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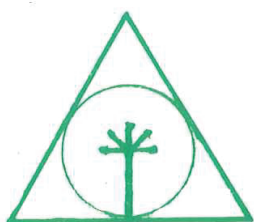
Volume 1

Summer 1988

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Publication of The International
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Publication de l'Association Internationale
des Juristes Africains

SOUTH AFRICA: BETRAYAL OF A COLONISED PEOPLE

– Issues of International Human Rights Law

By S. E. M. Pheko



CHAPTER 9

An Act to constitute the Union of South Africa

[20th September 1909.]

WHEREAS it is desirable for the welfare and future progress of South Africa that the several British Colonies therein should be united under one Government in a legislative union under the Crown of Great Britain and Ireland:

And whereas it is expedient to make provision for the union of the Colonies of the Cape of Good Hope, Natal, the Transvaal, and the Orange River Colony on terms and conditions to which they have agreed by resolution of their respective Parliaments, and to define the executive, legislative, and judicial powers to be exercised in the government of the Union:

And whereas it is expedient to make provision for the establishment of provinces with powers of legislation and administration in local matters and in such other matters as may be specially reserved for provincial legislation and administration:

And whereas it is expedient to provide for the factual admission into the Union or transfer to the Union of such parts of South Africa as are not originally included therein:

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the South Africa Act, 1909.

....
44. The qualifications of a member of the House of Assembly shall be as follows:—

He must—

....

(c) be a British subject of European descent.

Qualifications
of members of
House of
Assembly.

S. E. M. Pheko holds a B.A. degree from the University of South Africa majoring in political science and systematic theology and reading history; an LL.B. degree from the University of Zambia and an LL.M. degree from the London University. The author has practised law and is an Advocate of the High Court for Zambia. This book is based on a research that is to be a partial fulfilment for a Doctor of Jurisprudence degree with an American university.

The author has presented papers and debated in various sessions of the United Nations Working Group and Sub-Commission. He has attended many conferences on a wide variety of subjects including law, history, literature and theology. He is a holder of a D.Th. degree. He has travelled widely in Western Europe, U.S.A., Asia and Africa. He has contributed articles to various Law Journals as well as writing books and articles for several publishers.

Some extracts from his current book are:

The Union of South Africa Act 1909

The Westminster Statute 1931

The Colonial Laws Validity Act 1865

The Berlin General Act 26 February 1885

The League of Nations Covenant Article I(2)

The Southern Rhodesia Constitution – Letters

Patent Providing for a Responsible

Government in the Colony of Southern Rhodesia 1923

International Convention on the Suppression and Punishment of the Crime of Apartheid 1973

The Nuremburg International Military Tribunal Articles 6 and 8

– all discussed in relation to South Africa.

‘... nothing but a strong Federal Government which unites within itself all the European races in South Africa can permanently maintain peace in this country ... and free Great Britain from constant anxiety for the peace of her possessions here.’

‘... a vote would be taken on this matter, so that the people should be able to see who were prepared to make South Africa a Whiteman’s country ... to assure South Africa that they were all in earnest when they said, “this shall be a Whiteman’s country”.’

‘No, ... the captains of your commandos are no Christians, for I shall never believe that Christianity consists in carrying away women and children into captivity, in shooting down old and sick people.’

‘The apartheid regime is illegitimate and has no right to represent the people of Azania (South Africa). Such a regime is the by-product of a white settler minority in 1910. The recognition of South Africa as a sovereign independent state has impeded the struggle for liberation in South Africa.’

‘The Zimbabwe guerrillas were fighting for national liberation and not against apartheid. They were fighting for self-determination, independence and liberty. In South Africa the ANC is carrying a fight for civil rights and not an armed struggle for national liberation.’

‘We accept many tenets of international law. ... But the tenet which is quoted in support of colonial powers having sovereign rights over territories which they won by conquest in Asia and Africa is no longer acceptable. It is the European concept. It must die. It is time, in the twentieth century that it died.’

Terra nullius res nullius?

Nemo dat quod non habet

Pacta tertiis nec nocent nec prosunt