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IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON THE SUPPRESSION
AND PUNISHMENT OF THE CRIME OF APARTHEID

Report of the Group of Three established under the Convention

Chairman/Rapporteur: Mr. Volodymyr Vassilenko (Ukrainian SSR)

I. INTRODUCTION

1. The International Convention on the Suppression and Punishment of the Crime of Apartheid, which was adopted by the General Assembly in resolution 3068 (XXVIII) of 30 November 1973, entered into force on 18 July 1976, on the thirtieth day after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession. As at 31 December 1989, there were 88 States parties to the Convention (see E/CN.4/1990/32, annex).
2. Under article VII of the Convention, the States parties undertake to submit periodic reports to the Group established under article IX on the legislative, judicial, administrative or other measures that they have adopted and that give effect to the provisions of the Convention.
3. In accordance with article IX of the Convention, the Chairman of the Commission on Human Rights is authorized to appoint a group consisting of three members of the Commission, who are also representatives of States parties to the Convention, to consider reports submitted by States parties in accordance with article VII. The group may meet for a period of not more than five days, either before the opening or after the closing of the session of the Commission, to consider the reports submitted in accordance with article VII.

4. In accordance with article IX of the Convention and General Assembly resolution 31/80, the Chairman of the forty-fifth session of the Commission appointed the representatives of Nigeria, Panama and Ukrainian Soviet Socialist Republic as members of the Group.

5. By its resolution 1989/8, the Commission decided, inter alia, that the Group of three members of the Commission appointed in accordance with article IX of the Convention should meet for a period of not more than five days before the forty-sixth session of the Commission to consider the reports submitted by States parties in accordance with article VII; commended those States parties that had submitted their reports, and called upon those that had not yet done so to submit their reports as soon as possible; reiterated its recommendation that States parties should take full account of the general guidelines laid down by the Group in 1978 for the submission of reports (see E/CN.4/1286, annex); and requested the Group of Three to continue, in the light of the views expressed by States parties to the Convention, the examination of the extent and the nature of the responsibility of transnational corporations for the continued existence of the system of apartheid in South Africa, including legal action that might be taken under the Convention against transnational corporations whose operations in South Africa came under the crime of apartheid, and to report to the Commission at its forty-sixth session.

II. ORGANIZATION OF THE SESSION

A. Attendance

6. The Group held its thirteenth (1990) session at the United Nations Office at Geneva from 22 to 26 January 1990. The session was opened by the representative of the Secretary-General. The membership of the Group was as follows:

Nigeria	Mr. Scott Oguma E. Omene
Panama	Ms. Lourdes C. Vallarino
Ukrainian Soviet Socialist Republic	Mr. Volodymyr Vassilenko

B. Election of officers

7. At its meeting held on 22 January 1990, the Group elected Mr. Volodymyr Vassilenko as Chairman/Rapporteur.

C. Agenda

8. At its meeting held on 22 January 1990, the Group considered the provisional agenda (E/CN.4/AC.33/1990/L.1) submitted by the Secretary-General, and adopted the following items as the agenda of its 1990 session:

- "1. Opening of the session by the representative of the Secretary-General.
2. Election of officers.
3. Adoption of the agenda.
4. Consideration of reports submitted by States parties under article VII of the Convention.

5. Consideration of the actions of transnational corporations which operate in South Africa, in accordance with Commission resolution 1989/8.
6. Report of the Group to the Commission on Human Rights."

III. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE VII OF THE CONVENTION

9. The Group had before it the following documents: (a) a note by the Secretary-General (E/CN.4/1990/32) concerning the status of the Convention and the submission of reports by States parties under article VII of the Convention and (b) reports submitted since the forty-fifth session of the Commission on Human Rights by: Czechoslovakia (E/CN.4/1989/31/Add.10); Philippines (E/CN.4/1990/32/Add.1); India (E/CN.4/1990/32/Add.2); Pakistan (E/CN.4/1990/32/Add.3); China (E/CN.4/1990/32/Add.4); Burundi (E/CN.4/1990/32/Add.5); and Bahamas (E/CN.4/1990/32/Add.6).

10. The Group undertook the examination of each report in the presence of the representatives of the reporting States who had been invited to attend the meetings of the Group in accordance with the recommendations made by the Group at its 1979 and subsequent sessions. The report of the Bahamas was considered by the Group without the participation of a representative of the reporting State.

Czechoslovakia

11. The fourth report of Czechoslovakia (E/CN.4/1989/31/Add.10) was introduced by the representative of the State party, who stated that his Government had fully supported the "Declaration on Apartheid and its Destructive Consequences in Southern Africa" adopted by the Sixteenth Special Session of the General Assembly in December 1989; and emphasized, in particular, that that Declaration had broadened the options the international community had in its fight against apartheid. To the mandatory and comprehensive sanctions against South Africa and its total isolation, had been added the possibility for a negotiated solution amongst all the sectors of the South African population. He stated that his Government, without abandoning other measures, supported that new option. Internal political pressure within South Africa coupled with international pressure was likely to create the necessary atmosphere for the total eradication of the system of apartheid in that country.

12. Members of the Group wished to know how the relevant resolutions and decisions of the Security Council and General Assembly were implemented by Czechoslovakia. Information was also sought as to whether Czechoslovakia had any economic, cultural or other links with South Africa; and whether transnational corporations operating in South Africa were banned in Czechoslovakia.

13. Responding to the questions raised, the representative of the reporting State stated that his country had no links of any kind with South Africa, and that transnational corporations operating in South Africa were not permitted to operate in Czechoslovakia. With regard to resolutions and decisions of the United Nations organs, or other international bodies which his country had undertaken to implement, these were implemented by the relevant organs of the

22. The Group took note, with appreciation, of the report and commended the representative of the State party on his presentation. Further information was sought on the implementation by Pakistan of the provision of articles II and XI of the Convention and on any measures taken by the Government to prevent legal persons from entering into relation with South African companies. With reference to articles IV and VI of the Convention, it was pointed out that the national legislation should contain appropriate measures dealing specifically with the crime of apartheid. In his reply, the representative explained that the policy of the Government was of a nature which prevented any national of Pakistan from organizing commercial links with South Africa. Furthermore, passports issued by the Government did not allow Pakistan nationals to enter South Africa. Lastly, he gave examples of cricket players who had refrained from visiting South Africa. As regards the actions mentioned in article II of the Convention, he recalled that legislation in Pakistan provided for equal protection under the law without any discrimination.

China

23. The second periodic report of China (E/CN.4/1990/32/Add.4) was introduced by the representative of the State party who emphasized constitutional and legislative provisions which provided for equality of rights of all 55 minority nationalities existing in China. Furthermore, he stated that in areas where minority nationalities lived in concentrated communities, autonomous areas and organs of self-government had been established, that the right to freedom of religious beliefs was safeguarded and that a number of preferential policy measures had been taken to help minority nationalities to speed up their economic and cultural development. He also pointed out that apartheid was considered by China as a crime against humanity and a threat to international peace, and that his Government deplored the direct assistance provided to the racist régime of South Africa by certain western countries. He added that China supported all United Nations resolutions on the question of apartheid, that his Government provided material assistance to victims of apartheid, that it had no direct or indirect link with South Africa, and that it was in favour of the imposition of more comprehensive and effective sanctions against South Africa.

24. The Group took note of the report with satisfaction and commended the representative of the State party on his presentation and for the efforts made by his Government in the struggle against apartheid. It was noted with satisfaction that the report had been prepared in strict conformity with the general guidelines. Further information was sought regarding measures taken in China to incorporate the objectives of the Convention in the educational system and to familiarize the population with the struggle against apartheid, and on the rights to freedom of religious beliefs in the Tibet Autonomous Region. With reference to articles IV and VI of the Convention, it was recalled that the national legislation should contain adequate measures dealing specifically with the crime of apartheid. In his reply, the representative of the State party pointed out that information on the struggle against apartheid was provided through the mass media, and that teaching materials relating to racial discrimination and the policy of apartheid had been prepared for primary school, middle school and college students in China. He also emphasized that a rally had been held in Beijing on 15 July 1988 to celebrate the seventieth birthday of Nelson Mandela.

Burundi

25. The second periodic report of Burundi (E/CN.4/1990/32/Add.5) was introduced by the representative of the reporting State who gave a brief overview of the political and social context within which human rights were implemented in Burundi. Despite the tragic events of August 1988, the Government was determined to ensure protection of human rights without distinction of any kind. Since these events, the Third Republic had broadened the Government and had established a commission to study the question of national unity. He further stated that refugees who had fled the violence had returned to the country, that national unity and the ethnic question were the subject of a debate at all levels and sectors of the society, and that a Charter of National Unity was being prepared. He added that in Burundi apartheid was considered a crime against humanity and a threat to international peace, that his Government supported the idea of the immediate release of all the political prisoners, in particular, Mr. Nelson Mandela, that Burundi did not maintain any relations whatsoever with the apartheid régime of South Africa, and that it actively supported national liberation movements in South Africa.

26. The Group noted with appreciation the introductory statement of the representative of the reporting State. The hope was, however, expressed that the general guidelines would be taken into account by the Government when submitting its future reports. Further information was sought regarding measures taken to publicize the Convention in Burundi, and to discontinue diplomatic, trade or other relations with South Africa. It was also asked whether specific reference to the crime of apartheid was made in Burundi legislation. In his reply, the representative of the State party explained that all mass media means were used to alert the public to the crime of apartheid. He further stated that his Government prohibited all exportation to and importation from South Africa and that if an alleged perpetrator was ever to be found in the territory of Burundi, the authorities would either extradite that person or bring him to trial.

Bahamas

27. The initial and second reports of Bahamas, submitted in one document (E/CN.4/1990/32/Add.6) were considered without the participation of a Government representative. The Group took note of the report and observed that it had been prepared in accordance with its general guidelines. It was regretted, however, that in the absence of the representative of the reporting State the members of the Group could not receive answers to their questions. The Group recommended that it was essential for the effective implementation of the Convention that States parties appoint representatives to participate in its meetings when reports submitted by their Governments were considered.

28. The members of the Group wished to be informed whether the new legislation referred to in the report had already been promulgated and noted that that legislation would make the crime of apartheid an offence in the Bahamas, demonstrating effective and concrete implementation by that country of the provisions of the Convention. Clarifications were also sought with regard to the exceptions to denial of entry visas to South African citizens, in particular, how the Government would be able to judge that a South African citizen had demonstrated his/her "active participation in the anti-apartheid movement in South Africa". It was observed that some of these exceptions reduced the effectiveness of the measures taken by the Government of the Bahamas in the implementation of the provisions of the Convention.

IV. CONSIDERATION OF THE ACTIONS OF TRANSNATIONAL CORPORATIONS
WHICH OPERATE IN SOUTH AFRICA

29. In accordance with the request contained in Commission on Human Rights resolution 1989/8, the Group of Three continued to consider whether the actions of transnational corporations operating in South Africa and Namibia came under the definition of the crime of apartheid and whether legal action could be taken under the Convention against them, and, in the light of the views expressed so far by States parties to the Convention (Bulgaria, Burundi, Byelorussian Soviet Socialist Republic, Czechoslovakia, Ecuador, German Democratic Republic, Madagascar, Mexico, Panama, Peru, Syrian Arab Republic, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics), specialized agencies (International Labour Organisation) and non-governmental organizations (International Confederation of Free Trade Unions and Women's International Democratic Federation) (see E/CN.4/1986/46, E/CN.4/1987/27 and Add.1-2, E/CN.4/1988/31 and Add.1-3, E/CN.4/1989/32 and E/CN.4/1990/34 and Add.1-2), examined the extent and the nature of the responsibility of transnational corporations for the continued existence of the system of apartheid in South Africa.

30. The Group commended the States parties which had submitted their views and information and called upon those which had not yet submitted their views to do so as soon as possible. The Group was of the opinion that further examination of the matter was needed and that the views and information of all the States parties to the Convention on the extent and the nature of the responsibility of transnational corporations for the continued existence of the system of apartheid in South Africa would be of the greatest usefulness.

31. The Group noted that several United Nations organs had continued to draw the attention of the international community to the close interconnection existing between the activities of transnational corporations operating in South Africa and the persistence of the racist régime in South Africa.

32. The Group noted, with reference to the views and information submitted, that all States parties were in agreement as to the necessity of imposing sanctions against the apartheid régime, in accordance with Chapter VII of the Charter of the United Nations, thus supporting the people of South Africa in their legitimate struggle for freedom and equality, and expressed the hope that more concrete proposals on the subject could be communicated to the Group in the future.

33. The Group reiterated that the role played by transnational corporations in South Africa was threefold: firstly, they exhausted South African and Namibian natural resources, which belonged to the people; secondly, they exploited the labour force of that region with the single aim of making larger profits; and thirdly, by operating in South Africa, they strengthened the apartheid régime, helped to perpetuate the oppression of the African majority and enhanced the repression against those fighting for their independence.

34. Within that context the Group rejected as completely unfounded the assertion that the action of transnational corporations operating in South Africa and close co-operation between certain countries and the racist régime of South Africa in the political, economic, military and other spheres were helping to improve the critical situation of the overwhelming majority of the population of that country and contributed to making the system of apartheid more human.

35. The Group endorsed the conclusion that, by their complicity the transnational corporations operating in South Africa, in conformity with article III (b) of the Convention, must be considered accomplices in the crime of apartheid and must be prosecuted for their responsibility in the continuation of that crime. In that connection, the Group called upon all States parties to the Convention to incorporate in their legislation provisions to that effect.

V. CONCLUSIONS AND RECOMMENDATIONS

36. The Group of Three expressed its appreciation to the representatives of the reporting States for their presence at its meetings and noted with satisfaction that all but one of the reports considered by the Group at the current session were introduced by the representatives of the reporting States.

37. The Group commended States parties which have submitted periodic reports. It noted with concern that 33 States parties as listed in document E/CN.4/1990/32 had not submitted any report and urged in particular those States parties which had not yet submitted their initial reports to do so as soon as possible. The Group further noted with great concern that, as at 31 December 1989, more than 190 reports were overdue under the Convention, and once again strongly urged the States parties concerned to fulfil their reporting obligations, as required under article VII of the Convention. The Group urged the States parties concerned to expedite the submission of their overdue reports as requested by the General Assembly in resolution 44/69.

38. The Group noted with regret that the reports submitted by some States parties were not in line with the general guidelines and therefore reiterates once again its recommendation that all States parties when preparing their reports should strictly follow the general guidelines regarding the form and contents of reports (E/CN.4/1286, annex).

39. The Group noted with concern that only one State acceded to the Convention in 1989. It also expressed concern at the fact that only 88 States had become parties to the Convention. Convinced that the ratification of, or accession to, the Convention on a universal basis and the implementation of its provisions were necessary for its effectiveness, the Group recommended once again to the Commission on Human Rights that it should urge all States which have not yet done so to ratify or to accede to the Convention without delay, in particular those States which have jurisdiction over transnational corporations operating in South Africa.

40. The Group called upon all States parties to the Convention to incorporate in their legislation provisions relating to the "crime of apartheid" including practices of racial segregation and discrimination in accordance with article II of the Convention, and to provide appropriate penalties in respect of persons guilty of the crime of apartheid, as stipulated in article IV (b) of the Convention. In that connection, the Group reiterated the view which it had expressed earlier that consideration should be given to drawing up of model legislation which would serve the States parties as a guide for the implementation of the provisions of the Convention.

41. The Group wished to appeal once again to States parties, through the Commission on Human Rights, to strengthen their co-operation at the international level and to adopt legislative and administrative measures to

implement fully and expeditiously, in accordance with the Charter of the United Nations, the decisions taken by the Security Council and other competent organs of the United Nations and its specialized agencies aimed at the prevention, suppression and punishment of the crime of apartheid, in accordance with article VI of the Convention.

42. The Group took note of Economic and Social Council resolution 1989/27, by which the Council condemned those transnational corporations that continue to collaborate with the racist minority régime in South Africa in defiance of United Nations resolutions and international public opinion and, in many cases, in violation of measures adopted by their home countries.

43. The Group called on all States whose transnational corporations continued to do business with South Africa to take urgent steps to put an end to their operations there. It further urged developing countries to take concerted action to persuade transnational corporations, specially those trading within their territories, to end their operations in South Africa.

44. The Group recommended to the Commission that it request the Secretary-General to give wide publicity to the list of banks, transnational corporations and other organizations operating in South Africa, as reflected in the updated study prepared by the Special Rapporteur, Mr. Ahmed Khalifa (document E/CN.4/Sub.2/1989/9 and Corr.1 and Add.1) and to disseminate the list as widely as possible, including through the United Nations Information Centres around the world, and to report to the Commission at its forty-seventh session on the implementation of this provision.

45. The Group wished to note once again that the crime of apartheid is a form of genocide, similar in nature to Fascist and Nazi crimes, and as such falls under the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. The Group recommended to the Commission on Human Rights that it reflect this similarity in its respective resolutions, and stress the fact that adherence to the International Convention on the Suppression and Punishment of the Crime of Apartheid is a step towards implementation of the Convention on the Prevention and Punishment of the Crime of Genocide.

46. The Group, recalling in particular paragraph 3 of General Assembly resolution 3068 (XXVIII), by which the Convention was adopted, as well as General Assembly resolution 44/69, wished once again to draw the attention of United Nations organs, specialized agencies and international and national non-governmental organizations to the need to step up their activities in enhancing public awareness by denouncing the crimes committed by the racist régime of South Africa and to intensify their efforts, through appropriate channels, to disseminate information on the Convention and its implementation. In that connection, the Group wished to emphasize the importance of the role of the mass media.

47. The Group wished to emphasize once again the importance of measures to be taken in the field of teaching and education for fuller implementation of the Convention and invited the States parties to include information on these measures in their reports.

48. The Group continued to believe that the implementation of article V of the Convention, relating to the establishment of an international penal tribunal, was conducive to the strengthening of the mechanisms for combating apartheid.

49. The Group reiterated its opinion that the assistance given to national liberation movements in southern Africa should be strengthened and called upon the international community to contribute generously to such movements.

50. The Group wished to recommend to the Commission on Human Rights that it request the Secretary-General to invite once again the States parties to the Convention which have not yet done so to express their views on the extent and the nature of the responsibility of transnational corporations for the continued existence of the system of apartheid in South Africa.

51. The Group wished to recommend to the Commission on Human Rights that it request the Secretary-General to invite the States parties to the Convention, the specialized agencies and non-governmental organizations to provide the Commission with relevant information concerning the types of crime of apartheid, as contained in article II of the Convention, committed by transnational corporations operating in South Africa.

52. The Group reiterated its conviction that the very important means available to the international community to put an end to the system of apartheid consisted in imposing comprehensive and mandatory sanctions against the racist régime in South Africa. At the same time the Group considered that it would be desirable to undertake serious efforts to bring to an end the policies and practices of apartheid of the Government of South Africa through negotiations based on the principle of justice and peace for all as stated in the Declaration on Apartheid and its Destructive Consequences in Southern Africa, adopted unanimously by the Sixteenth Special Session of the General Assembly on 14 December 1989 in resolution S-16/1.

VI. ADOPTION OF THE REPORT

53. At its meeting on 26 January 1990, the Group considered the draft report on the work of its 1990 session. The draft report, as revised during the discussion, was adopted unanimously.
