

LEGALISTIC CYNICISM

Jan C. Heunis: **The Coventry Four**; Perskor, Johannesburg, Cape Town, 1985, R9,95

This book recounts the story of the arrest in 1984 of four Armscor employees in Britain on charges of smuggling military equipment to South Africa and how they were eventually "freed" by a decision of the South African government not to return them. This decision was justified as a lawful reprisal, resulting from a failure by the British government to evict six refugees who sought to escape the effect of a ministerial banning order by seeking refuge in the British Consulate in Durban.

Dr Heunis, at the time Law Adviser to the Department of Foreign Affairs (he is now Chief Legal Adviser to the State President), was intimately involved in this affair. ("I was sorely tempted to write in the first person".) He is aware of the implications of this for the objectivity of his account, but is quite frank about his feelings: "They became my friends and I consider them to be decent, hard working and honest South Africans who have had to suffer the humiliating experience of being jailed and the traumatic prospect of being separated from their families for a long period of time — all because of the existence of United Kingdom legislation that was founded in sin in that it incorporated into British legislation the contents of an unlawful mandatory arms embargo of the Security Council of the United Nations against South Africa".

This reflects the legalistic interpretation given to principles of International Law in defending South Africa's position in general. What it boils down to is a denial that South Africa's internal policies are at the heart of our international dilemma. According to this approach there exists an absolute prohibition on interference in the domestic affairs of another country. Thus the substance of the issue is simply not to be discussed. Needless to say, gross violations of human rights are not considered a purely domestic issue any more. It should also be recalled that the UN arms embargo was adopted in the wake of the 1976 Soweto riots and the death of Steve Biko.

Arguments about formal legal aspects constitute the bulk of the book. The basic contention is that the decision not to return the four was a lawful reprisal in response to a

prior illegal act by the British government. It should be pointed out that the British had granted "temporary refuge" and not asylum. A study of the **travaux préparatoires** of the International Law Commission's work for the Vienna Convention on Consular Relations will reveal no prohibition with respect to that. A more fundamental criticism is the purpose for which reprisals are to be used. They are exceptional measures of last resort, permitted only in the context of the peaceful settlement of disputes. In other words — the moment the six had left the Consulate, the Coventry Four had to be returned. That would have been a correct application of the concept had the real purpose been the solving of the problem with respect to the presence of the six in the Consulate. Our Minister of Foreign Affairs modified the rules slightly when he stated, immediately after the South African decision, that the four would not be returned, even if the six were turned over to the police. Both countries had had their "pound of flesh" and the matter was viewed as closed.

The inescapable conclusion remains — the purpose was never to solve a relatively minor problem about the refuge of six political activists, but to find a pretext for not honouring a commitment to another country. This inference is supported by additional evidence such as the haste with which the matter was conducted. (The decision was simply announced an hour after the final **aide memoire** to the British government was delivered).

Such a use of the law will only result in cynicism. The effect will be the exact opposite of what is demanded, namely less preparedness to play according to the rules when dealing with South Africa. In the end the ordinary South African will fail even more to understand our international problems. The few friends we have left in the international community will be less inclined to take us at our word.

Finally, one wonders about the relevance of the cover design for the subject matter of the book. Or is the picture of the launching of a missile from a fighter aircraft in flight simply the ultimate gesture of derision? □