

THE U.N. CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION, by Natan Lerner, Alphen aad den Rijn: Sijthoff & Noorrdhoff 1980, pp. xvii and 258, \$37.50.

At a time when Canada is concerned with the possible entrenchment of a Charter of Rights forbidding discrimination and the United Kingdom is being accused of introducing or propagating discrimination with the introduction of its new Nationality Bill, it is apt that we be reminded that both are among the more than one hundred states which have become parties to the *U.N. Convention on the Elimination of all Forms of Racial Discrimination*. This Convention, adopted by the General Assembly of the United Nations in December 1965 and opened for signature in March 1966, was ratified by Canada in October 1970.

Dr. Lerner's monograph provides a useful account of the history and purpose of this Convention, explaining how each article came to be finalized in the terms in which it is expressed, and indicating the interrelationship of the various parts of each article. Not only does he explain this interrelationship, but he also points out the manner in which parts of specific articles are interdependent with those of other provisions of the Convention. For example, the issue of "favourable discrimination" appears as an exception to the definition of racial discrimination spelled out in Article 1, and appears again in the enumeration of the obligations of states in Article 2. One of the criticisms that is occasionally made of the Convention is the fact that it makes no reference to anti-Semitism, even though this was to some extent the reason for interest being aroused in this aspect of human rights in the first place. Article 3 is concerned with racial segregation and specifically condemns *apartheid*. On this, the learned author comments at page 43:

The fact that *apartheid* is specially condemned by the Convention, while nazism, as well as anti-Semitism, are not specifically mentioned, should not be considered a consequence of a substantial difference among these forms of racial discrimination, but rather as a consequence of political and other considerations of the majority of States Members of the United Nations. *Apartheid* violates every accepted concept of fundamental rights and the rule of law as set out in the Charter of the United Nations and the Universal Declaration of Human Rights. But so do nazism and anti-Semitism. Once it has been decided to single out one form of racial discrimination, the juridical logic demanded a similar treatment for other equally abhorrent forms which have resulted in no less tragic consequences.

The revival of anti-Semitic propaganda in various parts of the world and the resurrection of neo-nazism in the western world give added point to Dr. Lerner's criticism. Even so, it is important to note that the official reason given for this omission is that the problem of religious discrimination is to be dealt with separately, an undertaking that the United Nations seems to have conveniently forgotten.

Much of the volume is taken up with an account of the work of the United Nations Committee on the Elimination of Racial Discrimination established in accordance with Article 10 of the Convention, with particular attention paid to such issues as Southern Rhodesia and Namibia. This Committee has had much to do with calling upon the United Nations to apply sanctions against South Africa and other foreign administered territories. Perhaps more interesting, however, is the description of the Committee's attitude toward "occupied or *de facto* controlled territories". Those territories examined include the Panama Canal Zone — an area of interest that may now be purely historical unless the Reagan

administration revokes the Panama Treaties — the Golan Heights, the West Bank, Sinai and Cyprus. Dr. Lerner points out that the Committee may be criticized with respect to all of these issues in that it tended to accept a complainant state's accusations without proper analytical examination. At the same time, it overlooked the extent to which the Middle Eastern issues were matters of the law of war, while Panama and Cyprus involved issues which were political by their very nature; none of them being truly questions of racial discrimination. Such an approach is perhaps not surprising if one bears in mind that its membership has comprised eleven countries from Africa and Asia, six from Communist states, four from Latin America and eight from the rest of the world including Western Europe. However, while there have been some instances of confrontation,

... in view of the variety of geographic areas and political systems to which the members of the Committee belong, it should be stressed that the work of the Committee was remarkably harmonious. The reports to the General Assembly, and the summary records released for general circulation show that even those debates in which conflicting political or philosophical views were expressed seldom acquired the tones frequent in other international bodies. (p. 152)

The learned author points out that the value and importance of a convention like that against racial discrimination may be measured on both the national and the international level, and he suggests that given both standards of measurement "the record of [the] Convention on Racial Discrimination seems to be reasonably satisfactory" (p. 165). One might inquire, however, whether minority groups would in fact agree with this assessment.

With regard to Canada, he comments favourably upon the 1977 Human Rights Act and the establishment of the Human Rights Commission, but there is no comment as to the effect of provincial human rights legislation on racial discrimination. The sole reference to the attitude of the U.N. Committee towards Canada's record indicates that during discussion of Canada's third report, there was criticism of the effectiveness of the anti-hate legislation regarding the suppression of racial superiority concepts. Apart from that, "the Committee took note with appreciation of the information provided" (p. 173).

Apparently a somewhat different approach was taken towards Bulgaria. Dr. Lerner mentions no criticism of that country by the Committee, which found that one of the reports submitted by that government "demonstrated the influence of the Convention on the development of domestic legislation in a State Party" (p. 172). It would seem that the Committee has been equally lacking in criticism of the Soviet Union.

While Dr. Lerner recognizes that a ten-year period is somewhat short for assessing the value of a convention of this character, he feels that on the whole its achievements have been positive. The Convention has been ratified by some two-thirds of the world community, numerous national legal systems have been amended to criminalize racial discrimination and courts have been enforcing it. By and large the reporting system has worked with states submitting periodic accounts of their home situation. Dr. Lerner comments that:

... the implementation machinery has worked effectively as far as the reporting system is concerned. The Committee has scrutinized the implementation of the Convention in a thorough way, to the point that sometimes its detailed examination has even been called inquisitorial. Some of the decisions taken by [the committee] have been criticized, especially those in which political

elements have been present; but on the whole, its role has generally been seen as an effective contribution to the struggle against racial discrimination. (p. 212)

With the world so ideologically divided, it is probably inevitable that a Convention against Racial Discrimination is bound to be affected by political rivalries. Some might argue that in view of this and the potential for biased approaches, it might be as well not to adopt such documents or to cooperate with their agencies when established. Dr. Lerner's analysis of the *U.N. Convention on the Elimination of all Forms of Racial Discrimination* indicates that in spite of its comparatively small scale, with its influence restricted to those countries which really wish to cooperate and give effect to the principles embodied within it, such an instrument may make a real contribution to uplifting the dignity and equality of man.

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