



Strange Fruit at the United Nations by Ursula Tracy Doyle

**COMMON CAUSE: SYNTHESIZING THE WORK OF HUMAN RIGHTS AND CIVIL RIGHTS
SCHOLARS AND PRACTITIONERS**

NKU CHASE COLLEGE OF LAW

APRIL 12, 2019

Article Scope

- ▶ 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**

Part I--The United Nations—Cont'd

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)

PART III

The General Assembly



The General Assembly's Efforts to Combat Racial Segregation and Racial Discrimination

Resolutions--**Five Categories**

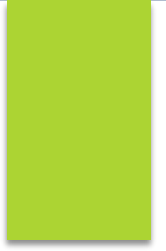
- 1) **general condemnations** of RS and RD as violations of the Charter and the UDHR;
- 2) **State-specific condemnations** (principally regarding the Union of South Africa);
- 3) **general promotion** of HR and FF as consistent with the Charter and the UDHR;
- 4) **referrals of questions** concerning 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



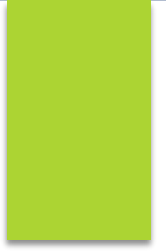
The Security Council's Efforts to Combat Racial Segregation and Racial Discrimination

- ▶ **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**.

ECOSOC—Cont'd

- ▶ **Denied a hearing for the NAACP's petition--1947**

- ▶ *An Appeal to the World: A Statement on the Denial of Human Rights to Minorities in the Case of Citizens of Negro Descent in the United States of America and an Appeal to the United Nations for Redress*

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



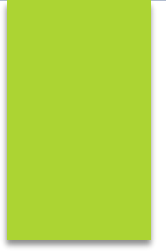
The Secretariat's Efforts to Combat Racial Segregation and Racial Discrimination

- ▶ 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

The International Court of Justice



The ICJ's Opinions Regarding Racial Segregation and Racial Discrimination

Regarding South Africa in South West Africa

“**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.**”

Cont'd

“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.***”

Cont'd

► 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**;

ICJ—General Questions Cont'd

- 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**;

ICJ—General Questions Cont'd

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!!!!