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POLICIES OF APARTHEID OF THE GOVERNMENT OF SOUTH AFRICA

SECURITY COUNCIL
Forty-fourth year

Report and recommendations of the Panel of Eminent Persons established to conduct the second public hearings on the activities of transnational corporations in South Africa and Namibia

Note by the Secretary-General

1. The Secretary-General has the honour to transmit to the General Assembly and the Security Council the report of the Panel of Eminent Persons established to conduct the second public hearings on the activities of transnational corporations in South Africa and Namibia, held at the United Nations Office at Geneva from 4 to 6 September 1989.

2. In its resolution 1988/56 of 27 July 1988, the Economic and Social Council requested the Secretary-General to establish a panel of eminent persons to conduct public hearings in Europe on the activities of transnational corporations in South Africa and Namibia, with a view to further mobilizing public opinion to induce home Governments and transnational corporations to cease any kind of collaboration with the South African régime. In this resolution and in the follow-up, Council resolution 1989/27 of 24 May 1989, the Secretary-General was asked to report to the Commission on Transnational Corporations, the Economic and Social Council, the General Assembly and the Security Council.

3. The report and recommendations of the Panel appear in the annex to the present document.

ANNEX

Report and recommendations of the Panel of Eminent Persons established to conduct the second public hearings on the activities of transnational corporations in South Africa and Namibia

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LETTER OF TRANSMITTAL

Geneva, 6 September 1989

We have the honour to submit to you our report on the public hearings we conducted in Geneva, 4 to 6 September 1989.

At your request, we spent three days examining a number of very important issues relating to:

The role of transnational corporations in the South African economy;

The impact that sanctions have had in pressing the South African Government to come to the negotiating table on the issue of fundamental political rights for the majority;

The possibility of broadening and strengthening such sanctions so as to accelerate the pace of change;

The partial success that South Africa has had in reducing the impact of such sanctions, and the role that other Governments have had in undermining United Nations policies (and in some cases their own laws) in this way;

The shape of "post-*apartheid*" South Africa.

We heard a very wide range of opinions on many different subjects, and we were moved by the intensity with which many voices spoke on these issues. This is clearly a subject that cannot be taken lightly.

On the basis of the evidence presented to us, we have no hesitation in saying that sanctions are effective - both in terms of their economic impact on the white minority and, as important, through their psychological impact on white morale.

However, we also have no hesitation in saying that the impact of sanctions has been seriously undermined by the fact that they are not comprehensive, not universal and, in many crucial areas, not mandatory. We deplore the fact that certain countries have consistently blocked the adoption of universal, mandatory sanctions through action at the level of the Security Council. As a result of their position, the road to majority rule in South Africa may be even more painful than it need be. We were also deeply disturbed by clear evidence that those

Javier Pérez de Cuéllar
Secretary-General
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New York

measures that have been imposed, either through the United Nations or by individual countries, are routinely flouted - often with the collusion of the countries that are themselves signatories to those agreements. This seems to us an utterly unacceptable state of affairs, and we call upon the General Assembly to carry out a thorough investigation of such abuses, with the specific aim of publicizing the names of both the countries and companies involved.

We are particularly concerned about the gross abuses that have been brought to our notice in the critically sensitive areas of armaments, oil and coal. But, as we have been made well aware, abuses of sanctions legislation are deep-rooted. We believe they must be extirpated, and that countries and companies must be forced to live up to their obligations.

As far as the need to tighten the economic pressure on South Africa is concerned, we believe that the most promising tool is the possibility of increasing financial sanctions - particularly by restricting the availability of trade credit to South Africa. We also believe that the next nine months will see a unique opportunity for the international community to demand concessions from the South African Government as a result of its need to renegotiate foreign debt covered by the Second Interim Agreement. For this to work, however, the banks must hold together - and we call upon Governments and the public to support us in insisting immediately that the banks act responsibly and in the best interests of the majority.

To us, the issue of "people power" is of crucial importance. We know the impact that shareholder pressure and the consumer movement can have in the United States and the Nordic countries. It is time the same grass-roots pressure groups exerted the same influence in Europe. One problem that we have identified, which retards development of such a movement, is the lack of information on European (and other) links with South Africa. We are, therefore, also calling upon the General Assembly to establish a comprehensive information-gathering and collating centre that will disseminate information on trade and investment links to South Africa throughout the international community.

What of the future?

We believe that there are clear signs of a changing mood among some sections of the white community in South Africa. We do not underestimate the problems that lie ahead, or the intransigence of those who currently hold a monopoly of political and economic power. But there are indications that an increasing proportion of the white community is reluctantly coming to the conclusion that - in part as a result of sanctions - it will have no alternative but to negotiate on fundamental constitutional change. We cannot say when apartheid will end: that depends on the people of South Africa themselves. But we feel it is important to stress that the abolition of apartheid will not be the end of the process: rather, it will be the beginning of a new series of challenges in which the international community must have a positive role to play.

As a result, and without in any way diminishing the emphasis that we place on increasing the economic and political pressure on South Africa, we urge consideration of a comprehensive training and educational programme for black South Africans, both inside and outside the country, to prepare them for the challenge of taking responsibility for a democratic and just South Africa. We believe that the United Nations system would have an important part to play in this programme, along with individual member Governments. We also believe that transnational corporations - which are widely perceived to have benefited from the apartheid system - may well have a role to play that could affect their standing in post-apartheid South Africa.

Finally, we cannot ignore what is happening in South Africa today - and particularly the fact that the disenfranchised majority is unable to participate in the whites-only election. We hope this will be the last such election, and that the next will be conducted on the principle of one person, one vote. In the mean time, however, we join our voices to those who call for the immediate release of Nelson Mandela and other political prisoners, and we urge the Government - in its own best interest - to come to the negotiating table and talk about the future of a democratic South Africa.

We thank you, Sir, for the honour you have bestowed on us and the opportunity to contribute to the important efforts of the United Nations in southern Africa. We also wish to thank you for the authoritative and comprehensive reports of the Executive Director of your Centre on Transnational Corporations and the efficiency with which the United Nations Secretariat supported the public hearings.

Respectfully yours,

(Signed) Canaan BANANA (Co-Chairman)   (Signed) Judith HART (Co-Chairman)

(Signed) Kamal HOSSAIN (Raporteur)   (Signed) Abdlatif AL-HAMAD   (Signed) Francis BLANCHARD

(Signed) Anatoly GROMYKO   (Signed) Flora MACDONALD   (Signed) Mochtar KUSUMA-ATMADJA

(Signed) Edward SEAGA   (Signed) Wole SOYINKA   (Signed) Lowell WEICKER

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I. INTRODUCTION

1. At the request of the Economic and Social Council, the Secretary-General convened a Panel of Eminent Persons to hold public hearings and to consider expert testimony on the eradication of apartheid in South Africa and the attainment of independence in Namibia. The Panel concentrated its attention on South Africa, in view of the positive developments in Namibia. Testimony relating to Namibia, however, underlined the need for continuing international support to both the Namibian people and to their newly-elected Government when it takes power in their efforts to promote national development and, in particular, the development of Namibia's natural resources.

2. The primary aim of the hearings was, thus, to examine the process of change that is under way in South Africa and to investigate various forms of action that the international community could take through sanctions and other means - directly and through transnational corporations (TNCs) - to accelerate the abolition of apartheid and to contribute positively towards the better functioning of post-apartheid society in South Africa.

3. These hearings build on an earlier exercise, conducted by a Panel of Eminent Persons chaired by the Rt. Hon. Malcolm Fraser, former Prime Minister of Australia, held in New York in September 1985, resulting in a comprehensive set of recommendations 1/ that was submitted to the Economic and Social Council and endorsed by it in its resolution 1986/1 of 19 May 1986.

4. The hearings sought to find out how the mounting pressure for change in South Africa, and the efforts of the majority to replace apartheid with democratic rule based on "one person, one vote", could be effectively supported by the international community.

5. It was felt that not only governments and international organizations, but also TNCs and transnational banks and other non-governmental organizations, could provide valuable support in this effort. The United Nations system could also play a key role by co-ordinating and monitoring developments.

6. It was decided to hold the hearings in Europe in order to focus attention on the fact that several European countries have been reluctant to take tough economic measures against South Africa, despite the clear United Nations position on the issue. The Panel noted that European Governments were not alone in this, but it felt that it was important to mobilize European public opinion on this issue.

7. The Panel heard a wide variety of views from representatives of Governments, the South African business community, trade union leaders, church organizations and the academic community. It also had the benefit of presentations from the Chairman of the United Nations Special Committee on Apartheid, the International Labour Organisation, the United Nations Centre on Human Rights, the International Chambers of Commerce, other non-governmental organizations and individual experts.

8. The Panel states at the outset that there are no easy options.

9. The dynamics of change in South Africa will be determined by the people of South Africa. The intensifying demand on the part of the majority for an end to *apartheid* continues to be resisted by a powerful minority. The international community remains committed to supporting the aspirations of the majority for democratic rule. This underpins the need for more effective strategies to be adopted internally and externally to increase pressure on the protagonists of *apartheid* to engage in serious negotiations aimed at its elimination.

10. International action so far has consisted of political support supplemented, in recent years, by the introduction of economic sanctions. The Panel was impressed by the need for universality in the implementation of sanctions. It recognized that, in the absence of universality, sanctions would only have a limited impact. It was clear to the Panel that, for greater effectiveness to be achieved, there would have to be concerted action by Governments, TNCs (especially shipping companies and transnational banks) and popular-based non-governmental organizations. Moreover, the Panel recognized that, even where Governments are vigilant and active, TNCs may be in a position to frustrate or attenuate the impact of sanctions through circumvention. It is here that the concept of "people's sanctions" has a very important role to play. Organized action at the "grass-roots" level for the tougher application of sanctions, including pressure on companies by consumers and shareholders, has been effective in the past in influencing TNC and Government behaviour, and it is hoped that it will play an even bigger role in the future.

II. THE CURRENT SITUATION IN SOUTH AFRICA

11. In 1985, the previous Panel of Eminent Persons, meeting on this subject, reported that:

> "The Government of South Africa continues to base the country's political, legal, social and economic systems on an institutionalized form of racism. The white minority régime has continuously used its military, political, economic and legislative powers to dominate and suppress the black majority. This domination has been achieved through white control of the State, enforcement of racial separation and discrimination, administrative and political fragmentation, the exclusion of the black majority from political participation and suppression of political opposition. The black majority has no fundamental rights - not even that of full citizenship of its country." 2/

12. Those words are as true today as they were four years ago, and the current programme of systematic repression of legitimate dissent, epitomized by the 1988 amendment to the labour laws, vindicates the decision of the Economic and Social Council to hold a further round of hearings on the relationship between TNCs and South Africa and on the impact of economic sanctions.

13. That said, the Panel is cognizant that the situation in South Africa today is, in certain important ways, very different from that of four years ago. It is, in particular, now much more fluid. The Panel also believes that many of the Government's latest repressive actions are signs, not of strength, but of a weakness that did not exist a few years ago.

14. Indicative of the fluidity of the situation in South Africa are the changes that have taken place so far this year. There is difficulty in distinguishing substantive change from cosmetic actions that are designed to divide the opponents of apartheid and to postpone the inevitable dismantling of the apartheid system. But there is a process of change under way in South Africa which the Government is no longer able to resist and which is steadily accelerating and increasing in intensity.

15. The Panel does not underestimate the duplicity of the South African Government. Nevertheless, it accepts that these changes, and others like them, are, beyond a doubt, the product of pressure on the Government - though it is still some way from acting on the evident truth that the abolition of apartheid is now in its own enlightened self-interest. This pressure has been applied:

(a) Internally, by the courageous efforts of the Mass Democratic Movement, of trade unionists and of black and white activists at all levels;

(b) Externally, both by the activities of the African National Congress of South Africa and its affiliated organizations and by the increasingly visible condemnation of the international community, as manifested by economic and political sanctions and by the progressive isolation of the South African Government.

16. The result has been a progressive deterioration in South Africa's relative economic performance, with its consequential effect on morale among the white minority.

17. Indicative of South Africa's disappointing economic performance, gross domestic product (GDP) growth this year is expected to be no more than 1.5 per cent, and lower still in 1990. This compares with an average growth rate for the Organisation for Economic Co-operation and Development (OECD) countries this year, which is expected to be around 2.5 to 3 per cent. It also compares with an average South African growth rate of 3.3 per cent in the 1970s. More importantly, the current growth rate is substantially below the country's population growth rate, which is over 2 per cent per annum. The result is that real unemployment throughout the economy as a whole may be as high as 30 per cent. Moreover, it has been estimated that the economy will have to produce approximately 1 million new jobs a year over the next decade just to keep the unemployment rate where it is - a task that both the Government and the business sector realize is beyond them. In addition, inflation is running at around 16 per cent (or close to four times the OECD average) and interest rates are 18 to 20 per cent, which puts the admittedly very high white standard of living under considerable pressure - particularly given the continuing squeeze on imports, which has cut disproportionately into the availability of consumer durables for more affluent buyers.

18. While it is obviously difficult to measure psychological morale, on two counts it is clear that internal and external pressures are eroding white confidence:

(a) There is continuing emigration, particularly of higher-skilled English speakers (a Market Research Africa poll in late 1987, for instance, found that 160,000 whites were planning to emigrate in the next five years);

(b) There is evidence that both legal and illegal capital flight have increased - it is estimated to be running presently at over $US 2 billion a year (and would have been much higher but for the artificial disincentive created by the two-tier foreign exchange market).

19. The Panel feels strongly that the future of South Africa will only be determined by the people of South Africa themselves - black and white. But it also accepts that the continuous tightening of external pressures can and does improve the environment within which pressure can be brought to bear internally on both the Government and the business sector. It believes that the evidence on this is now overwhelming and that the pre-conditions for more radical change in South Africa are firmly in place. The task now is to increase the pressure until the Government and the business community are induced to negotiate an end to apartheid, recognizing both its unsustainability and the fact that it is no longer in their own interests. The Government in particular must be convinced to remove the repressive legislative framework of apartheid, to adopt a new Constitution based on universal adult suffrage and to hold free and fair elections.

20. It is recognized that the business community is now more receptive to some of these ideas, and that certain elements within the Government have had their faith severely shaken that South Africa can ride out the combination of external and internal pressure.

III. THE IMPACT OF SANCTIONS

21. The Panel listened to testimony from a wide range of expert witnesses whose evidence on sanctions was frequently at odds. It heard, for instance:

(a) Testimony to the effect that the impact of sanctions on the South African economy is frequently exaggerated by failure to appreciate that many of the country's economic problems are endemic to almost all upper middle-income developing countries;

(b) Suggestions that sanctions may actually have had a positive impact on the South African economy by forcing it to adapt structurally to a broader base that could generate greater strength in the future;

(c) Evidence that the policies of economic sanctions and disinvestment have been routinely circumvented, to the extent that disinvestment in particular may have been counterproductive by strengthening the dominant ownership role of the white minority;

(d) Testimony that the financial "squeeze", which is said to face the South African authorities over the next two years as a result of heavy principal and interest payments on rescheduled foreign debt, may have been overstated since the

Reserve Bank has already had some success in converting short-term credits into longer-term loans and bonds and since the country's debt service ratio is still tolerable by the standards of many developing countries;

(e) Suggestions that the apartheid system is crumbling of its own accord, and that efforts to expedite this will only weaken the ability of the country to deal with its post-apartheid problems.

22. However, the Panel also heard authoritative testimony suggesting that sanctions are working; that the South African economy is being progressively dislocated as a result of external pressures; that disinvestment is having an increasingly penetrating psychological impact on white morale; that financial sanctions, if applied in a timely way, could have a crucial impact in the next couple of years; and that the pace of apartheid's disintegration is gathering momentum as a result of the increasing resolve of those engaged in the internal conflict. The Panel believes that those who consider sanctions to be of little value or counterproductive have failed to make their case, while those - inside and outside of South Africa - who argue for the progressive tightening and extension of sanctions have both empirical evidence and morality on their side.

A. The experience of sanctions

23. When the Panel met in 1985, the debate over the efficacy and validity of sanctions was even more intense than it is today, in large part because most of South Africa's trading partners were only just beginning to think about the imposition of mandatory restrictions (and those who had imposed sanctions earlier tended to have had only marginal economic links with South Africa prior to their imposition). As a result, the Panel was, in many ways, venturing into the unknown when it recommended the adoption of a comprehensive package of trade, financial and investment sanctions.

24. Over the past four years, however, the history of sanctions has developed a track record that the present Panel can draw on.

25. In 1989, although the Panel notes the reservations that some experts have adduced, it believes that the overwhelming evidence is that economic sanctions are working - not as quickly or as effectively as some proponents had hoped, but beyond a reasonable doubt. Most importantly, the Panel believes that the cumulative psychological impact of sanctions on the white minority has developed a most effective self-generating internal dynamic that is now a principal factor in changing attitudes.

26. Despite the fact that, to date, sanctions imposed on South Africa have been far more limited than the Panel had recommended in 1985, and despite the fact that certain Governments continue to oppose the concept of mandatory or universal sanctions, there is abundant evidence that the pressure imposed on South Africa has so adversely affected white morale that it has become a principal force in pushing both the Government and business closer to the point at which they are prepared to talk about fundamental constitutional and economic change. Both the International

Chamber of Commerce and the South African Chamber of Commerce, for instance, concede that there have been important changes in attitude since 1985.

27. The most obvious example is the abolition of influx control as a direct response to the refusal of international banks to discuss debt rescheduling, after South Africa's default on its international obligations in mid-1985, without evidence of social reform. In addition, one might note the many meetings held, both in Africa and in Europe, between the white business community and representatives of the African National Congress (ANC) - meetings that have now become almost routine as pragmatic business leaders start to plan for a "post-apartheid" economy.

28. True, the fundamental pillars of apartheid remain in place - notably the Group Areas Act, the Land Acts, the Population Registration Act, the Separate Amenities Act and the fundamental disenfranchisement of the majority. And the Government still has both the power and the will to crack down violently on legitimate dissent. But the economic costs of dealing with sanctions - particularly the need to generate a very substantial current account surplus to finance internal stress and external strain - have sharply reduced the policy options open to the Government, e.g., on Namibia and Angola. And the very limited access to international capital markets after 1985 has cut economic growth to an unsustainably low level, while seriously damaging white morale.

B. Summary of sanctions in place

29. A full and comprehensive list of all economic sanctions currently imposed against South Africa is maintained for public use by the Centre on Transnational Corporations. From the Panel's point of view, the following are noteworthy:

(a) United Nations resolutions: Over the years, United Nations organs have adopted numerous resolutions calling for economic sanctions, particularly with regard to arms, oil and other strategic minerals, trade and transportation, foreign investment, loans, commercial credits and the role of TNCs. In 1985, after imposition in South Africa of the State of Emergency, the Security Council adopted a resolution calling for a ban on new investments, on guaranteed trade credits, on the sale of krugerrands, on new nuclear contracts and on the sale of computer equipment. In 1986, it urged members to take additional measures aimed at closing loopholes in the arms embargo. It also noted - as does the Panel - that calls for comprehensive, mandatory sanctions have been vetoed consistently by two permanent members of the Council. Over the same period, the Economic and Social Council has also endorsed a number of resolutions adopted by the Commission on Transnational Corporations calling on TNCs to comply strictly with United Nations resolutions by ending further investments and any form of collaboration with South Africa. It has also called on TNC home Governments to adopt measures to put the resolutions into effect.

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(b) Commonwealth actions: In 1985, the 49 Commonwealth member States issued the Nassau Declaration (A/40/817, annex I), calling upon member States to restrict government loans to South Africa, to forbid export and import of arms, and to ban sale of oil, computers, and nuclear-related equipment and technology. In 1986, several Governments, including those of Australia, the Bahamas, Canada and India, decided to put into effect additional measures on air links, new investment and reinvestment of profits in South Africa. At its Heads of Government meeting held at Vancouver, British Columbia, Canada, in 1987, the Commonwealth, except for the United Kingdom, agreed on a "wider, tighter and more intensified" programme, which involved measures for co-ordinating sanctions through a special committee of Foreign Ministers (see A/42/677, annex II).

(c) The Nordic initiative: Although it is accepted that their trade links with South Africa have never been significant, there is no doubt that the Nordic countries have led the way on sanctions. Not only does the group now apply what is virtually a complete ban on trade and investment links (including trade in both goods and services), but the Nordic countries have also pledged to work for mandatory sanctions within the United Nations.

(d) The European Economic Community position: Despite the reluctance of the United Kingdom and (to a lesser extent) the Federal Republic of Germany, the Community agreed in 1986 to suspend imports of iron, steel and gold coins from South Africa, as part of a package that also prohibited most forms of new investment. It did not, however, ban imports of coal, despite considerable pressure to do so.

30. On an individual country level, the most remarkable progress has been in the United States - and the other members of the Panel would like to pay particular tribute to Senator Lowell Weicker for his efforts in this regard.

31. In 1986, the United States Congress passed (and overrode a Presidential veto on) the Comprehensive Anti-*Apartheid* Act. Among the measures included in this far-reaching legislation are a ban on: (a) most new investments in and private loans to South Africa; (b) loans to the South African Government; (c) exports of computers and oil; (d) direct air links between South Africa and the United States; and (e) imports of uranium, coal, iron, steel, agricultural products and textiles.

32. In addition, the Act gave the President authority to "limit the importation into the United States of any product or service of a foreign country" which is taking advantage of the imposition by the United States of sanctions. So far, this power has not been used, but it could be a very important tool indeed.

33. In the Panel's opinion, one of the most important measures adopted by any country against South Africa - and well worth universal adoption - was the decision by the United States in 1987 to withdraw tax credits that United States firms receive for taxes paid by their subsidiaries in South Africa. The Rangel Amendment, as it is known, has been cited by several major United States corporations as the most important single factor convincing them towards disinvestment from South Africa.

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34. Unfortunately, the performance of many countries on sanctions has been patchy, at best. The United Kingdom, for instance, has consistently opposed mandatory sanctions and has even continued to encourage trade links (though it has gone some way with so-called "voluntary" measures). And other European countries in which trade is a high percentage of the gross national product (GNP), notably the Federal Republic of Germany, have also shown reluctance to move beyond essentially minimal measures. Thus, although the Foreign Minister of the Federal Republic of Germany has met senior representatives of the ANC, Bonn remains firmly opposed to disinvestment and distinctly lukewarm on other economic sanctions - although its banks generally have a good record on financial sanctions. The same may not be true of Switzerland, whose banks have long been active in South Africa. Though Swiss banks have a formal "cap" of SF 300 million a year for new lending to South Africa, Switzerland remains the centre for the sale of half of South Africa's gold production and all of the world supply of diamonds. Details of transactions in these areas are not available, but the Panel feels strongly that the economic links between Switzerland and South Africa should not be allowed to remain hidden.

35. The Panel notes that, although Japan has imposed limited sanctions on trade with South Africa and participates in the ban on new lending, there is evidence that Japanese companies, also, have benefited materially from the sanctions imposed by other countries. This, too, should be more fully brought into the open.

36. On the same subject, the Panel heard testimony to the effect that, since the more general application of sanctions in 1985-1986, South Africa had developed close economic links, covering both trade and investment, with newly-industrialized economies like Hong Kong and the Taiwan Province of China. Again, these links, if they exist, should be subject to public scrutiny. They illustrate that, in the absence of comprehensive, mandatory and universal sanctions, imposed through and maintained by the United Nations, the impact of sanctions will be to increase the cost and difficulty of doing business for South Africa - rather than, as earlier proponents of sanctions had hoped, to make such business impossible.

C. The efficacy of sanctions

37. The Panel heard a considerable amount of evidence to the effect that the piecemeal sanctions that have been imposed on South Africa over the past few years are highly susceptible to circumvention. It was suggested that this could be considered an argument against the imposition of sanctions. However, in the view of the Panel, the evidence suggests rather that:

(a) More efforts ought to be made to close loopholes and to administer and monitor sanctions programmes more effectively;

(b) Were such efforts to be made, the impact of sanctions would be more pronounced;

(c) At any rate, imperfect though they are, sanctions are pushing the white minority in the right direction to come to terms with anti-*apartheid* forces.

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38. That said, the Panel acknowledged that different kinds of sanctions differed both in the extent to which they could be deemed to have been successful and in the extent to which they could be felt to have potential for accelerating change in South Africa.

1. Trade sanctions

39. Although the Panel conceded that the South African economy is highly dependent on trade (which accounts for around 60 per cent of GNP, compared with 20 to 40 per cent for most OECD countries), it acknowledged that the impact of trade sanctions so far has been limited. It noted that, despite the sanctions imposed since 1985, the dollar value of South African exports has risen by 30 per cent - permitting South Africa to run a current account surplus sufficient to service its rescheduled debt. This surplus exists despite the fact that the embargo on oil exports has forced South Africa to pay a very heavy "apartheid premium" for necessary oil supplies in the Rotterdam spot market, which even the Government has conceded may run as high as $US 2 billion a year.

40. Although the Panel again deplores the lack of accurate and consistent data because of ineffective monitoring, it appears that one reason the business community has had some success in circumventing trade sanctions is that it has found new trading partners to fill the gap left by the sharp reduction in bilateral trade with countries such as the United States, Canada, New Zealand and the Nordic countries. In 1987, for instance, Japan replaced the United States as South Africa's largest trading partner in dollar terms - a development that was a clear embarrassment to Tokyo. Other Asian countries have also increased their two-way trade. More surprisingly perhaps, the Federal Republic of Germany's trade with South Africa has increased - as has recorded trade with Switzerland, Austria, Belgium, the Netherlands, Spain, Portugal and Turkey.

41. The Panel notes (and regrets) that the caveat concerning "recorded" trade is necessary, since South Africa has become adept at disguising the origin of fungible products such as iron, steel, coal and other minerals. The most common technique is to export such goods via a third country that does not impose sanctions - or, in some cases, to use counterfeit certificates of origin. In the agricultural field, it is clear that much produce that is labelled as coming from Lesotho, Swaziland and Botswana in fact emanates from South Africa.

42. The impact of trade sanctions is also limited by unrealistically narrow definitions. Japan, for instance, forbids import of South African iron and steel - but permits large quantities of iron ore to be imported, making its sanctions legislation an empty threat. Similarly, oil embargoes frequently exclude oil products.

43. Nevertheless, despite the lack of "transparency" and the evidence that sanctions are being routinely circumvented, trade sanctions have had an impact:

(a) It is estimated that South Africa has lost approximately 7 per cent of its traditional exports since 1985 (or approximately R 2.3 billion) - which has made the squeeze on the import side even tighter.

(b) It has caused a major misallocation of scarce investment resources. The Government, for instance, is planning to spend more than $US 2 billion on the Mossel Bay fuel-from-gas plant despite the fact that it is estimated that it will not be commercially viable at an international oil price of less than $US 60 a barrel. Deplorably, the United Kingdom is a major supplier for this project. Economic distortion on this scale is a further constraint on development in other sectors that could benefit the whole population.

44. As for the future, the Panel was impressed by the argument that the efficacy of trade sanctions, which is conceded to have been low in the past, can be expected to increase. The reason is that, as a result of both trade and financial sanctions, South Africa now has very little margin to increase exports. Without the resources to open up major new mines, it is, for instance, an increasingly high cost gold producer when compared with countries like the United States, Canada and Australia. As a result, even holding the intensity of trade sanctions constant, their efficacy will grow and the pain they impose will rise.

45. That said, however, it is clear that several steps need to be taken in the area of trade sanctions. In particular:

(a) There must be much better monitoring of trade flows;

(b) Existing loopholes must be closed (particularly in the oil trade, where producers must be more vigilant);

(c) New items must be brought within the sanctions net.

46. On the last point, the Panel was concerned in particular about the export of technology - especially given the passage of disinvestment legislation, which is progressively shutting South Africa out of high-technology United States and European markets. It was also very concerned about the way that coal exports frequently slip through the sanctions net and about the possibility of controlling the trade in gold.

47. The Panel was also deeply disturbed that, despite the United Nations embargo, South African military expenditure is actually increasing. Not only does this contribute directly to the repressive nature of South African society, but it also clearly diverts scarce economic resources from areas where they would be far more beneficial to the community as a whole.

2. Investment sanctions

48. The Panel acknowledges that this is a particularly vexed area. It notes, for instance, that some former proponents of disinvestment legislation now believe that the process may have gone far enough - citing the decline of South Africa as a political issue in the United States as the number of American-based TNCs operating in South Africa has shrunk. It also notes research that suggests:

(a) That one impact of disinvestment has been to concentrate economic power even more tightly in the hands of a white business oligarchy;

(b) That the new owners have frequently proved less responsive to worker demands than the TNCs they replaced.

49. There is no doubt that this sort of analysis is troubling. The Panel notes, however, that disinvestment is consensually regarded as one of the most powerful symbols as far as sanctions are concerned, and that it is acknowledged to have had a major psychological impact on white morale. It is also strongly supported by legitimate representatives of the black community inside South Africa - which is the one most directly affected. The Panel was particularly impressed by testimony from representatives of the International Confederation of Free Trade Unions (ICFTU), the African National Congress and the South African Chemical Workers' Industry Union (CWIU), who confirmed both that the South African union movement is aware of the impact that disinvestment may have on its members and that it still supports such a policy wholeheartedly. It is quite clear that the South African union movement is prepared to pay any price imposed by disinvestment in the belief that it accelerates the pressure for constitutional change.

50. There are, however, other disquieting problems.

51. The first is the differential impact of calls for disinvestment in the United States and Europe. Of the 1,068 TNCs identified as operating through subsidiaries or affiliates in South Africa in 1984 (of which 406 were of United States origin, 364 of United Kingdom origin, and 192 were from the Federal Republic of Germany), 563 (or 46 per cent) disposed of their equity interests between 1984 and 1988. However, the impact by country of origin has been very uneven:

(a) 56 per cent of United States companies have disinvested;

(b) 19 per cent of United Kingdom companies have left;

(c) 4 per cent of Federal Republic of Germany companies have withdrawn.

52. There appear to be at least three reasons why United States firms have been quicker to depart than United Kingdom companies, which now constitute the clear majority of TNCs operating in South Africa:

(a) They simply did not have the same long-term historical commitment to the market;

(b) They were under some tax pressure even before the withdrawal of foreign tax credits;

(c) They were subject to intense pressure from clients, consumers, shareholders and community groups.

53. The Panel would like to emphasize the impact of consumer and shareholder groups in the United States - and to deplore the lack of information and "transparency" that militated against such "grass-roots" activity in Europe. There are counter-examples - the pressure on Barclays Bank by British students, for instance, was clearly a major factor in the bank's deciding to sell its share in Barclays National. But, on balance, "people's sanctions" arising from the actions of shareholders, workers, consumers and local officials have been much more effective in putting pressure on United States companies than on most European companies (although the impact has admittedly been uneven). Japanese companies still appear to be immune.

54. The second problem is the very serious issue raised by continuing "non-equity" links, which it is widely accepted have largely undercut the impact of disinvestment legislation, particularly in the United States. Indeed, a recent survey of United States companies that disinvested in the 1984-1989 period shows that at least 53 per cent (and probably more) have retained non-equity ties.

55. These non-equity links can include licensing or franchising agreements with the new ownership, either directly or through some specially-created vehicle. For the disinvesting entity, these have several advantages. In particular:

(a) They improve the return to the former owner by permitting him to lower the cash sale price (which can only be exported at an unfavourable rate through the financial rand market), while providing instead a stream of licensing and franchise fees that can be exported through the more favorable commercial rand market;

(b) They enable the departing TNC to maintain a link, which could be important in the event that it wishes to re-enter the market in the post-apartheid era (there have even been suggestions of secret buy-back agreements in the event that sanctions are lifted).

56. For South Africa, these links are important in terms of access to state-of-the-art technology and management skills. Without them, it is clear that the disinvestment campaign would have caused much greater long-term economic dislocation.

57. There is some evidence that "people's sanctions" in the United States are now starting to focus on this abuse of anti-apartheid legislation as well. The Panel notes, for instance, that Motorola is cutting non-equity ties with its former affiliate in response to United States consumer pressure. However, the Panel also notes that the issue is a difficult one, in that it is wrapped up with the perception of how close South Africa is to the elimination of apartheid. In the belief that the end of apartheid is near, it might be argued that some non-equity links should be sustained so that the South African economy is in better shape for the post-apartheid era. If, on the other hand, a longer-term horizon is used, the elimination of non-equity ties itself becomes a weapon in the struggle. On balance, the Panel subscribes to the latter view, and urges that non-equity ties be severely restricted and monitored.

3. Financial sanctions

58. The Panel heard a good deal of evidence for and against the proposition that a "window of opportunity" will open in 1990-1991, during which it will be possible to use the rescheduling of South Africa's external debt as a powerful lever to extract political concessions from the Government. It also noted that this was the conclusion of the recent meeting of the Commonwealth Finance Ministers' Working Party, which met at Canberra.

59. In its view, there is no doubt that the denial of new loans and credits to South African institutions has been one of the most effective forms of pressure on South Africa. In addition to the specific repeal of influx control legislation, the Panel accepts the view of expert witnesses that the denial of access to world capital markets has led to a general lowering of living standards and to a failure to create enough new jobs to keep up with the demographic changes that are occurring. It has forced the central bank to concentrate on a policy involving export incentives and import substitution, even at a longer-term cost to the economy. The Panel accepts that the impact of financial sanctions is immediate and across-the-board.

60. That said, however, it also acknowledges that South Africa has had some limited success in thwarting the impact of financial sanctions:

(a) By increasing its reliance on short-term trade credits (which is virtually the only kind of new money that the Government has been able to obtain);

(b) By convincing at least some of South Africa's more important creditor banks to convert short-term loans that were frozen in 1985 into medium- and long-term obligations that are not due to be fully repaid until the late 1990s.

61. The Panel accepts that the impact of those actions has been to close, at least partially, the "window of opportunity" that was opened by the Government's need to reschedule approximately $US 8.5 billion in loans covered by the Second Interim Agreement, which terminates in June 1990, and by the problem that the Government faces as a result of a $US 3 to 4 billion "bunching" of repayments on guaranteed debt in 1990-1991.

62. It notes in particular, and deplores:

(a) The decision by two of the largest United States creditors who were caught "within the net" of the standstill agreement, Citicorp and Manufacturers Hanover, to accept a conversion of those debts which would have come due next year into long-term obligations (the "1997 option"), although it believes that Citicorp's action may be counter-productive by precipitating "grass-roots" consumer activity against the bank in the United States;

(b) The reported decision of Swiss investors to extend the maturity of South African bond issues falling due in 1989-1990 (although it accepts that the South Africans have almost certainly been forced to pay penal rates of interest to obtain this relief).

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63. Nevertheless, the Panel accepts the view of expert witnesses that, if creditor Governments and the consumer movement in the banking industry act quickly, they will have a unique opportunity to use the fact that South Africa desperately needs a roll-over of its maturing obligations to extract both political and economic concessions. It notes that South Africa's exclusion from International Monetary Fund (IMF) lending means that conventional ideas of "conditionality" do not apply - but it may be that creditor banks themselves, with the encouragement of Governments and consumers, will be able to apply their own far-reaching macro-economic or financial conditionality that will set performance targets which will impact heavily on the Government's ability to divert resources to apartheid.

64. The Panel notes that, although 250 banks hold South African debt on their books, the main pressure points appear to be the United Kingdom (especially National Westminster, Barclays Bank and Standard Chartered), the major United States money centre banks, and banks in Switzerland and the Federal Republic of Germany. It believes that the most appropriate way to put pressure on the South African Government is through the 13-bank Technical Committee, and it therefore deplores the irresponsible decision by Citicorp to drop out of this group. It asks the Technical Committee to stand firm in the face of reports that the Reserve Bank is proposing a "unilateral rescheduling" on its own terms. It also urges that creditor Governments should tighten their rules on the availability of trade credits to South Africa, and that they should review their provisioning requirements to ensure that they reflect South Africa's deterioriating creditworthiness.

D. Other measures

65. The Panel believes that formal sanctions are not the only way of bringing pressure to bear on the Government of South Africa to come to the negotiating table on the future of apartheid. This year, for instance, a new effort has been made by the Metalworkers' Federation in the Federal Republic of Germany to design a 14-point code for subsidiaries of German companies operating in South Africa to prevent them from taking advantage of the State of Emergency regulations in dealing with their employees.

66. This code - which should be considered by others - requires companies to grant the same treatment to employees in South Africa as they apply to workers in their home country with respect to fundamental rights, including the right to strike. The Federal Republic of Germany code goes further than previous efforts in giving South African unions a right of redress in the home country.

E. Monitoring

67. In all its deliberations, the Panel has been impressed by the inadequacy and the uneveness with which existing sanctions against South Africa are monitored. This has provided an important loophole that the Government and the business community have been quick to exploit.

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68. At the intergovernmental level, the Panel notes that only the Committee established by Security Council resolution 421 (1977) and the Intergovernmental Group to Monitor the Supply and Shipping of Oil and Petroleum Products to South Africa presently exercise monitoring functions - and those are very limited. It recognizes that the International Labour Organisation (ILO) has formed a three-person independent group of experts to assess and report on sanctions, with specific reference to attempts by South Africa at circumvention. However, it believes that the ILO initiative will need to be supplemented to cope with the very serious problem caused by lack of information. At the national level, the Panel acknowledges that some countries - like the Nordic countries and the United States - now have fairly comprehensive monitoring procedures in place, although the information is frequently not generally available. The EEC does have limited reporting requirements for companies that continue to operate in South Africa, but these are of a minimal nature and, moreover, are not readily available to "grass-roots" pressure groups.

69. As a result, much of the responsibility for monitoring the impact and the efficacy of sanctions, and for publicizing violations, falls on private groups that have limited resources and access to the Press. Many of these groups were represented before the Panel, which commends their work.

70. That said, the Panel recognizes a clear need for a centralized and standardized system of monitoring the trade, investment and financial sanctions imposed on the South African economy in a timely and comprehensive way. It believes that a single agency ought to collect, collate and co-ordinate this information, and that it ought to be in a position to disseminate it more widely than at present so as to facilitate the growth of "people's sanctions" - which the Panel believes to have been extremely effective in changing legislative opinion in the United States and the Nordic countries. It believes that the United Nations system has an important role to play in this area.

F. Impact of sanctions on the black community

71. While the Panel has heard testimony from representatives of the black community in South Africa to the effect that there is widespread recognition that some degree of suffering is inevitable for the abolition of *apartheid*, it remains deeply troubled by the arguments of those who hold that the impact of sanctions falls most acutely on those members of the black community who are least able to bear them.

72. This remains a concern. However, the Panel also heard testimony from an impressive number of witnesses who argued that the primary impact of sanctions is against the Government and the white community. In particular:

(a) The majority of the black population remains in the subsistence economy, and hence largely immune from the effects of sanctions;

(b) The types of exports to South Africa that have been restricted under sanctions legislation are those primarily aimed at the white community (particularly luxury goods) and against the majority (e.g., imports for the security apparatus).

73. Clearly, there is an impact on the black community. But the Panel was impressed by certain witnesses who argued that blacks may actually benefit from sanctions in two important ways:

(a) They encourage greater use of what is a rapidly developing, black-dominated informal economy, which is now estimated to amount to as much as 30 per cent of the formal economy - it is believed that this could have important implications for the ability of blacks to participate actively in a post-apartheid society;

(b) They have forced the business community, including TNCs, to stop the short-sighted policy (encouraged by the overvaluation of the rand in the 1970s and early 1980s) of importing highly capital-intensive manufacturing equipment and technology that were clearly inappropriate in a southern African context, where the priority has to be job creation.

IV. THE FUTURE OF SOUTH AFRICA

74. The Panel is aware that its most important task at the present time is to use the tools at its disposal, notably the pressure that it can bring to bear on TNCs, banks and the business community in general to accelerate the process of change that is already under way in South Africa - and, ultimately, to force the Government to accept an end to the system of apartheid. The Panel does not want, in any way, to minimize the magnitude of this endeavour or the intransigence of the white community as it clings to what it sees as its privileges.

75. That said, however, the Panel also believes that:

(a) As noted, the process of change is now irreversible - although there are certain to be set-backs;

(b) Since it is in no one's best interests that the black majority should inherit an economic wasteland, it is appropriate to begin to think how the international community, including TNCs, can play a role in preparing for the post-apartheid era.

76. In other words, the Panel believes that while the pressure must be intensified, the strategy is now basically in place to force the white minority to the negotiating table: it is time to begin to think also about winning the peace.

A. The inevitability of change

77. Since the 1985 hearings, there is no doubt that economic and political changes have come to South Africa - and that the pace of change has accelerated. There is also no doubt that, in very substantial measure, these changes have come about as the result of internal and external pressure, and not because of any fundamental change of heart on the part of the white minority.

78. The most far-reaching change was probably the abolition of the so-called Pass Laws. As the 1988 report by the Commonwealth intergovernmental group makes clear, this was a direct response to pressure exerted by the international community via the country's transnational bank creditors:

> "On 31 January 1986, President Botha announced reforms to apartheid in his speech to open parliament. The proposals seem to have been designed with a view to meeting banks' requirements for tangible evidence of reform prior to settlement of the debt problem."

79. Many anti-apartheid groups were rightly critical of the banks' willingness to come to an interim agreement on the question of South Africa's debt. Nevertheless, the international community was able to draw two important lessons from the action of the banks: (a) sustained pressure will force the Government of South Africa to compromise; and (b) it is possible to extract political conditions as a part of financial negotiations.

80. The result has been a steady increase in such pressure, and a corresponding series of grudging concessions. The Panel does not want to minimize the set-backs that the anti-apartheid movement has sustained inside and outside South Africa. But, on balance, progress has been significant and positive.

81. In the labour area, for instance, despite the highly repressive nature of the new Labour Relations Amendment Act and the impact of the State of Emergency, the two major labour federations - the Congress of South African Trade Unions (COSATU) and the National Council of Trade Unions (NACTU) - have continued to see their membership grow. In the case of COSATU, this has been true in the white community as well as among blacks. In 1988, for example, registered union members totalled 1.6 million, of whom 835,000 were black and 310,000 "coloured" and Asian. One consequence has been a narrowing of wage differentials between black and white in the formal economy and a sharp increase in the power that the black community in South Africa has as consumers, and not just as producers. It has, for instance, been reported that 70 per cent of downtown Johannesburg's retail turnover now comes from blacks, giving the black community an economic leverage very different from that of a few years ago.

82. This change is well understood by all but the most myopic members of the white community - and it is particularly well appreciated by businessmen, both South African and expatriate, who have, as noted, greatly increased their contact with nationalist political groups over the past four years. Provided the international community remains vigilant about increasing the pressure on South Africa, there is every reason to believe that these changes will continue, and indeed accelerate.

B. The futility of repression by the Government

83. The Panel is deeply skeptical about the Government of South Africa's alleged commitment to reform. Moreover, it sees no reason to believe that the Government's definition of "reform" will be in any way congruent with its own. Indeed - despite Mr. de Klerk's call for "drastic" change and his proposals for "power sharing" - it believes that the Government's aim is still to maintain its indefensible *apartheid*-based system for as long as possible. Dividing the opposition to *apartheid* is an integral part of that strategy.

84. However, as almost everyone except the South African Government now accepts, this is not just a morally indefensible strategy; it is a senseless and impractical one. Not only is the ethnic mix in South Africa moving irreversibly against the white community, but the very fact that the black community is increasingly gaining power as consumers gives it a leverage over white society, which means that the clock cannot be turned back, e.g., on "petty" *apartheid*.

85. The Panel believes that the fundamental difference in the Government's repressive actions now and in the past is that the initiative is no longer with the Government. Instead it is, effectively, forever slamming the stable door after the horse has bolted. The actions themselves may be equally vicious, but they are essentially reactive - and the more violent the Government's reactions, the more clearly it acknowledges that it has lost the initiative.

C. The prospect of a "post-apartheid era"

86. The Panel is anxious not to divert attention from the continuing effort to induce the dismantling of *apartheid* in South Africa - and it, therefore, supports an intensification of the sanctions campaign both because of the economic impact that it will have on South Africa and, equally important, because of the psychological impact that it will have on white morale.

87. However, the Panel does not wish to be perceived as advocating anything other than positive change - and it is, therefore, appropriate to begin to think about the requirements of a "post-*apartheid*" situation in South Africa.

88. No one suggests that, even if sanctions are tightened as the Panel recommends, the end of *apartheid* is imminent. Nevertheless, the pace of change in southern Africa over the past two or three years has been quite unprecedented, and the future is likely to hold at least as many surprises. Moreover, it is in no one's interest that the black majority should enter the post-*apartheid* era without the appropriate skills to manage effectively what is, in important respects, a highly advanced industrialized economy. Unfortunately, it is unrealistic to expect the present Government to prepare itself for the day that it has to cede power to the majority. Indeed, although blacks inside South Africa have obtained progressively better access to education, educational opportunities are still strictly limited and advancement to senior management levels in organizations of all types is virtually impossible under the *apartheid* system. The result is that the white

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community effectively retains a monopoly on the kinds of skill and experience that are vital in running the large organizations that make up a modern state. The Panel notes the testimony of one expert witness to the effect that sanctions may have supported the growth of a black-dominated "informal" economy that could nurture entrepreneurial skills. But it also notes - the rhetoric of the Government and TNCs aside - that qualified blacks are being systematically excluded from obtaining the appropriate skills and experience within the formal economy that would enable them to take over senior management positions once apartheid is dismantled.

89. The situation is even more acute for those black South Africans who have found themselves involved in the liberation struggle outside South Africa. For the most part, they have been deprived of the formal training necessary for them to play the roles that they will legitimately expect to play in a post-apartheid South Africa.

90. The Panel believes that the international community has a role to play:

(a) In helping black South Africans - both inside and outside the country - to acquire the technical and managerial skills that will qualify them for full and equal participation in industry, commerce, mining, agriculture and the professions in post-apartheid South Africa;

(b) More broadly, in preparing for government on the basis of one-man one-vote democracy, with or without power-sharing with white South Africans - which means, among other things, training black South Africans now for the senior positions in the civil and diplomatic services that they will occupy in the foreseeable future.

91. The Panel notes that certain organizations within the United Nations system (notably ILO) do already organize such training outside South Africa, albeit necessarily on a very limited basis. It notes also that individual Governments sponsor scholarship programmes that may have a very important role to play. However, the magnitude of South Africa's needs in a post-apartheid era and the requirement that the appropriate training be provided both to black South Africans inside and outside the country mean that, in the opinion of the Panel, a special programme is needed that could supply appropriate training in administration, management, law, diplomacy and the professions. While much of this training might be at the university or vocational (i.e. on-the-job) level, it must be recognized that many otherwise qualified black South Africans, who have been deprived of access to adequate secondary education, will need provision for pre-university training.

92. Although this would have a United Nations element - perhaps including a co-ordinating role for one of the United Nations agencies - the Panel feels that it is important that the programme should involve as many non-governmental organizations as possible. The trade union movement would obviously have an important role to play, as would international employers' groups. Religious groups could also be involved, and the Panel would like to see a role for organizations such as the World University Service, which is about to launch an appeal for money for South African students.

93. The Panel believes that TNCs and transnational banks could - and should - have an important role to play in this area. It wants to emphasize that this would be qualitatively different from the essentially cosmetic training programmes that many TNCs presently advertise as an excuse for their continued failure to divest from South Africa. Nor would participation in such a comprehensive programme absolve TNCs of their overriding commitment to work constructively towards the dismantling of the apartheid system from which it is widely perceived that they have benefited - including a commitment to oppose South African law where it conflicts with the inalienable rights of the black majority.

94. Nevertheless, TNCs that do operate in South Africa - plus those which used to operate there and those which have aspirations to operate in South Africa once sanctions have been lifted - can make a contribution in training the coming generation of South African leaders, both through a substantial financial commitment to formal education programmes and through the possibility of making their world-wide facilities available for "on-the-job" training. It is important to appreciate that this commitment is a world-wide commitment: it is not enough for a TNC to promote a few co-opted blacks to junior management positions within its South African affiliate. The Panel envisages a major international programme in which South African blacks from inside and outside the country are given broad and deep experience and responsibilities within a TNC's international operations.

95. Although the Panel is well aware of the asymmetries between the South African and Namibian examples - in particular, the differences in the statutory role of the United Nations and in the respective sizes of the two countries - it notes that there are some parallels between what it is proposing for post-apartheid South Africa and the Nationhood Programme for Namibia. What is particularly important is the inter-agency nature of the Namibian programme, involving as it does ILO, the United Nations Development Programme (UNDP), the United Nations Centre on Transnational Corporations, the United Nations Conference on Trade and Development (UNCTAD) and the United Nations Fund for Namibia. What the Panel envisages for South Africa is a similar multilateral structure - but encompassing also non-governmental organizations, bilateral assistance programmes, individual country programmes and a substantial contribution (perhaps with certain tax concessions) from TNCs. It also notes that there could be lessons to be learned in the experience of the British in training black Rhodesians for senior positions in independent Zimbabwe.

V. RECOMMENDATIONS

96. We believe that it is very important to understand that the Panel's recommendations are not punitive. Our intention is not to use the measures that we recommend to punish the white South African community, TNCs or banks. Rather, the intention is to convince the South African Government and the business community that:

(a) A system based on apartheid - which is both morally indefensible and economically inefficient - is no longer in their own best interests;

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(b) The Government should move quickly to a negotiated removal of _apartheid_ and to a system of democratic majority rule.

97. We cannot predict when _apartheid_ will end, and we emphasize our distrust of the present Government's pledges of "reform". Nevertheless, we believe that the strategy that the international community has followed since the early 1980s is the correct one, and that the progressive tightening of economic restrictions will continue to erode the confidence of the white minority that it can avoid substantive negotiations. We, therefore, call upon the international community to reflect the will of the United Nations in adopting universal, comprehensive and mandatory sanctions against the minority Government of South Africa.

98. While the achievement of universal sanctions depends upon Governments, we wish to emphasize the crucial importance of individual and collective initiatives. People can urge action upon Governments. The experience of the United States has shown how powerful a force the pressure of the people can be in supporting and achieving policy changes.

99. People can act to influence transnational corporations to disinvest. People can act to influence the key banks involved to sustain and intensify financial sanctions. In the period ahead, particularly in Europe, "people power" can be a highly effective instrument in forcing the pace of change in South Africa. The recommendations made by the Panel are thus addressed not only to Governments but to their peoples.

100. With that in mind, the Panel, in the interest of the longer-term development of South Africa, believes also that it is now time to recognize that the inevitable abolition of _apartheid_ is not the end of the affair, but the beginning of a process that will culminate in the true enfranchisement of the majority in a just and prosperous South Africa.

A. Sanctions

101. One of the most dispiriting discoveries that the Panel made during the hearings is that Governments cheat. It has long been widely acknowledged that many TNCs will endeavour to circumvent sanctions legislation if it is in their short-term interest. But we were genuinely shocked to hear testimony that: (a) many Governments (though by no means all), from both the developed and developing worlds, routinely assist in the circumvention of sanctions on South Africa - even those to which they may themselves be signatories; and (b) many of the worst abuses are in the most sensitive areas, such as trade in arms, oil and technology.

102. We recognize that the evidence is not unequivocal and that much of it is hearsay. Nevertheless, this is a very important issue, and we therefore call upon the General Assembly to appoint an independent group to prepare a detailed report as soon as possible into these abuses. This report must "name names" - both of countries that collude on the evasion of sanctions and of the TNCs that benefit thereby.

103. Despite this, the Panel is convinced that sanctions work. We are also convinced that their shortcomings as a tool to bring change to South Africa have more to do with the lack of universality and the half-heartedness with which they have been applied than with any intrinsic failure of the policy. In the words of the recent report to the Commonwealth Foreign Ministers, "partial sanctions have been a partial success". We feel the evidence is overwhelming that the broadening and strengthening of sanctions, consistent with the United Nations principle of universality, would further accelerate the pace of change in South Africa and help bring the white minority to the negotiating table. We note that, in many cases, the recommendations of the 1985 Panel are still relevant and still need to be implemented - particularly the strengthening of the much-abused arms and oil embargoes (oil-related products, for instance, must be brought more clearly into the oil measures). As part of this, we also urge increased co-ordination between countries on sanctions to minimize the possibility of evasion, and we believe that the monitoring procedures that we are recommending below have an important role to play in this.

1. Financial sanctions

104. This is perhaps the most promising area as far as new measures are concerned. We were particularly impressed by evidence that South Africa's sharply reduced access to the world's capital markets has already substantially constrained the options open to the Government - and that it looks set to have a progressively greater impact in the future unless the Government is able to lengthen the maturity structure of its existing debt and/or reduce interest rates substantially.

105. At the outset, however, the Panel must acknowledge that - as with other forms of sanctions - the impact of financial sanctions has been limited, in part because the lack of "transparency" has enabled the South Africans to turn to alternative, non-traditional sources of finance. We believe, therefore, that it is important to develop a comprehensive data base on financial flows into and out of South Africa - so that banks from countries that are thought to have increased their exposure to South Africa, while United States and United Kingdom banks have cut back, can be exposed to the full glare of publicity.

106. Furthermore, the Panel urges that:

(a) Official export credit agencies, such as the United Kingdom's Export Credit Guarantee Department (ECGD), take South African risk "off cover" - and keep it off cover;

(b) National regulatory agencies and the Bank for International Settlements should review their provisioning requirements for South African exposure with a view to reflecting the country's deteriorating creditworthiness (as indicated by political considerations, its very low level of foreign exchange reserves and its history of unilaterally abrogating loan agreements);

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(c) National authorities must ensure that any trade credits given to South Africa by their banks shall be of very short duration - no more than 90 days - so as both to reflect the country's deteriorating creditworthiness and to maintain continuous pressure on the South African authorities;

(d) Governments (particularly the Government of Switzerland) should forbid the South African authorities to raise money either through gold swaps or through sales of gold in the forward market.

107. The Panel reminds Governments that claim to support sanctions that trade and investment flows are impossible without finance, and that, by restricting the ability of banks to lend, they would sharply restrict the ability of South Africa to trade as well as to finance investment.

108. We would also like to re-emphasize that the principle of using South African debt to extract political concessions from the Government has been established since the efforts of former Swiss National Bank President Leutwiler to negotiate the original Interim Agreement in 1986 (which led to the elimination of influx control). As a result, the five points put forward by leaders of the South African churches and various anti-apartheid groups as a pre-condition for debt rescheduling are appropriate demands, and we would like to endorse them. They are:

(a) The freeing of political prisoners;

(b) An end to the state of emergency;

(c) The unbanning of political organizations;

(d) Repeal of the Group Areas Act and other apartheid legislation;

(e) The beginning of "meaningful negotiations" on the abolition of apartheid.

109. We take note, however, of a point raised by one expert witness: it is incumbent on creditor Governments to define what they mean by "meaningful negotiations".

110. With regard to the rescheduling of the Second Interim Agreement, which is due to take place by June 1990, and the repayment "bunching" on guaranteed credits that is anticipated for 1990-1991, we accept that this represents a "window of opportunity" to put pressure on the South African authorities. We also accept, however, that the longer such pressure is postponed, the more ineffective it is likely to be since more creditors will have been tempted to accept the longer-term extension offered by the Reserve Bank, or will have rolled over maturities on the guaranteed portion of their debt. We would, therefore, like to begin by expressing our strong disapproval of the action by Citicorp and Manufacturers Hanover, both of which have been reported as having accepted conversion of debt "in the net" into longer-term guaranteed loans. The Panel feels strongly that the Technical Committee of South Africa's creditors must hold together, and that the reported actions of these two banks have seriously undermined the potential for exerting leverage on the authorities.

111. That said, we believe the banks in the Technical Committee can and must refuse to extend their loans beyond a further 12 months, impose IMF-style or banking conditionality, requiring that South Africa's fiscal deficit be reduced to zero and that its reserves be built up sharply and demand much more detailed information on South Africa's financial position than is currently available.

112. In the event that the South African authorities are unwilling to go along, the banks must be prepared to call their loans and, if necessary, to seize South African assets held abroad - a step that would have dire implications for South Africa's international standing.

113. In this way, the country's external debt can be used as a way of steadily increasing the pressure on the Government without precipitating a crisis for the financial system itself.

114. Finally, we urge greater consumer pressure on all banks with ties to South Africa. We note the impact that the boycott of Barclays Bank had, and we commend the proposed United States consumer action against Citicorp.

2. Investment sanctions

115. Disinvestment poses certain problems both in terms of impact and the ease with which the South African authorities and business community have been able to circumvent it. Nevertheless, we believe that the preponderance of the evidence overwhelmingly suggests that disinvestment is a powerful tool in undermining the confidence of the white community. That said, however, it is important that loopholes should be closed, mandatory disinvestment legislation should be broadened, the adverse impact of disinvestment on the black community should be minimized, and the policy of disinvestment must be reinforced by enhanced "grass roots" pressure in the home countries of TNCs, including transnational banks with interests in South Africa.

116. To this end, the Panel strongly recommends that:

(a) Countries that do not yet have disinvestment legislation should consider implementation of such measures, using the comprehensive Nordic disinvestment law as a model;

(b) The double taxation agreement granting tax relief by way of tax credits be repealed, along the lines of the Rangel Amendment;

(c) All countries should adopt legislation to cover non-equity ties, such as licensing and franchise agreements and commitments to the long-term supply of technology - it is particularly important that when a corporate entity leaves South Africa, it does so in fact and not just in name;

(d) Home countries should enact legislation on disinvestment that will ensure the fair and just treatment of the black workforce that is affected by disinvestment - we endorse the 14-point proposals put forward by IG Metall in the Federal Republic of Germany and the "Dellums Bill" in the United States. We also endorse the call by COSATU for disinvesting companies to negotiate the terms of their withdrawal with their workers and unions before pulling out.

117. In addition, the Panel believes that more information is required on the international activities of South African-owned or -controlled companies outside the country. We urge the United Nations system to collect information on these companies, and we recommend that other countries should be vigilant in not permitting these firms to act as a conduit for technology or trade flows to South Africa.

3. Trade sanctions

118. We recognize that, in the absence of mandatory and universal sanctions, restrictions on trade with South Africa will always be subject to circumvention. While we acknowledge that there is still opposition by some veto-wielding members of the United Nations Security Council to the concept of mandatory and universal sanctions, the Panel wants to go on record as deploring the unwillingness of these Governments to consider measures that, in its opinion, would bring peaceful change to South Africa more quickly and with less disruption.

119. That said, in broad terms the Panel endorses the six key recommendations made to the Commonwealth Foreign Ministers, which call upon Governments:

(a) To commit to a steady reduction in trade with South Africa;

(b) To ban imports of South African agricultural goods;

(c) To ban import of non-strategic South African minerals;

(d) To ban import of South African manufactured goods;

(e) To prohibit production and sale of platinum coins and bars for investors;

(f) To phase out trade credits for sales to South Africa.

120. In particular, we reiterate the importance of reducing South Africa's access to trade finance, which is now virtually the only kind of finance available to the Government and business community.

121. In addition, the Panel demands that the mandatory arms embargo must be substantially strengthened, particularly with regard to "dual-use" items and technology transfer. We repeat the call made in 1985 for the compilation of a list of military equipment and dual-use items by the United Nations, and we call on the world-wide community, including "non-traditional" arms exporters, to cease this trade. We note with great concern that South Africa's arms purchases have actually increased since 1985 despite the United Nations embargo.

122. We are also particularly concerned by evidence that export of foreign technology to South Africa has increased. We recommend that licensing and franchise agreements must be brought within existing trade sanctions, and we urge Governments that have imposed trade sanctions to extend them to the export of technology. In this regard, we note that Japanese companies have been particularly keen to sell technology to the South Africans, and we insist that Tokyo extend its trade sanctions beyond the very limited measures currently in place. In the same vein, the Panel also urges the authorities in other countries that are known to have built up trade links with South Africa since 1985 to sever those links immediately.

123. While we recognize the difficulties inherent in controlling trade in a fungible commodity such as gold, the Panel also recognizes that gold still constitutes 40 per cent of South African exports and we, therefore, urge that Governments should impose a complete ban on imports of South African gold wherever its origin can be established. We call upon gold-consuming nations to establish a system for certifying the origin of gold, and we urge greater "transparency" on the part of the Swiss authorities who oversee the markets through which South Africa sells a good part of its gold and all of its diamonds.

124. The Panel is also concerned about the ease with which the South African Government has apparently been able to fill its oil needs, albeit at a cost. We, therefore, urge much closer official monitoring of oil flows and we urge producers to be more vigilant in establishing that shippers and middlemen with whom they are dealing are not circumventing sanctions and trading with South Africa.

125. We would also like to highlight the importance of coal exports to the South African economy. While some countries, notably the United States, have banned imports of South African coal, others (even coal-producers in their own right) have increased their purchases. The Panel calls for a mandatory prohibition on the purchase of South African coal by all United Nations member countries. We urge trade unions to support such measures actively and demand that Governments act to legalize such activity where it is presently against the law.

126. Finally, we recommend that the export of machine tools and capital equipment to South Africa should be banned, since it is believed that this would be a severe blow to the Government's policy of "inward development" as a way of combating trade restrictions.

B. Monitoring

127. As discussed in detail above, the Panel has become increasingly aware that the absence of a comprehensive monitoring system means that the efficacy of sanctions against South Africa has been sharply reduced. This has happened in at least four ways:

(a) It has permitted the South African Government and business community to establish new trade, financial and investment links out of the glare of public opinion;

(b) It has facilitated the diversion of trade through third countries and the use of improper documentation;

(c) It has encouraged disinvesting companies to reduce the impact of their disinvestment by replacing a direct equity presence with non-equity links that may be very little different from a direct presence in substantive terms and, at least as important;

(d) It has retarded the development of "grass-roots" pressure groups, on the North American and Nordic models, in much of Europe (and particularly in the United Kingdom, the Federal Republic of Germany and Switzerland).

128. As a result, we recommend that, as a matter of urgency, the United Nations system should provide for a central mechanism to organize and co-ordinate the various monitoring activities undertaken by governmental and non-governmental agencies, and to supplement these where necessary in order to set up a comprehensive information system on (a) the relevant aspects of the South African economy and (b) the impact and efficacy of economic sanctions.

129. The Panel wants to emphasize that this monitoring system must be comprehensive. We were, for instance, impressed with the quantity of information collected by non-governmental organizations in the area of South Africa's coal exports. But we were also depressed at the problems that the gatherers of that information had had in disseminating it more widely to Governments and other organizations. We also call upon Governments themselves to act on the information on South African abuses that non-governmental organizations collect.

130. This system should also:

(a) Standardize reporting procedures on investment and trade links with South Africa;

(b) Maintain a register of investment and disinvestment, including equity and non-equity links;

(c) Ensure maximum publicity to its findings.

131. In addition, we note that the International Chamber of Commerce has agreed to consider the establishment of an in-house monitoring group that will report to the United Nations. We urge the ICC to collaborate at all levels with the United Nations and to put pressure on its own members to increase their participation in sanctions programmes.

C. The post-apartheid era

132. The Panel is aware of the danger that recommendations in this area might be perceived as diminishing in some way the emphasis that we wish to place on the need to increase the short- and medium-term pressure on the South African Government and the business community. That said, given the pace of change, we also believe we would be derelict in our duty if we did not begin to point the way to the post-*apartheid* era.

133. The kind of comprehensive training programme, involving the United Nations bodies, national Governments, non-governmental organizations and TNCs, that we envisage has already been discussed. What we now recommend is that the General Assembly call for a comprehensive study to be prepared immediately, detailing (a) the scope of such a programme, (b) the responsibilities envisaged for each of the sets of participants involved and (c) the likely cost, with some indication of where these funds could be raised.

134. We further recommend that this report should then be considered at a Conference convened by the United Nations.

Notes

1/ E/CN.10/1986/9, annex. The report and recommendations of the Panel of Eminent Persons was subsequently issued in *Transnational Corporations in South Africa and Namibia: United Nations Public Hearings* (United Nations publication, Sales No. E.86.II.A.6), part one.

2/ *Ibid*., para. 3.

APPENDIX I

Notes from the hearings

1. This Panel cannot but take note that its deliberations have taken place against a background of popular outrage in *apartheid* South Africa, the immediate cause of which is the renewed expression of racial domination through an election that disenfranchises the vast majority of that country's inhabitants. That travesty of an election thereby provides the most eloquent commentary on the work of our commission, its aspirations and its frustrations, its ambitions and its limitations, its sense of urgency, but ultimately its faith in the humane conscience of the world and the potential of its collective will to redress the gross injustice that continues to diminish the achievements, and the self-esteem of a civilized world.

2. The testimonies laid before us have been both chastening and uplifting, ranging as they do through revelations of good intention but pathetic impotence, through barely disguised self-interest, casuistry and other forms of subtle pleas for the preservation of *apartheid* in disguise, to revelations of heroic endurance, resistance and the will to limitless sacrifice. Not once did the Panel encounter a witness who declared himself or herself in direct support of *apartheid*; on the contrary. But the plea did surface from time to time of a nature that presented *apartheid*, indeed, as an aberration, but as one that contains its own seeds of destruction, seeds that have indeed begun to burgeon and therefore require no further nudging from the outside world.

3. The weight of evidence was overwhelmingly against this special plea, and the Panel found no difficulty in associating itself with the contrary view. Indeed, our conviction is that, if anything, the process of external pressure on the *apartheid* régime in South Africa must be intensified and accelerated, if the glimmer of hope in a peaceful resolution of the ongoing struggle is to be preserved.

4. There yet exists, unfortunately, a reductive perception of the just goals of the South African majority, in sections of the very corporations whose activities this Panel was set up to examine. An excerpt from one of the submissions before the Panel captures the tragic essence of this reductiveness: "Although the goal of one-man one-vote is irresistibly appealing ...". Such unwitting betrayals of a grudging concession cannot but serve as a most erroneous guide to the strategies of operation for a transnational enterprise caught between the desperation of an oppressive régime and the just aspirations of the employees of that enterprise. For the black South African, the goal of one-man one-vote is not "irresistibly appealing". It is an implacable objective, the most fundamental definition of his social being and the equality of all men and women. Yet another submission that argued against the imposition of sanctions presented a picture of South African society as one which is being reduced, in economic terms, to "eating its own seed-corn". Taking this flight into hyperbole at its face value leads inexorably to the obvious question: in the apportionment of this seed-corn, which section of South African society consumes the germ, and which one subsists on the chaff?

5. Only by pursuing every special plea of this nature to its stark conclusion within the South African social reality can one understand, respect and empathize with the position taken by the representatives of the majority of South Africa when they declare that they are the least affected by the weapon of economic sanctions, no matter how rigorously applied. It is a position rooted in actuality, and in the passionate pursuit of an egalitarian future. The world must respond to this voice of willing endurance but above all, to its confident pursuit of a non-racial future. The Panel's conclusions have been guided by its identification of this authentic voice of the oppressed peoples of *apartheid* South Africa. It is urged upon the rest of humanity as an imperative of world solidarity that must find expression in a comprehensive action on all fronts, against the inhumanity that is *apartheid*.

(*Signed*) Wole SOYINKA
Geneva, 1989

APPENDIX II

Members of the Panel of Eminent Persons

Canaan Sodindo BANANA (Co-Chairman)	First President of Zimbabwe; Chancellor of the University of Zimbabwe, 1983-____.
Judith HART (Co-Chairman)	Member of the House of Lords in the United Kingdom with the title of Baroness of South Lanark, 1959-____; Minister of Commonwealth Affairs, 1966-1967; Minister of Overseas Development, 1969-1970, 1974-1975, 1977-1979.
Kamal HOSSAIN (Rapporteur)	Minister for Foreign Affairs of Bangladesh, 1973-1975.
Abdlatif AL-HAMAD	Secretary-General of the Arab Development Fund; Minister of Finance and Planning of Kuwait, 1982-1983.
Francis BLANCHARD	Director-General of the International Labour Organisation, 1974-1989.
Anatoly GROMYKO	Director of the Africa Institute of the USSR Academy of Sciences.
Flora MACDONALD	Member of Parliament, Canada, 1972-1988; Secretary of State for External Affairs, 1979-1980; Minister of Communications, 1986-1988.
Mochtar KUSUMA-ATMADJA	Minister for Foreign Affairs of Indonesia, 1977-1988.
Edward SEAGA	Prime Minister of Jamaica, 1980-1989.
Wole SOYINKA	Nigerian author of numerous plays; Nobel laureate for literature, 1987; film-maker; lecturer at the University of Ife, Nigeria.
Lowell WEICKER	United States Senator, 1971-1989.
