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IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON THE SUPPRESSION
AND PUNISHMENT OF THE CRIME OF APARTHEID

Report of the Group of Three established under the Convention

Chairman/Rapporteur: Mr. Boudjemâa Delmi (Algeria)

I. INTRODUCTION

1. The International Convention on the Suppression and Punishment of the Crime of Apartheid, which was adopted by the General Assembly in resolution 3068 (XXVIII) of 30 November 1973, entered into force on 18 July 1976, on the thirtieth day after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession. As at 31 December 1986, there were 85 States parties to the Convention (see E/CN.4/1987/26, annex I).

2. Under article VII of the Convention, the States parties undertake to submit periodic reports to the Group established under article IX on the legislative, judicial, administrative or other measures that they have adopted and that give effect to the provisions of the Convention.

3. In accordance with article IX of the Convention, the Chairman of the Commission on Human Rights is authorized to appoint a group consisting of three members of the Commission, who are also representatives of States parties to the Convention, to consider reports submitted by States parties in accordance with article VII. The group may meet for a period of not more than

five days, either before the opening or after the closing of the session of the Commission, to consider the reports submitted in accordance with article VII.

4. In accordance with article IX of the Convention and General Assembly resolution 31/80, the Chairman of the forty-second session of the Commission appointed the representatives of Algeria, Nicaragua and Sri Lanka as members of the Group.

5. By its resolution 1986/7 of 28 February 1986, the Commission decided, inter alia, that the Group of three members of the Commission appointed in accordance with article IX of the Convention should meet for a period of no more than five days before the forty-third session of the Commission to consider the reports submitted by States parties in accordance with article VII, commended those States parties that had submitted their reports, urged those States parties that had not yet done so to submit their reports as soon as possible, and reiterated its recommendation that States parties should take full account, when submitting their reports, of the guidelines laid down by the Group in 1978 concerning the form and contents of reports (see E/CN.4/1286, annex).

II. ORGANIZATION OF THE 1987 SESSION

A. Attendance

6. The Group held its tenth (1987) session at the United Nations Office at Geneva from 26 to 30 January 1987. The session was opened by the Deputy-Director of the Centre for Human Rights. The Group's membership for the session was as follows:

Algeria	Mr. Boudjemâa Delmi
Nicaragua	Mr. Norman Miranda Castillo
Sri Lanka	Mr. Bernard A.B. Goonetilleke

B. Election of officers

7. At its meeting held on 26 January 1987, the Group elected Mr. Boudjemâa Delmi as Chairman/Rapporteur.

C. Agenda

8. At its meeting held on 26 January 1987, the Group considered the provisional agenda (E/CN.4/AC.33/1987/L.1) submitted by the Secretary-General, and adopted the following items as the agenda of its 1987 session:

1. Opening of the session by the representative of the Secretary-General
2. Election of officers
3. Adoption of the agenda
4. Consideration of reports submitted by States parties under article VII of the Convention

5. Consideration of the actions of transnational corporations which operate in South Africa, in accordance with Commission resolution 1986/7
6. Report of the Group to the Commission on Human Rights

III. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE VII OF THE CONVENTION

9. The Group had before it the following documents: (i) a note by the Secretary-General (E/CN.4/1987/26) concerning the status of the Convention and the submission of reports by States parties under article VII of the Convention and (ii) reports submitted after the forty-second session of the Commission on Human Rights by Cameroon (E/CN.4/1987/26/Add.1), Cuba (E/CN.4/1987/26/Add.2), Union of Soviet Socialist Republics (E/CN.4/1987/26/Add.3), Seychelles (E/CN.4/1987/26/Add.4), China (E/CN.4/1987/26/Add.5), Rwanda (E/CN.4/1987/26/Add.6), Qatar (E/CN.4/1987/26/Add.7), Venezuela (E/CN.4/1987/26/Add.8), Ethiopia (E/CN.4/1987/26/Add.9), Jamaica (E/CN.4/1987/26/Add.10), Maldives (E/CN.4/1987/26/Add.11), Ghana (E/CN.4/1987/26/Add.12), Chad (E/CN.4/1987/26/Add.13), Mexico (E/CN.4/1987/26/Add.14), and Poland (E/CN.4/1987/26/Add.15).

10. The Group undertook the examination of each report in the presence of the representatives of the reporting States who had been invited to attend the meetings of the Group in accordance with the recommendations made by the Group at its 1979 and subsequent sessions.

China

11. The initial report of China was introduced by the representative of the reporting State who referred, in particular, to the demographic composition of his country and to article 4 of the Chinese Constitution which provided for equality of rights of all nationalities existing in China. He also stated that in accordance with the laws and policies of his country, apartheid was considered as a crime against humanity. His Government had protested on numerous occasions against the racist régime of South Africa and its illegal occupation of Namibia. It had also deplored the economic and military assistance provided to that régime by certain western countries and by transnational corporations. Furthermore, the representative stated that his Government fully supported and implemented all the United Nations resolutions on the question of apartheid in South Africa, it had no direct or indirect relations with the South African Government and provided assistance to the victims of apartheid.

12. The Group commended the Government of China on its comprehensive report which followed the general guidelines of the Group in form and content. It was asked, in particular, whether provision was made in China with regard to the possibility of extradition under article XI, paragraph 2, of the Convention and what measures had been taken by the Chinese Government to inform the people of China about the Convention. Replying to these questions, the representative of China stated that no specific provision for extradition existed in his country. However, he explained that, the provisions of all international instruments to which China was a party were applicable in the

country if the Government had not made a specific reservation. This was the case of article XI, paragraph 2, of the Convention on which no reservation had been made by the Chinese Government and which was therefore applicable in China even in the absence of domestic laws for its implementation. The representative finally referred to information on the struggle against apartheid and racial discrimination which was provided by mass media and included in the educational programmes of his country.

Cameroon

13. The second periodic report of Cameroon was introduced by the representative of the reporting State who stressed that the provisions of international human rights instruments and, in particular, the Convention were considered as guiding principles of the life of his country since its independence. He also referred to the Constitution of Cameroon and to domestic legislation supplementing the Constitution which provided for the protection of fundamental human rights and the prohibition of all forms of racial discrimination. He stated that his Government participated actively in the international struggle against apartheid by ratifying and implementing all the relevant international instruments, by taking diplomatic and economic measures against the racist régime of South Africa, by promoting and organizing seminars and conferences and assisting liberation movements, students and refugees from South Africa.

14. The Group took note with satisfaction of the report which had been prepared in accordance with its general guidelines and congratulated the representative of Cameroon for his excellent presentation. It was asked what measures had been taken by the Government of Cameroon to include the question of apartheid in educational programmes, what was the view of that Government with regard to the role of transnational corporations in supporting the racist régime of South Africa, whether that Government considered that their activities could imply international criminal responsibility under the terms of article III, paragraph (b), of the Convention and whether any cases of racial discrimination dealt with by the Criminal Code of Cameroon, had been brought before the courts. In reply to the questions raised, the representative stated that the teaching of moral principles leading to the respect of all individuals without discrimination was included in primary education and that information and messages of the governmental authorities on the struggle against apartheid were transmitted regularly to the people of his country. It was the view of his Government that the activities of transnational corporations in South Africa constituted a vital support to its racist régime and that they could be seen as relevant to the provisions of article III of the Convention. The representative finally stated that no case of racial discrimination had been brought to court in his country.

Cuba

15. The fifth periodic report of Cuba was introduced by the representative of the State party, who stressed that the Cuban Revolution had given rise to many and varied activities to combat racism, apartheid and any manifestation of discrimination, at both the national and international levels. He pointed out that the Constitution established the right of the Cuban citizens to live and develop in dignity, free of any form of discrimination. The Criminal Code defines as serious and punishable offences apartheid and acts of

discrimination on grounds of sex, race, colour or national origin. Cuba has acceded to the international conventions intended to combat discrimination in all its forms, including discrimination on grounds of race, sex and nationality. He stated that Cuba implemented all the provisions of the Convention as well as the decisions of the United Nations in that regard, including the programme of action of the Second Decade to Combat Racism and Racial Discrimination. Cuba has condemned colonialist, Zionist and discriminatory practices based on apartheid and racial discrimination at meetings of the Movement of Non-Aligned Countries and other international fora, some of which were held in Cuba. In Cuba everyone is taught the principle of the equality of all peoples. The Group noted that Cuba did not maintain relations of any kind with the régime in South Africa. Clarification was sought as to whether there were any cases falling within the scope of article II of the Convention or cases of extradition referred to in the Convention, and if there was a legislation relating to these matters. In reply to questions by members of the Group, the representative stated that no one has been prosecuted in his country for the crime of apartheid or racist crimes and there have been no cases of extradition as referred to in the Convention. The representative further elaborated on the concrete provisions of the Criminal Code which prescribed severe penalties for any act constituting an expression of racial discrimination or apartheid. This Code also established specific provisions relating to extradition.

16. The Group expressed its appreciation for the comprehensive report which was presented regularly and illustrated clearly the steps taken by the reporting State in order to combat racism and apartheid.

Union of Soviet Socialist Republics

17. The fifth periodic report of the Union of Soviet Socialist Republics was introduced by the representative of the State party, who stated that his Government strictly followed the provisions of the Convention, advocated wider adherence to it, supported and carried out all the decisions and recommendations of international bodies aimed at combating racism and apartheid, including the Programme of Action for the Second Decade to Combat Racism and Racial Discrimination. The twenty-seventh Congress of the Communist Party of the Soviet Union had proposed fundamental principles of an all-embracing system of international security, the integral part of which was a call for co-operation of all governments in extirpation of genocide, apartheid, advocacy of fascism and every other form of racial, national or religious exclusiveness, and of discrimination against people. He pointed out that the main reason why the South African racist régime continued to pursue the criminal policy of apartheid, aggression and occupation was that, notwithstanding numerous United Nations decisions, the régime found direct support from influential Western protectors. It is precisely they who through various means, including their transnational corporations, are supporting relations with the Pretoria régime in the political, military, economic and financial fields. The Soviet Union considers that the adoption of comprehensive and mandatory sanctions against the racist régime of South Africa would be an effective step towards the elimination of the system of apartheid and would contribute to the establishment of peace and stability in the interests of all peoples of the region.

18. In reply to questions by members of the Group, the representative stated that the Soviet Union was neither a home country nor a host country of transnational corporations. The USSR had no diplomatic, economic, commercial, military or other relations whatsoever with South Africa and did not permit the re-export of Soviet goods to that country.

19. The report of the Soviet Union was highly commended by the Group for the comprehensive and valuable information contained therein and appreciation was expressed for the additional information submitted by the representative. The Group also expressed satisfaction for the substantial material assistance of the Soviet Union to national liberation movements fighting against the apartheid régime and for the regularity of the Government of the Soviet Union in submitting its reports under the Convention.

Seychelles

20. The initial report of the Seychelles was introduced by the representative of the State party who gave some background information on the ethnic composition of his country and stated that racial harmony existed among different groups which settled in the islands during the last two centuries. He pointed out that his Government actively supported international movements fighting against the racist régime of South Africa and it applied restrictive measures against that régime. The representative further stated that although a certain amount of trade still existed between the Seychelles and South Africa, his Government was doing its best to sever its economic links with that country.

21. The Group took note with satisfaction of the report, commended the representative of the State party on his presentation and expressed appreciation for the efforts made by the Government of the Seychelles to reduce trade with South Africa. It was asked, in particular, whether legal redress against acts of racial discrimination existed in the Seychelles and whether school programmes included not only information on apartheid, but also measures to educate against this concept. In his reply, the representative stated that comprehensive information on redress against acts of racial discrimination through legal procedures would be included in his country's next periodic report. He also referred to educational programmes and training courses through which young people in the Seychelles learned the principles guiding the political orientation of their Government including the principle of non-discrimination.

Rwanda

22. The second periodic report of Rwanda was introduced by the representative of the reporting State who referred to his Government's condemnation of all forms of racial discrimination and especially apartheid, which it considered a crime against humanity. He referred also to legal measures against discrimination which were contained in the Constitution of his country as well as in the Rwandese Criminal Code, in particular, in its article 393. He pointed out that measures concerning political and economic sanctions against South Africa had been taken in his country by Presidential Decree since 1964.

23. The Group expressed its appreciation for the report which had been prepared in accordance with its general guidelines and for the presentation

made by the representative of Rwanda. The Group was of the view that the legal measures adopted in Rwanda to fight against racial discrimination adequately implemented the provisions of the Convention. In this connection, information was requested on any action taken by the courts in Rwanda with regard to cases of racial discrimination and on the view of the Rwandese Government on the nature and extent of the responsibility of transnational corporations for the continued existence of the system of apartheid in South Africa. In his reply, the representative stated that there had never been in his country cases of racial discrimination which had been brought before the courts and that his Government included in its economic sanctions against the South African Government any individual, institution or organization contributing to the existence of the system of apartheid.

Qatar

24. The fourth periodic report of Qatar was introduced by the representative of the reporting State, who stated that the State of Qatar was committed to the prevention and punishment of acts of racial discrimination and segregation and to this end it promulgated a number of legislative acts and, primarily the Amended Constitution. The Holy Koran and Islamic Shari'a are the principal sources of the human rights on which all laws in Qatar are based. The State of Qatar acceded to a number of pertinent international conventions. The representatives of Qatar participated in a number of conferences for the expression of solidarity with the peoples of South Africa and Namibia and fully supported the resolutions adopted by them. He strongly condemned the relations between Israel and South Africa, and stated in particular, that his Government prohibited oil exports to that country. Qatar holds the view that an international diplomatic conference should be convened for the purpose of setting up an international penal tribunal provided for by article V of the Convention. More information was requested on the measures that had been taken concerning education and mass media to acquaint the public with the evils of apartheid. In reply to the question raised, the representative of Qatar stated that through educational, cultural and information policies, the State is endeavouring to combat racism and racial discrimination and to foster greater tolerance and friendship among all peoples and races. The Group commended the Government of Qatar on its regularity in presenting reports and on the measures it had taken to implement the Convention, especially with regard to educating the population in the spirit of the Convention.

Venezuela

25. The initial report of Venezuela was introduced by the representative of the reporting State, who pointed out that Venezuela was a party to the International Convention on the Elimination of All Forms of Racial Discrimination as well as the International Convention on the Suppression and Punishment of the Crime of Apartheid, instruments which had been incorporated in the Venezuelan legal order and were binding on all inhabitants of the Republic and all judicial, administrative or other authorities. Under article 61 of the Constitution, any act of discrimination or segregation based on race, sex, creed or social status may be qualified as an unconstitutional act. The representative stressed that racial discrimination had not existed in Venezuela for over a century now. The mass communication media, school education and university courses and other means were used to publicize the struggle of people of South Africa against racial discrimination and

apartheid. The representative also referred to a number of measures taken by his Government to implement the provisions of the Convention and emphasized the active participation of Venezuela in all international activities to combat the apartheid policy in South Africa.

26. The Group noted with approval the initial report of Venezuela which had been drafted in accordance with the guidelines for submission of reports established by the Group. Clarification was sought as to whether oil exports were prohibited to South Africa and on the view of the Government of Venezuela on the establishment of an international penal tribunal. In his reply, the representative stated that all oil exports including those by companies of other countries were prohibited. The question of setting up a tribunal is being considered by the pertinent national authorities.

Maldives

27. The initial report of Maldives was considered without participation of a Government representative. The Group welcomed the report as a concrete effort made by the Government of Maldives to implement the Convention. It took note, in particular, of the information concerning basic rights of all citizens guaranteed in accordance with the existing rules and regulations without any discrimination. The Group requested that the legislation referred to in the report be submitted as an annex to the report and recommended that it was essential for the effective implementation of the Convention that States parties appoint representatives to participate in its meetings when reports submitted by their Governments were considered.

Chad

28. The initial report of Chad was considered without the participation of a Government representative. The Group welcomed the report as a concrete effort made by the Government of Chad to implement the Convention. However, the Group wished to receive, in the future, more comprehensive information on action taken in Chad to fight against racial discrimination and apartheid. In this connection, the Group expressed the hope that the general guidelines concerning the form and contents of reports would be taken into account by the Government of Chad when submitting its future reports and that the Government would consider sending a representative to participate in their consideration.

Ethiopia

29. The initial report of Ethiopia was introduced by the representative of the State party who stressed his Government's condemnation of apartheid and support to all international initiatives to eliminate racial discrimination. In this connection, he referred to domestic legislation under which the crime of apartheid was punishable and, in particular, to articles 2 and 3 of the final draft Constitution of Ethiopia, which shall provide for guarantees of equality in the enjoyment of rights for individuals, as well as for the different nationalities existing in the country. He referred also to practical measures taken by his Government to assist liberation movements fighting the racist régime of South Africa and to his Government's condemnation of any economic and military support given to that régime especially by transnational corporations.

30. The Group took note with satisfaction of the report and the presentation made by the representative of the Government of Ethiopia. However, the Group observed that future reports of that Government should be prepared taking into account its general guidelines. The Group also expressed the wish to receive information on the position of the Ethiopian Government with regard to the establishment of an international penal tribunal in accordance with article V of the Convention, on the responsibility of transnational corporations in supporting the apartheid system, on specific legislation enacted in Ethiopia to prevent any form of racial discrimination and on the text of relevant provisions of the final draft Constitution. In addition, it was asked what measures had been taken in Ethiopia to inform school children about apartheid and whether the Ethiopian Government considered the activities of transnational corporations in South Africa criminally liable. In his reply, the representative informed the Group that the final draft Constitution of his country was subject to the approval of the people by referendum and that the final text of the sections of the Constitution dealing with racial discrimination would be included in future reports. He reiterated his Government's condemnation of the activities of transnational corporations in South Africa and Namibia and stated that the teaching of subjects such as history included topics relating to the struggle of South African and Namibian people against apartheid. The representative, finally, stated that wide information on the evils of apartheid was given by the mass media of his country and that southern African liberation movements had access to the Ethiopian mass media for that purpose.

Jamaica

31. The initial report of Jamaica was briefly introduced by the representative of the State party who pointed out that legislation to give effect to the Convention was under elaboration in her country and that Jamaica had recently become party to the International Convention against Apartheid in Sports.

32. The Group welcomed the report and recalled that its general guidelines should be taken into account in the preparation of reports to be submitted under article VII of the Convention. The Group also wished to receive information on the views of the Government of Jamaica with regard to the role of transnational corporations in the continued existence of the apartheid system in South Africa and on the establishment of an international penal tribunal in accordance with article V of the Convention. Information was also requested on specific domestic legislation to be adopted in Jamaica with regard to racial discrimination. It was asked, in particular, whether the Constitution of Jamaica provided for safeguards to prevent racial discrimination in all its forms. In her reply, the representative stated that the Constitution of her country did not contain safeguards to that effect, but provisions against any form of discrimination were entrenched in other legislation and that relevant information would be provided in her Government's next periodic report.

Ghana

33. The initial report of Ghana was introduced by the representative of the State party who supplemented the report by providing more information about

pertinent national legislation and by describing the intrastate and international activities of the Government and public organizations concerning struggle against apartheid and racial discrimination. He pointed out that there existed in Ghana a National Committee against apartheid, which educates the public on the evils of that régime. In 1986 Ghana urged the imposition of sanctions on the illegal Pretoria régime and also joined a boycott of the Commonwealth Games in protest against the policies of the United Kingdom. Recently, Ghana celebrated the 75th anniversary of the ANC. In this regard, rallies, symposia and photo exhibitions on apartheid were organized to educate the people. The Government of Ghana issued a statement reaffirming its rejection of the cynical interpretation of the tragic situation in South Africa as Communist-inspired and invited all civilized nations to join the people of South Africa in their fight for the elimination of apartheid.

34. Clarification was sought as to whether there were cases of prosecution for the crimes enumerated in article II of the Convention. Information was also requested on the attitude of the Ghanaian Government concerning the establishment of an international penal tribunal. In reply to the questions raised, the representative stated that he knew no case of prosecution in his country for the crime of apartheid. He assured the Group that the information about the position of his Government towards establishing an international penal tribunal would be included in the next report of his Government.

35. The Group took note with appreciation of the report of Ghana and the information contained therein. Finally, the Group expressed the hope that the general guidelines concerning the form and contents of reports would be taken into account by the Government of Ghana.

Mexico

36. The second periodic report of Mexico was introduced by the representative of the reporting State. He pointed out that Mexico was a multiracial country which rejected the concept of racial discrimination and which was actively involved in international measures to eradicate apartheid. He also outlined the main provisions of Mexican legislation against any form of discrimination referred to in the report, in particular, article 149 bis of the Penal Code and provisions concerning equality in the enjoyment of rights which were contained in the Political Constitution of the United Mexican States.

37. The Group commended the Government of Mexico on its report which contained complete information, followed the general guidelines of the Group and represented a model to be followed by other States parties in the preparation of their reports. The Group also expressed the wish to know what was the opinion of the Mexican Government with regard to the responsibility of transnational corporations for the continued existence of the system of apartheid in South Africa and with regard to the establishment of an international penal tribunal in accordance with article V of the Convention. It was asked, in particular, whether, according to Mexican law, a person charged with criminal acts enumerated in article II of the Convention, and committed on the territory of another State party to the Convention, could be tried in Mexico by a competent tribunal. The representative replied that information relevant to the questions raised by the Group would be provided in his Government's next periodic report.

Poland

38. The fourth periodic report of Poland was introduced by the representative of the State party who recalled his Government's commitment to fulfil its obligations under the Convention. As regards legislative measures adopted in Poland to prevent and suppress apartheid, he referred to constitutional principles recognizing the equality of rights for all citizens and to provisions of the Penal Code which covered all crimes listed in article II (a) of the Convention. He also stated that no crimes of racial discrimination had been committed in Poland; however, Polish courts could apply Polish penal law even if a perpetrator had committed an offence outside Polish territory if such an offence was punishable under international instruments to which Poland was a party. In addition, the representative referred to the participation of his Government in all efforts of the international community to eradicate apartheid. In this respect, he pointed out that Poland had recently become party to the International Convention Against Apartheid in Sports, that wide information on the evils of apartheid was provided to the Polish people through the mass media both at the governmental and non-governmental levels and that educational programmes in his country included the question of apartheid in the study of the main problems of contemporary world.

39. The Group commended the Government of Poland on its regularity in the submission of reports and on the comprehensive information provided. It also expressed particular appreciation for the presentation of the report made by the Government's representative. It was noted that Polish law recognized the principle of "universal repression" for certain crimes and it was asked whether any action had been instituted by the courts in Poland in accordance with that principle. The representative replied that action by Polish courts in that respect had been taken in the case of genocide and other crimes against humanity committed during the Second World War, but no case had been dealt with by the Polish courts in connection with the provisions of the Convention.

IV. CONSIDERATION OF THE ACTIONS OF TRANSNATIONAL CORPORATIONS
WHICH OPERATE IN SOUTH AFRICA AND NAMIBIA

40. In accordance with the request contained in Commission on Human Rights resolution 1986/7 the Group of Three continued to consider whether the actions of transnational corporations operating in South Africa and Namibia came under the definition of the crime of apartheid and whether or not some legal actions could be taken under the Convention, and, in the light of the views expressed by States parties to the Convention, examined the extent and the nature of the responsibility of transnational corporations for the continued existence of the system of apartheid in South Africa.

41. The Group commended the States parties which have submitted their views either in their periodic reports or separately; 1/ and called upon those which have not yet submitted their views, to do so as soon as possible. The Group felt that further examination of the matter was needed and that the views and opinions of the States parties to the Convention on the extent and the nature of the responsibility of transnational corporations for the continued existence of the system of apartheid in South Africa would be of the greatest usefulness.

42. The Group noted that several United Nations organs had repeatedly drawn the attention of the international community to the close interconnection existing between the activities of transnational corporations operating in South Africa and Namibia and the persistence of South Africa's racist régime and apartheid, as well as the position of the home countries of those corporations vis-à-vis the racist régime of South Africa. The Group emphasized the position of the General Assembly, expressed in resolution 41/103, that the continued collaboration of certain States and transnational corporations with the racist régime of South Africa in the political, economic, military and other fields is an encouragement to the intensification of its odious policy of apartheid.

43. The Group recalled that in its resolution 35/39, the General Assembly had for the first time called upon the Commission on Human Rights to take account, in further updating the list of perpetrators of the crime of apartheid, of those resolutions and instruments which, inter alia, denounce the complicity of transnational corporations and banks with the régime of apartheid. It also recognized the dimension and seriousness that the development of such activities is taking, as indicated in the conclusions of the report of the Special Committee against Apartheid (A/41/22), in the report of the Secretary-General on the activities of transnational corporations in South Africa and some other pertinent reports.

44. In the view of the Group, the public hearings in the United Nations on the activities of transnational corporations in South Africa and Namibia (E/C.10/1986/9), which concluded with the adoption of a report condemning the policy of apartheid and the activities of those who help to sustain it and which reaffirmed the importance of the measures outlined in the report of the Secretary-General (E/C.10/AC.4/1985/2), must give further practical impetus to the actions of the world community aimed at the complete and immediate elimination of the inhuman Pretoria régime.

45. The Group was also of the opinion that the economic, technological and military collaboration and support provided by the international and national monopolies and some countries to the South African authorities strengthens the criminal régime of apartheid and helps to perpetuate the oppression of the African majority and to heighten the repression against those fighting for civil, political, economic and other rights. The tragic events which have shown the repressive racist régime's true nature are eloquent proof that political, economic, military and other relations with the racist régime encourage it to persist in its wanton acts of aggression and its suppression of the aspirations of people to self-determination and independence. The Group was of the opinion that legal action against transnational corporations and banks on account of their collaboration with South Africa would be greatly conducive to the struggle of the people of South Africa and Namibia against the racist régime, as well as to the efforts of the United Nations to eliminate the policy of apartheid.

46. The Group rejects as completely unfounded the assertion that the action of transnational corporations operating in South Africa and close co-operation between certain countries and the racist régime of South Africa in the political, economic, military and other spheres are helping to improve the critical situation of the overwhelming majority of the population of that country and contribute gradually to making the criminal system of apartheid more human.

47. In this context the Group pointed out that in article I, paragraph 2, of the Convention, the States parties declare criminal also organizations and institutions committing the crime of apartheid. The Group held the view that, no doubt, that provision was applicable to transnational corporations.

48. The Group believes that by continuing and maintaining their activities in South Africa, transnational corporations frustrate all efforts aimed at implementing the decisions of the international community to prevent the perpetration of apartheid, and the application of the sanctions taken against the racist régime.

49. The Group held that the activities designed to identify such transnational corporations and banks which participate in racist exploitation in South Africa and Namibia or render assistance in some form or another to the apartheid régime are extremely important with a view to registering and securing assets that can be used to settle the compensation claims of the people of South Africa and Namibia in general and the victims of the apartheid régime in particular, as well as of the States directly affected by South African acts of aggression.

50. The Group, therefore reached the conclusion that by their complicity these transnational corporations, from the juridical point of view and in conformity with article III (b) of the International Convention on the Suppression and Punishment of the Crime of Apartheid, must be considered accomplices in the crime of apartheid and must be prosecuted for their responsibility in the continuation of this crime.

51. The Group expressed the view that an element of the responsibility of transnational corporations should be their liability for damage caused to the people of South Africa or Namibia when the apartheid régime will have been eliminated or when Namibia will have gained independence. It recalled that the existence of a right to claim compensation in connection with the crime of apartheid has expressly been affirmed on several occasions by the United Nations resolutions as well as in the Decree No. 1 of the United Nations Council for Namibia.

52. The Group noted that many countries including the members of the Non-Aligned Movement, the Socialist States, the members of the Organization of Petroleum Exporting Countries, the Nordic States and some other countries have taken far-reaching measures towards the total isolation and boycott of the apartheid régime. Besides the policy of isolation and boycott of the racist régime by those countries, many Western countries have also taken a variety of measures. State and local authorities, trade unions, religious bodies, co-operatives and other organizations and institutions have also stepped up their actions against apartheid.

53. The Group also noted a certain reluctance on the part of some transnational corporations in making new investments in South Africa. The Group welcomed the fact that the pressure of some Governments and public opinion abroad has persuaded some transnational corporations and financial institutions to suspend loans to South Africa and some corporations to reduce or terminate their operations in South Africa.

54. The Group is of the opinion that collaboration of States having jurisdiction over transnational corporations which continue to undertake activities in South Africa, is indispensable for the implementation of the sanctions against the apartheid régime.

V. CONCLUSIONS AND RECOMMENDATIONS

55. The Group of Three expresses its appreciation to the representatives of the reporting States for their presence at its meetings and for their participation in its work and notes with appreciation that the great majority of the reports considered by the Group at the current session were introduced by the representatives of the reporting States.

56. However, even though only two reports were considered by the Group in the absence of a representative of the reporting States, the Group does hope that representatives of all States which submit reports will participate in this work.

57. The Group commends those States parties which have submitted periodic reports. It notes with concern that some States parties to the Convention have not submitted any report and urges in particular those States parties which have not yet submitted their initial reports, to do so as soon as possible, as required under article VII of the Convention. The Group further notes with concern that, as at 1 February 1987, 122 reports were overdue under the International Convention on the Suppression and Punishment of the Crime of Apartheid, and strongly urges the States parties concerned to fulfil their reporting obligations. In accordance with General Assembly resolution 41/121, the Group urges States parties with overdue reports to make every effort to present their reports as soon as possible.

58. The Group reiterates its recommendation that the general guidelines regarding the form and contents of reports should be fully taken into account by all States parties when preparing their reports.

59. The Group took note with satisfaction of the new accessions to the Convention in 1986. However, the Group expresses concern at the fact that as at 31 December 1986, only 85 States had become parties to the Convention. Convinced that the ratification of, or accession to, the Convention on a universal basis and the implementation of its provisions are necessary for its effectiveness, the Group recommends once again to the Commission on Human Rights that it should urge all States which have not yet done so to ratify or to accede to the Convention without delay, in particular those States which have jurisdiction over transnational corporations operating in South Africa and Namibia, and without whose co-operation such operations cannot be halted.

60. The Group calls upon States parties to provide in their reports all relevant information on the legislative, judicial and administrative measures they have adopted to give effect to the provisions of article IV of the Convention, or on the difficulties which they may have encountered in the implementation of that article.

61. The Group also calls upon States parties to provide in their reports more information on concrete cases in which measures to prosecute, bring to trial and punish persons responsible for, or accused of, the acts enumerated in article II of the Convention have been applied under their jurisdiction.

62. The Group proposes to States parties which have not yet done so to submit their views on the extent and the nature of the activities of transnational corporations in South Africa and their applicability to article III of the Convention.

63. The Group calls upon States parties to identify in their reports, where possible, individuals, organizations, institutions and representatives of States deemed responsible for the crimes enumerated in article II of the Convention, as well as those against whom legal proceedings have been undertaken by the States parties to the Convention, with a view to enabling the Commission to continue its progressive updating of the list referred to in article X of the Convention.

64. The Group took note with satisfaction of the decisions of the World Conference on Sanctions against Racist South Africa, and requests the Commission on Human Rights to invite the active and urgent support of all Governments, organizations, institutions, media and individuals for the Declaration adopted at the Conference (A/CONF.137/5).

65. The Group calls on all States whose transnational corporations continue to do business with South Africa and Namibia to consider taking appropriate steps to terminate their dealings with South Africa and Namibia. It further urges developing countries to take concerted action to pressure transnational corporations especially those trading within their own territory to end their operations in South Africa. It urges all States to consider adopting appropriate legislation dealing with South Africa and Namibia.

66. The Group notes with satisfaction that the overwhelming majority of States and world public opinion are now in favour of comprehensive mandatory sanctions against the apartheid régime and support to the people of South Africa and Namibia in their legitimate struggle for freedom.

67. The Group stresses that the racist régime of South Africa, the only régime that practises racism as its official policy and has enshrined it in its so-called "constitution", has its roots in the same racist and bellicose ideology that provoked the Second World War and caused untold deaths and destruction. Appeasement of the racist régime therefore can only have the same disastrous consequences. It notes that the policy and practices of the apartheid régime have already brought South Africa to the brink of a racial conflagration.

68. The Group wishes to appeal once again to States parties, through the Commission on Human Rights, to strengthen their co-operation at the international level to implement fully, in accordance with the Charter of the United Nations, the decisions taken by the Security Council and other competent organs of the United Nations aimed at the prevention, suppression and punishment of the crime of apartheid, in accordance with article VI of the Convention.

69. The Group wishes to note once again that the crime of apartheid is a form of the crime of genocide, similar in nature to fascist and Nazi crimes, and as such falls under the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. The Group recommends to the Commission on Human Rights to reflect this similarity in its respective resolutions as well as the fact that adherence to the International Convention

on the Suppression and Punishment of the Crime of Apartheid is an indication of the implementation of the International Convention on the Prevention and Punishment of the Crime of Genocide.

70. The Group, recalling in particular paragraph 3 of General Assembly resolution 3068 (XXVIII) by which the Convention was adopted as well as General Assembly resolution 41/103, wishes once again to draw the attention of United Nations organs, specialized agencies and international and national non-governmental organizations to the need for stepping up their activities to enhance public awareness by denouncing the crimes committed by the racist régime of South Africa and to intensify their efforts, through appropriate channels, to disseminate information on the Convention and its implementation with a view to promoting further ratification of or accession to the Convention.

71. The Group wishes to express once again the importance of measures to be taken in the field of teaching and education for fuller implementation of the Convention and invites the States parties to include ample information on these measures in their reports.

72. The Group wishes to draw the attention of the States parties to the importance of article XI of the Convention and invites the States parties to include in their reports more information on their implementation of the provisions of this article.

73. The Group considers that the implementation of article V of the Convention relating to the establishment of an international penal tribunal is conducive to the strengthening of the mechanisms for combating apartheid.

74. The Group wishes to draw attention once again to the importance of strengthening the assistance given to the national liberation movements in southern Africa.

75. The Group wishes to recommend to the Commission on Human Rights that it requests the Secretary-General to invite once again the States parties to the Convention which have not yet done so to express their views on the extent and the nature of the responsibility of transnational corporations for the continued existence of the system of apartheid in South Africa.

76. The Group wishes to recommend to the Commission on Human Rights that it request the Secretary-General to invite the States parties to the Convention, the specialized agencies and non-governmental organizations to provide the Commission on Human Rights with relevant information concerning the types of the crime of apartheid, as contained in article II of the Convention, committed by transnational corporations operating in South Africa.

77. The Group reiterates its conviction that the most peaceful means available to the international community to put an end to the system of apartheid consists in imposing comprehensive and binding sanctions against the racist régime in South Africa.

VI. ADOPTION OF THE REPORT

78. At its meeting on 30 January 1987, the Group considered the draft report on the work of its 1987 session. The draft report, as revised during the discussion, was adopted unanimously.

Notes

1/ E/CN.4/1987/27 and Add.1-2.