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Leonard M. Salter

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Embargoes, Quarantines and Sanctions: Is the UN Nagging Rhodesia and South Africa?

... I am reluctant to follow the U.N. majority in demanding a war against the South African and Rhodesian governments. It may be frustrating that we have to wait for a provocation which clearly marks these governments as a danger to peace; but until an insurgent government can be recognized, there are many things a private citizen can do for Africans which the United States government cannot do and which the opposition cannot ask it to do.

*Collective Security,
Interventionism and the Left*
HENRY M. PACHTER

It was on March 17, 1970, that the United States first used its veto in the United Nations Security Council. The United States joined Britain in vetoing a properly adopted Security Council resolution which would have condemned Britain for its refusal to end by force the "rebellion" in Rhodesia. This resolution of the Security Council dated December 16, 1966, was historic in the annals of international organizations and would also have required all states to cut off contact (diplomatic, economic, railway, telegraphic, postal, etc.) with the Rhodesian government.¹

In vehement opposition to this ukase is the late Dean Acheson, former secretary of state, who claimed² that the United States is engaged in an international conspiracy, instigated by Britain, and blessed by the U.N., to overthrow the government of a country that has done us no harm and threatens no one. According to Acheson, "This is bare-faced aggression, unprovoked and unjustified by a single moral principle."

In the third report of the U.N.'s special committee on the enforcement of the Rhodesian sanctions, it appears that the three reasons that justified

Leonard M. Salter graduated from Harvard Law School (1936), Harvard College (cum laude- 1933); Chairman Board of Editors, Commercial Law Journal; President Commercial Law League (1970-71); Planning Committee World Peace Through Law Conference.

¹New York Times, March 22, 1970; see U.N. Charter, Article 41.

²"The Arrogance of International Lawyers," address delivered before the International and Comparative Law Section of the American Bar Association, 1968.

ostracizing Rhodesia from the family of nations were (1) secession from the British Commonwealth, (2) Rhodesia constitutes a threat to the peace, and (3) failure to eliminate racial segregation (apartheid) in that country. Let us examine these three charges in order to evaluate their substance and legitimacy.

The question of the right of Rhodesia to secede from the British Commonwealth³ might well be considered in the light of the American colonies' secession from the British Empire. The charge that Britain brings against the Rhodesians, as Acheson points out, is one that George III once brought against the Americans, and sought unsuccessfully to enforce by arms. The colonies felt it necessary, as Mr. Jefferson put it, "to dissolve the political bands which (had) connected them with another (people), and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them." Certainly, if anyone should be sympathetic to this action by Rhodesia, it should be the Americans.

And yet, by the United Nations Participation Act of 1945,⁴ the President is authorized by Congress to take executive action in support of any mandatory decision of the Security Council. The only case in which that authority has been used is that of Southern Rhodesia when President Johnson, by executive order of January 5, 1967, forbade United States companies to trade with that country. The first criminal action brought against a company since the imposition of this action occurred in 1970, when the defendant was fined \$10,000 for conspiracy to violate regulations imposing economic sanctions of Rhodesia.⁵ A New York corporation pleaded guilty to charges of importing \$367,000 worth of chrome concentrate and ore from Rhodesia.

The importation of chrome from Rhodesia is, according to some sources, of vital interest to our national defense; by general agreement, Rhodesia produces the finest metallurgical chrome on earth. After the imposition of the sanctions, the United States was compelled to purchase its chrome from the Soviet Union, at twice the price.⁶ This imposition of sanctions by the President was, of course, a show of solidarity by the United States to its ally, Britain. Unwillingness to enforce such sanctions by the United States would also have weakened the power and authority of the U.N.

Senator Harry S. Byrd, Jr., of Virginia, has recently introduced an

³Ian D. Smith announced the Rhodesian Unilateral Declaration of Independence (UDI) from Britain in November, 1965.

⁴Title 22 para. 287C USCA.

⁵U.S. v. William H. Mullers & Co. Inc., New York Times, April 5, 1970.

⁶James J. Kilpatrick, Boston Globe, October 4, 1971.

amendment to the sanctions which proposes to permit the resumption of chrome purchases from Rhodesia. He argues that the United States should not be dependent on the Soviet Union for this strategic material. However, only 10 per cent of this country's annual chrome purchased, is needed for defense purposes, and more than 44 per cent of all economic and national needs can be bought from non-Communist countries.⁷ The irony of the situation is that Rhodesia's total production of chrome for the next three years is already committed.

It is quite clear that the adoption of the Byrd amendment (the Senate passed it 64-36) cannot be justified on national security grounds. If the amendment is adopted, it would put the United States in violation of its obligations under the U.N. Charter. There seems to be a vast change in the view of the Chief Executive since President Johnson, while the Security Council was acting on a resolution on imposing sanctions, ordered the turnback of a cargo of Rhodesian sugar that was headed for New York.

There was also the recent United States decision to grant Union Carbide a license to import 150,000 tons of Chromide ore from Southern Rhodesia into this country. This occurred after the U.N. resolution was adopted, but before the Executive Order implementing it was signed. Union Carbide remitted to its subsidiary in Rhodesia, \$2.6 million for the purchase of ore. The company waited until April, 1969, to put in its plea for special permission to obtain the ore.⁸

Let us now turn to the second point raised in the list of malefactions allegedly perpetrated by Rhodesia in justification of the U.N. sanctions: that a threat to the peace existed in Rhodesia. Ambassador Arthur J. Goldberg admits that resort should be had to Chapter VII only in exceptional circumstances, and only when faced with a threat or actuality of international violence.⁹ He acknowledged that indiscriminate resort to Chapter VII could vitiate the important safeguards of national sovereignty condemned in that paragraph.¹⁰ It is important to keep in mind, in this context, Article 2 (7), which reads as follows:

Nothing contained in the present Charter shall authorize the U.N. 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. . .

Ambassador Goldberg argues, however, that Rhodesia is a unique situation, in that the United Kingdom has the legal right and the legal respon-

⁷Boston Globe, September 29, 1971.

⁸Boston Globe, January 15, 1971.

⁹Arthur J. Goldberg, *Law and the United Nations*, 52 A.B.A.J. 813 (September, 1966).

¹⁰*Id.*, at 815.

sibility to bring an end to the alleged secession, designed to deny indefinitely the basic human rights of the vast majority of the people of that country.

Another action taken by the Security Council in implementing the Rhodesian sanctions has raised considerable critical comment. In April, 1966, the Council found that there was a threat to the peace in that tankers then approaching the Port of Beira, were reasonably believed to be carrying petroleum destined for Rhodesia. The Council called on the United Kingdom to use force, if necessary, to prevent the arrival of the vessels at Beira.

Although it was alleged that this was the first time in the history of the U.N. that the Security Council had authorized the use of force under Chapter VII, Ambassador Goldberg pointed out that the use was authorized by the Council; when faced with threats to the peace in Korea and the Congo. Former Justice Goldberg goes on to say that the passage of the tankers constituted a threat to international peace, and the authorization to stop them by force, if necessary, was the least violent means available for Britain to discharge her legal responsibility.

The problem of a threat to peace in Rhodesia arises from the danger that that country could be the scene of a proxy war between the Cold War protagonists. The cataclysmic danger of an atomic confrontation has compelled the nuclear giants to support client states in various military engagements all over the world (Cuba, Vietnam, Korea, the Congo, Egypt/Israel), with the everpresent danger that a spark may be ignited. It is, therefore, incumbent on the Cold Warriors rigorously to refrain from permitting these brush fires to escalate into conflagrations.

Rhodesia, where whites are outnumbered by nearly 20 to 1, 5 million blacks to about 250,000 whites, had gained nearly 900,000 blacks and only 33,000 whites since she claimed independence in 1965. The danger of this tinder box is quite evident. Every African nation at the time of its independence vowed to free its black brothers in servitude, with the use of force, if necessary.

Failure to eliminate racial segregation (apartheid) is a third charge made against the government of Rhodesia. The fact that the country has not yet achieved the status of one man-one vote is quite understandable; it took the United States some 180 years before the Supreme Court handed down *Baker v. Carr*.¹¹ The real question is: Is the country's condition moving in the direction of giving its black inhabitants their human rights? It is asserted¹² that the new constitutional protection for the blacks would be

¹¹369 U.S. 186.

¹²Boston Globe, October 4, 1971.

guaranteed by two safeguards; certain constitutional rights would gain new judicial protection and a solemn treaty would embody Rhodesia's pledge against regressive amendments.

With regard to South Africa, we again have sanctions imposed for the specific purpose of putting pressure upon the government to adhere to the Declaration of Human Rights with respect to its blacks. The majority of the natives continue to be oppressed, segregated and denied the fruits of their own labor. The blacks labor under inhumane conditions, are denied the right to organize a trade union, bargain collectively or strike.¹³

The African nationalists, denied opposition within their country, backed by independent black Africa and driven, in the absence of Western support to look to Moscow and Peking, have turned to guerrilla warfare. The 300 million blacks in Africa see in the perpetuation of apartheid the ultimate insult to their dignity, and in the failure of the U.N. to act, proof of the unwillingness of the United States and other Western powers to repudiate white supremacy.¹⁴

The control by the Republic of South Africa over Southwest Africa is one of the particularly bitter problems which has kept that part of the world in internecine strife for several generations. Southwest Africa was taken from Germany by a British-South African military force in World War I. The League of Nations gave South Africa a mandate to govern this territory in 1920. When the League ceased to exist after World War II, its political and legal charges were turned over to the U.N.; thus Southwest Africa was adopted in the Trusteeship System.

Thereafter, the Pretoria government extended some of its national policies of racial segregation into the territory of Southwest Africa. The world has been traumatized by the stories of human repression and degradation emanating from these dark regions of Africa and especially Southwest Africa. On November 4, 1960, Ethiopia and Liberia instituted separate proceedings against South Africa in the International Court of Justice¹⁵ in a case concerning the continued existence of the mandate for Southwest Africa and the duties and performance of South Africa as mandatory power.

South Africa thereafter filed preliminary objections to the jurisdiction of the court, and the proceedings on the merits were suspended. On December 21, 1962, the court rejected the four preliminary objections raised by

¹³Aaron Segal, Editor, *African Report Magazine*, letter to New York Times, June 7, 1971.

¹⁴Leslie Rubin, National Vice-President of the Liberal Party of South Africa, 1953-1960, letter to New York Times, December 17, 1967.

¹⁵[I.C.J. Pleadgs., Vols. I-VII].

South Africa and upheld its jurisdiction. A second phase of the case was decided in July, 1966, when the court, by an 8 to 7 vote, found that Ethiopia and Liberia could not be considered to have any standing to bring the litigation before the court.

In October, 1966, the General Assembly terminated the mandate of South Africa and set up a fourteen-member committee to recommend practical means for the administration of the territory. In May, 1967, it decided to establish a council that would be based in the territory until independence, the target date for which was June, 1968. The Pretoria government thwarted all efforts of the council to enter the territory.¹⁶ The International Court of Justice, in its latest decision, decided (June, 1971) that South Africa was an illegal possessor of the territory and must vacate it, so that the U.N. can prepare it for independence.

The decision of the International Court of Justice is not a mandatory one in as much as it is only an advisory opinion.¹⁷ It is seriously doubted that South Africa will abide by the opinion.¹⁸ The question is; what action can and should the members of the U.N. take to uphold the Charter vis-à-vis South Africa?

There are at least three reasons why it is very difficult to obtain concerted action to enforce the opinion of the ICJ. There are those who can see small improvements that the government is making—the treatment of the Indian and Chinese populations so important to other Commonwealth countries, in the pass system, in the privileges for the Cape colored population—to show that the situation is improving rather than worsening.¹⁹ In September, 1971, a racially mixed trade delegation—the first in history—went forth from Durban. Barclay's Bank has dared to risk a black teller serving white customers. The Junior Mayor of Johannesburg publicly advocates dialogue with non-whites. Chinese are admitted to university functions.²⁰ Small improvements, these, but they are cracks in the apartheid wall.

The second reason why no enforceable sanctions can or will be applied under the Charter is that some of the large countries of the world find it profitable to trade with South Africa; Britain has decided to sell weapons to the Republic of South Africa in face of the U.N. Arms Embargo. France

¹⁶Boston Globe, June 30, 1971.

¹⁷See U.N. Charter, Article 96 (1).

¹⁸Some doubt was expressed as to whether the General Assembly had the power to terminate the mandate with South Africa's assent. See John F. Murphy, *The Trend Towards Anarchy In the U.N.*, 54 A.B.A.J., 267, 69 (March, 1968).

¹⁹Kevin P. Phillips, Washington Post, January 30, 1971.

²⁰Boston Globe, September 29, 1971.

²¹Boston Globe, June 16, 1971.

is the largest supplier of arms to South Africa, and finds it profitable to stay that way. The United States grants a bi-lateral quota worth nearly \$5 million per year for African sugar exports.

Until recently the United States continued to support the price of South African gold, an important prop to its economy. Throughout Africa, including the white local pockets. United States investments totaled nearly \$2 billion, \$700 million solely in South Africa, while 36 other countries shared the balance of \$1.3 billion. There has been a strenuous debate in the United States as to whether its international corporations should continue to invest their funds and maintain factories in South Africa in view of its racial policy.

Dr. Alan Paton, the distinguished South African liberal author, pointed out in an address at Harvard in June, 1971, that when people of different classes are being paid at different earning levels, they commence to understand each other better, the closer their earnings converge. It was his view that American business should continue to invest in South Africa in order to give employment to those who would otherwise be without a means of livelihood.

Another reason why there have been only token efforts to enforce the sanctions against South Africa, is that the leaders of the newly emancipated African nations are trying to engage in a dialogue with the white leaders so that peaceful progress toward emancipation can be made. In the Lusaka Manifesto of 1969, leaders of 14 African states made an honest effort to engage South African white rulers in negotiations on emancipation. Prime Minister Johannes Vorster proposed to several African states that they accept economic assistance from the Republic. The first crack in African unity appeared when President Felix Houphouët-Boigny of the Ivory Coast urged a positive response to Premier Voster's offer for dialogue.

Houphouët-Boigny is probably the most influential black moderate, who feels that black leaders should take advantage of the open door. He feels that if a dialogue develops between Black Africa and South Africa, it would prevent a terrible bloodletting. In the meantime, apartheid would atrophy. Furthermore, he has convinced nine countries to join him in establishing bilateral approaches to Pretoria. They contain 23 million people or 6 per cent of Africa's population. In opposition are 28 countries with 69 million of the continent's population, as presumably are most of the 14 per cent of Africa's peoples who live in still colonized territories.

We have, in an all too hasty fashion, examined some of the arguments—pro and con—for a strict policy by the West with regard to the stewardship of South Africa and Rhodesia over their black inhabitants.

The liberals cry out against the failure of the rich and powerful nations to honor the U.N. Charter. C. L. Sulzburger, reporting in the *New York Times*, has exposed apartheid as "absurd," "degrading," "immoral," "unjust" and "unreal." Yet the House of Commons voted 353 to 244 for sanctions which clearly shows that about 40 per cent of the British public is opposed to sanctions against Rhodesia. Last year saw a record of 254,000 tourists visiting Salisbury.

The real question is: In a world full of tensions, frustrations and alarums, with unbalanced and psychotic people in a position to initiate instant Armageddon, can we afford another area where people's boiling point is low,²² and the danger of conflagration is very high. Here is how Myres S. McDougal and W. Michael Reisman regard the problem in an essay entitled *Rhodesia and the United Nations: The Lawfulness of International Concern*.²³

... In the contemporary intensely inter-dependent world, peoples interact not merely through the modalities of collaborative or combative operations but also through shared subjectivities—not merely through the physical movements of goods and services or exercises with armaments, but also through communications in which they simply take each other into account. . . . Much more important than the physical movements are the communications which people make to each other. In the case of Rhodesia, the other peoples of Africa have regarded themselves as affected by the authoritarian and racist policies of the Rhodesian elites. . . .

²²The Sharpeville Massacre of March 21, 1960, caused worldwide uproar when 69 Africans in a crowd of thousands protesting apartheid and racial segregation in South Africa were shot to death by the police.

²³62 AM. J. INT'L LAW 1, 12.