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ADVERSE CONSEQUENCES FOR THE ENJOYMENT OF HUMAN RIGHTS
OF POLITICAL, MILITARY, ECONOMIC AND OTHER FORMS OF
ASSISTANCE GIVEN TO COLONIAL AND RACIST REGIMES IN
SOUTHERN AFRICA

Written statement submitted by the Procedural Aspects
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The decision by the Sub-Commission in 1980 to once again consider the topic "Adverse consequences for the enjoyment of human rights of assistance given to colonial and racist regimes in southern Africa" as a separate agenda item during its thirty-fourth session illustrates the continued concern on the part of the human rights organs of the United Nations about apartheid and the massive violations of human rights in southern Africa. The title of the agenda item correctly reflects the adverse influence of banks, transnational corporations, and other organizations on the enjoyment of human rights in that region.

The report before the Sub-Commission at its thirty-fourth session, E/CN.4/Sub.2/469, as prepared by the Special Rapporteur on this item, Mr. Khalifa, consists of an updated list of banks, firms and other organizations which give assistance to the racist regimes of southern Africa.

I.

Under Sub-Commission resolution 2 (XXXIII), the Special Rapporteur is to use all available material, including that provided by NGOs, to demonstrate clearly the volume and nature of such assistance.

The International Human Rights Law Group, a component of the Procedural Aspects of International Law Institute, has been conducting a comprehensive investigation during the past two years into the breaking of the United Nations Sanctions formerly imposed against Southern Rhodesia ^{1/} (now Zimbabwe) by two major United States oil companies, Mobil Oil Corporation and Caltex Petroleum Corporation. The information that will follow below will be partially historic in nature, since Zimbabwe is now an independent sovereign State.

However, the substantiated evidence which illustrates that several oil companies were involved in the continued illegal supply of petroleum and petroleum products to Southern Rhodesia should be noted. The posture and strategies of these companies as well as their home governments might shed some light on the requirements necessary for a strict enforcement of the present arms embargo and of possible future mandatory sanctions, under Chapter VII of the United Nations Charter, against the racist regime of South Africa. (See General Assembly Resolution 35/32, of 14 November 1980).

II.

In his final revised report, E/CN.4/Sub.2/383/Rev.1, the Special Rapporteur mentioned allegations brought in June 1976 against five oil companies regarding their illegal supply of petroleum and petroleum products to the Rhodesian regime. 2/ In addition mention was made of the intention of the Government of the United Kingdom to investigate whether British Petroleum and Royal Dutch/Shell were involved in such illegal trade. 3/ This investigation, the results of which were made public in 1978 in the "Bingham Report," found that there had been massive contraventions by both companies of United Nations Sanctions as well as British law implementing these sanctions. 4/ However, in 1980 the United Kingdom Government decided to give amnesty to both companies, removing the threat of prosecution. 5/

In the United States allegations brought against Mobil Oil Corporation in 1976 could not be substantiated. The corporation denied the charges, stating that since 1966 it had been corporation policy to bar any sales to Southern Rhodesia. 6/ In April 1981, however, the International Human Rights Law Group made public documentary evidence which finally seems to prove that Mobil Oil Corporation and Caltex Petroleum Corporation and/or their direct subsidiaries were involved in massive oil deliveries to the illegal Rhodesian regime. 7/ The evidence, consisting of official Mozambique customs documents illustrating the illegal trade, have been forwarded to the Special Rapporteur. Similar customs documents concerning Royal Dutch Shell's illegal activities, were obtained this spring by a member of the Parliament of the Netherlands. 8/

III.

The release of the documents has reopened the discussion about the role of governments in enforcing United Nations mandatory sanctions. At the 1981 Annual Shareholders meeting of Royal Dutch Shell, its director publicly admitted breaking the United Nations Sanctions. 9/ At the 1981 Annual Shareholders meeting of Mobil Oil Corporation its Chairman refused to stand by an earlier statement that Mobil's wholly owned South Africa subsidiary was not involved in illegal trade to southern Africa. 10/

However, to date none of the oil companies that violated these sanctions have been prosecuted by their home governments. The absence of prosecution can be partially explained by the fact that the Governments of the United States, the United Kingdom and the Netherlands in their domestic legislation implementing the 1966 United Nations Mandatory Sanctions against Southern Rhodesia exempted foreign subsidiaries of companies based in the three respective countries, even if those subsidiaries were wholly owned by that company. 11/ This ineffective enforcement of United Nations Sanctions against Southern Rhodesia triggered by both intended hiates in domestic laws and non-prosecution of the companies which violated those laws, undoubtedly had an adverse impact on the enjoyment of human rights in southern Africa.

This statement is submitted in the hope that such ineffective enforcement will be prevented with regard to present and possible future mandatory sanctions against the racist regime of South Africa.

Foot-notes

1. See Security Council Resolutions 232 of 16 December 1966 and 253 of 29 May 1968.
2. E/CN.4/Sub.2/383/Rev.1, paras. 210-214.
3. E/CN.4/Sub.2/383/Rev.1, para. 214
4. See, e.g., Martin Bailey, Oilgate, (1979).
5. See, e.g., Financial Times, 16 April 1980.
6. E/CN.4/Sub.2/383/Rev.1, para. 213.
7. See, e.g., South Magazine, April 1981.
The Village Voice, 6-12 May, 1981.
Africa News, 11 May 1981.
8. See De Volkskrant, 11 April 1981.
9. Royal Dutch Shell, Annual Shareholders meeting, 21 May 1981, The Hague, The Netherlands.
10. Mobil Corporation, Annual Shareholders meeting, 7 May 1981, New York, United States.
11. See in the case of the United States: "Rhodesian Sanctions Regulations," pursuant to Executive Order Nos. 11322 and 11419; Office of Foreign Assets Control, Department of the Treasury; 13 August, 1968, 33 Fed. Reg. 11524.
12. In the case of Mobil Corporation, at least 11 entries of the Mozambique bond books seem to illustrate delivery of petroleum products to Southern Rhodesia coming directly from the United States. Such practice was in direct violation of United States law.