

PORTUGUESE AFRICA: A BRIEF HISTORY OF UNITED NATIONS INVOLVEMENT

"Let him who will portray me, but let him not malign me; for patience is very often lost when insults are heaped upon it."

I. INTRODUCTION

A necessary prerequisite to any examination of Portuguese policy, in particular one concerning the Overseas Provinces, is an admission that Americans, in general, have yet to attain a realistic understanding of Iberian civilization. Traditionally, discussions of Portugal labored under the shadow of what has recently been recognized as the "Black Legend" (*Leyenda Negra*). Professor Philip Wayne Powell observes that the fundamental premise of the "Black Legend" is that Iberian people are "uniquely cruel, bigoted, tyrannical, obscurantist, lazy, fanatical, greedy, and treacherous."² Further, the illusion of a true Portuguese union with Spain under Philip II from 1580 to 1640, often led to the mistaken equation of Portuguese explorative achievements with the unfortunate adventures of Spain in the New World.³ Such misunderstanding predisposed many to uncritically accept allegations of Portuguese injustice whenever presented in a colonial context. John Tate Lanning writes that "the English language historian who deals with (Iberian) civilization and culture has to think as much of how he is going to grapple with the bias of his public as he does of finding what the case is."⁴ Hopefully, present scholarship should provide an adequate caveat against continuation of past histrionics.

II. LEGAL STATUS OF PORTUGUESE AFRICA UNDER CHAPTER XI OF THE U.N. CHARTER

Under its present constitution, approved by popular vote in Metropolitan Portugal and Overseas Provinces in 1933, Portugal is a unitary republic consisting of the following territories: (1) in Europe: the Metropole of Portugal, the Archipelagoes of Madeira and the Azores; (2) in Africa: Portuguese Guinea, Mozambique, Cape Verde, Cabinda, Angola, S. Joao Baptista de Ajuda, S. Tome and Principe; (3) in Asia: Goa (Estado da India) and Macau; and (4) in Oceania: Timor.⁵ The Republic of Portugal, under this constitutional composi-

1. M. CERVANTES, *DON QUIXOTE*, pt. II, ch. 59.

2. P. W. POWELL, *TREE OF HATE: PROPAGANDA AND PREJUDICE AFFECTING UNITED STATES RELATIONS WITH THE HISPANIC WORLD* 11, 3, 169 (1971) [hereinafter cited as POWELL].

3. J. VERZITI, *2 INTERNATIONAL LAW IN HISTORICAL PERSPECTIVE* 134 (1969).

4. POWELL, *supra* note 2, at 131.

5. For English text of Portuguese Constitution of April 11, 1933, as amended to 1959, see A. PEASLEE, *3 CONSTITUTIONS OF NATIONS* 725 (1968).

tion, was admitted to the United Nations on December 14, 1955.⁶ The seizure of Goa and S. Joao Baptista de Ajuda, by India and Senegal respectively, during the 1960's is not recognized by Portugal. Both are considered under military occupation by foreign powers and Goa retains its representation in the Portuguese National Assembly.⁷

Member States of the United Nations, responsible for administration of areas designated as non-self-governing territories, are obligated to transmit information concerning social and economic conditions of such territories to the Secretary General pursuant to Chapter XI of the United Nations Charter. Accordingly in 1956, the Secretary General requested of Portugal "whether there are any territories referred to in Article 73 of the Charter for the administration of which it has responsibility."⁸ Portugal replied that it "does not administer territories which fall under the category indicated by Article 73."⁹ During 1957, the Fourth Committee (dealing with colonial and trusteeship matters) considered transmission of information pursuant to Chapter XI by new members. Discussion focused upon whether the General Assembly could assume responsibility for an objective examination of the obligation of any new member (Portugal in particular) to submit information under Chapter XI.¹⁰ A Fourth Committee resolution to create an *ad hoc* committee to study the application of the provisions of Chapter XI in regard to new members was defeated by the General Assembly.¹¹ Such action by the Fourth Committee was not customary. Since 1948, when eight member nations transmitted information in regard to 74 territories, designation of territories as non-self-governing was understood to be the exclusive right of the administering country.¹² The suggestion that this right should now pass to the General Assembly was unprecedented. The Representative of Portugal explained that his country was a unitary state under a unitary constitution with the Metropole and Overseas Provinces under the identical organs of sovereignty and the same status under international law.¹³ When Portugal was admitted to the United Na-

6. 1958 YEARBOOK OF THE UNITED NATIONS 27.

7. OVERSEAS COMPANIES OF PORTUGAL, FACT SHEET ON PORTUGAL: CONSTITUTIONAL CHANGES 3 (1972). (Material available from the American representative of Overseas Companies of Portugal, Downs & Roosevelt, Inc., Washington, D.C.)

8. U.N. Doc. A/C.4/331/Add.1,2 (1956).

9. *Id.*

10. U.N. Doc. A/C.4/345 (1957).

11. U.N. Doc. A/3531/Add.1 (1957).

12. U.N. Doc. A/C.4/347 (1957).

13. Some members of the Fourth Committee alleged that Portugal had traditionally used the term "colonies" in regard to its overseas territories and only changed the designation to "Overseas Provinces" in 1951. The first references to "Overseas Provinces" in official Portuguese documents were in 1576 and 1633. The term was employed in the Constitutions of 1820, 1832, 1842, the overseas legislation of 1867 and the Consti-

tions, the Portuguese Constitution was known to its members and there could be no misunderstanding as to the political structure or territorial composition of Portugal. It was beyond the competence of the General Assembly to question the constitutional structure or territorial extension of any member state once it had been admitted to the United Nations. The Portuguese government was and would continue to furnish extensive information to specialized agencies of the United Nations, however to do so under Chapter XI would be in abrogation of its own national constitution.¹⁴

Although future debate would involve Portugal's failure to provide information on its Overseas Provinces, the substantial issue did not concern quantum of information. From its admission, Portugal submitted reports on its Overseas Provinces to the Economic and Social Council, the Economic Commission for Africa, the International Labour Organization, the World Health Organization and the United Nations Library.¹⁵ The real issue confronting the General Assembly by the Fourth Committee proposal was whether the Assembly could disregard the constitutional structure of a member nation and determine that nation's territorial composition. The Portuguese Constitution did not recognize the existence of territories within the nation with different legal status. Portugal maintained that the interpretation and application of a member nation's constitution was the exclusive right of the respective country. General Assembly interference constituted a "flagrant violation" of Article 2(1) (sovereign equality of all members) and Article 2(7) (U.N. intervention in matters essentially within the domestic jurisdiction of member states precluded).¹⁶ The Fourth Committee resubmitted the resolution explaining it was necessary to interpret Chapter XI in relation to: (1) the scope of the constitutional limitation clause in Chapter XI; (2) whether Chapter XI included territories incorporated as part of the metropolitan country; and (3) whether the General Assembly could itself define territories as non-self-governing. The General Assembly again rejected the draft resolution, failing to obtain a required two-

tutions of 1911 and 1933. Although the term "colony" was used for a short period in modern texts, this did not change the status of the provinces under Portuguese law. An early seventeenth century ruling of the Portuguese Royal Council reads in part that "Goa and the other lands overseas with whose Governments this Council is concerned are not distinct nor separate from this realm . . . and thus he who is born and lives in Goa or in Brazil or in Angola is just as much a Portuguese as he who lives and is born in Lisbon."

14. U.N. Doc. A/C.4/347 (1957). See also PORTUGUESE FOREIGN MINISTRY, PORTUGAL REPLIES IN THE UNITED NATIONS 3-4 (1970) [hereinafter cited as PORTUGAL REPLIES].

15. F. NOGUEIRA, THE UNITED NATIONS AND PORTUGAL: A STUDY OF ANTI-COLONIALISM 84 (1963) [hereinafter cited as NOGUEIRA].

16. *Id.* at 78-79.

thirds majority vote.¹⁷

The composition of the General Assembly in 1960, altered by the admission of eighteen newly independent states, gave a clear majority on the Portuguese question to the developing nations. Early in the session the Special Committee of Six, maintaining the Charter "was a living document and the obligations under Chapter XI must be viewed in the light of the changing spirit of the times," submitted principles to guide members in determining whether there existed an obligation on their part to transmit information concerning non-self-governing territories under Chapter XI.¹⁸ These principles were: (1) there exists a *prima facie* obligation to transmit information on territories geographically separate and ethnically or culturally distinct from the administering state; (2) full self-government can only be attained by independence, free association or integration; and (3) constitutional limitations enumerated in Chapter XI concerned only the quantum of information to be provided.¹⁹ The General Assembly accepted the principles submitted by the Special Committee of Six, and in its companion resolution, unilaterally designated the Overseas Provinces of Portugal to be non-self-governing territories.²⁰ Portugal was now obligated to transmit information on those areas without further delay.²¹

During the debate which surrounded adoption of Resolutions 1541(XV) and 1542(XV), Portugal maintained such action by the General Assembly was not authorized by the Charter, was *ultra vires* and that members of the General Assembly were applying a political interpretation to the Charter. Portugal insisted that only a legal interpretation of Chapter XI by the International Court of Justice or an amendment of the Charter would ensure a successful resolution of the problem.²² Portugal laid great stress upon the wording of the first draft of the Report of the Committee of Six, wherein the Committee, after having noted the difficulties involved in finding a satisfactory definition of the concept of "territories whose peoples have not yet attained a full measure of self-government" and that anyway, it "was not essential to arrive at a definition," said it "approached the problem from a practical point of view, bearing in mind the political

17. U.N. Doc. A/3733 (1957).

18. U.N. Doc. A/4526 (1960). The committee consisted of representatives from India, Mexico, Morocco, Netherlands, the United Kingdom and the United States.

19. *Id.*

20. G.A. Res. 1541, 15 U.N. GAOR, U.N. Doc. A/4651 (1960).

21. G.A. Res. 1542, 15 U.N. GAOR, U.N. Doc. A/4651 (1960). The territories so designated were Guinea, Angola, Mozambique, S. Tome and Principe, S. Joao Baptista de Ajuda, Goa, Macau and the Cape Verde Archipelago. Conspicuously absent were the Archipelagoes of Madeira and the Azores.

22. NOGUEIRA, *supra* note 15, at 351.

realities of the world situation."²³ Portugal also found the selection by the General Assembly of racial and cultural factors as criteria for determination of non-self-governing territories a contradiction of basic principles of the United Nations. That political separation should necessarily arise because of racial and cultural differences was viewed by Portugal as a stimulant to racial and cultural hostilities.²⁴ Portugal would not accept geographical separation, cultural and racial difference as sufficient to constitute a colonial situation. Instead, Portugal claimed the General Assembly must consider each situation on the basis of such factors as economic exploitation, disparity or conflict of economic interests, deprivation of political, educational or social rights and finally the imposition of a religion or culture upon a people considered inferior.²⁵

A compromise between the colonial and anti-colonial powers, Chapter XI consists of ambiguities and omissions.²⁶ The proposed definitions for the principles of self-government, just treatment of peoples, and free political institutions enumerated in Chapter XI reflect the ideological diversity of the international community. In attempting to define and implement, to some degree, these basic human rights in non-self-governing territories, the General Assembly asserted more power than a strict interpretation of Chapter XI would authorize.²⁷ From a legal point of view, Chapter XI does not enable the General Assembly to determine whether a territory has attained "self-government,"²⁸ nor does it authorize the Assembly to specify which territories are, in fact, non-self-governing.²⁹ Interpretations of the Charter by the General Assembly, however, "cannot always be defended from a legal point of view."³⁰ Although some authors suggest the methods employed by the General Assembly to implement Chapter XI "exceeds the requirements of the Chapter itself,"³¹ they maintain that the Charter cannot be considered "a rigid, unchangeable" legal document lacking "flexibility and adaptability."³²

23. U.N. Doc. A/AC.100/L.1 (1960).

24. NOGUEIRA, *supra* note 15, at 86.

25. *Id.* at 90.

26. Kunz, *Chapter XI of the United Nations Charter in Action*, 48 AM. J. INT'L L. 103, 104 (1954) [hereinafter cited as Kunz].

27. Engel, *The Changing Charter of the United Nations*, Y.B. OF WORLD AFFAIRS 80, 81 (1953).

28. Kunz, *supra* note 26, at 108-109.

29. H. KELSEN, *THE LAW OF THE UNITED NATIONS* 556 (1950).

30. Kunz, *The United Nations and the Rule of Law*, 46 AM. J. INT'L L. 504, 506 (1952).

31. L. GOODRICH, E. HAMBRO & A. SIMONS, *THE CHARTER OF THE UNITED NATIONS: COMMENTARY AND DOCUMENTS* 448-462 (3rd ed. 1969).

32. L. GOODRICH, *THE UNITED NATIONS* 68 (1959).

The occupation of Goa and its dependencies by the Indian Union in 1961, not only temporarily upset the moral framework of debate within the General Assembly in regard to the Portuguese Overseas Provinces, but confirmed many of Portugal's fears concerning the motives of its critics. Since Goa was among eight Portuguese territories designated as non-self-governing by Resolution 1542(XV), Portugal maintained that states, like India, which voted for the resolution were legally bound to decide the future of Goa only by terms of Resolutions 1514(XV) and 1541(XV). After analyzing the justifications submitted by India for its action, Quincy Wright concluded that "no interpretation of the Charter provides a legal justification" for the occupation.³³ When the action by India was tolerated in the General Assembly, Portugal perceived a double standard by which it was condemned for not respecting principles of self-determination while other nations politically aligned with the majority were not. Portugal concluded that "in the United Nations, self-determination is not regarded as a principle of political ethics but as a banner of political action designed to achieve certain pre-selected objectives which have nothing to do with real self-determination."³⁴ In regard to the implementation of self-determination within the United Nations, S. Prakash Sinha writes:

once the basic decision for political reorganization or redistribution of power has been made, the principle of self-determination is invoked to attain the result in a desirable fashion. The principle is thus one of political expediency which states may or may not use.³⁵

Any moral persuasion which past or future United Nations resolutions may have achieved with Portugal was lost after the action by India and subsequent inaction by the General Assembly.³⁶ By 1963, Dr. Franco Nogueira, Foreign Minister of Portugal, wrote that "from the study of this whole problem there is one inescapable conclusion to be drawn, namely that discussion is impossible."³⁷

III. INSURGENT ACTIVITIES AND INTERNATIONAL PEACE

A. *Angola: 1961*

Resolutions 1514 (XV), 1541 (XV) and 1542 (XV) were approved by the General Assembly during December 1960. Within a month, minor disturbances occurred around Luanda and on March 15, 1961, simultaneous attacks against settlements along the Congolese border

33. Wright, *The Goa Incident*, 56 AM. J. INT'L L. 617, 630 (1962).

34. PORTUGAL REPLIES, *supra* note 14, at 10; see also W. KULSKI, INTERNATIONAL POLITICS IN A REVOLUTIONARY AGE 513-514 (1968).

35. Sinha, *Is Self-Determination Passe?*, 12 COLUM. J. TRANSNAT'L L. 260, 271 (1973).

36. PORTUGAL REPLIES, *supra* note 14, at 10.

37. NOGUEIRA, *supra* note 15, at 120.

in northwestern Angola were initiated by rebel forces.³⁸ Interpreted by many of Portugal's adversaries as a spontaneous revolt, the rebellion was in reality a series of activities performed in accordance with a prearranged strategy and organization.³⁹ During the first week of violence hundreds of Africans of European descent and more than 6,000 black Africans were massacred by the insurgents.⁴⁰ One authority observed that it was "the biggest slaughter of Europeans which has taken place in Africa in this century,"⁴¹ and another that it made "the Congo look like a tempest in a teapot."⁴²

At the outset of the attack, there were approximately 7,000 military and police personnel in Angola, of which 5,000 were black and 2,000 of European descent.⁴³ For the most part, these units retreated to the large cities to undertake defensive measures until the strength of the insurgents could be determined and reinforcements arrived from Metropolitan Portugal.⁴⁴ By 1962, the insurgents had been contained within the densely forested areas of northwestern Angola, where guerilla activity continues today.⁴⁵ Immediately following the introduction of Metropolitan troops in Angola, allegations of Portuguese repression gained widespread attention. Atrocities were committed by the Portuguese, most by European settlers who had recently witnessed a similar fate befall their friends and neighbors.⁴⁶ The majority of such acts were committed prior to entrance of European military units.⁴⁷ With regard to the Portuguese army's attempt to control this bestiality, an official British commission undertaking on-the-spot investigations, was encouraged "by the sense of duty

38. D. WHEELER & R. PELISSIER, *ANGOLA* 180 (1971) [hereinafter cited as WHEELER & PELISSIER].

39. *Id.* at 177.

40. *PORTUGUESE AFRICA: A HANDBOOK* 407 (D. ABSHIRE & M. SAMMUELS ed. 1969) [hereinafter cited as ABSHIRE & SAMMUELS].

41. Waring, *The Case for Portugal*, *ANGOLA: A SYMPOSIUM* 31 (London Institute of Race Relations ed. 1962).

42. Clairmonte, *Angola: Unfinished Duel*, 53 *YALE REV.* 1 (1963); see also Waring, *Angola—Terrorists on the Run*, *NAT'L REV.*, Sept. 11, 1962, at 189.

43. *OVERSEAS COMPANIES OF PORTUGAL, PORTUGAL 1961-1971: A DECADE OF PROGRESS* 35 (1972). The size and nature of the Portuguese armed forces in Angola during early 1961 suggest that government authorities did not foresee the coming violence. However, other evidence indicates that the Portuguese did expect some trouble. During 1959, Angola imported 156 tons of munitions; in 1960, 953 tons; in 1961, 424 tons and in 1962, 145 tons. WHEELER & PELISSIER, *supra* note 38, at 173.

44. ABSHIRE & SAMMUELS, *supra* note 40, at 407-408.

45. The insurgents hold several small areas in the Zaire, Uige and Cuanza Norte districts of northwestern Angola and guerrilla infiltration continues in the Moxico district of eastern Angola; see WHEELER & PELISSIER, *supra* note 38, at 201.

46. H. Kay, *A Catholic View*, *ANGOLA: A SYMPOSIUM* 67, 89 (London Institute of Race Relations ed. 1962).

47. *Id.*

among the senior officials and military commanders" it witnessed.⁴⁸

B. *United Nations Action*

During 1961, the Security Council considered the "threat posed to international peace and security" by these developments,⁴⁹ disregarding Portugal's assertion that such attention by the Security Council was a contravention of Article 2(7) of the Charter and motivated by a desire to internationalize problems of Portuguese domestic public order for political advantage.⁵⁰ A Security Council draft resolution to investigate and report on the violence in Angola was defeated.⁵¹ In the General Assembly, a similar resolution, sponsored by 36 African and Asian countries,⁵² to create a subcommittee to investigate the "conflict and deterioration of human rights" in Angola and call on Portugal to institute reforms within its African territories was approved.⁵³ Eight months later the U.N. Subcommittee on the Situation in Angola transmitted its report to the General Assembly. The Subcommittee found: (1) the Portuguese policy of assimilation not accompanied by preparation of the indigenous population for citizenship; (2) indications of forced labor; (3) evidence of inadequate educational facilities; (4) political organizations advocating self-determination or independence were considered subversive and suppressed;⁵⁴ (5) the impossibility of discussion or negotiation with Por-

48. *Id.* The commission was composed of military personnel from the British embassy in Lisbon and the consul general for Angola.

49. U.N. Doc. S/4738 (1961).

50. U.N. Doc. S/4760 (1961).

51. U.N. Doc. S/4769 (1961).

52. The sponsors were Afghanistan, Burma, Cameroun, Central African Republic, Ceylon, Chad, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Ethiopia, Federation of Malaya, Gabon, Ghana, Guinea, India, Indonesia, Iraq, Ivory Coast, Japan, Lebanon, Liberia, Libya, Madagascar, Mali, Morocco, Nepal, Niger, Nigeria, Saudi Arabia, Senegal, Somalia, Sudan, Togo, Tunisia, United Arab Republic and Upper Volta. 1960 YEARBOOK OF THE UNITED NATIONS 140.

53. G.A. Res. 1603, 16 U.N. GAOR, U.N. Doc. A/L.345/Add.1-5 (1961).

54. See R. GIBSON, *AFRICAN LIBERATION MOVEMENTS: CONTEMPORARY STRUGGLES AGAINST MINORITY RULE* (1972). The political parties basically concerned were: Movimento Popular de Libertacao de Angola (M.P.L.A.); Uniao Nacional Para A Independencia Total de Angola (U.N.I.T.A.); Governo Revolucionario de Angola—Frente Nacional de Libertacao de Angola (G.R.A.E.—F.N.L.A.); Uniao dos Populacoes de Angola (U.P.A.); Partido Democratico Angolano (P.D.A.). Several observations should be made concerning this situation: (1) by 1965, 31 of the 36 independent African nations maintained a one-party system of government; see L. GANN & P. DUIGNAN, *BURDEN OF EMPIRE* 393 (1967); (2) the parliamentary system of the Overseas Provinces is not significantly different in this respect than that of the Metropole, making political liberalization in the Overseas Provinces prior to that in Europe unrealistic; see Wheeler, *The Thaw in Portugal*, 48 *FOREIGN AFFAIRS* 769-781 (1970); (3) government acceptance of such political organizations during the 1950's would, in all probability, have greatly increased the amount of covert foreign interference; see generally M. COPELAND, *THE GAME OF NATIONS* (1969); and P. LESSING, *AFRICA'S RED HARVEST* (1962).

tuguese authorities "forced" nationalistic movements into clandestine activity and "direct action."⁵⁵ In response to the report, the General Assembly affirmed the right of the Angolan people to self-determination and independence, deprecated Portuguese repression and violence against the people of Angola and the denial of their basic human rights and freedoms, and requested Portugal desist from repression, and undertake without delay extensive social, economic and political reforms to enable the transfer of power to the Angolan people.⁵⁶ The debate on Angola continued in the General Assembly through 1962 and was brought to a conclusion as a separate and distinct problem when the General Assembly condemned "the mass extermination of the indigenous population of Angola and other severe repressive measures being used by the Portuguese colonial authorities" and noted "that in the territory of Angola, as in other Portuguese colonies, the indigenous population is denied all fundamental rights and freedoms, that racial discrimination is in fact widely practiced and that the economic life of Angola is to a large extent based on forced labor."⁵⁷

C. *Border Incidents*

Following the violence in Angola, various African nations attempted to escalate the situation in Angola to an international crisis through allegations of aggression by Portuguese military units against neighboring countries. In 1961, Senegal charged in the Security Council that Portuguese army units entered a Senegalese village and motorized columns accompanied by jet fighters penetrated other Senegalese territory.⁵⁸ Portugal denied the allegation and explained that a routine reconnaissance patrol had become lost for a short time in Senegalese territory and the overflight of two jet aircraft, due to technical problems in navigation, had lasted no longer than 30 seconds.⁵⁹ In 1963, Senegal informed the Security Council that Portuguese military aircraft bombed a Senegalese village, but was uncertain as to the amount of damage and date of attack.⁶⁰ Portugal denied the charge and requested the Security Council establish a neutral commission to investigate *in loco* the Senegalese complaint.⁶¹ Instead, the Security Council deplored "any incursion by Portuguese forces into Senegalese territory as well as [this] incident."⁶² In 1965,

55. U.N. Doc. S/4993/Corr.1 (1962); U.N. Doc. A/4978/Corr.1 (1962).

56. G.A. Res. 1742, 16 U.N. GAOR, U.N. Doc. A/L.384/Rev.1 (1962).

57. G.A. Res. 1819, 17 U.N. GAOR, U.N. Doc. A/L.415/Add.1 (1962).

58. U.N. Doc. S/5039 (1961).

59. U.N. Doc. S/5055 (1961).

60. U.N. Doc. S/5279 (1963); U.N. Doc. S/5283 (1963).

61. U.N. Doc. S/5281 (1963); U.N. Doc. S/5284 (1963).

62. U.N. Doc. S/5293 (1963).

Senegal continued allegations of Portuguese military incursions into Senegalese territory.⁶³ Portugal again denied the charges and requested the United Nations investigate such allegations to reduce the increasing tension between the two nations.⁶⁴ The Security Council unanimously deplored "any incursion by Portuguese military forces into Senegalese territory," and requested Portugal "take all effective and necessary action to prevent any violation of Senegal's sovereignty and territorial integrity."⁶⁵

In 1966, the Democratic Republic of the Congo charged Portugal with allowing Angola to be employed as a military base for mercenary operations against the Congolese government.⁶⁶ While denying the allegation, Portugal informed the Council that official Congolese information organs were instigating violence against the Portuguese community in the Congo—the Portuguese embassy in Kinshasa had been set afire, embassy officials attacked and seriously injured. Further, Portugal indicated it would welcome an official United Nations investigation of alleged mercenary bases in Angola, if the Congo would allow similar inspections of known anti-Portuguese bases in Congolese territory.⁶⁷ The Security Council urged Portugal "not to allow foreign mercenaries to use Angola as a base of operation for interfering in the domestic affairs" of the Congo.⁶⁸ In 1967, Guinea, Senegal and Zambia complained of military incursions by Portuguese army units.⁶⁹ The Congo repeated charges that Portugal was providing and encouraging mercenary bases in Angola.⁷⁰ Portugal denied the allegations, stating that the Congo, since 1960, had openly promoted armed aggression against Angola from within the Congo.⁷¹ The Security Council condemned Portugal for its failure to prevent mercenaries from using Angola as a base of operations.⁷²

D. *Mozambique*

In 1973, new charges of Portuguese atrocities in Mozambique by

63. U.N. Doc. S/6177 (1965); U.N. Doc. S/6196 (1965) and U.N. Doc. S/6338 (1965).

64. U.N. Doc. S/6192/Corr.1 (1965); U.N. Doc. S/6240 (1965).

65. S.C. Res. 204, 20 U.N. SCOR, U.N. Doc. S/6366/Rev.1 (1965).

66. U.N. Doc. S/7503 (1966). The charges followed the dismissal of Tshombe and coup d'etat by Mobutu in the fall of 1965.

67. U.N. Doc. S/7506 (1966). See also Marcum, *Three Revolutions*, AFRICA REPORT 8, 10, 12 (Nov., 1967); and ABSHIRE & SAMMUELS, *supra* note 40, at 411.

68. S.C. Res. 266, 21 U.N. SCOR, U.N. Doc. S/7539 (1966).

69. Respectively, U.N. Doc. S/8193 (1967); U.N. Doc. S/8080 (1967); U.N. Doc. S/8151 (1967) and U.N. Doc. 7664 (1967).

70. U.N. Doc. S/8218 (1967).

71. U.N. Doc. S/8238 (1967).

72. S.C. Res. 241, 22 UN. SCOR (adopted without vote), see 1967 YEARBOOK OF THE UNITED NATIONS 127.

the Roman Catholic missionary order, the Missionaries of Africa (White Fathers), reopened the controversy concerning Portuguese military policy.⁷³ Allegations of widespread massacres were detailed in a 400-page document released by the "White Fathers" in explanation of that order's withdrawal from Mozambique in May, 1971.⁷⁴ The document, referring to incidents in 1971 and 1972, followed a charge by a British Roman Catholic priest, the Rev. Adrian Hastings, that approximately 400 civilians were massacred at Wiliamo.⁷⁵ The charges were officially denied by Lisbon and by General Kaulza de Arriaga, Portuguese military commander in Mozambique.⁷⁶ The village, allegedly destroyed by Portuguese troops after concentration of the population in fortified villages, was visited by a team of European journalists where a "careful search of the ruins revealed no sign of a massacre."⁷⁷ The existing evidence is less than conclusive, and complicity by many "White Fathers" with guerrilla terrorists diminishes the impartiality of their testimony.⁷⁸ It would appear that massacre and atrocity are no more part of Portuguese military policy in 1972, than in 1962.⁷⁹ To the contrary, evidence suggests a large portion of the black population consider Portuguese authorities "too soft" on terrorists.⁸⁰ More reliable information depicts a realistic situation wherein isolated, unauthorized incidents of summary execution and torture of suspected terrorists have been committed by units of the *Grupo Especial Paraquedistas* (special counter-terrorist paratroop group) composed mainly of black Africans and ex-guerrillas.⁸¹

Although the present failure of the "liberation movements" within the three African territories enjoys many explanations, the primary reason is that the Portuguese government retains the neutrality, if not the open support, of a majority of the black African

73. New York Times, July 14, 1973, at 9, col. 5.

74. *Id.* at col. 6.

75. *Id.* at col. 5.

76. *Id.*

77. Conspicuously absent were spent cartridges, bullet holes in trees or building frames and signs of recent burials; see Manchester Guardian, July 21, 1973, at 4, col. 4; New York Times, Aug. 11, 1973, at 10, col. 2.

78. INTELLIGENCE DIGEST 8 (Aug., 1973).

79. See generally A. VENTER, PORTUGAL'S WAR IN GUINEA-BISSAU (1973); A. VENTER, PORTUGAL'S GUERRILLA WAR (1973); A. VENTER, THE TERROR FIGHTERS (1970); Dodson, *Dynamics of Insurgency in Mozambique*, AFRICA REPORT 52-55 (Nov. 1967); Marcum, *Three Revolutions*, AFRICA REPORT 8-22 (Nov. 1967); and Zartman, *Guinea: The Quiet War Goes On*, AFRICA REPORT 67-72 (Nov. 1967).

80. *Supra* note 78, at 8.

81. Compare e.g. Manchester Guardian, July 21, 1973, at 3, col. 5, with DER SPIEGEL, Aug. 13, 1973, at 64-73.

population.⁸² The employment by Portugal of brutal repression against the civilian population such as massacres, wide scale use of napalm, defoliates or bombing would rapidly evaporate existing black African support. The fact that approximately 50 percent of the Portuguese defense forces in the territories consist of non-Europeans further reduces the possibility that the government is utilizing civilian directed methods of warfare.⁸³

E. *Portuguese Guinea*

The insurgent activity within the three African Overseas Provinces which has proved most difficult for the Portuguese is the war in Portuguese Guinea (Guinea-Bissau).⁸⁴ The revolutionary African Party for the Independence of Guinea and the Cape Verde Islands (P.A.I.G.C.) claims to have "liberated" two-thirds of the territory and several authorities suggest that they are actually in control of one-half of the area.⁸⁵ Portugal maintains that "there are no 'liberated areas' under the control of the P.A.I.G.C.,"⁸⁶ but admits there are some "frontier areas" rendered "unsafe by terrorists infiltrating clandestinely from the neighboring countries giving them sanctuary."⁸⁷

In 1972, the U.N. Special Committee on Decolonization established a Special Mission, composed of representatives of Ecuador, Sweden and Tunisia, to visit the "liberated areas" of Portuguese Guinea.⁸⁸ Entering Portuguese Guinea without the permission of Portuguese authorities and with a military contingent of the P.A.I.G.C. on April 2, 1972, the Mission reportedly observed reconstruction programs, and social, economic, educational and other conditions in the "liberated areas."⁸⁹ Upon the Mission's return to New York, the phys-

82. ABSHIRE & SAMUELS, *supra* note 40, at 429; and WHEELER & PELISSIER, *supra* note 38, at 221. Tribal animosity has in some regions increased greatly due to the fighting. For example, in Angola that of the Ovimbundu towards the Bakongo and Mbundu who massacred them in 1961; see WHEELER & PELISSIER, *supra* note 38, at 230. Also see generally address by Portuguese Prime Minister Marcello Caetano, *The Only Road Open to Us is to Defend Our Overseas Provinces*, broadcast on Portuguese television, Jan. 15, 1973 (available from Portuguese Embassy); Wheeler, *The Thaw in Portugal*, 48 FOREIGN AFFAIRS 769-781 (1970); and Howe, *Portugal at War: Hawks, Doves and Owls*, AFRICA REPORT 16-21 (Nov. 1969).

83. The 50 percent figure includes regular Metropole troops, militia, para-military groups and police; see Address by Portuguese Foreign Minister, Dr. Rui Patricio, conveniently found in 99 CONG. REC. S4948 (1971).

84. New York Times, Jan. 22, 1973, at 15, col. 1; see generally A. VENTER, PORTUGAL'S WAR IN GUINEA-BISSAU (1973).

85. New York Times, Jan. 22, 1973, at 15, col. 1.

86. PORTUGUESE MINISTRY OF FOREIGN AFFAIRS, MISSION INVISIBLE 31 (1972).

87. *Id.* at 46.

88. U.N. Doc. A/AC.109/2804 (1972).

89. *Id.*

ical evidence offered by the photographer who accompanied the Mission did not indicate any place identifiable as Portuguese Guinea, nor anything more than photographs of Mission representatives meeting with African natives in jungle areas.⁹⁰ In response to the Mission's report, the Special Committee on Decolonization approved a resolution condemning Portugal. The Committee found that the P.A.I.G.C. is the "only authentic representative of the territory" which, in its opinion, "some States are prepared to recognize."⁹¹ Portugal contested the findings of the Special Mission and invited the Secretary General,⁹² the President of the General Assembly,⁹³ and the Security Council⁹⁴ to designate a mission to visit Portuguese Guinea to determine the existence of "liberated areas."⁹⁵ The invitations were either rejected or ignored.⁹⁶

In September 1973, a Popular National Assembly, under the sponsorship of the African Party for the Independence of Guinea and the Cape Verde Islands, proclaimed the independence of the "liberated areas" of Portuguese Guinea.⁹⁷ Since then, approximately 70 African, Asian and communist nations have recognized the new territory. Currently, there is discussion in the General Assembly and the Special Committee on Decolonization on whether to seat representatives of the "liberated areas" on United Nations agencies and its admission to the United Nations.⁹⁸ However, since admission will depend upon the recommendation of the Security Council, it does not appear likely that the "liberated" territory will be admitted in the foreseeable future.

Assistant Secretary of State for African Affairs, David Newsom, has stated that the "independent areas" of Portuguese Guinea do not at this time possess the necessary attributes of a state to enable recognition by the United States.⁹⁹ Since "recognition [of] a country

90. U.N. Doc. A/AC.109/L.768 (1972).

91. U.N. Doc. A/AC.109/400 (1972).

92. May 8, 1972.

93. October 2, 24, 1972; October 11, 1973.

94. October 11, 1973.

95. Statement by Portuguese Representative, Antonio Patricio, before the United Nations General Assembly, Oct. 22, 1973.

96. *Id.*

97. The Proclamation of the State of Guinea-Bissau by the People's National Assembly on Sept. 24, 1973 may be found in U.N. Doc. A/9196, Annex I, at 1 (1973). The Constitution of the Republic of Guinea-Bissau may be found in U.N. Doc. A/9196, Annex II, at 1 (1973).

98. Statement by Portuguese Representative, Antonio Patricio, before the United Nations General Assembly, Oct. 22, 1973.

99. Address by David D. Newsom, African Studies Association Annual Meeting, Nov. 2, 1973. "The State as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and

still in the throes of warfare against the parent state . . . constitutes participation in the conflict [and] makes the cause of independence a common one between the aspirant for it and the outside State,"¹⁰⁰ the United States will not seriously consider recognition until the insurgent movement in Portuguese Guinea clearly demonstrates that it exercises control upon a recognizably substantial part of the territory and population of Portuguese Guinea. However, on October 22, 1973, the General Assembly welcomed the accession to independence of the "liberated areas" by the creation of the Republic of Guinea-Bissau and condemned Portugal for perpetuating its "illegal" occupation of and aggression against the Republic of Guinea-Bissau.¹⁰¹

IV. THE BLACK LEGEND REVISITED

Since 1960, various nations in the General Assembly have attempted to combine the problems of Angola and Mozambique with South Africa and Southern Rhodesia by charges against Portugal of racism, forced labor, inhumane labor conditions and the exportation of black workers to South Africa. The creation by the General Assembly of such a "Southern African Problem," requiring a uniform approach by that organization, can only result in unfortunate consequences for the people of Portuguese Africa. The situation in Angola and Mozambique is essentially different from that in South Africa and Southern Rhodesia.

A. Racism

The Portuguese territories do not experience legislation such as the Land Apportionment Act of Southern Rhodesia nor the "Jim Crow" laws formerly found in the United States.¹⁰² There is no *de jure* discrimination in employment, education or housing, and there is a corresponding lack of *de facto* discrimination.¹⁰³ In areas where admiration for South African and Rhodesian society at times emerges, primarily due to their greater economic and technological advancement, antiracist propaganda is freely transmitted by government

d) capacity to enter into relations with other States." Convention on Rights and Duties of States, Montevideo, 1933, 49 Stat. 3097, T.S. No. 881.

100. C. HYDE, 1 INTERNATIONAL LAW, CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES 153 (1947).

101. G.A. Res. 3061, 28 U.N. GAOR, U.N. Doc. A/L.702. The following Member States voted "no" on the resolution: Brazil, Greece, Portugal, South Africa, Spain, the United Kingdom and the United States. The following Member States abstained on the resolution: Australia, Austria, Belgium, Bolivia, Canada, Chile, Colombia, Denmark, Dominican Rep., El Salvador, Finland, France, Germany (Fed. Rep.), Guatemala, Honduras, Iceland, Ireland, Israel, Italy, Japan, Luxembourg, Netherlands, New Zealand, Nicaragua, Norway, Paraguay, Sweden, Turkey, Uruguay and Venezuela.

102. ABSHIRE & SAMMUELS, *supra* note 40, at 212.

103. Kennan, *Hazardous Courses in Southern Africa*, 49 FOREIGN AFFAIRS 218, 231 (1971) [hereinafter cited as KENNAN].

agencies through official information organs.¹⁰⁴ Miscengenation is not only accepted by a large majority of Portuguese, but is actively encouraged as an important aspect of official government policy.¹⁰⁵ Arnold Toynbee writes:

You will see there people with Goanese and African blood in their veins. It is evident that they feel themselves to be Portuguese and are felt to be Portuguese by their European-blooded fellow citizens . . . the freedom of the . . . Portuguese speaking peoples from race feeling is an unquestionable fact.¹⁰⁶

An increasing and significant portion of the population in the Overseas Provinces is of African-European descent (mesticos).¹⁰⁷

The various insurgent movements in Portuguese Africa continually assert racism in the administration of the Provinces, and such allegations find widespread acceptance in Afro-Asian and liberal Western communities. However, the disparity between the great majority of black Africans and the more prosperous Europeans, Asians and mesticos results from a corresponding disparity in educational opportunity.¹⁰⁸ In the territories, education, not race, is the avenue to prosperity and the greatest governmental reforms have occurred in the field of education.¹⁰⁹ George F. Kennan writes:

it is difficult . . . to believe that a triumph of the present insurgent pressures would produce any more rapid progress in educational opportunities and living standards for the African. In both these respects the Portuguese territories are already well ahead of most of the black-ruled countries in Africa.¹¹⁰

The Portuguese policy, in relation to aboriginal populations within its territories, has been criticized as a concealed form of racism despite similar practices by other nations and recognition by the International Labor Organization of such methods to protect aboriginal peoples.¹¹¹ Government dissatisfaction with the inadequacy of

104. ABSHIRE & SAMMUELS, *supra* note 40, at 213.

105. *Id.* at 202-203.

106. Toynbee, *A War of Races? No.*, *New York Times*, Aug. 7, 1960, at 56, col. 1; see also Kay, *The Portuguese Way in Africa*, *FORTUNE* 112-115, 139-142 (Jan. 1964).

107. ABSHIRE & SAMMUELS, *supra* note 40, at 1.

108. KENNAN, *supra* note 103, at 231. Mesticos are the indigenous population of the island provinces off the African continent which were uninhabited when reached by the Portuguese.

109. *Id.* at 232. R. Pelissier terms the educational reforms in Angola "a scholastic explosion." In 1961, there were 105,701 Angolans in primary schools, 4,501 in technical secondary schools and 7,486 in academic secondary schools. In 1967, the figures were 267,768; 15,371 and 16,700 respectively with 702 pursuing theological studies and 607 attending university in Angola; see WHEELER & PELISSIER, *supra* note 38, at 237.

110. KENNAN, *supra* note 103, at 232; see also WHEELER & PELISSIER, *supra* note 38, at 237; and Sammuels, *The 'New Look' in Angolan Education*, *AFRICA REPORT* 63-66 (Nov. 1967).

111. A. EDWARDS, *THE OVIMBUNDU UNDER TWO SOVEREIGNTIES* 136 (1962).

official assimilation methods led to repeal of the Native Statute in 1961. Under present legislation, any African may, without fee or test, retain a traditional life style under special protection of law or adopt full legal rights and obligations of Portuguese citizenship.¹¹²

B. *Labor Conditions*

In 1961, Ghana filed charges with the International Labor Organization against Portugal claiming that forced labor existed in Angola and Mozambique in conditions worse than slavery and that over 100,000 Mozambicans were forceably exported to South African mines. Acting upon the complaint, the I.L.O. established a commission to examine labor conditions in Portuguese Africa. The commission notified Ghana its complaint was unsupported by evidence.¹¹³ Yet in 1966, the General Assembly condemned, "as a crime against humanity," Portugal's policy of exportation of workers to South Africa.¹¹⁴ During 1970, Pierre Juvigny, the I.L.O. special representative on labor conditions in Portuguese Africa, made personal investigations of Angola and Mozambique, similar to the original I.L.O. examination in 1962. He reiterated the nonexistence of forced labor and forced exportation of workers to South Africa. The report concluded:

the Portuguese authorities appear to be fully aware of the need to develop further the series of policies which they have been pursuing in recent times . . . [they] have repeatedly referred to I.L.O. standards as reinforcing the legal basis of their decisions.¹¹⁵

Definitive reform of the labor system in Portuguese Africa began in 1960 with the creation of minimum wages, labor inspections, revocation of criminal penalties for breach of work contracts and ratification of the I.L.O. Convention on Child Labor and Abolition of Forced Labor.¹¹⁶ During 1961, the prohibition of labor recruitment by government officials, equal pay irrespective of race or sex and freedom of choice of work was extended to all rural and unskilled urban workers through the Code of Rural Labor. The Code also provides for free housing, food and transportation for rural workers; compulsory accident and illness insurance; collective bargaining; eight hour work day and 48 hour work week; and precludes labor for children under 14 years of age (16 years in some occupations) and six hour work day for

112. ABSHIRE & SAMMUELS, *supra* note 40, at 166-167; see generally A. WILENSKY, *TRENDS IN PORTUGUESE OVERSEAS LEGISLATION FOR AFRICA* (F. Holliday transl. 1971).

113. ILO, OFFICIAL BULL., XLV, No. 2, Supp. II at 231-234 (April 1962). The commission, composed of high court justices from Senegal, Switzerland and Uruguay reviewed documented evidence and made on-the-spot investigations traveling 9,000 kilometers through Angola and Mozambique by an unannounced itinerary.

114. G.A. Res. 2184, 21 U.N. GAOR, U.N. Doc. A/6554 (1966).

115. U.N. Doc. E/L.1403 (1970).

116. ABSHIRE & SAMMUELS, *supra* note 40, at 168-169.

children under 18 years of age. Penalties for violations are extensive.¹¹⁷

The emigration of native African labor to factories and mines in South Africa and Southern Rhodesia constitutes a special problem for Mozambique. Migration from the Lourenco Marques area has continued for over 100 years. The reason is simply economic. Wages in South Africa and Southern Rhodesia are significantly higher than in Mozambique.¹¹⁸ Immediate prohibition of labor emigration would cause severe economic hardship for a significant percentage of the black African population of Southern Mozambique. Recognized as a serious problem by Portugal, the situation is being alleviated by improved working opportunities and conditions, which have reduced the number of emigrants to 250,000 per year (of which approximately 100,000 are estimated to be illegal). Strong criminal sanctions exist to prohibit illegal labor emigration.¹¹⁹

V. THE UNITED NATIONS BOYCOTT

In 1965, the General Assembly proposed what was considered the final solution to Portuguese involvement in Africa. The Assembly adopted a Fourth Committee resolution whereby it: (1) constituted the Portuguese presence in Africa a "threat to international peace and security;" (2) recognized the legitimacy of the black nationalist "struggle" and "appealed" to all nations to cooperate with the Organization of African Unity to supply moral and material support; (3) condemned exportation of workers to South Africa; (4) urged all member states to sever or refrain from establishing diplomatic relations with Portugal; (5) urged the closure of sea ports to all Portuguese vessels and those in the service of Portugal; and (6) urged member states to prohibit their ships from entering ports in Portugal and its "colonial territories," and to boycott all trade with Portugal.¹²⁰

The General Assembly boycott of Portuguese trade, vessels and sea ports was, from the outset, unrealistic and a predictable failure. The Portuguese Overseas Provinces constitute international, geostrategic centers too important for many Western nations to boycott under contemporary circumstances. The Azores and Madeira islands, lying on the intercontinental air route, provide sites for a United States naval air station, outer space tracking facility and strategically important NATO projects. Cape Verde is a geostrategic point

117. *Id.* For English text see *Rural Labour Code for Portuguese Overseas Provinces*, 86 INT'L LAB. REV. 285-293 (1962).

118. ABSHIRE & SAMMUELS, *supra* note 40, at 173-174.

119. *Id.*

120. G.A. Res. 2107, 20 U.N. GAOR, U.N. Doc. A/6209 (1965). African nations gave serious consideration to economic sanctions against Portugal in early 1962. D. WATT, *SURVEY OF INTERNATIONAL AFFAIRS* 1962 492-493 (1970).

for air and shipping routes between Europe, Africa and South and North America. The Portuguese territories in Southern Africa provide an important transportation infrastructure for its neighbors and the international community. The railways and ports of Angola and Mozambique afford virtually the only access to the copper resources of central Africa and the landlocked nations of Zaire and Zambia.¹²¹ Approximately half of the United States importation of manganese ore, cobalt, uranium ore, natural gems, industrial diamonds and one-third of its chromite, platinum group metals and coffee come from nations dependant upon the transportation network in Angola and Mozambique.¹²² Portugal's fellow NATO members and a significant proportion of African nations were, understandably, unwilling to effect such a boycott.¹²³

The economic boycott having failed, the General Assembly continued procedures designed to deny Portugal access to United Nations agencies and other international organizations.¹²⁴ In 1964, African delegates walked out of the International Conference of Public Education and the U.N. Trade and Development Conference in Geneva. Later that year, Portugal was expelled from the U.N. Economic Commission for Africa, and the executive committee of UNESCO barred Portugal from the International Conference of Public Education and the International Conference on Illiteracy.¹²⁵ During 1965, the General Assembly recommended that the International Bank for Reconstruction and Development and the International Monetary Fund refuse Portugal financial, economic or technical assistance.¹²⁶ In 1966, the World Health Assembly suspended Portugal from participation in the Regional Committee for Africa.¹²⁷

VI. CONCLUSION

Societies exist in time more than in space. At any given moment a state is but a collection of individuals . . . But it achieves identity through the consciousness of a common history. This is the only 'experience' nations have . . . History is the memory of states.¹²⁸

The history of Portugal traces an involvement in Africa which dates from before the discovery of America.¹²⁹ From that time, Portu-

121. See generally Hance, *Three Economies*, AFRICA REPORT 23-30 (Nov. 1967).

122. OVERSEAS COMPANIES OF PORTUGAL, PORTUGAL: INFRASTRUCTURE 3 (1971).

123. The General Assembly vote was 66 to 26 with 15 abstentions.

124. ABSHIRE & SAMMUELS, *supra* note 40, at 383.

125. *Id.*

126. G.A. Res. 2107, 20 U.N. GAOR, U.N. Doc. A/6209 (1965).

127. WHO Press Release, WP/31, May 27, 1966, at 4.

128. H. KISSINGER, A WORLD RESTORED 331 (1964) [hereinafter cited as KISSINGER].

129. Cape Verde, 1469, S. Tome and Principe, 1470, Guinea, 1434, Angola, 1482 and Mozambique, 1489.

gal consolidated its national identity as a multi-racial, multi-cultural, transcontinental sovereignty. The debate in the United Nations concerning the international status and destiny of the Portuguese Overseas Provinces spans nearly two decades. Within five years from its admission to the United Nations, Portugal witnessed the dismemberment of that identity by passage of Resolution 1542 (XV) in the General Assembly. An act which, to obtain the acquiescence of Portugal, would have required the "amputation of [its] national memory."¹³⁰ If, during this time, Portugal is to be judged recalcitrant, its critics are equally guilty of gross distortion and rejection of a fundamental tenet of legitimate international settlement, namely that "diplomacy depends on persuasion and not imposition."¹³¹ Aside from whatever influence the internationalization of Portugal's policy may have had in the implementation of reforms in the Overseas Provinces, the primary achievement of United Nations action remains the collective legitimation of the insurgent movements and the anti-Portuguese foreign policy of its member nations.

Carl A. Anderson

130. The phrase is Aleksandr I. Solzhenitsyn's. *THE NOBEL LECTURE ON LITERATURE* 21 (T. Whitney transl. 1972).

131. *KISSINGER, supra* note 128, at 326.

