's support for a National Convention in South Africa reminded the Security Council that

The United States has consistently held that the ultimate solution in South Africa must be worked out by the people of South Africa themselves, worked out on the basis of a free and equal exchange of views between all segments of the population, worked out on the basis of give and take.^10

The Group of Experts proposed that the United Nations initiate action by inviting the South African Government to send representatives to the United Nations to carry out discussions on the formation of and the agenda for a National Convention. Later the United Nations could assist the Convention by providing expert advice on constitutional, economic and social problems. One task which the Group of Experts felt the United Nations should undertake immediately was in the vital field of education and training. The need for a large number of qualified non-white


professionals would increase once the outlines for a multi-
racial society had been accepted by the National Convention.

The United States endorsed these recommendations, but there was little hope that the South African Government would agree to such ambitious proposals. It was doubtful whether South Africa would even respond to the Group of Experts' report. Therefore, the Group of Experts proposed one final recommendation. Noting that the Security Council had expressed its strong conviction that "the situation in South Africa is seriously disturbing international peace and security,"

11 the Group of Experts recommended that

If no satisfactory reply is received from the South African Government by the stipulated date, the Security Council, in our view, would be left with no effective peaceful means of assisting to resolve the situation, except to apply economic sanctions.12

The United States could not agree with this last recommendation and particularly with

the concept of an ultimatum to South Africa that unless it complies with the recommendations for a convention by the stipulated date, economic sanctions will automatically be applied, regardless


of the factual situation.\textsuperscript{13}

In this instance the American delegate had not precluded the possibility of economic sanctions, but American delegates had often questioned the efficacy of economic sanctions in overcoming South African intransigence. The American position appeared to be that while the National Convention was a worthy goal and deserving of United Nations encouragement, it was not the United Nations goal to force the Convention by coercive measures.

As in the case of the Indian minority issue, American policy interpreted the United Nations role in the apartheid issue as largely a secondary one, encouraging initiative first shown by South Africans themselves.

\textbf{Reaction Against American Proposals}

How have other member states responded to the American proposal that South Africa can be persuaded to abandon its racial policies and employ the United Nations good offices to achieve a peaceful multi-racial society? Understandably, twenty years of South African resistance to United Nations persuasion have caused most members to doubt the credibility of the American proposal. The apparent

failure of American requests for moderation and concilia-
tion have led some members to demand more forceful and
coercive measures.

The widespread frustration was clearly expressed by
the African delegates at the Sixteenth Assembly session.

For what is the purpose, after asserting for ten years
that the racial policy of South Africa is contrary to
the Charter—which everyone knows—of noting with con-
cern that the continuation of that policy endangers
international peace and security? . . . What is the
purpose of deploring, of deprecating, if nothing is
done to end this catastrophic state of affairs?14

American delegates have always replied that the weight of
world conscience will eventually force South Africa to
re-examine and revise its racial policies so as to secure
racial harmony and world approval. Many however, including
some white South Africans doubt that the Afrikaner nation-
alist will ever respond voluntarily to world opinion.

One thing is certain: he won't change just by per-
suasion, or out of the goodness of his heart. He
will change only when the pressure inside and outside
the country becomes unendurable. . . . What he needs
to bring him out of his pipedream is a decisive order
from the outside world.15

1961, para. 109. (Quote by Ivory Coast delegate).

15Alan Paton, "As Blind as Samson Was," New York
The United States has also admitted the apparent failure of the United Nations persuasive efforts:

it is only stating a fact of life to say that the visible result of all these discussions and resolutions here in the United Nations, and all the diplomatic activities so far, is zero... our efforts have yielded no tangible results... There has been no forward motion; indeed, there has been retrogression—calculated retrogression.\textsuperscript{16}

The patience of most member states has been worn thin. Nowhere is this more evident than in the African bloc itself. Speaking for the African states, Ghana's representative declared

The world has been tolerant—too tolerant in respect of apartheid, the most pernicious system of government on this earth. Never in the history of mankind has a small group of persons dominated so brutally... the innocent majority, the indigenous masses in their own country, with such low depths of depravity... We in Africa cannot believe that this system can be uprooted by persuasion, understanding and moderation.\textsuperscript{17}

The Communist bloc members have been anxious to champion the African cause and have equally criticized Western apostles of moderation.

To confine ourselves to mere oral condemnation of [apartheid] would in the circumstances... be tanta-


\textsuperscript{17} GAOR: 16th Sess., 1067 Plenary Mtg., 28 Nov. 1961, paras. 73 & 74.
mount to giving de facto approval to a continuation of the policy of barbarous racial discrimination. * * * To bring moral pressure to bear on a Government which openly spurns all moral standards is no more than a fiction. Only realistic measures, only resolute action can really put an end to this policy. 18

African demands, supported by a Communist and Asian majority, for forceful and coercive measures against a recalcitrant South African Government is probably the greatest challenge confronting American policy on apartheid at present. It is towards these demands that we must now direct our attention.

18 Ibid., paras. 88 & 89.
CHAPTER VI

THE APPLICATION OF COERCIVE MEASURES

In the interest of maintaining international peace and security, both the General Assembly and the Security Council may recommend the application of coercive measures. Article 11 allows the Assembly to consider and recommend the voluntary application of coercive measures when such action is believed to be in the interest of international peace and security. The General Assembly may also call the attention of the Security Council to situations which are likely to endanger international peace and security. Chapter VI of the Charter, concerning the pacific settlement of disputes, allows the Council to recommend voluntary coercive measures if it decides that the continuation of a dispute is likely to endanger the maintenance of international peace and security.

Assembly recommendations and Security Council resolutions referring to Chapter VI of the Charter are in no way binding on member states. There is no legal compulsion to comply with recommendations of coercive action. Coercive measures become mandatory only under Chapter VII when the Security Council determines the existence of a threat to
the peace, breach of the peace, or act of aggression. The decisions taken by the Security Council under Chapter VII are more than recommendations and may be directions which member states are bound to carry out.

Mandatory coercive measures have not yet been imposed by the Security Council, but it has made certain recommendations under Chapter VI. Along with the General Assembly, the Council has called for a voluntary arms embargo against South Africa. Acting on its own, the Assembly has urged all members to take coercive political and economic action against South Africa. Assembly recommendations have included the cessation of diplomatic relations, a general trade embargo with specific emphasis on petroleum and petroleum products, and the severance of transportation and communication. The Special Committee on Apartheid, created by Assembly resolution 1761(XVII), has also recommended an embargo on investments and emigrant labour in South Africa. More importantly, it has recommended that the Security Council decide to apply economic sanctions in accordance with Chapter VII of the Charter.¹

¹For a complete list of measures recommended in Assembly and Council resolutions, as well as recommendations of the Special Committee, the Organization of African Unity and the Conference of Non-Aligned Countries, see: UN document 8/6210, Annex VI, 2 March 1965.
In this study of the American position on coercion, we shall consider coercive measures in three separate categories: 1) those recommended in Assembly resolutions, 2) those recommended by the Security Council with reference to Chapter VI of the Charter and 3) those which may in the future be imposed and enforced by the Council under Chapter VII.

Assembly Recommendation of Coercive Measures

At the Fifteenth General Assembly a group of twenty-four African states introduced a draft resolution recommending that all States consider taking the following steps:

(a) To break off diplomatic relations with the Union Government, or refrain from establishing such relations.
(b) To close the ports of each State to all vessels flying the South African flag.
(c) To enact legislation prohibiting the ships of each State from entering South African ports.
(d) To boycott all South African goods and to refrain from exporting goods to South Africa.
(e) To refuse landing passage facilities to all aircraft belonging to the Government and companies registered under the laws of the Union of South Africa.²

This particular paragraph failed to receive the required two-thirds majority vote, and the African delegates asked that the entire resolution be withdrawn.

The American delegation voted against the operative paragraph above, and other delegations have repeatedly voiced opposition to coercive measures in Assembly resolutions. Many reasons have been advanced to justify the American position. It is argued that coercion will only harden South Africa's resistance to Assembly efforts to find a peaceful solution to the apartheid issue. It is also argued that punitive measures would hurt the innocent as much as the guilty in South Africa. The proposed measures would harm the very people they were intended to help, namely the black majority and the vanishing group of white liberals. Moreover, the United States has long maintained that "the paramount consideration should surely be the welfare of the victims of apartheid rather than punitive action against a recalcitrant government." 3

Further, it is argued that coercive measures would be difficult to enforce, especially on a universal level, and that unless universally applied and enforced their effectiveness would be questionable. The prestige of the United Nations would surely suffer if after recommending voluntary sanctions they were found to be ineffective, or if after imposing sanctions they were found to be unenforce-

able. Lastly, the United States has felt that extreme measures like sanctions should be restricted to situations in which there is a flagrant breach of international peace—a situation which does not now exist in South Africa. If the choice were between conciliation and coercion, the United States would recommend the former.

Convinced of the futility of conciliation, the African states continue their drive for coercion. At the Sixteenth Assembly session they presented a resolution urging similar coercive measures as well as drawing the attention of the Security Council to the apartheid issue with regard to Articles 6 and 11 of the Charter. Once again the proposal for coercion failed to receive the required two-thirds majority.

Communist bloc support of Afro-Asian demands notwithstanding, there appeared sufficient opposition to diplomatic and economic coercion to make Assembly recommendation of these measures doubtful. Nevertheless, a resolution passed at the Seventeenth Assembly named the following measures and requested that member states take them to bring about the abandonment of South Africa's racial policies;

(a) Breaking off diplomatic relations with the Government of the Republic of South Africa or refraining from establishing such relations;
(b) Closing their ports to all vessels flying the South African flag;
(c) Enacting legislation prohibiting their ships from entering South African ports;
(d) Boycotting all South African goods and refraining from exporting goods, including arms and ammunition to South Africa.
(e) Refusing landing and passage facilities to all aircraft belonging to the Government of South Africa and companies registered under the laws of South Africa. 4

The manner in which this resolution was passed led some member states, including the United States, to charge the African states with political irresponsibility and the violation of a basic rule of procedure. The African states apparently realized that if their resolution was voted upon by division, i.e., paragraph by paragraph, the paragraph recommending coercive measures would fail, just as it had in the two previous sessions. Led by Ghana and Senegal, the African delegation opposed the request for a vote by division. The United States delegate protested that past practice made it clear that important paragraphs of draft resolutions should receive strong support, i.e., a two-thirds majority, before they are accepted by the Assembly. Nevertheless, the request for a vote by division was defeated by a narrow margin of 52 to 49 with 5 abstentions.

The full force of African membership in the Assembly

4General Assembly Resolution 1761 (XVII), 6 Nov. 1962.
was now being demonstrated. During the Fifteenth, Sixteenth and Seventeenth Assembly, twenty-three newly independent African states were admitted into the United Nations. Despite the discontent of a growing Afro-Asian majority in the Assembly, the United States remained firm in its opposition to coercive measures. American arguments against coercion remained the same.

The adoption of a draft resolution calling for measures that could easily be evaded, would only serve to cast doubt on the efficacy of the sanction process. Also, the sense of frustration that prompted such measures would only be heightened by their failure. Then again, dissension might arise between various Member States as to the extent of their compliance with the resolution and, finally the failure of such a resolution could seriously weaken the authority of the United Nations—a consequence which all Members and particularly the smaller nations, would wish to avoid. 5

The United States has preferred Assembly resolutions requesting all States to consider or to take “such separate and collective action as is open to them, in conformity with the Charter of the United Nations, to bring about the abandonment of these [apartheid] policies.” 6 In this way each member state is able to decide for itself if the

---


application of coercive measures is an effective and legal means of confronting apartheid.

Resolution 1761 (XVII) also requested the Security Council to consider action under Article 6 of the Charter. Article 6 provides that a member state which has persistently violated Charter principles may be expelled by the General Assembly upon the recommendation of the Security Council. American delegations have always opposed the proposition that South Africa be expelled from the United Nations because of its racial policies. Expulsion from the United Nations would relieve the South African Government of its obligations under the Charter, would cut it off from the influence which other Governments might have on it through the United Nations and would isolate a country which more than anything else needed human contact with the rest of the world.7

The American argument has been that persuasion is better than coercion, and that expulsion would eliminate the United Nations opportunity to apply its persuasive powers.

The practical result of [expulsion] would be to remove the South African Government from the one place where the full weight of world opinion could be brought to bear on it. . . . The steady and repeated impact of the conscience of the world community would be of far

---

more use than any dramatic action.  

Security Council Endorsement of Coercive Measures

The expulsion of South Africa is one way in which member states have sought to involve the Security Council in the apartheid issue. Primary responsibility for the maintenance of international peace and security is conferred upon the Security Council, and it is with reference to this responsibility that apartheid has most frequently been brought before the Security Council. Apartheid first came to the attention of the Council following the events in South Africa on 21 March 1960. The rioting and bloodshed in Sharpeville on that date, following the Government's decision to tighten its enforcement of discriminatory pass laws, made it difficult for the Western members to urge moderation and restraint.

Within four days a twenty-nine member African-Asian group requested a meeting of the Security Council to consider "the grave potentialities for international friction." Unlike France and the United Kingdom, the United States

---


did not object to Security Council consideration of the apartheid question. France and the United Kingdom questioned the loyalty of the Council's concern with what they still considered to be a domestic issue. The United States, on the other hand, reaffirmed its belief that the Charter provided a basis whereby the Council as well as the Assembly "can properly consider questions of racial discrimination when they are matters of governmental policy."\textsuperscript{10}

Since the Council's chief concern is the maintenance of international peace and security, the United States felt that the Council should be particularly concerned with the recent events in Sharpeville.

When governmental policies within one country evoke the deep concern of a great part of mankind, they inevitably contribute to tensions among nations. This is especially true of racial tensions and of violence which sometimes results.\textsuperscript{11}

Recognizing that "the goal in Africa as everywhere must be to end the domination of groups by groups so that members of all races will feel secure,"\textsuperscript{12} the United States supported a Council resolution condemning apartheid. The resolution noted that the situation in South Africa is "one that has

\textsuperscript{10} SCOR: Fifteenth year, 855th Mtg., 1 April 1960, p. 3.

\textsuperscript{11} ibid.

\textsuperscript{12} ibid.
led to international friction and if continued might endanger international peace and security."\textsuperscript{13} The resolution also deplored South African policies which had led to the loss of so many African lives; called upon the Union Government to initiate measures aimed at racial harmony and equality and requested the Secretary-General to make whatever arrangements might be necessary to uphold the Purposes and Principles of the Charter.

When the Security Council again considered apartheid in August, 1963, Adlai Stevenson announced that his Government had decided to end the sale of all military equipment to the Government of South Africa by the end of 1963. Since the Sixteenth Assembly, the United States had adopted a policy of forbidding the sale of those arms and military equipment to South Africa which "might be used to enforce apartheid either in South Africa or in the administration of South West Africa."\textsuperscript{14} However, the distinction between those arms which might be used to enforce apartheid and those which could not was impossible to define. Therefore, the United States terminated the sale of all military arms and equipment to South Africa and supported a Council

\textsuperscript{13} SCOR: 15th year, Supplement for April, May and June 1960, document S/4300.

resolution calling upon all states "to cease forthwith
the sale and shipment of arms, ammunition of all types
and military vehicles to South Africa."\(^{15}\)

**Mandatory Enforcement of Coercive Measures**

**under Chapter VII of the United Nations Charter**

As originally formulated, the August 1963 resolu-
tion calling for an arms embargo noted that the situation
in South Africa is seriously endangering international
peace and security and called upon all States "to boycott
all South African goods and to refrain from exporting to
South Africa strategic materials of direct military value."\(^{16}\)

This operative paragraph was not adopted, having failed to
receive the affirmative vote of seven members of the Coun-
cil, and the sponsors of the resolution saw fit to change
the original formulation from "is seriously endangering
international peace and security" to "is seriously disturb-
ing international peace and security."

The United States abstained on operative paragraph 3
and thanked the sponsors of the resolution for the change
in terminology and for recognizing that a number of Council

---

\(^{15}\)SCCR: 18th year, Supplement for July, August and

\(^{16}\)Operative paragraph 3.
members were not prepared to agree that the situation in South Africa called for the application of Chapter VII, appropriate in cases of threats to the peace, breaches of the peace or acts of aggression. Disturbances of the peace, even serious ones are not occasions for the implementation of Chapter VII.

American delegates have never recognized the applicability of Chapter VII to the situation in South Africa. Adlai Stevenson has stated that to do so would be both bad law and bad politics.

It would be bad law because the extreme measures provided in Chapter VII were never intended and cannot reasonably be interpreted to apply to a situation of this kind. . . . mandatory coercive measures [were meant to apply] in situations where there was an actuality of international violence or such a clear and present threat to the peace as to leave no reasonable alternative but resort to coercion.

It would be bad politics because the application of sanctions in this situation is not likely to bring about the practical result that we seek, that is the abandonment of apartheid . . . . punitive measures would only provoke intransigence and harden the existing situation.17

Thus far the United States has agreed that the situation in South Africa is one which has led to international friction, has seriously disturbed international peace and security and if continued might endanger international

17SCQ: 18th year, 1052nd Mtg., 2 August 1963, p. 16.
peace and security. In none of these situations, however, is Chapter VII applicable, and the Security Council may only recommend the application of voluntary coercive measures.

France and the United Kingdom have also argued against the application of Chapter VII. France continues to consider Security Council concern with apartheid as an unwarranted intervention in the internal affairs of a member state. The United Kingdom agrees that the situation in South Africa does not call for the imposition of mandatory measures and that coercive measures, whether mandatory or voluntary, are not the best way to resolve the issue.

The West’s refusal to consider mandatory measures and its well known economic and military ties with South Africa have angered the Afro-Asian states. These states readily support the Soviet accusation that the West’s refusal to consider coercion, especially economic sanctions, has shown that

their selfish interests and the profits which they crave from the victims of a racist policy steeped in hatred of mankind, that this monstrous enrichment, is to them much more important than principles of humanitarianism and morality.19

---

While the United States maintains that the situation in South Africa does not now call for mandatory action, that sanctions would be impractical and difficult to apply and that sanctions would hurt those whom they were intended to benefit, the African states argue just the opposite. They argue that mandatory sanctions against South Africa are legal because apartheid has become a threat to the peace, that recent studies have shown that the South African economy is clearly vulnerable to economic sanctions, and that black leaders in South Africa, who realize the adverse effect sanctions might have on the black majority, are demanding them nevertheless.

The African argument is that Security Council enforcement of mandatory coercive measures is "the only peaceful recourse left open to resolve and remove [apartheid's] threat to international peace and security."19 The African states will apparently be satisfied with nothing less.

We [the African states] do not desire a resolution of wish and not of will. The Security Council, above all else, can provide the world with an instrument by which humanity can defeat the despotism of the racist Government of Premier Verwoerd and support it with free and self-respecting men. In Africa you will be measured not by your words but by your deeds.20

19 Delegate of Liberia, United Nations document S/PV.1127, 8 June 1964, p. 27.
20 Ibid., p. 32.
Despite its reservations on mandatory action, the United States agreed to serve as a member of an expert committee to study the feasibility, effectiveness and implications of measures, namely economic sanctions, which the Security Council might decide to impose. This Expert Committee reached important conclusions on the aspects of economic sanctions against South Africa.

Regarding the feasibility of economic measures, the Committee reported that while the South African economy was strong, diversified and prosperous, it was not immune to the dangers of economic sanctions. Regarding the effectiveness of economic measures, the Committee noted that their effectiveness depends to a great extent on the degree of collective willingness, universality of application and genuine desire from those imposing measures, special attention being given to the States maintaining close economic relations with South Africa.\(^{21}\)

It was also agreed that the implications of economic sanctions would be particularly harsh on those countries, like the United Kingdom, having considerable interest in South African trade. It was agreed, however, that the adverse effects could be mitigated and that they did not prohibit the application of economic sanctions.

The Committee recognized that the prerogative to impose economic sanctions rested with the Security Council and recommended that if such a decision were reached emphasis be placed on the following measures:

(a) total trade embargo;
(b) embargo on petroleum and petroleum products;
(c) embargo on arms, ammunition of all types, military vehicles and equipment and materials for the manufacture and maintenance of arms and ammunition in South Africa;
(d) cessation of emigration of technicians and skilled manpower into South Africa;
(e) interdiction of communications with South Africa;
(f) political and diplomatic measures as referred to in the resolutions already adopted by the Security Council and the General Assembly. 22

The Committee also noted the possible need for a naval and air blockade to make sanctions effective, as well as the great costliness of such an operation.

The United States voted in favour of these recommendations and conclusions, but American support for the study was without commitments or implications as to its future action. The United States had only agreed that

if and when a situation arose in which sanctions might be appropriately considered under the Charter, a situation which does not in our judgement exist today, the availability of a detailed, practical and expert study would have considerable utility. 23

22 Ibid., p. 8.
Despite the demands for coercive measures and the availability of expert plans for their implementation, the opposition of three permanent Security Council members to the application of Chapter VII makes Security Council enforcement of mandatory coercion a dubious hope, indeed. Nevertheless, some attention should be given to the probable impact on the American economy of the imposition of sanctions against South Africa. What would be the effect of the complete cessation of economic relations with South Africa upon American imports, exports and foreign investments? The United States provided some answers in its report to the Expert Committee studying the question of sanctions.\(^{24}\)

Imports from South Africa in 1963 were $259 million representing 1.5 per cent of total United States imports. American exports to South Africa for the same period were $276 million representing 1.3 per cent of total United States exports. Most American imports could be obtained from other sources or if unattainable elsewhere would cause only slight inconvenience. However, certain products in the ore and mineral category are vital and are either unobtainable elsewhere or available elsewhere but in inadequate

quantities.

The absence of exports like the absence of imports would affect particular industries rather than the United States as a whole. Particularly hurt by a cessation of exports would be the textile industry whose exports to South Africa totaled about $30 million in 1963. The machinery and transportation equipment industry would lose estimated annual sales of over $120 million if exports to South Africa were discontinued.

The United States estimates that the cessation of exports and imports plus the loss of invisible incomes, such as transfers of investment income and capital, would have an initial adverse effect on the United States balance of payments of about $300 million annually. The American Government admits that an adverse balance of payment effect of about $300 million annually is not large in relation to the over-all magnitude of United States external transactions, but points out that the figure becomes more significant in relation to the present deficit in its balance of payments.

Understandably, the United States would like to retain its favourable balance of trade with South Africa. Understandably also, American industry would like to retain its share in what is perhaps the most stable economy on the
African continent. Like its Government, American industry has pleaded for persuasion rather than coercion and, like its Government, has angered impatient African states. Typical, but increasingly hard to justify, is this plea from a captain of American industry:

Let us lower our voices. Let us drop the tough talk, which will take us nowhere, and adopt instead friendly argument and thoughtful persuasion on a man-to-man basis. The white people of South Africa are charged with a great responsibility toward the black man, and they know it. In the end they will do right. Let us give them a little more time.25

CHAPTER VII
SOME CONCLUDING REMARKS

This study has attempted to describe American confrontation of apartheid in the United Nations, to determine the rationale behind its decisions and the success of its efforts. Some concluding remarks may now be given.

Unmistakably and persistently, the United States has sought to make clear its basic opposition to apartheid. While admitting its own shortcomings in race relations and recognizing the universality of racial tensions, the United States has placed apartheid in a special category. Under the theory of "separate development," racial discrimination in South Africa has become an official government policy sanctifying the flagrant violation of human rights.

Nationally and internationally, the United States has espoused the concept of racial equality, and as such its goal seems in harmony with the United Nations majority. However, African and American desires have sometimes conflicted over the kinds of policy which should be adopted towards the Republic of South Africa. Thus a challenge has developed in which the United States must convince the African membership of the sincerity of its intentions,
while preventing impatient African members from employing the United Nations in a manner for which it was not intended.

The task of the United States is complicated by its desire not to alienate and isolate the South African government. South Africa holds a strategic military and economic position on the African continent, and its hostility to communism is well publicized. South Africa takes pride in being "the only country in Africa unequivocally aligned with the West, both in fact and in outlook."\(^1\) It is generally agreed that any alternative to a white-pro-Western government in South Africa would at best be a neutral one.

At first, the United States had hoped to take a moderate, even non-committal, position on the apartheid issue. At the Seventh Assembly session, when the question was first raised, the American delegation noted that it "wished to avoid both excess of zeal and timid legalism in dealing with the South African racial policy."\(^2\) Such a hope was impossible. The opponents of apartheid never considered their zeal in excess, and the South African government never considered its position to be one of timid

---

\(^1\) Information Service of South Africa, New York City, *South Africa in Fact*.

legalism.

As apartheid policies intensified, so did American condemnation. American moral indignation may in part have been a reaction to growing Afro-Asian membership in the United Nations. At its inception, the United Nations had only four African members. Today there are thirty-eight and together with the Asian members the Afro-Asian group now contains enough members to practically determine procedural questions and seriously influence important questions of substance. Undeniably, the African states have shown persistence and determination in uniting their efforts to destroy apartheid and eliminate racist minority governments from the southern third of their continent.

Having witnessed the political emergence of a world which is two-thirds non-white, the United States might well be cautious of establishing precedents in the area of human rights, the ramifications of which may as yet be unforeseen. Rather than issuing rigid proclamations as to the international action which must be taken against all instances of racial discrimination, the United States has chosen to confront apartheid cautiously, pragmatically and, despite statements to the contrary, dispassionately.

This has angered the African states who demand quick, harsh and universal action. Thus far, the United
States has agreed with the Assembly majority on the following points. It agrees that apartheid is abhorrent, that it is of proper and legitimate concern to the United Nations, and that all members have pledged themselves to co-operate with the United Nations in the promotion of human rights without distinction as to race. More recently, the United States has acknowledged that the policy of apartheid has clearly led to a situation the continuance of which is likely to endanger international peace and security, and that all members should take separate and collective action in conformity with the Charter to bring about the abandonment of apartheid.

The action taken by the United States has been short of African demands. Through public words and private diplomacy, the United States has demonstrated its official disapproval of apartheid. It has determined to uphold its national principle of racial equality in its embassy and consular offices. "All—white or black—who enter its doors will be treated, as always, in the same dignity and respect as they are in our embassies and consulates in every country." Believing in the value of universal education for national growth and development, the United States has

---

3 SCOR: 18th year, 1078th Meeting, 4 December 1963, p. 15.
offered educational opportunities to those in South Africa now denied them.

African states consider these steps necessary but insufficient in themselves to eliminate apartheid policies. They regard international coercion as the only peaceful alternative left in confronting apartheid. It is argued that punitive measures, especially economic pressures, must now be applied to force South Africa to modify or abandon its racial policies. While the American refusal to consider coercive measures is often attributed to economic and political interests, its official opposition is based on legal and pragmatic arguments. The United States argues that the situation in South Africa, while admittedly tense, does not now justify coercive intervention. Secondly, it is argued that coercion might not be as effective and practical as expected and might produce results quite opposite from those intended.

The United States has argued, in effect, that racial conflict resulting from apartheid is a domestic matter and must be resolved internally. A solution must be sought from within rather than imposed from without. This does not imply that apartheid is not subject to international action. Discussion, investigation, recommendation, expressions of regret and condemnation are all legitimate activities. Some
may be more effective than others, but all are in accord with the United Nations Charter. None are regarded by the United States as intervention in South Africa's internal affairs and, therefore, a violation of Charter principles.

South Africa argues just the opposite and denounces all United Nations activities, even the most cautious and conciliatory, as unwarranted intervention into its internal affairs.

In fact, we have argued, and demonstrated . . . that discussion in the United Nations . . . constitutes one of the most insidious and dangerous forms of intervention of which this organization is capable.\(^4\)

It is South Africa's intransigence combined with the African states' hostility and impatience which makes the apartheid issue so difficult to resolve on the international level.

The United States, therefore, faces a double dilemma in confronting apartheid. Its refusal to consider coercive measures has weakened the faith of the African states in its uncompromising opposition to apartheid. At the same time, the United States has become discouraged over its long and apparently fruitless efforts to confront apartheid

with moral pressure alone.  

What of the future? Unless the South African government modifies its racial policies, or the African states accept the principle of “separate development,” African demands for coercive measures will continue. African states will continue to exert coercive pressures on their own, but without the co-operation of South Africa’s major trading partners such action will have a minimal effect.

Some commentators have predicted an inevitable and bloody uprising in South Africa unless injustices are quickly corrected. The resultant internal chaos and its threat to international peace and security would force the United States to reconsider international intervention.

Other commentators see only a slight possibility of a general uprising in South Africa. The South African government seems well entrenched and fully capable of suppressing internal dissention. Despite its threats, it is also doubtful that black Africa would be capable of mobilizing a sufficient military force to defeat the

---


South African regime. Pressures generated by its northern neighbors and the United Nations not withstanding, South Africa looks forward to a considerable period of power to conduct its apartheid experiment.

If the majority in South Africa are forced to rely on patience in confronting apartheid, their slogan might well be "educate and multiply."\textsuperscript{7} It is reasonable to expect the day when there will be eight or ten black Africans to each white in South Africa. It may be the American hope that when that day comes the African majority will be numerous and educated enough to peacefully secure the full right of political participation.

\textsuperscript{7}Ibid.
APPENDIX

List of resolutions of the General Assembly and the Security Council with regard to the racial policies of the Government of South Africa

(a) General Assembly

<table>
<thead>
<tr>
<th>Resolutions</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>44 (I)</td>
<td>8 December 1946</td>
</tr>
<tr>
<td>265 (III)</td>
<td>14 May 1949</td>
</tr>
<tr>
<td>395 (V)</td>
<td>2 December 1950</td>
</tr>
<tr>
<td>511 (VI)</td>
<td>12 January 1952</td>
</tr>
<tr>
<td>615 (VII)</td>
<td>5 December 1952</td>
</tr>
<tr>
<td>616 A (VII)</td>
<td>5 December 1952</td>
</tr>
<tr>
<td>616 B (VII)</td>
<td>5 December 1952</td>
</tr>
<tr>
<td>719 (VIII)</td>
<td>11 November 1953</td>
</tr>
<tr>
<td>721 (VIII)</td>
<td>8 December 1953</td>
</tr>
<tr>
<td>816 (IX)</td>
<td>4 November 1954</td>
</tr>
<tr>
<td>820 (IX)</td>
<td>14 December 1954</td>
</tr>
<tr>
<td>917 (X)</td>
<td>6 December 1955</td>
</tr>
<tr>
<td>919 (X)</td>
<td>14 December 1955</td>
</tr>
<tr>
<td>1015 (XI)</td>
<td>30 January 1957</td>
</tr>
<tr>
<td>1016 (XI)</td>
<td>30 January 1957</td>
</tr>
<tr>
<td>1178 (XII)</td>
<td>26 November 1957</td>
</tr>
<tr>
<td>1179 (XII)</td>
<td>26 November 1957</td>
</tr>
<tr>
<td>1248 (XIII)</td>
<td>30 October 1958</td>
</tr>
<tr>
<td>1302 (XIII)</td>
<td>10 December 1958</td>
</tr>
<tr>
<td>1375 (XIV)</td>
<td>17 November 1959</td>
</tr>
<tr>
<td>1460 (XIV)</td>
<td>10 December 1959</td>
</tr>
<tr>
<td>1597 (XV)</td>
<td>13 April 1961</td>
</tr>
<tr>
<td>1699 (XV)</td>
<td>13 April 1961</td>
</tr>
<tr>
<td>1662 (XVI)</td>
<td>28 November 1961</td>
</tr>
<tr>
<td>1663 (XVI)</td>
<td>28 November 1961</td>
</tr>
<tr>
<td>1761 (XVII)</td>
<td>6 November 1962</td>
</tr>
<tr>
<td>1881 (XVIII)</td>
<td>11 October 1963</td>
</tr>
<tr>
<td>1978 (XVIII)</td>
<td>16 December 1963</td>
</tr>
<tr>
<td>2054A (XX)</td>
<td>15 December 1965</td>
</tr>
<tr>
<td>2054B (XX)</td>
<td>15 December 1965</td>
</tr>
</tbody>
</table>
(b) **Security Council**

Resolution adopted on 1 April 1960 (document S/4300)
Resolution adopted on 7 August 1963 (document S/5386)
Resolution adopted on 4 December 1963 (document S/5471)
Resolution adopted on 9 June 1964 (document S/5761)
Resolution adopted on 18 June 1964 (document S/5773)
BIBLIOGRAPHY

Books


Articles, Reports and Pamphlets


United Nations Documents


