

**United Nations Working Group of Experts on People of African Descent
Symposium
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14:00-16:00 CET**

**Panel Presentation
By
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Introduction

Thank you so much to the Working Group for inviting me to present today. I am pleased that the United Nations through this Working Group, the Special Rapporteur on Contemporary Forms of Racism and other UN entities are confronting some of the circumstances that frustrate, delimit and end African American life today. Many scholars and activists have fought for this kind of recognition and movement to action by the UN—W.E.B. DuBois, Walter White, Mary McLeod Bethune, Ralph Bunche, Malcolm X, James Baldwin, Paul Robeson, Patricia Roberts Harris and many others. I will discuss today some of the challenges confronted by African Americans when seeking redress from the UN for the crucible that was “Jim Crow” laws and practices. I discuss these challenges at length in my article *Strange Fruit at the United Nations*,¹ published by HOWARD LAW JOURNAL, and this presentation draws from that work. My focus is on the years 1945-1965.

The UN Promise

The UN was founded, of course, in the aftermath of the Second World War, in part to promote human rights and fundamental freedoms. It established the machinery to vindicate this purpose—the General Assembly, Security Council, Economic and Social Council, Secretariat, Trusteeship Council and International Court of Justice.

The US Reality

The inverse of its promise, however, was reality for many African Americans, who lived every day the circumscription and terror imposed by Jim Crow laws and practices. An outgrowth of American slavery and Reconstruction, Jim Crow laws were both federal and state. At the federal level, for example, they segregated public housing by race and prohibited the granting of government-insured loans to African Americans.² At the state and local levels, these laws required racially segregated public facilities, including hospitals, cemeteries, schools, and modes of transportation, in each instance reserving the worst of the offerings for African Americans. Jim Crow laws also included “vagrancy” prohibitions, convict leasing and barriers to voting such as poll taxes and literacy tests. Many of the lived circumstances of African Americans were also the product of extralegal conduct—forced displacement, land theft, rape, torture and lynching. The Equal Justice Initiative has found that between the years 1870 and 1950, 4075 lynchings of African

¹ 61 HOW. L. J. 187 (2018).

² See RICHARD ROTHSTEIN, THE COLOR OF LAW (2018).

Americans occurred in the United States.³ For African Americans, the combination of these laws and practices created an atmosphere pregnant with grief, fear and foreboding.

The Petitions

Many of those struggling to find redress for racial discrimination and segregation, considered the aborning United Nations a beacon of hope in the face of an ineffectual and complicit United States government. They acted on this belief by petitioning various UN bodies.⁴ In 1946, the National Negro Congress (NNC) solicited the UN Secretary General to circulate its *Petition to the United Nations on Behalf of 13 Million Oppressed Negro Citizens of the United States of America*. Similarly, in 1947, the National Association for the Advancement of Colored People (NAACP) sought to file in the Commission on Human Rights, the predecessor entity of the Human Rights Council, its *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*. Finally, in 1951, the Civil Rights Congress (CRC) sought General Assembly action on its petition *We Charge Genocide: The Crime of Government Against the Negro People*. The Secretary-General asserted that the NNC needed to provide more data about the lives of African Americans before he could advance its petition. Eleanor Roosevelt, chair of the Commission on Human Rights, did not support the circulation of the NAACP petition in substantial part because this would add fodder to the Soviet Union in its Cold War with the United States. And the CRC petition torpedoed for similar reasons.

These petitions failed to achieve the traction that they sought and deserved. But the UN possessed the capacity to act on behalf of African Americans in the absence of a petition wistfully filed by an organization representing African American interests. The Security Council and Economic and Social Council certainly had the legal charge and technical wherewithal to take cognizance of the lived conditions of African Americans under Jim Crow. However, because of the United States' position as a permanent member of the Security Council, with veto power, the Council was not a realistic source for redress. Given the manner in which the Economic and Social Council, through its Commission on Human Rights, handled the NAACP position, it had demonstrated reluctance to act in specific aid of African Americans.

The General Assembly

The General Assembly, however, was positioned differently. Possessing the power to create soft law, through its resolutions, and seek requests for advisory opinions from the International Court of Justice (ICJ), it was poised to address the plight of African Americans without the constraint of a veto of one of its members or United States determinism.

Indeed, between the years 1945 and 1965, the Assembly actively used its powers to condemn racial discrimination and racial segregation. It issued resolutions that rejected the general practice of racism—in one “*declar[ing]* that it is in the higher interest of humanity to put an immediate end to . . . so-called racial persecution and discrimination, and call[ing] on the Governments and

³ EQUAL JUSTICE INITIATIVE, *LYNCHING IN AMERICA: CONFRONTING THE LEGACY OF RACIAL TERROR* 3 (2d 2015).

⁴ *See generally* CAROL ANDERSON, *EYES OFF THE PRIZE, THE UNITED NATIONS AND THE AFRICAN AMERICAN STRUGGLE FOR HUMAN RIGHTS 1944–1955* (2003).

responsible authorities 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.”⁵

The Assembly rejected State-specific practice, issuing a panoply of progressively urgent resolutions, for example, condemning the Union of South Africa’s policy of apartheid in its territory. In that complex of resolutions it spoke about the “inconsisten[cy]” of apartheid with South Africa’s commitment “to promote the observance of human rights and fundamental freedoms;”⁶ convened experts to study apartheid, who concluded that the regime violated the UN Charter and the Universal Declaration of Human Rights and threatened international peace and security.⁷ It further stated that it was “*deeply convinced* that the practice of racial discrimination and segregation is opposed to the observance of human rights and fundamental freedoms.”⁸ It also requested that Member States “consider taking . . . separate and collective action . . . to bring about the abandonment of these policies”⁹ and referred to apartheid as a “flagrant violation” of the UN Charter and the UDHR.¹⁰ Additionally, it requested that Member States end all diplomatic and commercial activity with South Africa¹¹ and asked the Security Council to confront this issue, using, if necessary, the full breadth of its tools, including sanctions, UN expulsion and military force.¹² The Assembly issued similar resolutions regarding South Africa’s imposition of apartheid in its then-colony South West Africa. Indeed, by 1965, it referred to apartheid there as a “crime against humanity.”¹³

During this period, the Assembly also broadly promoted human rights and fundamental freedoms, “[c]all[ing] upon . . . all States to take all necessary measures to prevent all manifestations of racial . . . hatred,”¹⁴ and calling upon all Member States to rescind discriminatory laws which create and perpetuate racial prejudice.¹⁵

Finally, the Assembly referred legal questions regarding racial discrimination and racial segregation to the ICJ for advisory opinions. For example, it specifically asked the court what were South Africa’s obligations to the UN given the country’s institution of apartheid in South West Africa. The court responded as follows:

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

⁵ GA Res. 103(I) (Nov. 19, 1946) (emphasis in original).

⁶ G.A. Res. 616B (VII), at 2 (Dec. 5, 1952).

⁷ G.A. Res. 721 (VIII) (Dec. 8, 1953).

⁸ G.A. Res. 1375 (XIV) (Nov. 17, 1959) (emphasis in original).

⁹ G.A. Res. 1598 (XV), at 3 (Apr. 13, 1961).

¹⁰ G.A. Res. 1598 (XV), at 4 (Apr. 13, 1961).

¹¹ G.A. Res. 1761 (XVII), at 9 (Nov. 6, 1962).

¹² G.A. Res. 2054A (XX), at 16–17 (Dec. 15, 1965).

¹³ G.A. Res. 2074 (XX), at 60 (Dec. 17, 1965).

¹⁴ G.A. Res. 1510 (XV), at 22 (Dec. 12, 1960) (emphasis in original).

¹⁵ G.A. Res. 1779 (XVII), at 32 (Dec. 7, 1962).

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.¹⁶

The court continued:

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.*¹⁷

The ICJ answers questions concerning rights and obligations of States as well as abstract questions of law. During the subject time period, it received 10 requests from the General Assembly and granted each of them. No entity requested a question of the court regarding Jim Crow laws and practices in the United States. The Assembly, however, was well disposed to seek an advisory opinion from the court regarding the complicity of Jim Crow with international law:

1) it had the power to act relative to any matter concerning the Charter; 2) it had a history of seeking such opinions in other matters (and so would be acting in accordance with past precedent); 3) it had the capacity to issue follow-up resolutions with the power to influence the subject State; and 4) no State could veto the passing of a resolution asking the legal question. Yet the . . . Assembly did not seek this opinion.¹⁸

It might have posed a general question, such as:

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

¹⁶ Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, 1971 I.C.J. Rep. 16, 57 (June 21) (emphasis added).

¹⁷ *Id.* at 54 (emphasis added).

¹⁸ 61 HOW. L. J. at 234-35.

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 o[n] the Member States; 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.¹⁹

Or, it might have asked a more specific question, such as:

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.²⁰

The advisory opinion has the capacity to declare before the world the rightness or wrongness of a State’s conduct, thereby imposing pressure on the subject to align its conduct with international law. It is, of course, also one of the ways that the United Nations can vindicate its mission to promote human rights and fundamental freedoms.

Conclusion

During the latter twenty years of Jim Crow and the first twenty years of the United Nations, the organization refrained from exerting the breadth of its power to relieve African Americans from the tyranny of American apartheid. It is good that today, through this body and others, the human rights violations of African Americans can receive some of the attention that it deserves.

¹⁹ *Id.* at 235.

²⁰ *Id.* at 236.