



UNITED NATIONS
GENERAL
ASSEMBLY



Distr.
GENERAL

A/8768/Add.1
29 September 1972

ORIGINAL: ENGLISH

Twenty-seventh session
Agenda item 50 (d)

ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION
DRAFT CONVENTION ON THE SUPPRESSION AND PUNISHMENT
OF THE CRIME OF APARTHEID

Note by the Secretary-General

Addendum

CONTENTS

	<u>Page</u>
III. REPLIES RECEIVED FROM GOVERNMENTS	
Netherlands	2

III. REPLIES RECEIVED FROM GOVERNMENTS

NETHERLANDS

/Original: English/

15 September 1972

1. The draft convention on the suppression and punishment of the crime of apartheid as well as the draft protocol on the same subject give rise to questions of a legal nature which require careful attention. First of all, it is doubtful whether the method of taking recourse to international criminal law will in fact serve the purpose sought after in the present context. It should be realized that any steps contemplated in the field of international criminal law would have to bring into play various types of legal mechanisms, such as those relating to extradition and international judicial assistance, which can only function properly on the basis of large-scale acceptance and co-operation. Moreover, it cannot be overlooked that the drawing up and enforcement of rules of international criminal law can hardly be effective without the establishment of international criminal jurisdiction. In this respect the Convention on the Prevention and Punishment of the Crime of Genocide would seem a case in point, in particular since the international penal tribunal referred to in article VI of that Convention is still lacking.

2. It is necessary to consider the proposed international instruments in relation to the comprehensive and widely accepted International Convention on the Elimination of All Forms of Racial Discrimination, which defines the responsibility of States Parties to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms. As is stated above, an approach along the lines of international criminal law may be regarded as a means which would not be as effective as it seems. But it should also be considered how far such an approach, whether it be in the form of separate convention or as a protocol to be annexed to the International Convention on the Elimination of All Forms of Racial Discrimination, would affect the scope and the operation of the just mentioned international convention. This is notably true for the draft protocol inasmuch as this draft would make use of the implementation machinery provided for in the international convention. Such an arrangement may very well change the character and orientation of the Committee on the Elimination of Racial Discrimination.

3. Another question deserving attention is whether the acts enumerated in articles II of both draft instruments should be declared international crimes when committed exclusively in the context of apartheid or other forms of racial discrimination, or whether such acts, particularly inasmuch as they amount to a consistent pattern of violation of human rights, should also be declared international crimes in other contexts. In fact, this question touches upon the scope of any new international instrument regarding individual responsibility for gross violations of human rights. Comparing the scope of the two draft texts

/...

circulated and in particular articles I and the opening phrases of articles II of both draft instruments, it is clear that the draft protocol is based, ratione materiae, on a wider premise than the draft convention. The question remains, however, whether the scope and the content of any new international instrument should not be broadened so as to make an instrument applicable to consistent patterns of violations of human rights in general, including acts resulting from policies and practices of racial discrimination and segregation. In this context it is also relevant to note that both draft instruments contain certain elements which come very close to provisions of the Genocide Convention. For this reason it seems necessary to study the relationship to the Genocide Convention in order to make sure that the latter instrument not be affected.

4. The above observations are much of a general character. It would seem necessary that matters of such general and fundamental impact first be discussed and clarified before comments are made on the various provisions of the drafts.
