

CHAPTER XI (I.E. ARTICLES 73 & 74)
OF THE UNITED NATIONS CHARTER
AND A SELF GOVERNING TRANSKEI

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Sir de Villiers Graaff has raised the question of whether the according of self-government to the Transkei will not bring this territory within the purview of Article 73 of the United Nations Charter and thus enable the United Nations to demand reports on the territory from the South African Government.

Article 73 deals with Non-self-governing Territories and it is anomalous that according "self-government" may bring a territory into this category but the contradiction is really one of words only. A territory may well be looked on as self-governing from the point of view of the parent power and as non-self-governing from the point of view of the outside world. Nigeria, for example, enjoyed a very large measure of self-government before independence but the British Government treated it as falling within Article 73 and reported on Nigeria to the United Nations.

Whether the Transkei will be a territory falling within Article 73 can best be considered by trying to fix limits beyond which the Article clearly has no application. On the one hand a territory may be an integral constitutional part of the metropolitan country to such an extent that no question arises of its being a separate territory whether self-governing, non-self-governing or otherwise. Such are the constituent parts of the United Kingdom. In that case England, Scotland and Wales are far removed from the meaning of Article 73; Northern Ireland is nearer to it and it could quite plausibly be argued that the Channel Isles should come within its terms.

On the other hand there are territories which have such complete independence that they are taken out of Article 73 in what may be termed the opposite direction. The extreme case is the fully sovereign state. Less certain is the status of territories having a large degree of internal self-government and it is significant that Britain has not submitted reports to the United Nations on Southern Rhodesia while doing so on Nyasaland and Northern Rhodesia.

Since, however, the Transkei will be changing its status from one of integration with the Republic of South Africa to one of self-government in some degree, it is only the first of the limits described above that needs concern us. Unfortunately the history of the United Nations does not provide any precedents for a sovereign state granting self-government to a part of its metropolitan territory. There is of course the case of Algeria which was claimed by France to be part of the French Republic divided into departements no different from those of metropolitan France. But this claim was never accepted by the outside world and furthermore it seems clear that there the change will be from integration to independence and not to limited self-government. Algeria does not, therefore, provide a useful analogy.

The Portuguese overseas possessions are of interest since Portugal has consistently claimed that as they are integral parts of Portugal they do not fall within Article 73 of the Charter. This claim has never been acceptable to the great majority of United Nations members and time and again Portugal has been called on to report on these territories. This demand culminated at the last session of the General Assembly in the setting up of a special committee to investigate conditions in Portuguese overseas territories (Resolution 1699 XVI).

There are also the instructive cases of Alaska and Puerto Rico. These were territories on which the United States Government transmitted information to the United Nations. On their achieving a new status vis-a-vis the United States (Alaska as a state and Puerto Rico as a closely associated commonwealth) the United Nations General Assembly agreed that the transmission of this information should cease. The resolution regarding Puerto Rico makes it clear that the General Assembly approved the course taken by the United States and Puerto Rico as it was considered that "when choosing their constitutional and international status, the people of the Commonwealth of Puerto Rico have effectively exercised their right to self-determination". (U.N. Resolution 748 (VIII) 27th November, 1953.

Nevertheless since the cases of Alaska and Puerto Rico are of territories moving away from the status of "non-self-governing territory" they throw little light on the case of the Transkei which will be moving away from integration with the Republic towards that status.

Little help can therefore be had from United Nations precedent. But on 27th November, 1953, the United Nations General Assembly passed a resolution entitled Factors which should be taken into account in deciding whether a Territory is or is not a Territory whose people have not yet attained a full measure of self-government.

It might be expected that the resolution would provide the answer as to the position of the Transkei but in fact the resolution deals only with "determining whether any Territory, due to changes in its constitutional status is or is no longer within the scope of Chapter XI of the Charter in order that a decision may be taken by the General Assembly on the continuation or cessation of the transmission of information required by Chapter XI of the Charter", (para 3). Nowhere in this resolution is consideration given to the question of when the transmission of information becomes necessary in respect of territories previously integrated in a member state.

Nor do commentators on this chapter of the Charter help us to any extent as they do not appear to have considered the possibility of a section of the metropolitan territory of a member state being granted self-government and set on the road to eventual independence. Goodrich "The United Nations" Stevens - London 1960, deals with which countries are non-self-governing on page 307 but considers only the question of an administering power claiming that a particular territory had achieved a full measure of self-government even though the facts might not support this contention. Boyd "The U.N.O. Handbook" - Pilot Press, London 1946, considers the question of defining non-self-governing territories but concludes that definition is impossible and that "the only test left to us is that of general opinion".

From what has been said it will be clear that there is no simple way of determining whether the Transkei could be considered to fall within Article 73 of the Charter when it has been granted self-government, but it is also clear that this danger will exist once the safety of integration in the Republic is abandoned.

Members of the United Nations will be ready to quote Dr. Verwoerd's own words in his broadcast on 23rd January, 1962, when he said "I have just announced in Parliament details of the granting of self-government to the Transkei. The Transkei is the first Bantu homeland which has approached the Government of the Republic to aid

it by means of this great step on the road to independence for which - in its final form - it rightly feels itself not ready." The reference to self-government in the first sentence takes the Transkei out of the protection of integration in the Republic while the reference to future independence shows the path on which it is set and that it will not for some time be able to claim to have progressed beyond being a "non-self-governing territory". One is thus forced to the conclusion that it falls fairly within the scope of Article 73.

In practise this will probably not mean a great deal. South Africa can refuse to agree that Article 73 is applicable to the Transkei and the most that could happen is that action similar to that taken against Portugal might result. This would not be particularly grave but it would mean that South Africa's opponents had been given another weapon to use against her at the United Nations and it could well be a continuing embarrassment as plans for the Transkei develop.

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G.G.L.

The above short note has been prepared to indicate the nature of the problem to which Sir de Villiers Graaff has drawn attention. Further study would require lengthy research into the records of the United Nations debates. It appears that the subject of what constitutes a non-self-governing territory has been treated most fully by Robert E. Asher and Associates "The United Nations and Promotion of the General Welfare" (Washington: The Brookings Institution, 1957) but this work is not available at the time of writing.