

EDITORIAL COMMENT

WHEN IS THERE A THREAT TO THE PEACE?—RHODESIA

To read the indictment of Rhodesia by the Organization of African Unity in November, 1966, and a week later by the United Nations General Assembly on November 17,¹ and again a month later by the Security Council on December 16,² one would come to the conclusion that some crime of first magnitude was being committed by the Smith Government and not rather a serious delinquency such as one and all of the colonial Powers committed with impunity in Africa within the memory of most of us. Admitting that some 220,000 whites are in control of some four million Africans, denying them what are accepted today as majority rule and other civic rights, what transformed so suddenly what was a common situation a generation ago into what is a threat to the peace today, and whose peace at that?

A British colony declares its independence on November 11, 1965, and puts into effect a constitution in which the non-white majority is given limited representation and civic rights. Although the new state was only following the British colonial tradition that preceded it, Britain was free to deny independence to the new state and call upon it to recognize the rights of the majority as a condition of recognition. Times had changed; the old order of colonial administration was not sufficient. Well and good! But perhaps the constitution drawn up by the new government could be modified to prevent abuses and to make "unimpeded progress to majority rule," and assurance could be given that the basis proposed for independence was acceptable to the people of Rhodesia as a whole. Detailed discussions to that effect took place between the British Prime Minister and Mr. Smith, but the proposals for an adjustment were rejected.

What then? Great Britain denied recognition of independence and Rhodesia continued defiant. Was there to be a resort to military force to bring back the colony to subjection? The day of war was past; but there were economic sanctions that might be applied, among others the efficient oil sanction that might bring the economy of Rhodesia to a stop. Great Britain had in law every right to resort to such measures as an alternative to military force. But the geographic situation of Rhodesia made it difficult to apply economic sanctions effectively. So the British Government had recourse to the United Nations in the hope that the collective action of its Members might bring the recalcitrant state to terms.

On what ground could the United Nations justify taking up what was primarily a domestic issue between a mother country and its colony? The General Assembly and the Security Council had long been urging the mother country to remedy conditions in Rhodesia; but as late as 1963 it

¹ Res. 2151 (XXI); 61 A.J.I.L. 652 (1967).

² Res. 232 (1966); 61 A.J.I.L. 654 (1967).

was not believed to be a task that could be carried out forthwith.³ Now with Great Britain ready, there was the formidable obstacle of Article 2 (7) of the Charter, prohibiting intervention "in matters which are essentially within the domestic jurisdiction of any state." But if Great Britain asked for intervention, would that fall under the prohibition? And then there was the exception, that the principle of non-intervention must not prejudice the application of enforcement measures in the case of a threat to the peace. But where was the threat to the peace to be found? The Organization of African Unity (O.A.U.), meeting in Addis Ababa in November, had declared that "the Southern Rhodesia independence crisis constitutes a threat to international peace and security," and had called upon its members to impose sanctions against the "illegal regime" and to give aid to the Zimbabwe people, going so far as to condemn even the talks between the British Government and the "rebel settler regime."

Here was, indeed, a potential threat to the peace, based upon the principle that the denial of "majority rule" in one country can justify neighboring countries in openly intervening to protect a racial group against injustice. But was that situation one that the United Nations could recognize as a threat to the peace? Could the United Nations intervene on its part on the ground that there was danger that certain of its Members might violate the law by intervening in Rhodesia on no other ground than the denial of majority rule? If it could, then there might be threats to the peace in a dozen other countries in which one form or another of discrimination, if not racial, might justify intervention.

In its resolution of December 16, 1966, the Security Council, declaring itself "deeply concerned that the Council's efforts so far and the measures taken by the administering Power have failed to bring the rebellion in Southern Rhodesia to an end," took the final step of adopting a resolution "determining that the present situation in Southern Rhodesia constitutes a threat to international peace and security"; and, after specifying the sanctions to be applied, reminded the Member States that the failure or refusal by any of them to implement the resolution would constitute a violation of Article 25 of the Charter. An earlier resolution of the General Assembly had gone further in declaring "the inalienable right of the people of Zimbabwe to self-determination and independence," condemning "foreign financial and other interests" for supporting the "illegal racist minority regime" and preventing the "African people of Zimbabwe from attaining freedom and independence," and calling upon all states to render to them all moral and material support to achieve their freedom and independence.

The issue is thus presented, not whether Great Britain is justified in refusing recognition of Rhodesian independence except in accordance with a constitution prescribing higher standards in respect to the rights of the African majority, but whether there is an actual threat to the peace under Chapter VII of the Charter involved in the sanctions which the

³ Details of the resolutions of the General Assembly and of the Security Council may be found in 1963 Yearbook of the United Nations 469 ff.

members of the Organization of African Unity and others have declared they are prepared to put into effect against the alleged "illegal regime" in Rhodesia. Assuming that the General Assembly and the Security Council were influenced in their separate decisions to apply sanctions because of the danger that neighboring African states and others might make trouble, was it not the duty of the two bodies, speaking with authority, to issue a restraining order against violent interference by one state in what was still, under the law, a domestic situation? Or has international law developed to the point where a mother country, not wishing to use military force against a rebellious colony, may seek to avoid local violence by calling upon the United Nations to make its economic sanctions effective? On January 5, 1967, President Johnson issued an Executive Order to carry out the resolution of the Security Council of December 16.⁴ Exports and imports are alike involved.

Is the precedent a good one? Ambassador Goldberg, in his address of December 29,⁵ emphasized that the decision of the Security Council under Article 39 "is conclusive and not to be contested by any member." The decision is indeed final in the sense that the Members of the United Nations are obligated individually to carry out the decision; but finality in law does not guarantee wisdom in fact. We have now a rule that practically stamps racial discrimination in a particular state as constituting a threat to the general peace. Doubtless it is, but how serious is it? And a question might well be raised whether the earlier resolutions of the General Assembly and the Security Council reiterating the threat to the peace were not in part responsible for the threat. Less drastic pressure might well have been brought against Rhodesia and slower progress made towards the objective of majority rule rather than magnify the denial of it into a threat to the peace under the Charter.

C. G. FENWICK

⁴ The latest documents may be found in 6 Int. Legal Materials No. 1 (1967).

⁵ "International Law in the United Nations," address before the Association of American Law Schools, Washington, D. C., 56 Dept. of State Bulletin 140 (1967).