Strange Fruit at the United Nations
by
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COMMON CAUSE: SYNTHESIZING THE WORK OF HUMAN RIGHTS AND CIVIL RIGHTS SCHOLARS AND PRACTITIONERS
NKU CHASE COLLEGE OF LAW
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Evaluation of the UN’s response to Jim Crow laws and practices, from 1945 to 1965
The United Nations

PART I
Part I—The United Nations

- The Founding
  - Dumbarton Oaks (1944) and Yalta (1945) Conferences
  - San Francisco Conference--1945
    - Disparate Goals
      - World Powers
      - Human Rights and Civil Rights Activists
  - Governing Document—UN Charter--1945
UN Charter

- Commits **UN** to **promote human rights and fundamental freedoms** (Art. 1)

- Commits **UN Member States** to **promote human rights and fundamental freedoms** (Art. 2)

- **Does not authorize** the “United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state” (Art. 2, para. 7)
Part I—The United Nations—Cont’d

- **Principal Organs (including functions and powers)**

  - **General Assembly**—Oversee Member State Adherence to UN Charter
    - Issue **Non-Binding Resolutions**—"Soft" Law
      - Regarding Human Rights and International Peace and Security
    - Refer Questions to International Court of Justice

  - **Security Council**—Oversee Member State Adherence to UN Charter
    - Issue **Binding Resolutions**—"Hard" Law
      - Regarding Human Rights and International Peace and Security
    - Refer Questions to International Court of Justice
Part I—The United Nations—Cont’d

- Economic and Social Council
  - Issue Reports and Recommendations
    - Largely concerning Human Rights

- Secretariat
  - Oversee Organization
  - Issue Reports and Recommendations
Part I—United Nations—Cont’d

- **International Court of Justice**
  - Decide Contentious Cases
  - **Render Advisory Opinions**
    - Regarding “any legal question”
    - Requested by GA, SC or other GA-authorized specialized agency if legal question is relevant to the agency’s normal activities

- **Trusteeship Council**
  - Oversee Administration of Colonies
The United States

PART II
Part II--The United States

- Brief History of African Americans
  - Transatlantic Slave Trade
  - Slavery
  - Emancipation and Reconstruction
  - End of Reconstruction and Rise of Jim Crow
Part II--The United States—Cont’d

1945-1965--Latter Part of Jim Crow Era and First 20 Years of UN’s Existence

Jim Crow Laws
- Racially Discriminatory Housing
- Racially Segregated Public Facilities
- Poll Taxes, Literacy Tests, Convict Leasing, Debt Peonage

Jim Crow Practices
- Forced Displacement
- Torture
- Lynching
Part II—The United States—Cont’d

- Worldwide News Coverage
  - The “Scottsboro Boys” Case—1930s
  - The Monroe Four Killings—1940s
  - The Lynching of Emmett Till—1955
  - Racial Segregation and Racial Discrimination Broadly
  - Civil Rights Activity
Strange Fruit at the United Nations (The Efforts of the UN to address RS and RD)
The General Assembly
The General Assembly’s Efforts to Combat Racial Segregation and Racial Discrimination

**Resolutions—Five Categories**

1) **general condemnations** of RS and RD as violations of the Charter and the UDHR;

2) **State-specific condemnations** (principally regarding the Union of South Africa);

3) **general promotion** of HR and FF as consistent with the Charter and the UDHR;

4) **referrals of questions** concerning HR and FF to the ICJ; and

5) recommendations and presentations of **instruments** concerning human rights and fundamental freedoms.
What the General Assembly Might Have Done

The GA never issued a resolution specifically concerning Jim Crow laws.

However, it could have:

- Stated that Jim Crow laws were racially discriminatory;

- Stated that these laws violated human rights and fundamental freedoms; and

- Stated that they violated the UN Charter and the Universal Declaration of Human Rights.
The Security Council
The Security Council’s Efforts to Combat Racial Segregation and Racial Discrimination

► Called upon South Africa to abandon its policy of apartheid; and

► Sanctioned South Africa for Apartheid.
What the Security Council Might Have Done

Never disposed to act regarding Jim Crow, given the US veto.
Economic and Social Council
ECOSOC’s Efforts to Combat Racial Segregation and Racial Discrimination

- Drafted and Finalized the **Universal Declaration of Human Rights**;

- Drafted and Finalized the **Declaration for the Elimination of All Forms of Racial Discrimination**;

- Drafted the **Convention for the Elimination of All Forms of Racial Discrimination**; and

- Drafted the **International Covenant for Civil and Political Rights**.
Denied a hearing for the NAACP’s petition--1947

What ECOSOC Might Have Done

- Acted upon the NAACP petition;
  - Studied and offered recommendations to the US for eradicating Jim Crow
  - Worked with the GA to prepare a resolution concerning Jim Crow; and
  - Sought authorization from GA to get an advisory opinion regarding Jim Crow from the ICJ
The Secretariat
The Secretariat’s Efforts to Combat Racial Segregation and Racial Discrimination

- Required **triennial reports** from Member States regarding HR compliance and challenges

- **Rejected 1946 petition from the National Negro Congress**—A Petition to the United Nations on Behalf of 13 Million Oppressed Negro Citizens of the United States of America
What the Secretariat Might Have Done

- Spoken clearly, early and often about JC laws as violative of human rights
- Worked with GA to issue related resolutions
- Assisted in getting a hearing for petition
- Encouraged GA to get ICJ advisory opinion
“Under the Charter of the United Nations, the former Mandatory [South Africa] has pledged itself to observe and respect, in a territory having an international status, human rights and fundamental freedoms for all without distinction as to race. To establish instead, and to enforce, distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter.”
“South Africa, being responsible for having created and maintained a situation which the Court has found to have been validly declared illegal, has the obligation to put an end to it. **It is therefore under obligation to withdraw its administration from the Territory of Namibia.** By maintaining the present illegal situation, and occupying the Territory without title, South Africa **incurs international responsibilities arising from a continuing violation of an international obligation.**”
Regarding Abstract Legal Questions:

Whether Western Sahara was *terra nullius* when it was occupied by Spain.

Whether the use of nuclear weapons breaches international law.
What the ICJ Might Have Done Upon Request by UN Body—General Questions

1) Whether the Preamble of the Charter, acknowledging the commitment of Member States to “reaffirm faith in fundamental human rights,” imposes a legal obligation on the Member States;

2) Whether Article 1(3) of the Charter stating that it is the purpose of the United Nations “[t]o achieve international cooperation . . . in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race” imposes a legal obligation on the Member States;

3) Whether Article 2(2) of the Charter, stating that the Member States “shall fulfill in good faith the obligations assumed by them in accordance with the present Charter” imposes a legal obligation;
4) Whether Article 56 of the Charter stating that “[a]ll Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55 [e.g., promotion of human rights and fundamental freedoms]” imposes a legal obligation on the Member States;

5) Whether the Preamble, Purposes and/or Principles of the Charter obligate Member States to protect their citizens against human rights violations;

6) Whether human rights violations by a Member State against its territorial population threaten international peace and security;
7) Whether the "domestic jurisdiction" clause of the Charter applies only to military intervention; and

8) Whether *jus cogens violations* override the "domestic jurisdiction" prohibition in the Charter U.N. Charter, Preamble.
ICJ—Jim Crow-Specific Questions

1) Whether Jim Crow laws in the United States—e.g., regarding convict leasing, “vagrancy”, poll taxes and segregated housing, education and public utilities—violate the Preamble, Purposes, Principles, Article 2(2) and Article 56 of the Charter;

2) Whether Jim Crow practices in the United States—e.g., regarding lynching, torture, forced displacement and terrorism—violate the same provisions of the Charter;

3) Whether Jim Crow laws and/or practices threaten international peace and security; and

4) Whether Jim Crow practices—e.g., regarding lynching and torture—are jus cogens violations.
Conclusion

From 1945 to 1965, the United Nations did not use the tools available to it to address, if not redress, Jim Crow laws and practices. Given the UN’s rapt attention to the circumstances in South Africa, South West Africa and Angola, the organization’s failure to do more to address Jim Crow in the United States was by design, an abdication of its responsibilities under the Charter and a detriment to African Americans and society broadly.
Thank You!!!!