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ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

DRAFT CONVENTION ON THE SUPPRESSION AND PUNISHMENT  
OF THE CRIME OF APARTHEID

Note by the Secretary-General

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\* A/8760.

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## I. INTRODUCTION

1. At the 1859th meeting of the Third Committee of the General Assembly, held on 5 November 1971, a draft convention on the suppression and punishment of the crime of apartheid (A/C.3/L.1871) 1/ was submitted to the Committee by Guinea and the Union of Soviet Socialist Republics during the discussion of item 54 (a) of the Assembly's agenda, entitled "International Year for Action to Combat Racism and Racial Discrimination".
2. The General Assembly, considering that it could not fully examine the draft convention at its twenty-sixth session, in resolution 2786 (XXVI) of 6 December 1971, invited the Secretary-General to transmit the draft convention, together with the relevant records of the discussion in the Assembly (A/C.3/SR.1859-1863 and A/PV.2001), to the Commission on Human Rights and recommended that the Commission and the Economic and Social Council should consider the item, in co-operation with the Special Committee on Apartheid, as a matter of priority at their twenty-eighth and fifty-second sessions, respectively, and should submit the text of a draft convention on the suppression and punishment of the crime of apartheid to the General Assembly at its twenty-seventh session.
3. The General Assembly, in section II, paragraph 4, of resolution 2784 (XXVI), adopted on 6 December 1971, invited the Economic and Social Council to request the Commission on Human Rights to study and make recommendations for the further elaboration of international instruments to deal with crimes against humanity, particularly those arising from the policies of apartheid.
4. The Economic and Social Council, at its organizational meeting (1810th) for the fifty-second session, held on 6 January 1972, decided to transmit General Assembly resolution 2786 (XXVI) to the Commission on Human Rights and to consider the matter at its fifty-second session in the context of the report of the Commission on its twenty-eighth session.

## II. ACTION TAKEN BY UNITED NATIONS ORGANS

### Action taken by the Commission on Human Rights (twenty-eighth session)

5. The Commission considered the draft convention on the suppression and punishment of the crime of apartheid submitted by Guinea and the Union of Soviet Socialist Republics (A/C.3/L.1871), together with a draft resolution (E/CN.4/L.1189) 2/ submitted by Nigeria, Pakistan and the United Republic of Tanzania proposing a separate protocol on the suppression and punishment of the

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1/ See annex I.

2/ See annex II.

crime of apartheid, to be annexed to the International Convention on the Elimination of all Forms of Racial Discrimination, and a draft resolution submitted by the Union of Soviet Socialist Republics (E/CN.4/L.1193) 3/ relating to the draft convention. The Commission also had before it an amendment to article 5 of the draft convention submitted by the Byelorussian Soviet Socialist Republic (E/CN.4/L.1194) 4/.

6. At its 1163rd meeting, on 23 March 1972, the Commission adopted by 22 votes to none, with 5 abstentions, resolution 4 (XXVIII), 5/ entitled "Draft convention on the suppression and punishment of the crime of apartheid". In paragraph 1, the Secretary-General was requested to circulate the text of the draft convention, together with amendments thereto, and the text of the draft protocol to be annexed to the International Convention on the Elimination of all Forms of Racial Discrimination to Governments for their comments and views and to transmit such comments and views received, together with the comments made in the Commission on Human Rights during its twenty-eighth session on the relevant drafts, 6/ to the General Assembly at its twenty-seventh session. In paragraph 2, Governments were requested to communicate their comments and views concerning the draft convention and the draft protocol to the Secretary-General at the earliest possible date for consideration by the General Assembly at its twenty-seventh session. In paragraph 3, the Special Committee on Apartheid was invited to consider the draft convention and the draft protocol and to submit its recommendations to the General Assembly at its twenty-seventh session. In paragraph 4, the Economic and Social Council was requested to invite the General Assembly to give priority to the question of the adoption of an international instrument for the suppression and punishment of the crime of apartheid in the agenda of its twenty-seventh session.

#### Action taken by the Special Committee on Apartheid

7. The Chairman of the twenty-eighth session of the Commission on Human Rights accordingly addressed a letter to the Chairman of the Special Committee on Apartheid, transmitting the texts of the draft convention, the draft protocol and the amendment to article 5 of the draft convention.

8. The recommendations of the Special Committee have been included in the report of the Committee 7/ to the General Assembly at its twenty-seventh session.

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3/ See annex III A. For the revised draft resolution, submitted by Nigeria and the USSR (E/CN.4/L.1193/Rev.1), see annex III B.

4/ See annex IV.

5/ See Official Records of the Economic and Social Council, Fifty-second Session, Supplement No. 7 (E/5113), chap. XIII, section A.

6/ See summary records of the twenty-eighth session of the Commission, (1155th to 1157th, 1162nd and 1163rd meetings).

7/ See Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 22 (A/8722).

Action taken by the Economic and Social Council (Fifty-second session)

9. At its 1818th meeting on 2 June 1972, the Economic and Social Council, noting resolution 4 (XXVIII) of the Commission on Human Rights, adopted resolution 1696 (LII), entitled "Draft convention and draft protocol on the suppression and punishment of the crime of apartheid", in which it emphasized the great importance of the preparation and adoption of an international instrument that could serve as a legal basis for uniting the efforts of all States with a view to eradicating the inhuman policies and practices of apartheid expressed the view that it was essential to complete at the earliest possible date the preparation of a draft international instrument for the suppression and punishment of the crime of apartheid and requested the General Assembly to consider this question as a matter of priority at its twenty-seventh session.

Action taken by the Secretary-General

10. In accordance with resolution 4 (XXVIII) of the Commission on Human Rights, the Secretary-General transmitted the texts of the documents referred to in operative paragraph 1 of the resolution to Governments of States Members of the United Nations and members of the specialized agencies, and drew attention to the request of the Commission that they communicate their comments and views concerning the draft Convention and the draft Protocol to the Secretary-General for consideration by the General Assembly at its twenty-seventh session. The Secretary-General requested Governments to make their comments and views available to him by 30 June 1972.

11. Comments and views of Governments on the draft Convention and the draft Protocol received by the Secretary-General up to 15 September 1972 are reproduced in section III below. Those received after that date will be transmitted to the General Assembly as addenda to the present document.

III. REPLIES RECEIVED FROM GOVERNMENTS

AUSTRIA

/Original: English/

14 July 1972

All actions described in article II of the draft convention on the suppression and punishment of the crime of apartheid and in article II of the draft protocol to the International Convention on the Elimination of all Forms of Racial Discrimination are strictly opposed by Austria as being in flagrant contradiction to basic freedoms and human rights.

Austria has repeatedly taken that view the last time by ratifying the International Convention on the Elimination of All Forms of Racial Discrimination, article II of which condemns a policy of racial segregation and apartheid.

On the other hand, Austria is of the opinion that the elaboration of an international criminal law in this respect must be subject to careful and detailed study to avoid legal uncertainties.

In addition, it may be pointed out that actions punishable under the Austrian Penal Code, even if they are committed by foreigners in a foreign country, will be prosecuted by Austria according to the "principle of world legal order".

BARBADOS

/Original: English/

16 June 1972

The Government of Barbados does not have any comments to offer on the draft convention on the suppression and punishment of the crime of apartheid.

BHUTAN

/Original: English/

5 July 1972

The Royal Government of Bhutan have no special comments to offer at this stage concerning the draft convention and the draft protocol.

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BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

/Original: Russian/

17 August 1972

The Byelorussian SSR has always been and continues to be in favour of the adoption of the most decisive and effective measures to combat the policy and practice of apartheid and considers it essential that an international legal instrument aimed at the suppression and punishment of the crime of apartheid should be elaborated and adopted within the United Nations.

The Byelorussian SSR therefore fully supports the draft convention on the suppression and punishment of the crime of apartheid submitted to the General Assembly at its twenty-sixth session by the delegations of the Union of Soviet Socialist Republics and Guinea.

At the twenty-eighth session of the Commission on Human Rights some States proposed the elaboration, not of a draft convention, but of a draft protocol on the suppression and punishment of the crime of apartheid to be annexed to the International Convention on the Elimination of All Forms of Racial Discrimination.

An analysis of this proposal shows that the elaboration of a protocol to the above-mentioned Convention might create further difficulties for those States which are at the present time considering acceding to it and might also lead some States Parties to it to reconsider their attitude to the Convention. Thus, a protocol might weaken the International Convention on the Elimination of All Forms of Racial Discrimination and, moreover, might complicate the work of the Committee established under article 8 of that Convention.

Lastly, it should be borne in mind that a separate convention would be a more effective instrument of international law and a further step in the struggle against the most flagrant mass violations of human rights.

In view of the above considerations, the Byelorussian SSR considers it essential to concentrate the attention of the United Nations on the elaboration of a convention on the suppression and punishment of the crime of apartheid on the basis of the draft submitted by the Soviet Union and Guinea.

DENMARK

/Original: English/

6 July 1972

Denmark has consistently supported international efforts to eliminate all forms of racial discrimination and will continue to do so. The adherence of the Danish Government to the International Convention on the Elimination of All Forms of Racial Discrimination, to the United Nations Covenants on Human Rights and other

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international human rights instruments bears witness to this fact; with particular regard to apartheid, Denmark's strong opposition to this policy is well known from debates in the General Assembly and elsewhere.

The Danish Government has therefore carefully considered the "Draft convention on the suppression and punishment of the crime of apartheid", and the amendment thereto as well as the "Draft protocol on the suppression and punishment of the crime of apartheid" to be annexed to the International Convention on the Elimination of All Forms of Racial Discrimination.

Both drafts can be regarded as supplementary to the International Convention on the Elimination of All Forms of Racial Discrimination inasmuch as they differ from that instrument mainly in providing for universal jurisdiction in respect of acts which States Parties to the said Convention have already undertaken to prevent, prohibit and eradicate in territories under their own jurisdiction.

In view of the fact that no progress has been made in the question of the principles of international criminal jurisdiction, it is doubtful whether a supplementary convention or protocol of the proposed contents would gain the widespread support required to make it effective. In the absence of such support, an international instrument based on either of the two drafts would have the negative and detrimental effect of weakening the confidence in international law as a useful means of promoting respect for the observance of human rights.

So far, about half the Members of the United Nations have adhered to the International Convention on the Elimination of All Forms of Racial Discrimination and the implementation system instituted under the Convention holds out positive prospects for the establishment of a humanitarian practice tending to further the elimination of racial discrimination. In the view of the Danish Government, it would seem more useful at the present time to concentrate efforts on securing increased support for and implementing the existing international instruments in this field and the Danish Government is prepared to consider any proposal which realistically could promote the efforts to eliminate apartheid.

KENYA

/Original: English/

3 July 1972

The Government of Kenya fully supports the present draft convention in principle because, if and when it comes into force, it will be the only convention specifically dealing with apartheid as a particularly vicious type of discrimination in a legal as opposed to a political manner. Thus, apart from making apartheid fall within the ambit of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, it is our view that States parties to the convention should not only adopt any legislative or other measures necessary to prevent any encouragement of the crime of apartheid, as is provided for in article 4 of the draft, but there should also be a provision in the convention to the effect that States parties to the convention will undertake to punish those found guilty of the crime whether or not it was committed in their territory or in the territory of a State not party to the present convention.

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LIBERIA

/Original: English/

2 August 1972

The Government of Liberia have the following views and comments on the "Draft convention on the suppression and punishment of the crime of apartheid".

Draft Convention:

ARTICLE II

The provisions, which read:

"committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and of systematically oppressing them",

should be changed to read as follows:

"committed for the purpose of establishing and maintaining domination by persons over persons by reason of racial difference".

The change is to broaden the definition and to remove the impression that apartheid occurs only in the context of two races. It may and does occur in a multiracial setting. The change also deletes the need to show systematic oppression. The crime of apartheid should be checked long before it hardens into systematic oppression.

In the subparagraphs under article II of the draft convention, the word "oppressed" should be deleted because it is the perpetration of acts of the type listed which makes a racially oppressed group. To wait until a group is already racially oppressed before the punishment of acts of apartheid against them would be to ignore the wise maxim that prevention is better than cure.

Subparagraph (b) of article II should be changed to read:

"Imposition on a racial group of living conditions calculated to cause their physical destruction, or wilfully neglecting to improve living conditions likely to cause the physical destruction of a racial group".

This change is intended to ensure that racial groups, who for any reason are living under conditions likely to cause their physical destruction, will not continue to suffer those conditions merely because they were not imposed by the Government or with its encouragement. Thus, if the authorities should be aware of such conditions, even though not caused by the Government, there should be a duty to improve those conditions.

In subparagraph (c) of article II, the word "completely" on the first line should, for obvious reasons, be deleted.

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LIBYAN ARAB REPUBLIC

/Original: English/

21 August 1972

Having studied the "Draft convention on the suppression and punishment of the crime of apartheid" submitted by the Republic of Guinea and the Union of Soviet Socialist Republics, the Government of the Libyan Arab Republic is pleased to report that it has no objection to the above-mentioned draft convention.

In its firm conviction that apartheid is a crime against humanity, the Government of the Libyan Arab Republic believes that this draft convention is a measure which will ensure and fully implement the Charter of the United Nations, the Universal Declaration of Human Rights and the conventions on war crimes and crimes against humanity. In addition, the draft convention is an implementation of the various resolutions adopted by the General Assembly, the Security Council and other organs of the United Nations condemning the policy of apartheid as a crime against humanity. It will be recalled that the Government of the Libyan Arab Republic has fully supported these resolutions.

Since the Government of the Libyan Arab Republic has always rejected and condemned the policy of apartheid in the strongest terms and has consistently declared its firm opposition to any manifestation of this policy on any level, the stand of the Government of the Libyan Arab Republic with respect to this draft convention should be viewed within that context.

It might also be added that this draft incorporates some important aspects of the International Convention on the Elimination of All Forms of Racial Discrimination, of which the Government of the Libyan Arab Republic is a Member State.

MADAGASCAR

/Original: French/

25 July 1972

Apartheid, which is referred to as a crime in the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, nevertheless remains a manifestation of racial discrimination and is mentioned as such in the ninth preambular paragraph and in article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination. The problem of apartheid is admittedly of a serious and urgent nature, but it seems to be limited to a small number of countries, in particular South Africa. Any convention on apartheid would therefore only cover that country in particular and might as a result become a political instrument without general scope.

In these circumstances, Madagascar considers that any draft convention along those lines seems to be neither particularly useful nor desirable.

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Moreover, the proposed text of the draft convention, in the absence of specific and important elements by comparison with the International Convention on the Elimination of All Forms of Racial Discrimination, is of a limited character only.

In fact, the definition in article II relates almost exclusively to the political system practised by South Africa. Moreover, the possibility of branding as criminal, in accordance with article I, paragraph 2, "representatives of the State authority", mentioned in article III, would create great political and legal confusion in application. Furthermore, under article IV the States Parties undertake to adopt legislative or other measures to punish persons guilty of the crime of apartheid: since, however, apartheid is a State policy, a State which practises it cannot be asked to turn against itself by imposing penalties: it would be more effective to call for the abrogation of penal provisions included in legislation or regulations based on discrimination. With regard to article V, the question arises whether, apart from the measures under Chapter VII of the Charter of the United Nations referred to in that article, measures other than those applied hitherto and provided for under the Charter could be adopted as sanctions against a crime such as apartheid. Similarly, the undertaking given under article V no longer seems to make a distinction between resolutions and decisions (of the Security Council for example), between mere recommendations and mandatory provisions. These considerations lead Madagascar to think that the text of the above-mentioned draft convention introduces no desirable precision or innovation to the International Convention on the Elimination of All Forms of Racial Discrimination. For its part, the Government of the Malagasy Republic considers that that Convention, to which it has acceded, and the internal legislation in force in Madagascar are quite adequate.

NORWAY

/Original: English/

31 July 1972

The Norwegian position with regard to the question of apartheid and the need to abolish all forms of racial discrimination has been clearly and unequivocally stated on a number of occasions and in many international fora, and need no further elaboration. The Norwegian Government is ready to co-operate in any realistic efforts aimed at the suppression and eradication of racial practices wherever these might occur.

The Norwegian Government has some doubts, however, as to whether a new international legal instrument on apartheid would in practice add any new substance to the protection against racial discrimination already given by existing international agreements. Prominent among the conventions in force prohibiting apartheid and similar crimes is the International Convention on the Elimination of All Forms of Racial Discrimination. This instrument of international law, which is binding upon a great number of States, contains, inter alia, certain provisions to ensure its implementation. In this convention, the States Parties also condemn expressis verbis apartheid and undertake to eliminate this evil in territories under their jurisdiction.

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The Norwegian Government is traditionally of the opinion that it is more important to support and strengthen the implementary machinery of those conventions already in force than to introduce new international legislation that cannot be realistically expected to provide added protection for those who suffer from the crimes of apartheid and other forms of discrimination. A new convention or protocol that perhaps stands little chance of being adhered to by a State which engages in the activities which the instrument is intended to prohibit, may in fact tend to weaken rather than to strengthen the respect and status of international law.

In conclusion, the Norwegian Government would tentatively and as a general observation state that it has some doubts with regard to the usefulness of a new convention or protocol on the subject of apartheid. Consequently, the Norwegian Government will, for the time being, refrain from commenting on the texts circulated by the Secretary-General.

SWEDEN

/Original: English/

13 July 1972

It is a well known fact that, in the United Nations as well as in other fora, Sweden has consistently criticized and condemned policies of apartheid and other forms of racial discrimination. Sweden is prepared to support any realistic proposals for effective action aimed at combating and suppressing such policies wherever they occur.

The proposal for a new international convention on apartheid embodying international criminal responsibility for such crimes must be viewed against the background of other international conventions which also prohibit racial discrimination. The most important convention of this kind is the International Convention on the Elimination of All Forms of Racial Discrimination, which contains extensive provisions against racial discrimination and also establishes a special committee to ensure its implementation. According to article 3 of this Convention, States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

Other international instruments, in particular the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, also prohibit discrimination based on, for instance, race and colour.

The Swedish Government therefore has some doubts whether a new convention on apartheid would really add any new substance to the protection already afforded by other international instruments. If a new convention cannot be expected to increase this protection substantially, it would be preferable not to introduce a new convention. In fact, the creation of a number of different legal instruments dealing with more or less the same subject-matter involves certain risks. Difficult

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questions may arise about the relations between different treaties. A proliferation of treaty obligations may also result in a weakening of the authority of legally binding international instruments, since States may be inclined to look at them as recommendations or resolutions rather than as conventions whose provisions they are legally obliged to implement in their national law.

It should also be observed that a State which practises a policy of apartheid is not likely to adhere to a convention which prohibits apartheid. It therefore serves little purpose that a convention is concluded by States which do not engage in such practices and which do not tolerate racial discrimination within their territories.

Consequently, the Swedish Government feels some doubts about the usefulness of a new convention on this subject. In these circumstances, the Swedish Government refrains, for the time being, from commenting in detail on the drafts presented by certain delegations.

SYRIAN ARAB REPUBLIC

/Original: English/

8 August 1972

1. The Government of the Syrian Arab Republic feels that the draft convention on the suppression and punishment of the crime of apartheid and the draft protocol to be annexed to the International Convention on the Elimination of All Forms of Racial Discrimination should be merged and integrated into one single draft.

2. Article II of both the draft convention and the draft protocol has enumerated acts where "the crime of apartheid" should be applied. In this respect, the Government of the Syrian Arab Republic believes a separate paragraph should be added in this context to each of the drafts under consideration, or to the one (should they be merged), to the effect that:

"Forcible deportation of indigenous population, or the creation of conditions which may lead to mass emigration, and the denial of the legitimate right to return to the native home land."

UKRAINIAN SOVIET SOCIALIST REPUBLIC

/Original: Russian/

8 August 1972

The Ukrainian SSR is resolutely opposed to the policies of apartheid, racism and racial discrimination in all their forms and manifestations. This position has been stated repeatedly by delegations of the Ukrainian SSR in the United Nations and its organs during the consideration of various questions related to the elimination of all forms of racial discrimination.

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As a sponsor of a draft resolution in which the General Assembly at its twenty-sixth session would have recognized that "the conclusion of a convention on the suppression and punishment of the crime of apartheid under the auspices of the United Nations would be an important contribution to the struggle against apartheid, racism, economic exploitation, colonial domination and foreign occupation", the Ukrainian SSR is strongly in favour of the earliest possible adoption of such a convention.

The adoption of an international legal instrument aimed at the suppression of the crime of apartheid and other flagrant violations of fundamental human rights and freedoms is both essential and timely since the policies of apartheid and racial discrimination are in our time taking particularly monstrous forms in some parts of the world and if appropriate measures are not adopted they might create a serious threat to the peace and security of the peoples.

The adoption in the very near future of an international instrument to combat one of the most flagrant violations of fundamental human rights and freedoms, namely, apartheid, would strengthen existing humanitarian law and would be an important contribution to the decade for action to combat racism and racial discrimination.

In the view of the Ukrainian SSR, such an international instrument could take the form of a separate international convention which would clearly define the legal norms whereby States would legally assume an obligation to combat the inhuman policy of apartheid. An international instrument in the form of a convention would offer a distinct advantage in that those principles and norms involved in the struggle against apartheid which are now a reality would be codified and progressively developed in such a convention.

The draft additional protocol to the Convention on the Elimination of All Forms of Racial Discrimination proposed by some States is no substitute, in significance, for a separate text of a draft convention. The consideration of the draft additional protocol in the United Nations Commission on Human Rights showed that the very fact that such a protocol was submitted detracted from the significance, on the one hand, of General Assembly resolution 2736 (XXVI), which recognized the need for the conclusion of a convention on the suppression and punishment of the crime of apartheid, and, on the other, of the future international instrument on apartheid. It is not hard to see that the elaboration of a draft protocol might have an adverse effect on participation in the Convention on the Elimination of All Forms of Racial Discrimination and complicate the work of the Committee on the Elimination of Racial Discrimination.

The Ukrainian SSR considers that the draft convention submitted by the delegations of the USSR and Guinea provides a good basis for the adoption of an international instrument on the suppression and punishment of the crime of apartheid. At the same time, the inclusion in the text of the draft convention of some individual provisions from the draft additional protocol, in particular those providing for international responsibility for the crime of apartheid, would strengthen the text of the draft convention and would serve to ensure the elaboration and adoption of a more effective international legal instrument designed to combat apartheid and other mass violations of human rights.

UNION OF SOVIET SOCIALIST REPUBLICS

/Original: Russian/

17 July 1972

The consideration of the draft convention on the suppression and punishment of the crime of apartheid by the United Nations General Assembly and the Commission on Human Rights once again confirmed that it is essential and timely to elaborate and adopt an international instrument to combat one of the most flagrant violations of fundamental human rights and freedoms, namely, apartheid. In the view of the Soviet Union, such an instrument should take the form of a separate international convention which would emphasize the special danger of apartheid as a heinous crime against humanity creating a serious threat to the peace and security of the peoples. It was these considerations which led the Soviet delegation at the twenty-sixth session of the General Assembly to submit, jointly with the delegation of Guinea, a draft convention on the suppression and punishment of the crime of apartheid.

The proposal submitted to the Commission on Human Rights by some States to the effect that, instead of a draft convention on apartheid, a draft additional protocol to the Convention on the Elimination of All Forms of Racial Discrimination should be elaborated detracts to some extent from the significance of the future international legal instrument on apartheid. Furthermore, the elaboration of such a protocol would complicate the question of participation in the Convention on the Elimination of All Forms of Racial Discrimination and would place on the Committee on the Elimination of Racial Discrimination new and complex functions in addition to the heavy workload which it already carries under the Convention on the Elimination of All Forms of Racial Discrimination.

In this connexion, it would be essential to continue the elaboration of an international legal instrument on the suppression and punishment of the crime of apartheid on the basis of the draft convention submitted by the USSR and Guinea. At the same time, some provisions of the draft protocol designed to strengthen international responsibility for the crime of apartheid could be taken into account in the text of the draft convention. As a result of such an approach, the General Assembly could elaborate a new important and effective international instrument which would make a substantial contribution to the struggle against the most flagrant mass violations of human rights.



ANNEX I

Guinea and Union of Soviet Socialist Republics:  
draft Convention on the suppression and  
punishment of the crime of apartheid a/

The States Parties to this Convention,

Guided by the Charter of the United Nations, which provides for international co-operation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion,

Recalling the Declaration on the Granting of Independence to Colonial Countries and Peoples, in which the General Assembly stated that an end must be put to colonialism and all practices of segregation and discrimination associated therewith,

Observing that, in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination, States particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction,

Observing that, in the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, "inhuman acts resulting from the policy of apartheid" are described as crimes against humanity,

Recalling the Universal Declaration of Human Rights, which states that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, colour or national origin,

Observing that the United Nations General Assembly and Security Council have adopted a number of resolutions in which the policy of apartheid is condemned as a crime against humanity,

Convinced of the need to take further effective measures at the international and national levels with a view to the suppression and punishment of the crime of apartheid,

Have agreed as follows:

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a/ For the printed text, see Official Records of the General Assembly, twenty-sixth session, Annexes, agenda item 54, para. 32.

## Article I

1. The States Parties to this Convention reaffirm that apartheid is a crime against humanity, which is a flagrant violation of the purposes and principles of the Charter of the United Nations and of the universally recognized principles of international law, and which constitutes a serious threat to the peace and security of the peoples.

2. The States Parties to this Convention brand as criminal organizations, institutions and individuals which pursue a policy of apartheid.

## Article II

In this Convention, the term "the crime of apartheid" shall apply to the following acts, committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and of systematically oppressing them:

(a) Murder of members of an oppressed racial group or infliction upon them of serious bodily injuries or mental derangement;

(b) Deliberate imposition on an oppressed racial group of living conditions calculated to cause their physical destruction;

(c) Any measures, including legislative measures, calculated completely to debar an oppressed racial group from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the all-round development of such a group;

(d) Any measures, including legislative measures, forcibly dividing the population of a country along racial lines by the creation of separate reserves and ghettos for the members of an oppressed racial group and the prohibition of mixed marriages between various racial groups, and by the expropriation of landed property belonging to an oppressed racial group;

(e) Denial to members of such a group of elementary human rights and freedoms, including the right to work, the right to education and the right to freedom of movement;

(f) Exploitation of the labour of the members of an oppressed racial group;

(g) Legal and administrative prosecution of organizations and persons opposing apartheid;

(h) Arbitrary arrest and illegal imprisonment of the members of an oppressed racial group.

### Article III

The provisions of this Convention shall apply to representatives of the State authority and private individuals who, as principals or accomplices, participate in or directly incite others to the commission of the crime of apartheid, or who conspire to commit that crime, and to representatives of the State authority who tolerate its commission.

### Article IV

The States Parties to this Convention undertake to adopt any legislative or other measures necessary to prevent any encouragement of the crime of apartheid and to punish persons guilty of that crime.

### Article V

The States Parties to this Convention undertake to participate in international measures adopted through the competent organs of the United Nations and aimed at the suppression and punishment of the crime of apartheid, including measures adopted under Chapter VII of the Charter of the United Nations.

### Article VI

This Convention shall be open for signature by all States. Any State which does not sign the Convention before its entry into force may accede to it subsequently at any time.

### Article VII

/Additional final clauses/

ANNEX II

Nigeria, Pakistan and United Republic of Tanzania: draft resolution relating to a separate protocol on the suppression and punishment of the crime of apartheid, to be annexed to the International Convention on the Elimination of All Forms of Racial Discrimination

The Commission on Human Rights,

Believing that there is an urgent need to intensify international efforts to protect human rights for all without distinction as to race, sex, colour or religion,

Alarmed at the continuing flagrant violation of the Charter of the United Nations and the denial of basic human rights particularly in southern Africa,

Having considered the draft international convention on the suppression and punishment of the crime of apartheid in accordance with resolution 2786 (XXVI) of the General Assembly,

Taking into account the conclusions and recommendations contained in the report of the Ad Hoc Working Group of Experts prepared under resolutions 8 (XXIII) and 7 (XXIV) (E/CN.4/1075),

Convinced of the need to adopt an instrument to penalize the inhuman acts arising from the policies and practices of apartheid;

1. Recommends that the Economic and Social Council adopt the following draft resolution:

The Economic and Social Council,

Recalling that in resolution 2784 (XXVI) the General Assembly had requested the Commission on Human Rights to elaborate a draft international instrument to deal with crimes against humanity, particularly those arising from the policies of apartheid,

Also recalling General Assembly resolution 2786 (XXVI) in which the General Assembly transmitted a draft convention on the suppression and punishment of the crime of apartheid to the Commission on Human Rights for study and further elaboration,

Bearing in mind the conclusions and recommendations contained in the report of the Ad Hoc Working Group of Experts established under resolution 8 (XXIII) and 7 (XXIV) of the Commission on Human Rights (E/CN.4/1075),

Firmly convinced of the urgent need to establish the basis of an international machinery for the suppression and punishment of inhuman acts inherent in the policies of apartheid,

/...

1. Submits to the General Assembly for its consideration at its twenty-seventh session the following draft separate protocol on the suppression and punishment of the crime of apartheid to be annexed to the International Convention on the Elimination of All Forms of Racial Discrimination for its adoption.

The States Parties to the present Protocol,

Guided by the Charter of the United Nations, which provides for international co-operation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion,

Recalling that in article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination States Parties have particularly condemned policies of racial segregation and apartheid and have undertaken to prevent, prohibit and eliminate all such policies and practices in the territories within their jurisdiction,

Convinced of the need to take further and effective measures, at the national and international level, to suppress and punish such policies and practices wherever they may occur, and in particular in southern Africa,

Have agreed as follows:

Article I

The States Parties to the present Protocol declare the inhuman acts resulting from the policies and practices of apartheid and similar racial segregation as enumerated in article II of the present Protocol, are crimes in international law, and that all individuals, organizations and institutions responsible for such acts, whether acting on their own or under the authority of the State, are criminals under international law.

Article II

For the purpose of the present Protocol, the following acts, committed for the purpose of establishing or maintaining the domination of one racial group of persons over any other racial group or groups of persons and of systematically oppressing them, are crimes in international law for which there shall be individual responsibility:

1. Denial to a member or members of a racial group or groups of the right to life, liberty and security of person or the murder of a member or members of a racial group or groups or subjecting them to torture or to cruel, inhuman or degrading treatment or punishment or infliction upon them of serious bodily or mental injuries in accordance with articles 3 and 5 of the Universal Declaration of Human Rights;

2. Deliberate imposition on a racial group or groups of living conditions calculated to cause them physical, political, economic or cultural destruction:

3. Any measures, including legislative measures, calculated completely to debar a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing peaceful and normal development of such a group:

4. Any deliberate measures, including legislative measures, forcibly dividing the population of a country along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups and the prohibition of mixed marriages between various racial groups, and by the expropriation of landed property belonging to a racial group or groups:

5. Denial to members of such a group of elementary human rights and freedoms, including the right to work, the right to education and the right to freedom of movement and of speech:

6. Exploitation of the labour, including forced labour, of the members of a racial group or groups;

7. Arbitrary arrest and illegal imprisonment of the members of a racial group or groups:

8. Legal and administrative prosecution of organizations and persons opposing apartheid and the acts enumerated in this article.

### Article III

International criminal responsibility shall apply to individuals, members of organizations and institutions and representatives of the State, whether residing in the territory of the State in which the acts are perpetrated or in some other State, whenever they:

1. Participate in, directly inspire or conspire in the commission of any of the acts mentioned in article II of the present Protocol; or

2. Abet or encourage such participation, inspiration or conspiracy.

### Article IV

1. The State Parties to the present Protocol undertake:

(a) To prevent the encouragement and commission of the acts declared to be crimes under international law arising from the policies and practices of apartheid within their territorial jurisdiction:

(b) To adopt legislative, judicial and administrative measures to bring to trial, and punish, if found guilty, persons believed to be responsible for the acts defined in article II of this Protocol who are presently within their territorial jurisdiction, whether they be the nationals of that State or of any other.

2. Persons charged with the acts enumerated in article II shall be tried by a competent tribunal of the State in the territory of the State Party to this Protocol.

#### Article V

State Parties to the present Protocol undertake to send reports to the Committee on the Elimination of All Forms of Racial Discrimination (hereinafter referred to as the Committee) established under article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter referred to as the Convention) on:

1. Information concerning entry visas issued, entries made and businesses conducted by the representatives of the Government of the Republic of South Africa and other persons believed to be responsible for acts defined in article II of this Protocol;

2. Information concerning the legislative, judicial and administrative measures adopted to bring to trial, and punish, if found guilty, persons believed to be responsible for the acts defined in article II in accordance with article IV (a) of this Protocol;

3. Proceedings instituted and findings made under article IV (b) of the present Protocol.

#### Article VI

The States Parties to the present Protocol empower the Committee on the Elimination of All Forms of Racial Discrimination to:

(a) Request United Nations organs, when transmitting copies of petitions under article 15 of the International Convention on the Elimination of All Forms of Racial Discrimination, to draw its attention to complaints concerning acts which are enumerated in article II of this Protocol;

(b) Prepare, on the basis of the information submitted to it under article IV a list of individuals, organizations, institutions and representatives of States, who are alleged to be responsible for the crimes enumerated in article II of this Protocol, as well as those against whom legal proceedings have been undertaken by States Parties to this Protocol;

(c) Request information from States Parties to this Protocol, and from authorities responsible for the administration of trust and non-self-governing territories mentioned in article 15 of the International Convention on the Elimination of All Forms of Racial Discrimination, as to the measures that have been taken by them with regard to such individuals alleged to be responsible for crimes under article II of this Protocol who are believed to be within their territorial and administrative jurisdiction.

Pending the achievement of the objectives of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV) of 14 December 1960, the provisions of this Protocol shall in no way limit the right of petition granted to these peoples by other international instruments or by the United Nations and its specialized agencies.

#### Article VII

When the Committee discharges its duties under articles V and VI, only experts elected by States Parties to this Protocol may participate.

#### Article VIII

Acts enumerated in article II of this Protocol shall not be considered as political crimes for the purpose of extradition.

#### Article IX

Any States Parties may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of the acts enumerated in article II or any other inhuman acts arising from the policies of apartheid.

#### Article X

Disputes between States Parties relating to the interpretation, application or fulfilment of the present Protocol which are not settled by negotiation or by the procedures provided for in the Convention, shall, at the request of any of the States Parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.

#### Article XI

1. This Protocol is open for signature by any State referred to in article 17, paragraph 1, of the Convention.



2. This Protocol is subject to ratification and accession by any State referred to in article 17, paragraph 1, of the Convention.

3. Accession and ratification may be effective by the deposit of an instrument of accession or ratification with the Secretary-General of the United Nations.

#### Article XII

1. This Protocol shall enter into force on the tenth day after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or instrument of accession.

2. For each State ratifying or acceding to this Protocol after the deposit of the tenth instrument of ratification or accession, the Protocol shall enter into force on the fourteenth day after the date of the deposit of its own instrument of ratification or instrument of accession.

#### Article XIII

1. The Secretary-General of the United Nations shall receive and circulate to all States who are or may become parties to this Protocol reservations made by States at the time of ratification or accession. Any State which objects to the reservation shall, within the period of 90 days from the date of the said communication, notify the Secretary-General that it does not accept it.

2. A reservation incompatible with the objective and purpose of this Protocol shall not be permitted, nor shall a reservation the effect of which would inhibit the operation of any of the bodies by the Convention be allowed. A reservation shall be considered incompatible or inhibited if at least two thirds of the States Parties of this Protocol object to it.

3. Reservation may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations. Such notification shall take effect on the date on which it is received.

#### Article XIV

A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

Article XV

1. A request for the revision of this Protocol may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General.

2. The General Assembly shall decide upon the steps, if any, to be taken in respect of such a request.

Article XVI

The Secretary-General of the United Nations shall inform all States referred to in article 17, paragraph 1, of the following particulars:

- (a) Signatures, ratifications and accessions under articles 17 and 18;
- (b) The date of entry into force of this Protocol under article 19;
- (c) Communications and declarations received under articles 14, 20 and 23;
- (d) Denunciations under article 21.

Article XVII

1. This Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Protocol to all States belonging to any of the categories mentioned in article 17, paragraph 1.

ANNEX III

A

Union of Soviet Socialist Republics: draft resolution

The Commission on Human Rights,

Recalling General Assembly resolution 2786 (XXVI) which drew attention to the need for the conclusion of a draft convention on the suppression and punishment of the crime of apartheid,

Noting the urgency and importance of this question in view of the continuing crime of apartheid being committed by the racist régimes in southern Africa against the African population,

Emphasizing the need to take effective national and international measures for the suppression of the crime of apartheid and the punishment of those who are guilty of perpetrating it,

Having considered the draft convention on the suppression and punishment of the crime of apartheid in document A/C.3/L.1871,

Bearing in mind the draft protocol to the International Convention on the Elimination of All Forms of Racial Discrimination submitted to the Commission at its current session in document E/CN.4/L.1189,

Noting that it does not have time to consider fully the aforementioned draft protocol to the International Convention on the Elimination of All Forms of Racial Discrimination,

1. Approves the draft convention on the suppression and punishment of the crime of apartheid;
2. Requests the Secretary-General to circulate the text of the draft convention on the suppression and punishment of the crime of apartheid together with the amendments and additions thereto and the text of the draft protocol to the International Convention on the Elimination of All Forms of Racial Discrimination to Governments for their comments and views and to transmit any answers received to the General Assembly at its twenty-seventh session;
3. Requests Governments to communicate their comments and views concerning the draft convention and the draft protocol to the Secretary-General at the earliest possible date for consideration by the General Assembly at its twenty-seventh session;

4. Invites the Special Committee on Apartheid to consider the draft convention on the suppression and punishment of the crime of apartheid and the draft protocol to the International Convention on the Elimination of All Forms of Racial Discrimination and to submit its recommendations to the General Assembly at its twenty-seventh session;

5. Invites the General Assembly, through the Economic and Social Council, to give priority to the question of the preparation of a convention on the suppression and punishment of the crime of apartheid in the agenda for its twenty-seventh session.

B

Nigeria and Union of Soviet Socialist Republics:  
revised draft resolution a/

The Commission on Human Rights,

Recalling General Assembly resolution 2786 (XXVI), which recognized the need for further effective measures for the suppression and punishment of the crime of apartheid,

Noting the urgency and importance of this question in view of the continuing crime of apartheid being committed by the racist régimes in southern Africa against the African population,

Emphasizing the need to take effective national and international measures for the suppression of the crime of apartheid and the punishment of those who are guilty of perpetrating it,

Having considered the draft convention on the suppression and punishment of the crime of apartheid and the draft protocol on the suppression and punishment of the crime of apartheid to be annexed to the International Convention on the Elimination of All Forms of Racial Discrimination, contained in documents A/C.3/L.1871 and E/CN.4/L.1189,

Taking into account the report of the Ad Hoc Working Group of Experts submitted under Commission resolution 8 (XXVII) and Commission resolution \_\_\_\_\_ (XXVIII),

Noting that it does not have time to consider fully the aforementioned draft convention and draft protocol,

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a/ Adopted by the Commission on Human Rights as resolution 4 (XXVIII).

1. Requests the Secretary-General to circulate the text of the draft convention on the suppression and punishment of the crime of apartheid, together with amendments thereto, and the text of the draft protocol to be annexed to the International Convention on the Elimination of All Forms of Racial Discrimination to Governments for their comments and views and to transmit such comments and views received, together with the comments made in the Commission on Human Rights during its twenty-eighth session on the relevant drafts, to the General Assembly at its twenty-seventh session;

2. Requests Governments to communicate their comments and views concerning the draft convention and the draft protocol to the Secretary-General at the earliest possible date for consideration by the General Assembly at its twenty-seventh session;

3. Invites the Special Committee on Apartheid to consider the draft convention on the suppression and punishment of the crime of apartheid and the draft protocol to the International Convention on the Elimination of All Forms of Racial Discrimination and to submit its recommendations to the General Assembly at its twenty-seventh session;

4. Requests the Economic and Social Council to invite the General Assembly to give priority to the question of the adoption of an international instrument for the suppression and punishment of the crime of apartheid in the agenda for its twenty-seventh session.

ANNEX IV

Byelorussian Soviet Socialist Republic: amendment to article 5  
of the draft convention (A/C.3/L.1871)

Replace article V with the following text:

"The States Parties to this Convention undertake to participate in international measures adopted by the Security Council of the United Nations and aimed at the suppression and punishment of the crime of apartheid and to co-operate in the implementation of decisions adopted by the other competent organs of the United Nations with a view to achieving the purposes of this Convention."

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