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U. N. Response To Government Oppression

During the United Nations' first two decades it seemed to be firmly established that the UN would take no action with respect to the complaints of persons claiming to be oppressed by their own governments. Toward the end of these two decades, however, a set of practices grew up applicable to colonies and to the Republic of South Africa, which utilized individuals' complaints and gave them very wide notice. So extensive a set of practices was bound in the end to lap over into the broader area of human rights complaints generally.

In the first half of the decade of the 1960's, the Committee on Colonialism of the UN General Assembly, followed shortly thereafter by the Committee on South African Apartheid, began holding hearings for complainants and publishing their written complaints. While some felt that this process produced very little result, the mere publication, either in writing or orally, of individuals' complaints, was a new field of activity for the UN.[1] As a result of some of the complaints which were brought to the surface by this process in the Colonialism Committee, the General Assembly in October, 1966, in a landmark resolution, Number 2144, invited the Economic and Social Council and the Commission on Human Rights to give urgent consideration to ways and means of improving the capability of the UN to put a stop to violations of human rights wherever they might occur.[2] This resolution opened a door which would be very difficult for anyone now or in the future to close. Efforts were made during the February-March 1968 session of the UN Human Rights Commission to close that door,[3] but it nevertheless remains open.

[1] *See* Carey, *The United Nations' Double Standard on Human Rights Complaints*, 60 AM. J. INT'L L. 792 (1966).

[2] U.N. Doc. A/2144 (XXI) (1966).

[3] The events at the Human Rights Commission's 1967 session described herein are officially set forth in the Commission's Report on the Twenty-Fourth Session, U.N. Doc. E/4475-E/CN.4/972 (1968) at 58-79. Summaries of the statements made with respect to the subject herein treated are published as U.N. Docs. E/CN.4/SR.964-974 (1968).

Just how far the door is open, and how much effort is necessary to keep it even that far ajar, can be seen by looking at developments which occurred between October, 1966, when the General Assembly opened the door, and the early part of 1968 when the efforts to close it were thwarted.

The Door Opens Wider

The UN Human Rights Commission, meeting in early 1967, shortly after General Assembly resolution 2144 was adopted, resolved to ask the Sub-Commission on Prevention of Discrimination and Protection of Minorities to bring to the Commission's attention any situation which the Sub-Commission had reasonable cause to believe revealed a consistent pattern of violations of human rights and fundamental freedoms in any country, including policies of racial discrimination, segregation and apartheid, with particular reference to colonial and dependent territories.[4] In addition, the Human Rights Commission asked the Sub-Commission to prepare a report containing information on violations of human rights and fundamental freedoms from all available sources. Later, in June, 1967, the Economic and Social Council gave its blessing to these arrangements, and in addition, took a step of great significance in giving authority to both the Commission and the Sub-Commission to examine the many hundreds and thousands of written human rights complaints which flow yearly to the UN.[5] This authority was granted for the explicit purpose of complying with the duties assigned to the Commission and Sub-Commission with respect to their annual consideration of the question of violations of fundamental rights throughout the world.

Prior to June 1967, the thousands of written complaints coming to the UN each year were handled in accordance with a highly restrictive arrangement contained in ECOSOC resolution 728F of 1959, which was only the latest of a series of similar provisions dating back to the early days of UN.[6] Under these rules, complaints relating to any parts of the world other than colonies or South Africa were simply filed at UN Headquarters, and a form letter sent to the complainant, advising that

[4] Commission resolution 8(XXIII); *see* Report of the Twenty-Third Session, U.N. Doc. E/4322-E/CN.4/940 (1967) at 131.

[5] U.N. Doc. E/1235 (XLII).

[6] The history of UN procedures for dealing with human rights complaints is officially recited in U.N. Doc. A/C.32/6 (1968) at 142-149.

substantially nothing could be done.[7] A copy was sent without the name of the author to the state complained against, for any comments which it might care to make.

Greece and Haiti

The new procedure under ECOSOC resolution 1235 allowed the Commission and Sub-Commission to look at these complaints in the original form instead of in the form of mere summaries prepared by the Secretariat. The new procedure was first put into effect at the meeting of the Sub-Commission in Geneva in October, 1967. The outcome was a resolution adopted without any contrary vote, recommending to the Human Rights Commission further investigation concerning not only those parts of South Africa which had become traditional targets of UN investigation, but also in two countries elsewhere in the world, Greece and Haiti.[8] It was in this manner that the Sub-Commission complied with the Commission's request that situations revealing consistent patterns of violations be brought to the Commission's attention.

The Sub-Commission's compliance with the Commission's other request, to prepare a report containing information on violations from all available sources, was met by means of a one-page annex to the resolution.[9] As to South Africa, this annex cited various documents already published by the UN and therefore fully available to any member of the public. Concerning Greece and Haiti, however, a new departure was represented in the annex. In the case of these two countries, the annex referred to communications received by the Sub-Commission pursuant to ECOSOC Resolution 1235 and identified at a meeting of the Sub-Commission held in private by virtue of ECOSOC resolution 728F.[10] In the case of Greece, the government's response was also cited. By this kind of coded reference, the secrecy of the communications was

[7] As early as 1947 the Economic and Social Council in resolution 75(V) had approved a statement that the Human Rights Commission "recognizes that it has no power to take any action in regard to any complaints concerning human rights."

[8] Sub-Commission resolution 3(XX); *see* report of Sub-Commission's Twentieth Session, U.N. Doc. E/CN.4/947-E/CN.4/Sub.2/286 (1947) at 38.

[9] *Id.* at 42.

[10] ECOSOC resolution 728F (XXVIII) requested the Secretary-General to distribute "in private meeting" to Commission and Sub-Commission members "a confidential list containing a brief indication of the substance" of complaints alleging specific human rights violations. ECOSOC resolution 1235 (XLII) authorized examination by the Commission and Sub-Commission of "information . . . contained in the communications listed . . . pursuant to . . . resolution 728F."

retained, while at the same time making clear that definite documents, two in the case of Greece and one in the case of Haiti, were being specified and could be individually identified through reference to the minutes of the private Sub-Commission meeting, which, though unpublished, were available to all Sub-Commission members.

When this matter was brought up in the Human Rights Commission meeting in February and March 1968, an assortment of currents swirled and surged over a period of several days, buffeting, but finally leaving intact, the flimsy structure created during the previous months for the examination of communications complaining about governmental oppression anywhere in the world.

Representatives of the Greek and Haitian Governments spoke at length before the Human Rights Commission in an effort to vindicate their governments, and to defend them against any accusation of human rights violation. The Greek representative based his defense primarily on the proposition that his government had properly exercised its right of derogation, which he said precluded all possibility of human rights violations.[11] The Haitian actually discussed in detail various of the hitherto confidential communications directed at itself.[12]

The USSR Attacks

Self defense by the governments accused was therefore one of the strong currents flowing and surging at the Human Rights Commission meeting in early 1968. Another current was that of political attack. The Soviet Union launched an attack against Greece, against Israel because of its alleged aggression, and against the United States because of Vietnam.[13] No one else attacked Greece, except that the representative of Sweden, which had taken an initiative in the Council of Europe against the Greek regime, spoke of the service rendered by the Sub-Commission in bringing situations to the Commission's attention.[14] No government representative attacked Haiti, nor did any non-governmental organization, although one non-governmental organization did attack Greece, and one attacked Israel.

By launching its three-pronged attack, the Soviet Union was sanctioning a broad interpretation of the proper scope of the UN's concern with violations of human rights. Its assaults against Greece, Israel, and

[11] U.N. Doc. E/4475-E/CN.4/972 (1968) at 66-67.
[12] *Id.* at 69; *see also* U.N. Doc. E/CN.4/SR.970 (1968).
[13] U.N. Doc. E/CN.4/SR.965 (1968).
[14] U.N. Doc. E/CN.4/SR.964 (1968).

the United States were not consistent with the narrower view that only racial discrimination like that in South Africa was a proper human rights subject for UN concern.

The United Arab Republic advanced a theory which may be considered as in part a separate current from that of mere political attack, because of its abstract rather than *ad hoc* approach. The Egyptian principle explicitly proposed was that the Commission should concern itself not only with southern Africa but also with human rights violations occurring in war situations.[15] This scope enabled it to bring under its guns both Israel and the United States, a substantial advance beyond the notion that the Sub-Commission, under its existing authority, was confined to apartheid in South Africa and similar phenomena. The latter position was argued by some, with the suggestion that consideration of types of wrongs other than apartheid would jeopardize the sovereignty of any nation represented in the Commission and open it to malicious and slanderous attack.

An Opponent Fails

Tanzania introduced a draft resolution [16] which, while not clearly saying so, was described by its author as having the purpose of cutting down the jurisdiction of the Sub-Commission, to limit it in the future to matters of apartheid and similar practices in South Africa. The more objectionable features (from the U.S. standpoint) of the Tanzanian resolution were eliminated upon withdrawal of a separate U.S. proposal. The Tanzanian resolution as shortened would have left the record somewhat obscure, and given a basis for argument in the Sub-Commission in October, 1968, over whether the Commission had in fact reduced the Sub-Commission's area of responsibility. However, Austria and the Philippines submitted amendments to the Tanzanian proposal, to endorse and renew the Sub-Commission's previously wide scope, whereupon, Tanzania withdrew its resolution altogether.[17] This left nothing before the Commission except a separate draft resolution aimed at Israel.

The anti-Israel draft was presented as being humanitarian in purpose and dealt with persons displaced during hostilities and their right to return to their homes. A remarkable amount of accommodation and

[15] U.N. Doc. E/CN.4/SR.966 (1968).

[16] Quoted in the Commission's Report, U.N. Doc. E/4475-E/CN.4/972 (1968) at 59.

[17] *Id.* at 62.

compromise on the wording was brought about through lengthy consultations, with the result that the proposal ended in such form that all members except Israel were able to vote in its favor, while even Israel did not find it necessary to vote against, or even abstain, but simply did not participate in the voting.[18] The significance of the consultations can be judged by the fact that the original wording included the word "deportation," which, if found as a fact, would have rendered Israel subject to being charged with "crimes against humanity," on the theory advanced at other times in the Commission that the definition in the Nuremberg Charter can be applied to current situations.[19]

The unanimous adoption of the U.A.R. resolution can be said to confirm that the UN's present geographic capacity to take specific action with respect to human rights violations is as broad as the whole world. While it is true that the Middle East situation is an international one, an international war is not far in this respect from a war within the borders of one country. This is demonstrated in the Geneva Conventions of 1949, which concern both types of hostility. Once one has moved to the sphere of civil war, it is no great step to be concerned also with civil unrest short of war.

The U.A.R. resolution, taken together with the fact that the Commission has left undisturbed the broad scope of the Sub-Commission's authority to concern itself with human rights violations the world over, indicates that international human rights protection procedures are now evolving apart from those embodied in treaties. Such a trend seems inevitable in view of the reluctance or refusal of certain states to ratify such treaties [20] and the limited scope of treaty protection [21] for oppressed

[18] *Id.* at 78-9.

[19] The Commission's Special Rapporteur on apartheid and racial discrimination presented a report asserting that conditions in southern Africa ". . . constitute a 'crime against humanity' within the language of Article 6(c) of the 1945 London Charter of the International Military Tribunal which sat at Nuremberg." U.N. Doc. E/CN.4/949/Add. 4 (1968) at 496.

[20] The United States has become a party to only one human rights treaty in the past twenty years, that on Practices Akin to Slavery to which the Senate gave its advice and consent in 1967, while several others such as Genocide, Political Rights of Women, and Forced Labor have not been approved. The communist countries, on the other hand, usually seek to avoid compulsory judicial jurisdiction over such treaties. *See* Carey, *Implementing Human Rights Treaties: The Soviet View,* 53 KY.L.J. 114 (1964).

[21] Of the non-regional treaties, only the 1965 Convention on the Elimination of All Forms of Racial Discrimination provides for receipt of petitions from individuals, and that at the separate option of States Parties. The 1966 Covenant on Civil and Political Rights contains no such provision, although an Optional Protocol thereto does do so.

individuals. The extent to which non-treaty procedures develop depends on the national policies guiding those attending inter-governmental meetings, and on their forcefulness and leadership, as well as upon the ingenuity of those who act unofficially to guide the course of the international protection of human rights.