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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. Oluyemi Adeniji (Nigeria) •

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 3046 (XXVIII) of 30 November 1975, 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 1 February 1979 there were 49 States parties to the Convention, 1/

2. As required under article IX of the Convention, the Chairman of the Commission on Human Rights at its thirty-third session appointed a Group of three members of the Commission, consisting of the representatives of Cuba, Nigeria and the Syrian Arab Republic, who are also representatives of States parties to the Convention, to consider reports submitted by States parties in accordance with article VII. Article IX, paragraph 1, of the Convention provides that the Group may meet for a period of no more than five days, either before the opening or after the closing of the session of the Commission on Human Rights, to consider reports submitted in accordance with article VII.

3. By its resolution 7 (XXXIX) of 22 February 1978 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 five days before the thirty-fifth session of the Commission to consider reports submitted by States parties in accordance with article VII of the Convention; and invited States parties to submit to the group, through the Secretary-General reports on the legislative, judicial, administrative and other measures that they have adopted and that give effect to the provisions of the Convention, as required under article VII.

1/ See E/CE.4/1326, annex.

## II. ORGANIZATION OF THE IQ79 SESSION

### A. Attendance

4. The Group held its second (17<sup>o</sup>) session at the United Nations Office at Geneva, from 2<sup>o</sup> January to 2 February 197<sup>o</sup>. The session was opened by the Chairman/Rapporteur of the 1978 session of the Group. The Group membership at the session was as follows:

Cuba	Mr. Frank ORTIZ-RODRIGUEZ*
Nigeria	Mr. Oluyemi ADSFUI* Mr. Kabiru AffiED^ Mr. B.C.!! "IHEKUNA**
Syrian Arab Republic	Mr. Dip-Allah EL-FATTAL* Mr. Clovis KHOURY**

### B. Election of officers

5. At its meeting held on 29 January 1979, the Group re-elected by acclamation Mr. Oluyemi Adeniji (Nigeria) as its Chairman/Rapporteur.

### C. Agenda

6. At its meeting held on 29 January 197<sup>o</sup>, the Group considered the provisional agenda, submitted by the Secretary-General (E/CN.4/AC.33/I.2) and adopted it, with amendments, as the agenda of its 1979 session, as follows;

1. Election of officers
2. Adoption of the agenda
3. Consideration of reports submitted by States parties under article VII of the Convention
4. Consideration of information submitted to the Group in accordance with resolutions adopted by the Commission on Human Rights
5. Consideration of other Matters relating to the Group's mandate
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

7. The Group had before it a note by the Secretary-General (E/CN.4/1976) concerning the reports submitted by States parties under article VII of the Convention, as well as reports submitted since the 197<sup>o</sup> session of the Group by Madagascar (E/CIT.4/1277/Add.13), the Byelorussian Soviet Socialist Republic (E/CN.4/1277/Add.14), Poland (E/CN.4/1277/Add.15), Hungary (E/CN.4/1277/Add.16) and the Ukrainian Soviet Socialist Republic (E/CN.4/1277/Add.17).

8. At its second session, the Group considered the reports of the five States parties listed in paragraph 1 above. It expressed its appreciation to these States parties for the early submission of their reports. In the case of Madagascar, it was noted, from the report that no legislative, judicial, administrative or other measures relating to the implementation of the Convention were adopted at the national level in 1977 and that Malagasy courts had not so far had to deal with cases relating to the crime of apartheid. The Group took into consideration the fact that the report was submitted before the Government of Madagascar received the general guidelines concerning the form and contents of reports to be submitted by States parties under article VII of the Convention, and expressed the hope that future reports from Madagascar would benefit from these guidelines. Considering the report submitted by the Byelorussian Soviet Socialist Republic, the Group noted its initiative whereby it had sponsored General Assembly resolution 32/122 on the protection of persons detained or imprisoned as a result of their struggle against apartheid, racism and racial discrimination, colonialism, aggression and foreign occupation and for self-determination, independence and social progress for their people. At the same time the Group expressed the hope that the next report of the Byelorussian Soviet Socialist Republic would make appropriate reference to the relevant provisions of the new Constitution which was promulgated after the submission of the report considered by the Group. The report of Poland was found to be very informative particularly on the constitutional and legal provisions available for combatting apartheid and similar manifestations of racial discrimination. The Group believed that it needed further information on the efforts made to publicize the text of the Convention in the country and on steps taken to implement the decisions of the Security Council and other organs of the United Nations aimed at the prevention, suppression and punishment of the crime of apartheid. The Group commended the report of Hungary particularly the reference to the promulgation by the Hungarian People's Republic of a decree to widely disseminate the provisions of the Convention. The Group expressed the hope that the relevant provisions of the new Penal Code, referred to in the report, would be made available to the Group in the next report of that country. Noting from the report the contribution of Hungary as a founding member of the United Nations Special Committee against Apartheid, the Group expressed the hope that future reports will embody more extensive information on the activities of Hungary in implementation of article VI of the Convention. The Group expressed its satisfaction with the report submitted by the Ukrainian Soviet Socialist Republic, which it considered in conformity with the basic requirements of the Convention. The report was commended in particular for the information it contained concerning the activities undertaken in connexion with the Programme of the Decade for Action to Combat Racism and Racial Discrimination.

9. The Group stressed the importance of a continuing co-operation and dialogue between itself and the States parties to the Convention, and to this end, requested the Secretary-General to invite, on its behalf, the representatives of States parties whose reports are being considered, to participate at its meeting on 1 February 1979 for the purpose of exchanging views on their reports and on the implementation of the Convention.

10. The meeting of the Group, held on 1 February 1979, was attended by the representatives of the Byelorussian Soviet Socialist Republic, Hungary, Poland and the Ukrainian Soviet Socialist Republic. The Group welcomed their presence and expressed its appreciation for their prompt acceptance of its invitation which testified to the importance attached by their governments to the struggle against racial discrimination and apartheid and to the implementation of the Convention. This invitation was motivated by the deep desire of the members of the Group, who themselves represent States parties to the Convention, to conduct a fruitful dialogue with the representatives of the other States parties on the implementation of the provisions of the Convention.

11. The representatives of the States parties concerned welcomed the invitation of the Group and expressed their Governments' willingness to co-operate fully with it to achieve a better implementation of the Convention. Each of them gave further information on the activities and measures undertaken or adopted by their Governments at both the national and international levels with a view to achieving the ultimate purpose of the Convention, which is the suppression and eradication of the crime of apartheid and similar policies and practices of racial segregation and discrimination as defined under the Convention. Each in turn cited provisions of their constitutions and laws enacted to that effect as well as the international conferences attended and resolutions initiated, sponsored or supported by their Governments, which related to the combat against racism and racial discrimination. They emphasized however that to achieve this end, wider adherence to the Convention was required and stronger co-operation was needed at the international level towards isolating the racist régimes as well as preventing any assistance to them. Stronger pressure should also be exerted on States maintaining relations with such régimes with a view to bringing them to an end.

12. Members of the Group expressed their gratitude for the supplementary information submitted by the representatives of the States parties present and agreed with them on the importance of a wider adherence to the Convention as well as on the need for more international co-operation to isolate the racist régimes which apply apartheid and similar policies and practices of racial segregation and discrimination. They also agreed that in the meantime, States parties to the Convention should be expected to give further details in their future reports concerning the implementation of article VI of the Convention relating to the relevant resolutions adopted by the Security Council and other organs of the United Nations. The Group also agreed that since this Convention was particularly concluded for the suppression and punishment of the crime of apartheid, States parties should, in the light of article V, include in their reports information on any competent courts and legal measures that they may have established with a view to trying persons charged with the acts enumerated in the Convention as well as their own ideas concerning the establishment of the international penal tribunal as anticipated in that article.

#### IV. CONSIDERATION OF INFORMATION SUBMITTED TO THE GROUP IN ACCORDANCE WITH RESOLUTIONS ADOPTED BY THE COMMISSION ON HUMAN RIGHTS

13. The Group had before it a note by the Secretary-General (E/CN.4/AC.33/L.3) drawing its attention to resolution 5 (XXXIV) of the Commission on Human Rights, by which the Commission took note of the list of persons who are suspected of having been guilty in Namibia of the crime of apartheid or of a serious violation of human rights as contained in the progress-report of the Ad Hoc Working Group of Experts in southern Africa, and requested the Secretary-General to bring this list to the attention of States and the competent United Nations bodies, including the Group of three members of the Commission appointed under article IX of the International Convention on the Suppression and Punishment of the Crime of Apartheid. Chapter V (paragraphs 559 to 567) of the progress report of the Ad Hoc Working Group of Experts which contained the list of persons in question was annexed to the note of the Secretary-General.

14. The Group agreed that the list of persons who had been guilty in Namibia of the Crime of apartheid should be amplified and disseminated as widely as possible. The list should contain all the information necessary for identification of criminals, including if possible their photographs, and should be communicated to all States parties to the Convention, as well as to all members of the United Nations. The need was emphasized by the Group that the States parties should take appropriate measures to adopt legislations in line with the requirements of the Convention in order to be able to try and punish the criminals in accordance with articles IV and V of the Convention. Where States parties have not yet taken the measures envisaged under article IV, they have the obligation to arrange for the extradition of the criminals in accordance with article XI of the Convention to States parties which may have competent tribunals to try and punish such criminals, or to be tried by an international penal tribunal which may be established in accordance with article V of the Convention.

15. Concerning the international penal tribunal envisaged in article V of the Convention, the Group reiterated its last year's recommendation stressing the desirability of suggestions to be made by States parties for the establishment of such a tribunal. The Group noted that none of the States parties had referred to this matter in their reports submitted to it under article VII of the Convention. One of the possibilities for the establishment of such a tribunal, it was suggested, was the convening of a diplomatic conference of States parties to the Convention, after appropriate consultations among themselves, with a view to elaborating its statute. As regards the proposal reflected in the report of the Group last year for the drawing up of a model penal legislation which would serve as a guide to the States parties in implementation of the provisions of the Convention, the Group was of the opinion that this idea should be kept in mind for further consideration.

#### V. CONSIDERATION OF OTHER MATTERS RELATING TO THE GROUP'S MANDATE

16. The Group discussed the manner in which it may be able to assist the States parties in the implementation of the provisions of the Convention and to promote its effectiveness. It carefully considered the state of rectifications and accessions to the Convention and considered it extremely urgent, in view of the priority given by international public opinion and the United Nations to the suppression and punishment of the crime of apartheid and its complete eradication, that more decisive action should be taken by the competent organs of the United Nations in order to encourage further ratifications of the Convention. The Group also noted the fact that only 17 of the 49 States parties had submitted their reports under article VII and recommends to the Commission on Human Rights to call upon those States parties that have not yet submitted their reports to do so as soon as possible.

17. The Group considered practical ways of performing its functions and discussed in some detail the modalities of defining its terms of reference under the Convention. The following four areas of activities, some of which had already been dealt with in the first report of the Group to the Commission, were examined; (i) the modalities of its consideration of reports submitted by States parties under article VII of the Convention; (ii) the question of inviting representatives of States parties, which have submitted reports, to be present at the meetings of the Group and to participate in the consideration of their reports in an atmosphere of co-operation and dialogue; (iii) the manner in which the Group may submit proposals to the Commission on Human Rights concerning the ways in which the

Convention is applied; and (iv) the question of drawing the attention of the Commission to difficulties relating to the implementation of the Convention. This last area was of special importance and called for the elaboration of the terms of reference of the Group and the extent of its responsibilities under the Convention. The Group considered it necessary to study the reports of States parties in depth and to make recommendations which would cover broader aspects of the implementation of the Convention than those reflected in the reports. In this connexion, the Group considered it necessary to request the States parties, through the Commission on Human Rights, to give careful consideration to the manner in which the provisions of the Convention may be applied and to express their view concerning their understanding of the Group's terms of reference under the Convention.

#### VI. CONCLUSIONS AND RECOMMENDATIONS

18. The Group recommends that the Commission on Human Rights should appeal to all States which have not yet done so to ratify or accede to the Convention.

19. The Group also recommends to all States parties that have not submitted their reports under article VII of the Convention to do so as soon as possible. In this connexion, the Group reiterates its recommendation that the general guidelines regarding the form and contents of reports to be submitted by States parties (E/CN.4/1286, annex) should be brought once more to the attention of all States parties, requesting them to take those guidelines fully into account in submitting their reports under article VII of the Convention,

20. The Group considers that a constructive dialogue with the representatives of States parties whose reports are to be discussed is useful for the discharge of its mandate under the Convention. It therefore wishes to invite the States parties concerned, through the Commission on Human Rights, to consider the possibility of sending representatives to be present at future sessions of the Group when reports submitted by them are considered, and requests the Secretary-General to inform the States parties concerned accordingly in advance of its future sessions.

21. The Group, as the only body which consists exclusively of representatives of States parties to the Convention, considers itself duty-bound to express opinions on the situation in connexion with the implementation of the Convention and, therefore, draws the attention of States parties, through the Commission on Human Rights, to the desirability of expressing their views and ideas concerning the terms of reference of the Group under the Convention.

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22. The Group wishes once again to draw the attention of States parties, through the Commission on Human Rights, to the desirability of suggesting ideas in relation to the modalities for the establishment of the international penal tribunal referred to in article V of the Convention.

#### VII. ADOPTION OF THE REPORT

23. At its meeting held on 2 February 1979, the Group considered its draft report on the work of its 1979 session. The draft report, as amended in the course of the discussion, was adopted unanimously.