

South Africa's lamentable legal legacy at the UN

J. Shearar, *Against the World: South Africa and Human Rights at the United Nations, 1945–1961*

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Jeremy Shearar's book is "in essence an historico-legal survey", which sets out to explore the mindset of the members of the South African government and "administration officials behind events, whose public faces have often been chronicled". It aims to

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13. Covered very briefly in M.D.S. Notwala, "University of Fort Hare from 1916–26", BA thesis, University of Fort Hare, 1984, but in need of a more detailed study.
 14. See P. Limb (ed), *The People's Paper* (Johannesburg, forthcoming).
 15. R. Chapman, "A Culture of Resistance: Student Activism at the University of Fort Hare, South Africa, 1970–1994", PhD thesis, Howard University, 2008.

contribute to the “external” study of the history of human rights law by considering the constitutional, political, economic and social factors which have impacted on the development of that law and in which South Africa might have played a part” (p 2).

The book successfully achieves this goal. In 2007 a democratic South Africa, a self-perceived beacon of human rights promotion, fell foul of such a title in its first term as a non-permanent member of the Security Council. The issue of national interest in opposition to the promotion of human rights is a complex, contentious and, as demonstrated by Shearar’s book, long-running area of debate. In contrast to a transformed, contemporary South Africa, it is interesting to attempt to understand the thinking behind the leadership of a post-1945 non-democratic South Africa and its position on human rights law at the very beginnings of the UN organisation.

Former ambassador and South African permanent representative to the UN, Shearar is well placed to discuss the subject of the emergence of human rights law at the UN and South Africa’s position in relation to that role post-World War II. Academics, interested observers, South African historians and human rights buffs would all find this book an interesting exercise in dissecting the complex issue of international human rights law versus state sovereignty. One of the most important examples history can afford us is the opportunity to analyse events, after the fact, from a position of perspective. Shearar makes use of primary sources mainly found in South Africa’s Department of External Affairs (later Foreign Affairs) in an attempt to provide as accurate an account as possible of the thinking behind the practise of South African officials and law advisors at the UN.

The study is broken down into ten chapters, each of which covers a specific theme in the period 1945 to 1961. The first six chapters are dedicated to the evolution of human rights at the UN, including the fashioning of the Universal Declaration of Human Rights, amongst other covenants. Shearar sets the scene with great clarity, UN legal lingo included, by describing the birth of the UN and the role played by South Africa’s wartime prime minister, J.C. Smuts, in the writing of the Preamble to the UN Charter. Shearar also tries to make sense of Smuts’ thinking behind South Africa’s domestic debate on whether to ratify the UN Charter. He offers his impression of Smuts as “living in another world” (p 18) and as playing the role of a global politician without reference to South Africa’s domestic politics.

Chapter two continues with the UN’s first General Assembly, in June 1946, and the complaint by the government of India over the South African government’s treatment of Indians in South Africa. Smuts responded to this agenda item by dismissing it as an internal matter, because it dealt with Indians who were nationals of South Africa and not Indian nationals. The Indian question was discussed more than once, including in 1948 when the National Party came to power on the platform of apartheid. The chapter also describes how the initial General Assembly debates on the treatment of South Africa’s Indians “set the tone for the arguments on the respective roles of the UN and the International Court of Justice [ICJ] on deciding the limits of domestic jurisdiction” (p 49). The next two chapters discuss South African law advisers’ comments on the Universal Declaration of Human Rights and the two covenants on human rights in comparison with South African legislation at the time. Shearar offers a quirky interpretation of how South African officials’ consistent abstention policy on covenant articles may have given the erroneous impression that the Pretoria government was demonstrating “open hostility towards the liberal human rights philosophy” (p 99) which characterised the majority of the General Assembly.

This is followed by the fifth chapter's examination of the UN's *Yearbook on Human Rights (YHR)*, whose task it was to collate all member states' human rights bills and declarations. Although South Africa's contributions to the yearbooks were often done with little enthusiasm, the chapter does account for them. Most importantly, perhaps, it attests to the increasing gap between South Africa's statute law and developments in the growth of international human rights law. This is further examined in chapter six, where human rights laws pertaining to the rights and duties of nations; the rights of women and children; refugees and the right of asylum; and self-determination and independence; are discussed. Shearar succinctly sums up the consequence of South Africa's persistent low profile in UN debates on the issues listed above as contributing to the isolation of the country from the rest of the world. Moreover, South Africa's inability to support the conventions on the political rights of women and that on the status of refugees, merely cemented allegations of discrimination based on these issues in its domestic legislation.

Chapter seven offers interesting insights into how South Africa's consistent use of the UN Charter's Article 2(7), the domestic jurisdiction principle, which Shearar describes as "obstinate adherence" (p 5), became increasingly singled out. In other words, the sentiment frequently expressed by South African representatives was that "domestic jurisdiction trumped allegations of human rights" (p 150). However, in light of the expanding number of developing nations to the Assembly, whose focus it was to advance the cause of human rights in their draft resolutions and to chip away at the validity of the use of Article 2(7), South Africa's pig-headedness was very quickly becoming an irritation. Certainly, when it came to South Africa's support of other nations' use of the principle, it often found itself far from sure-footed, resorting instead to making ambiguous comments on such issues.

Apartheid is dealt with in chapter eight, including a reference to the South African Minister of External Affairs, E.H. Louw's speech in the Fourteenth General Assembly, offering an "apologia for apartheid in the UN" (p 181). The Sharpeville killings are covered in chapter nine, as well as South Africa's withdrawal from the Commonwealth and from the Commonwealth bloc at the UN. This is followed by a general study of the weakening relationship between South Africa and the UN between 1945 and 1961 in the final chapter.

In this book Shearar sets out to provide a survey (not a judgment) of the history of human rights law using South Africa's involvement, and in some cases its non-involvement, in shedding light on the development of that law. He does so with incredible detail and in a reasonably coherent way as to suggest that the reader need not be a professor of law to fathom its insightful contents.

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