
In response, at least since the American Revolution the majority has recognized under international law the right to alter, abolish, or overthrow any form of government that becomes destructive of the process of self-determination and the right of individual participation. As noted, such a government would lack authority and can be overthrown in an effort to ensure authoritative government, self-determination, and the human right of free and equal participation. Additionally, under international law, such an effort can be supported by other nation-states through the express right to self-determination assistance, a right tied to authoritative interpretation of the U.N. Charter, for example, in the 1970 Declaration on Principles of International Law and the 1974 Resolution on the Definition of Aggression.

In fact, in 1984, the General Assembly applied these international precepts while condemning the governmental process of South Africa; reaffirming the need for the “establishment of a non-racial democratic society based on majority rule, through the full and free exercise of adult suffrage by all the people in a united and unfragmented South Africa;” and recognizing the “legitimacy of . . . [the] struggle [by “the oppressed people of South Africa”] to eliminate apartheid and establish a society based on majority rule with equal participation by all the people of South Africa,” The General Assembly, in its nearly unanimous resolution, also condemned the South African “regime for defying relevant resolutions of the United Nations and persisting with the further entrenchment of apartheid, a system declared a crime against humanity and a threat to international peace and security.”

From the above, and what has been said thus far by others, it is evident that the present government of South Africa lacks authority under international law. It is an illegal regime designed quite clearly to repress self-determination and the right of individual participation. It follows that it has no right under international law which it might use to assure its survival, including the derogation provisions of relevant human rights instruments. Recently the banned Winnie Mandela affirmed: “No more talking, we are now talking about action. We are going to dismantle apartheid physically.”

It is not irrelevant that as early as the 1600s Grotius recognized the propriety of “war” as a response against a ruler who engages in a “manifest oppression” of his or her people, noting that such a military response was “undertaken to protect the subjects of another ruler from oppression” and to assure that they are not further denied “the right of all human society” to freedom from oppression. Much later, at Nuremberg, it was recognized that aggression “is the supreme international crime” because “it contains within itself the accumulated evil of the whole,” including each resulting individual international crime. Similarly, aggression against authority “contains within itself the accumulated evil of the whole,” and when peace is affected it is certainly no less dangerous and of no less import to the international community.

REMARKS BY WINSTON NAGAN*

The present crisis in South Africa seems deeper and more persistent than the events that followed Sharpeville in 1960 and Soweto in 1976–77. The current situation indicates that the conditions of power are undergoing profound change. There are four central facts salient in the present pattern of unrest and insurrection: (1) the extent of the political mobilization of blacks under the umbrella of the United Democratic

*Professor of Law, University of Florida.
Front (UDF); (2) the emerging attitude in various sectors of the white community (including the Afrikaners) that the African National Congress (ANC) is a force to be reckoned and spoken with; (3) the effects of international sanctions on the South African economy have been real; and (4) the position of influence of the ANC inside and outside South Africa.

These facts pose two basic problems for international law. First, international legal responses lack realism and efficacy if they are not based on the relevant facts. A keener understanding of the conditions of power in South Africa is therefore central to an effective international law response. Second, it is unrealistic to assume that outsiders (states, pressure groups, etc.) will not be involved in influencing events in South Africa. The central question for the international lawyer is this: Will such interventions assist or undercut the processes of change that are geared most likely to the promotion of human dignity values under the U.N. Charter?

The South African power processes. The major change occurring within South Africa is the extent of black political mobilization, particularly the influence of the UDF, and also mobilization within the trade union movement. The ANC is mobilizing blacks into one political force. Although more than 80 percent of the black laborers are members of the Inktah union movement, that union is in solidarity with the ANC. Also in solidarity with the ANC is the UDF, which has 680 affiliate groups, grassroots network and scattered leadership. The leadership of the UDF, in spite of efforts by the government to stamp it out, remains in force. The objective of the UDF is coextensive with that of the ANC. The groups differ in that the UDF has not endorsed violent strategies of insurrection. Many of the UDF leaders have an ANC pedigree. If the ANC were fully legitimized, observers predict the UDF effectively would be absorbed into the ANC.

By consensus of the trade unions, the ANC is the force to be reckoned with. One of the unions has a membership of 18 percent of the black South African labor force. Also, leaders of various homelands have stated publicly that ANC leaders have an important role to play in officially structuring the future government of South Africa.

In sum, effective mobilization under the umbrella of UDF and the trade unions promises changes within the homelands and solidarity with the ANC.

A second major element of South African power processes is the fragmentation of politics within the white community. Significant changes have occurred in elements of the business sector, the university sector and the churches. They have sought and now maintain communications with the ANC. The contacts with the ANC have been significant breaches of the propagandistic techniques of the South African Government, which has labeled the ANC as a terrorist group.

A third major element is the impact of the ANC on these developments. The ANC maintains it will involve itself in the coercive strategies and in the negotiating strategies. Cautiously, it does not expect great strides in mere communications, but the ANC holds that the communications further the isolation of President Botha from his constituents and also provide news media coverage for the ANC.

Effects on U.S. foreign policy. The facts of the situation are inconsistent with the U.S. diplomatic function, if that function is to serve as an honest broker and "deal out" the ANC. The litany of errors that have evolved until now have consistently misread the power process in South Africa. For example, it was a miscalculation of Secretary of State Henry Kissinger that Angola, Mozambique and Rhodesia would remain in white hands forever. The Reagan Administration, through its policy of containment, has taken Kissinger's doctrines a step further toward "destructive en-
croachment.” The United States cannot play a meaningful intermediary role while ignoring the real political developments, including the ANC, inside South Africa.

The future of South Africa must reflect an understanding of the allocation of power within South Africa, and this understanding must be institutionalized. The key power actors must control. President Botha’s core constituency is shrinking; this constituency has been historically difficult to change, and it is backed by a nearly homogenous military establishment. Its consistency may be eroded by groups which force power brokers to accommodate to reality. The perception of realistic cost assessment may provide the key leverage for realistic negotiations with genuine black leaders, rather than the synthetic ones created by President Botha.

The starting point for negotiation is to find a common principle upon which the opposing groups can agree. The white side argues for the status quo of domination and against the uncertainty of change. The black side argues for majority rule, assuming that blacks will coalesce around an identity of ethnic interest. Majority rule does not mean black racial domination if principles of democratic political participation are honored by the people of South Africa.

The international law principles of self-determination and majority rule, complemented by the law of human rights, recognize equities in political, social and cultural rights. President Botha claims on behalf of Afrikaner nationalism to support human rights broadly without recognizing the other complementary rights. The experience of the U.S. Founding Fathers is relevant as it is based on the principle of limited government. The central policy questions are what principles of social and political morality are sacrificed for the majority and what principles are traded off to get that process. Each political culture must state what is crucial, put some values beyond ephemeral reach, hold some values crucial to its existence, and implement procedures or rules to live up to the expectation and hope that human dignity will be honored to the highest degree.

DISCUSSION

VED P. NANDA:* This is a comment and is not intended as a question for any of the panelists. Professor Dugard referred to the role played by nongovernmental organizations in the United States, which greatly influenced the country’s policies on Vietnam. For example, students on college campuses agitated in the 1960s and advocated certain U.S. foreign policy responses. Such conduct by nongovernmental organizations seems to be equally appropriate to stimulate debate on humanitarian intervention in South Africa.

NARAYANA RAO RAMPILLA:** This question is directed to Ambassador Wisner. Since the United States supports the Contras in Nicaragua, why does it not support the ANC?

Ambassador WISNER: I differ from other panelists here on U.S. policy toward the ANC. The United States is committed to change to end apartheid. As a matter of policy, we maintain a dialogue with the ANC and all other parties in the South Africa context. The United States agrees and disagrees with the ANC on issues. We agree on the necessity of ending apartheid. We disagree on the extent of Soviet influence on the ANC. We strongly disagree with the ANC’s reliance on violence.

*Thompson G. Marsh Professor of Law and Director, International Legal Studies Program, University of Denver.
**L.L.M. candidate, University of Georgia School of Law.