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APARTHEID SOUTH AFRICA: THE ILLEGITIMATE REGIME **

by

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The views expressed are those of the author.

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Introduction

(a) The development of the United Nations position on South Africa

United Nations concern with the racist policies of the apartheid régime in South Africa is of long standing, the General Assembly having first dealt in 1946 with complaints of racial discrimination against the people of Indian origin in South Africa. Since 1960, with the newly-independent States of Africa in the vanguard, the tenor of the Organization's response to the persistent, systematic and gross violations of national and human rights has undergone considerable changes. In the period from 1946 until 1960, the General Assembly was content to censure by repeated resolutions the policy of apartheid, notwithstanding South Africa's invocation of Article 2, paragraph 7, of the Charter of the United Nations concerned with domestic jurisdiction, in which South Africa was supported by the major Western countries. Since 1960, the Assembly and the Security Council have moved from general to specific resolutions requesting Member States to take separate and collective actions against the South Africa régime.

More than one hundred resolutions relating to apartheid have been passed. The fact that the apartheid régime has become more repressive and stronger over this period is due more to South Africa's principal allies in the West refusing to carry out these resolutions and, in particular, blocking the invocation of Chapter VII of the Charter, than to the inherent merit or relevance of these resolutions. Through these resolutions, the international community has recognized that the apartheid system and situation in South Africa are special cases, requiring exceptional responses both from the world body and from international law. This period has seen the development of new rules of international law and practice within the organs of the United Nations, reflecting the new balance in the political, economic and social forces within the world community which has evoked a grudging response from those States and commentators who had implicitly considered international law to be the preserve of the metropolitan and imperial powers.

The linking of racial equality with decolonization and self-determination, the development of the norm of non-discrimination, the acceptance of the principle of self-determination as a clear rule of international law, the recognition of apartheid as a crime against humanity under international law, the recognition of the legitimacy of all possible means of struggle by the oppressed people to overthrow apartheid and racialism, and the use of the rules of procedure of the General Assembly to refuse to acknowledge the right of the representatives of the racist régime to represent South Africa, are examples of the way in which the international community has dynamically attempted to isolate South Africa. Far from reflecting immaturity and lack of moderation on the part of the opponents of the racist régime, as alleged by some Member States of the United Nations, these examples show the strength and conviction of States who recognize that the apartheid system is not only a threat to international peace and security but also a direct threat to humanity itself because of the "herrenvolk" racist philosophy on which it is based.