

May 2020

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Recommended Citation

Randolph John Nogel, Human Rights and Uganda's Expulsion of Its Asian Minority, 3 Denv. J. Int'l L. & Pol'y 107 (1973).

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HUMAN RIGHTS AND UGANDA'S EXPULSION OF ITS ASIAN MINORITY

I. BACKGROUND

On August 5, 1972, Major General Idi Amin Dada Oumee ordered all Ugandans of Asian descent out of the country within three months, accusing them of "sabotaging the economy."¹ Most of the Asians are of Indian or Pakistani origin and have resided in Uganda for generations. They control 90 percent of Uganda's commerce and trade. They comprise 80 percent of the doctors, lawyers and teachers.²

Of the 309,000 Asians living in East Africa, over one-third are British subjects.³ These people have either preferred to remain British subjects because of the travel and educational advantages, or they have inadvertently forgotten to renounce their British citizenship.

Immediately after the expulsion decree was issued the British acknowledged "special responsibility" for the Asians in Uganda who held British passports.⁴ Noting Britain's moral and legal duty to absorb the ousted Asians, Sir Alec Douglas-Hume observed that

If these people were ever expelled we (the British Government) accepted an obligation to take them in. To go back on that would be to break the word solemnly given of successive British Governments. But it's not only a matter of the British Government's word. Under international law a state has a duty to accept those of its nationals who have nowhere else to go.⁵

Many of the Asians living in Uganda, however, claimed Ugandan citizenship. The government demanded that they furnish documentary evidence, such as a birth certificate or documents renouncing any previous citizenship, to substantiate their claim.⁶ The citizenship certificates of those Asians unable to do so were cancelled, and they became stateless.⁷

¹ N.Y. Times, Aug. 6, 1972, at 9, col. 1. Foreign Minister Kebeki claimed the Asians were charging exorbitant prices and illegally exporting funds from the country. N.Y. Times, Aug. 17, 1972, at 2, col. 7.

² N.Y. Times, Aug. 23, 1972, at 3, col. 1.

³ N.Y. Times, Aug. 29, 1972, at 8, col. 3.

⁴ N.Y. Times, Aug. 8, 1972, at 6, col. 1.

⁵ N.Y. Times, Sept. 1, 1972, at 3, col. 6.

⁶ N.Y. Times, Aug. 10, 1972, at 4, col. 4.

⁷ N.Y. Times, Aug. 12, 1972, at 3, col. 4. Also Britain's envoy to Uganda and European Economic Council Representative, Geoffrey Rippon, reported that citizenship papers were torn up at random by Ugandan officials. N.Y. Times, Aug. 13, 1972, at 8, col. 1.

Amin banned all air shipments of Asians' possessions for fear they would ship expensive goods instead of complying with currency regulations. Amin's minister of Commerce, Wilson Luteru, stated that the government would buy the property and sell it to Africans.⁸ No mention was made of the amount of reparation to be paid. The British reported that the first Ugandans arriving in Britain had been stripped of all their possessions. Army troops confiscated their remaining belongings as the expellees approached the airport to depart.⁹

The Asians were allowed 48 hours to leave the country after receiving exit papers. To insure compliance, Amin ordered a house to house search without warrant.¹⁰ The order authorized troops and prison officials to arrest any person suspected "on reasonable grounds of having committed or being about to commit an offense against property, a person or public order."¹¹

On September 14, Amin announced that any Asians left after November 8 would be put into camps by the army. Amin was later quoted by Ugandan radio as having no intention of extending this deadline;¹² however, he did express in a letter to U.N. Secretary-General Waldheim that "it is not my intention to treat or otherwise oppress any non-citizen Asian who might have failed to meet the deadline."¹³ This statement later proved to be untrue, and Asians were detained in camps after the departure date had expired.

II. HUMANITARIAN INTERVENTION AND ALIENS

The failure of traditional international law to provide mechanisms for protecting individual rights has often been noted. How these rights can be protected within the domestic sphere of a sovereign state remains a dilemma exemplified by the Ugandan situation.¹⁴

Basic to the protection of human rights is the doctrine of humanitarian intervention, which proposes that "each state has a legal duty to see that conditions prevailing within its own

⁸ N.Y. Times, Aug. 30, 1972, at 2, col. 5.

⁹ N.Y. Times, Oct. 7, 1972, at 8, col. 5. See also report in N.Y. Times, Sept. 30, 1972, at 3, col. 1.

¹⁰ Time, Oct. 16, 1972, at 34.

¹¹ N.Y. Times, Oct. 19, 1972, at 5, col. 1.

¹² N.Y. Times, Oct. 3, 1972, at 13, col. 1.

¹³ N.Y. Times, Oct. 5, 1972, at 13, col. 1.

¹⁴ Professor McDougal has expressed the belief that whatever values we summarize as "human rights," however narrowly or broadly, are with equal obviousness dependent upon "security" and all other values. McDougal and Bebr, *Human Rights in the United Nations*, 58 AM. J. INT'L. L. 607 (1964) [hereinafter cited as McDougal and Bebr].

territory do not menace international peace and order, and [that] to this end it must treat its own populace in a way which will not violate the dictates of humanity and justice or shock the conscience of mankind."¹⁵ Although its original purpose was to protect individuals and groups from their own state, the doctrine has been expanded to sanction the use of external force "in cases in which a State maltreats its subjects,"¹⁶ and to "require of each state a minimum protection of all inhabitants of its territory."¹⁷

A denial of justice allows an international claim of a violation of human rights, or "some unlawful violation of the rights of an alien."¹⁸ Interestingly, international law has developed more complex protection for aliens than for citizens.¹⁹ Professor Lauterpacht has noted:

Although international law does not at present recognize, apart from treaty, any fundamental rights of the individual protected by international society as against the state of which he is a national, it does acknowledge some of the principle fundamental rights of the individual in one particular sphere, namely, in respect of aliens . . . The result, which is somewhat paradoxical, is that the individual in his capacity as an alien enjoys a larger measure of protection by international law than in his character as the citizen of his own state.²⁰

There is substantial agreement that there is an "international standard of civilized justice" requiring local leaders to protect aliens crossing national and local boundaries.²¹ That standard would apply to the status of the Asians in Uganda. Since they have been deported as aliens, their rights in that country should have been interpreted accordingly by the international community. As long as a "vigorous minority,"²² however, demands that "equality of treatment" be the only international standard,²³ aliens will be offered the same small protection given to nationals.

III. HUMAN RIGHTS AND THE UNITED NATIONS CHARTER

Article 55(c) of the United Nations Charter states that "the United Nations shall promote . . . universal respect for,

¹⁵ 38 AM. J. INT'L. L. SUPP. 41-135 (1944); cited in McDougal and Bebr.

¹⁶ H. LAUTERPACHT, INTERNATIONAL LAW AND HUMAN 32 (1950).

¹⁷ AM. J. INT'L. L. SUPP., *supra* note 15.

¹⁸ BORCHARD, THE DIPLOMATIC PROTECTION OF CITIZENS ABROAD, *passim* (1915).

¹⁹ AM. J. INT'L. L. SUPP., *supra* note 15, at 609.

²⁰ LAUTERPACHT, *supra* note 16, at 121.

²¹ BORCHARD, *supra* note 18, at intro. See also McDougal and Bebr at 610.

²² AM. J. INT'L. L. SUPP., *supra* note 15, at 610.

²³ J. ROTH, MINIMUM STANDARD OF INTERNATIONAL LAW APPLIED TO ALIENS 23 (1949); see also C. DUNN, THE PROTECTION OF NATIONALS 47 (1931).

and observance of, human rights and fundamental freedoms for all . . ." Article 56 adds: "All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."²⁴

The two provisions taken together have been interpreted to create definite legal obligations. But since the legal obligation is very general, the U.N. has supplemented the Charter by adopting covenants which provide more substantive content and outline some specific enforcement procedures. Additionally, the Universal Declaration of Human Rights²⁵ has given comprehensive substance to human rights. While the Declaration is not a legal instrument, some of its provisions expound general principles of law. Perhaps its greatest significance is that it provides an authoritative guide to the interpretation of the provisions in the Charter.²⁶

In most instances however, the U.N. has not been able to do much about actual violations of human rights and, in fact, has frequently ignored them. There exists, consequently, no generally applicable and systematic international procedures or institutional machinery for receiving and investigating complaints for individual petitioners.

The first step in giving the individual substantial remedies for violations of human rights is to recognize him as a subject of international law. One is a subject of international law when he has "rights under international rules of conduct which he can enforce by seeking relief before a tribunal, whether or not domestic law would enforce such a right."²⁷

Professor McDougal aptly describes the protection of the individual through the state of nationality as a "fiction": the wrong done to the individual is a wrong done to the national state and international law imposes no duty on the nation state

²⁴ United Nations Charter, set forth at 59 Stat. 1031, T.S. No. 993. See also Articles 62, 68 & 76 for further provisions on human rights. Two cases point out that when private individuals tried to invoke Articles 55 and 56 in a domestic setting, relief was denied because the Charter was interpreted as not being a "self-executing" treaty, and, therefore, not binding on private citizens of the United States without some domestic legislation. See *Fujui v. State*, 38 Cal. 2d 718, 242 P.2d 617 (1952), and *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 245 Iowa 147, 60 N.W.2d 110 (1953).

²⁵ U.N. Doc. No. A/811 (1948).

²⁶ Waldock, *General Course on Public International Law*, 106 RECUEIL DES COURS 5, 198-99 (1962). See, e.g., Nanda, *A Critique of the United Nations Inaction in the Bangladesh Crisis*, 49 DENVER L.J. 53 (1972).

²⁷ Tucker, *Has the Individual Become a Subject of International Law?*, 34 U. OF CIN. L. REV. 345 (1965).

to prosecute such claims.²⁸

Thus, rights of the individual have not been widely recognized. Indeed, only the European Court of Human Rights grants the right of "individual petition."²⁹ Ugandan Asians, therefore, must qualify under other international provisions, not as individuals seeking petition, but as racial minorities appealing to other mechanisms for protection of their rights as aliens.

IV. REGIONAL SOLUTION

The eradication of colonialism, of racial discrimination and of apartheid are issues on which African leaders have always stood firmly united, and along these lines a regional solution may be found to situations like Uganda's.³⁰ The Resolution on Apartheid and Racial Discrimination expresses "the unanimous conviction of the imperious and urgent necessity of coordinating and intensifying efforts to put an end to the South African Government's criminal policy of apartheid and wipe out racial discrimination in all its forms."³¹

The Organization of African Unity Charter³² provides that by adherence to the U.N. Charter and the Universal Declaration of Human Rights, "the Heads of State and Government set forth a code of behavior for African States in their mutual relationship, elaborated in Article 3 of the Charter and based on respect for sovereignty and territorial integrity in inter-African affairs."³³ It should be noted that nowhere in the O.A.U. Charter is it stated that certain purposes are primary, and that, by exclusion, others are secondary.³⁴

Regional arrangements in Africa have already been initiated. In 1961 in Lagos a conference, organized by the International Commission of Jurists, created the "Law of Lagos" which states that a proposed convention should provide for "the creation of a court of appropriate jurisdiction and that recourse thereto should be made available to all persons under the jurisdiction of the signatory state."³⁵

As the European experience has shown, standards and approaches that entail relatively minimum obligations can be gradually expanded as fears of abuses lessen. On a local level,

²⁸ AM. J. INT'L. SUPP., *supra* note 15, at 610.

²⁹ 2 Y.B. EUR. CONV. ON HUMAN RIGHTS 174 (1957-58).

³⁰ J. CERVENKA, THE ORGANIZATION OF AFRICAN UNITY AND ITS CHARTER 1 (1965).

³¹ Vol. I of the *Proceedings of the Summit Conference of the Heads of State and Government* held at Adidas Ababa in May 1963, published by the Provisional Secretariat at Adidas Ababa.

³² *Id.*, sec. 1, at 1-7 (separately paged).

a small number of nations may closely control protocols, liberal reservation clauses and optional clauses, and so increase their confidence in such instruments.

As confidence increases in a regional instrument, the states' desire to have aliens exhaust its local remedies rule would decrease. The local remedies rule, which has traditionally required that the claimant exhaust all local remedies that were effective, would be modified allowing appeal to a regional body attuned to state as well as regional problems.

V. THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

One of the first formal efforts to prevent racial discrimination against minorities like the Ugandan Asians was Article 36 of the text prepared by the Drafting Committee of the Human Rights Commission.³⁶ It was not a strong text: While it recognized that persons belonging to racial, linguistic and religious minorities "shall have the right *as far as compatible with public order* to establish and maintain their schools and cultural or religious institutions and to use their language in the Press, in public assembly and before the Courts and other authorities,"³⁷ it did not put any obligation on governments to assist such minorities financially. It also limited protection to a interpretation of public order to be determined by the local authorities.³⁸

Since then much has been done by the U.N. Subcommission on the Prevention of Discrimination and Protection of Minorities. In fact, there has been no issue with which the U.N. has been more concerned than that of racial discrimination. The U.N. has made "detailed studies" regarding the existence and status of recognized minorities in various states and the legislative measures taken by these states for their protection.³⁹

Still, it was not until the International Convention on the Elimination of All Forms of Racial Discrimination was adopted

³³ *Id.*

³⁴ PROCEEDINGS OF THE SUMMIT CONFERENCE OF THE HEADS OF STATE AND GOVERNMENT, *supra* note 30, at 32.

³⁵ See International Commission of Jurists, *African Conference on the Rule of Law*, Lagos, Nigeria (Jan. 3-7, 1961), at 11. Cited in Nanda, *Implementation of Human Rights—Steps Taken by the United Nations and Regional Organizations*, 21 DEPAUL L. REV. 307, 332 (1971).

³⁶ 1947 U.N. Yearbook on Human Rights 499, 502.

³⁷ *Id.* Emphasis added.

³⁸ Humphrey, *The United Nations Subcommission on the Prevention of Discrimination and the Protection of Minorities*, 62 AM. J. INT'L. L. 872 (1968).

³⁹ *Id.* at 873.

that minorities were afforded some substantive protection.⁴⁰ Article 1(1) provides that

in this Convention the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

The systematic elimination of all persons of Asian descent from the Ugandan social, political, cultural and economic experience clearly comes within this definition. Additionally, the reasons articulated in Amin's expulsion order suggest a racial basis for the expulsion, even though such a basis was expressly denied therein.⁴¹

Within this definition the rights to which prohibition of discrimination apply are very broad: it covers discrimination in regard to "human rights and fundamental freedoms in the political, social, cultural or any other field of public life."⁴² As Professor Schwelb has noted: "For the practical purposes of the interpretation of the Convention of 1965 the three terms 'descent', 'national origin' and 'ethnic origin' among them cover distinctions both on the ground of present or previous 'nationality' in the ethnographical sense and on the ground of *previous* nationality in the 'politico-legal' sense of citizenship (emphasis added)."⁴³ Thus, the "nationality" of the Ugandan Asians does include them within the definitional protection of this Convention, regardless of their historic entry into Uganda.

Paragraph 2 of Article 1 points out that exclusions of or restrictions upon aliens *qua* aliens are not prohibited by the Convention. The Convention does not necessarily prohibit distinctions based on whether a person is, or is not, a citizen. Amin's action has not excluded Ugandan citizens and *de facto* appears to have been based on a citizen/non-citizen standard. However, this interpretation ignores the rationale for expulsion of the Asians, which was based not on this standard but on a purely racial distinction which singled out one minority be-

⁴⁰ Annex to General Assembly resolution 2106A (XX), 1406th plenary meeting, Dec. 21, 1965, General Assembly Official Records: Twentieth Session, Supplement No. 14 (A/6014) at 47 [hereinafter cited as Annex]. For a complete study of the Convention, see Schwelb, *The International Convention on the Elimination of All Forms of Racial Discrimination*, 15 INT'L. & COMP. L. Q. 996 [hereinafter cited as SCHWELB].

⁴¹ 11 INT'L. LEGAL MATERIALS 1191 (1972). See also 5 N.Y.U. J. OF INT'L. LAW AND POLITICS 603 (1972).

⁴² ANNEX, *supra* note 40, at 1103.

⁴³ ANNEX, *supra* note 40, at 1007.

cause of its economic wealth. If the former standard had been used by Amin, all Europeans living in Uganda should have been treated in the same manner.

Part II of the Convention provides for the use of mechanisms for the elimination of racial discrimination and the rights implicit therein. In particular, the Convention provides for an international "Committee on the Elimination of Racial Discrimination" (Arts. 8 and 10), for a reporting system in which State Parties undertake to cooperate (Art. 9), for interstate complaints through the Committee and through "ad hoc Conciliation Commissions" (Arts. 11 and 13), for the Committee to receive individual petitions (Art. 14), and for a *sui generis* procedure which will consider parties relating to non-self-governing territories (Art. 15). Lastly, the Convention provides for adjudication to the International Court of Justice with respect to interpretation or application of the Convention (Art. 22 of Part III). From this Convention and its ratification, therefore, comes the most efficacious means of protecting individuals in situations like Uganda's. As Professor Schwelb has pointed out, the Convention is not only the most "comprehensive and unambiguous codification in treaty form on the equality of the races."⁴⁴ but it is also the best mechanism for protecting individual rights now in existence.

VI. STATE RESPONSIBILITY

State Responsibility is the principle in international law holding that a state is responsible for its conduct and may be held to account for wrongdoing.⁴⁵ The need to concentrate study on the determination of the principles which govern the responsibility of states for international protection of human rights is great, but is too complex a concept to deal with in depth here.

African states, much like Asian states, are critical of the customary legal principle of state responsibility:

They believe that such a principle was established against their basic interests as sovereign states; that it is outmoded since it is basically a European principle; that aliens should not receive better or worse treatment than the nationals of a state; that admission of aliens should be at the complete discretion of the receiving state alone; and that the receiving state is permitted absolute discretion in prohibiting or restricting the participation of aliens in professions and other forms of gainful employment.⁴⁶

⁴⁴ ANNEX, *supra* note 40, at 1057.

⁴⁵ U.N. Doc. A/CN.4/233 at 179.

⁴⁶ C. RHYNE, INTERNATIONAL LAW 32 (1971).

Procedurally, to invoke the theory of state responsibility against the recent actions of the Ugandan Government, there must first be shown a violation of international law: "There can be no question of a State's international responsibility unless it can be proved that the State has violated one of the international obligations incumbent upon States under international law."⁴⁷ Additionally, under international law and apart from any convention or treaty, to invoke state responsibility, "it is necessary that an unlawful international act be imputed to a State, that is, that there exist *a violation of a duty imposed by an international juridical standard.*"⁴⁸

Since violations of international law in Uganda have been confirmed both under international convention and under customary law, it is necessary to consider what acts perpetrated there can actually be considered state conduct. Clearly, public officials acting in their mandated capacity perform duties for which the highest authority and the state must be responsible.⁴⁹ Hence, the violations herein cited do come within the state responsibility of Uganda.

VII. CONCLUSION

International protection of individuals in situations like that of Ugandan Asians has been given effect through the concept of humanitarian intervention and through formal documents yet unratified. However, actual protection of individuals does not exist now, nor appear to exist in the near future. Only through conventions like the 1965 Convention on the Elimination of All Forms of Racial Discrimination can these people come within international jurisdiction. State responsibility is still a concept, far from being finalized, and remains dependent on varying interpretations of international obligations.

What is needed for the future are flexible techniques such as optional clauses and liberal reservation clauses which can gradually change relatively minimal obligations into effective international instruments. How and when these instruments will come into existence is related to the willingness of the international community to reassess existing procedures and to experiment with new ideas.

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⁴⁷ U.N. Doc. A/CN.4/233, at para. 33.

⁴⁸ *Id.* at para. 42.

⁴⁹ *Id.* at para. 36. See also 2 Y.B. INT'L. L. COMM'N. 225, U.N. Doc. A/CN.4/496, annex 3 (1956).

