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Thirty-fifth year

Letter dated 28 November 1980 from the Permanent Representative of Bangladesh to the United Nations addressed to the Secretary-General

I have the honour to enclose herewith a copy of the report of the colloquium of experts organized by the United Nations Institute for Training and Research, in accordance with General Assembly resolution 33/99 of 16 December 1978, on "The Prohibition of apartheid, racism and racial discrimination and the achievement of self-determination in international law" held at Geneva from 20 to 24 October 1980.

It would be appreciated if the enclosed report could be circulated as a document of the General Assembly, under agenda item 28, and of the Security Council.

(Signed) K. M. KAISER
Permanent Representative

ANNEX

UNITAR COLLOQUIUM

ON

THE PROHIBITION OF APARTHEID, RACISM AND RACIAL DISCRIMINATION AND THE ACHIEVEMENT OF SELF-DETERMINATION IN INTERNATIONAL LAW

Geneva

October 20-24, 1980

In acceding to the request of the General Assembly to convene this conference in the context of the Decade Against Racism and Racial Discrimination, UNITAR had it in mind to provide an opportunity for experts to generate new ideas relevant to the global strategy for the abolition of apartheid, racism and denials of self-determination. We assumed the obligation of informing the General Assembly of the salient ideas emerging from the week during which the experts deliberated, as well as those propositions generated by the papers prepared by specialists in anticipation of this meeting.

It is UNITAR's impression that the expectations with which we embarked on this effort have been met. A number of valuable ideas were proposed by participants, some new, some worth repeating with renewed urgency.

The meeting explored, defined and emphasized the importance of the linkages implicit in the title of the conference. If the law is a seamless web, so is the strategy against apartheid, racism and denials of self-determination. The institutions created to pursue the various parts of this indivisible strategy, the legal instruments generated by these institutions, and the forms and forums of implementation that have developed, must be scrutinized

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with a view to making them into a more coherent, mutually reenforcing whole.

In addition, this unified strategy must be made relevant to the broader development strategy for the implementation of a New International Economic Order, for beneath apartheid, racism and denials of self-determination lie many of the same factors that make for economic subjugation.

Further, there must be an examination of the linkage between the strategies pursued by the public institutions of the international community, the strategies pursued by governments in discharge of their international and national legal obligations, and the efforts of private or non-governmental groups including churches, trade unions and public interest law firms. These parallel efforts can and must support and reenforce each other more effectively.

Next, the meeting of experts emphasized with clarity and unanimity the high priority states should accord, individually and collectively, to their normative obligation to use all means to bring to an end the supreme and continuing evils of apartheid, racism and denials of self-determination. In the case of apartheid and forceful denials of self-determination, this means that states have a duty to assist the South African Liberation Movement, the authentic representative of the people of South Africa, and have a right to render that assistance either through the United Nations or directly to those recognized as the instruments of that liberation.

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Similarly, there is a duty on the part of the international community to examine means by which existing mandatory sanctions against South Africa can be made more effective, particularly by developing more reliable means for the timely detecting and exposing of violations.

References were made to the correlation between the critical situation of human rights in South Africa and Namibia and the volume and intensity of assistance accorded to the racist regime. In this regard participants mentioned that those who support a state in the commission of acts of apartheid are in violation of their international obligations.

Efforts should also be directed towards strengthening the economies, and thus the resistance, of front-line states.

Many participants also expressed the view that priority should be given to the enhancement of sanctions to embrace all intercourse with South Africa, whatsoever. It was a widely shared view that the Security Council's Committee Established by Resolution 421 (177) Concerning the Question of South Africa should establish an enforcement secretariat and, perhaps with the help of UNITAR, develop the expert techniques necessary to effective detection of violations of those prohibitions on trade with South Africa (in weapons, etc.) which have already been ordered by the Security Council. In addition, it was proposed that the Security Council request the Secretary General to appoint a group of experts to study, within a relatively short, fixed time, the feasibility of

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a broader range of sanctions, including problems involved in imposing them, probable effectiveness, and means of enforcement. On receipt of this report the Security Council should proceed to its implementation unless South Africa has substantially complied with its previous resolutions concerning Namibia and apartheid.

It was repeatedly pointed out that the international community has a moral and legal obligation to provide training to displaced Namibians and South Africans, thereby hastening and preparing for the day of liberation. In the view of the participants, states which do not contribute to these programmes are distinctly in violation of their international obligations.

The meeting considered and approved the view that apartheid, racism and denials of self-determination should come to be perceived as violative of the most fundamental norms governing international conduct. The meeting heard various views as to the legal consequences this might entail. Among the views expressed on this subject were these:

First, no state may under any circumstance justify a violation of a peremptory norm of jus cogens, nor is any treaty, agreement or unilateral act valid which conflicts with such a norm.

Second, a regime which consistently violates such a norm may eventually lose its legitimacy as the recognized government of the state concerned.

Third, persons within a violating state who refuse to carry

out its unlawful dictates and escape its jurisdiction are entitled to special consideration as refugees.

Fourth, those engaged in combat against such a regime, if captured, are entitled to treatment as prisoners of war.

Fifth, civil transactions which lead a party to be enhanced or to profit by the illegal regime should not be recognized by legal institutions of other states.

Sixth, those directly involved in the illegal conduct should be subject to civil or criminal penalties wherever found. One example cited is the United States law permitting suit for damages by aliens in U.S. courts for violations of the law of nations committed anywhere.

Many participants in the meeting urged that the relevant organs and committees of the United Nations, perhaps with the aid of UNITAR, study further the legal consequences flowing from persistent, serious violations of the norms prohibiting apartheid, racism and denials of self-determination. Many participants called upon states who have not already done so to ratify the relevant conventions which declare these violations to be offenses against fundamental international law and crimes ergo omnes.

It was emphasized that combating apartheid, racism and all forms of racial discrimination was an integral part of the struggle to promote and protect human rights and fundamental freedoms. Participants also stressed that world-wide adherence to international

human rights instruments such as the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on the Suppression and Punishment of Apartheid will help ensure the eradication of these evils.

It was also observed that, especially as to the norm of self-determination, the United Nations itself must conduct itself in such a manner as to give that norm priority in all applicable circumstances. Refusal to implement the norm against some states for political reasons would make it impossible to establish the fundamental nature of the norm as jus cogens, thereby undermining an essential part of the overall strategy.

The meeting considered with approval various ways in which the domestic law of states, such as Sweden, had been revised to control and discourage investment in South Africa, and expressed the view that the states not yet equipped with such laws should so arm themselves as a matter of urgency.

Similarly, states should be encouraged to adopt laws which would permit the appropriate United Nations agencies to monitor compliance with sanctions by obtaining through national judicial or administrative processes the needed access to records of entities engaged in international transactions that may violate sanctions against South Africa.

In examining some commendable actions of states like India, the United Kingdom, and the United States to eliminate domestic

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racist laws and practices, participants again noted the importance of a correct analysis of the relevant linkages between social, legal, political and economic factors. They emphasized the need of the relevant national and international institutions to study and understand the true nature of the problem. In the view of several experts experienced in promoting reform in national laws and practices, overt, blatant racism is no longer the major feature either in their nations' domestic legislation or in the private patterns of conduct of their societies. Instead, in most societies other than South Africa and Namibia, racism has "gone underground," manifesting itself in subtle ways discoverable only by rather complex and expensive technologies of aggregate data research and on-the-spot investigation. It was widely agreed that the discovery and elimination of these more insidious methods of racism could not be significantly advanced simply by examining the formal reports of governments to international agencies, or by studying information provided by officially authorized institutions to national governments and courts.

Because of this change in the nature of racism, the participants felt that international agencies charged with the elimination of racism now must recognize a duty to obtain information from other than purely governmental or other public sources and underlined the importance of the availability of effective recourse procedures to victims of racial discrimination. As a start, all states which have not already done so should be urged to adopt

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Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination which permits private petition. Some participants also strongly urged that the tools of inquiry developed by the Committee of 24 in the investigation of colonialism should now be adapted by international organs to facilitate their pursuit of the global strategy against racism.

During the discussion of racism, participants recognized the wisdom of Article 2(2) of the Convention on the Elimination of Racism in obliging states to engage in programmes of remedial or affirmative action to establish economic, social and cultural equalization, rather than being satisfied with merely achieving formal equality before the law. To the extent that such remedial programmes are mandated by the Convention on the Elimination of Racism, it was felt that, as to poor countries, the international community owed a legal and moral obligation to give special consideration to the need for massive transfer of resources to overcome the barriers to real equality that had been engendered by a racist past.

It was also felt, in accordance with Article 2(2) of the Convention on the Elimination of Racism, that states employing such remedial programmes have a duty to specify in reasonable terms their objectives and to terminate the special treatment of particular groups once the reasonable objectives had been substantially achieved. These perceptions by the participants were supported by the experts' papers prepared for the meeting.

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The participants emphasized the role of research, education and training in combating racism and racial discrimination. In this regard reference was made to the conclusions and recommendations of the Round Table of University Professors and Directors of Race Relations Institutions on the Teaching of Problems of Racial Discrimination (ST/HR/SER.A/5). It was suggested that UNITAR, in cooperation with other competent organs and bodies of the U.N. system, could contribute to the follow-up and implementation of these conclusions and recommendations.

The feelings of all participants about the colloquium were summarized by one participants, who said, "I confess to a certain measure of unease in speaking here this morning about apartheid. For, after all, one would have thought that by this time the occasion for talking about this disgusting phenomenon would have ended and been replaced by decisive and positive action." It is the object of this report, as it was of all the experts whose ideas it reflects, to propose further concrete steps in that direction.

Thomas M. Franck

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ON

"THE PROHIBITION OF APARTHEID, RACISM AND RACIAL DISCRIMINATION AND THE ACHIEVEMENT OF SELF-DETERMINATION IN INTERNATIONAL LAW"

Palais des Nations
Geneva

October 20-24, 1980

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