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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. Ivan Khmel (Ukrainian Soviet Socialist Republic)

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 13 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 1984, there were 79 States parties to the Convention (see E/CN.4/1985/26, annex I).
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 fortieth session of the Commission appointed the representatives of Mexico, Senegal and the Ukrainian Soviet Socialist Republic as members of the Group.
5. By its resolution 1984/7 of 28 February 1984, 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 no more than five days before the forty-first 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, urged those States parties that had not yet done so to submit their reports as soon as possible, and reiterated its recommendation that States parties should take full account, when submitting their reports, of the guidelines laid down by the Group in 1978 concerning the form and contents of reports (see E/CN.4/1286, annex).

II. ORGANIZATION OF THE 1985 SESSION

A. Attendance

6. The Group held its eighth (1985) session at the United Nations Office at Geneva from 28 January to 1 February 1985. The session was opened by the Assistant Secretary-General for Human Rights. The Group's membership for the session was as follows:

Mexico:	Ms. Orpha Garrido-Ruiz
Senegal:	Mr. Samba Cor Konate
Ukrainian SSR	Mr. Ivan Khmel

B. Election of officers

7. At its meeting held on 28 January 1985, the Group elected Mr. Ivan Khmel as Chairman/Rapporteur.

C. Agenda

8. At its meeting held on 28 January 1985, the Group considered the provisional agenda (E/CN.4/AC.33/1985/L.1) submitted by the Secretary-General, and adopted the following items as the agenda of its 1985 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 1984/7.
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: (i) a note by the Secretary-General (E/CN.4/1985/26) concerning the status of the Convention and the submission of reports by States parties under article VII of the Convention and (ii) reports submitted after the fortieth session of the Commission on Human Rights by Cuba (E/CN.4/1984/36/Add.9), the Union of Soviet Socialist Republics (E/CN.4/1984/36/Add.10 and E/CN.4/1985/26/Add.7), the Byelorussian Soviet Socialist Republic (E/CN.4/1985/26/Add.1), Yugoslavia (E/CN.4/1985/26/Add.2), Algeria (E/CN.4/1985/26/Add.3), Madagascar (E/CN.4/1985/26/Add.4), the Ukrainian Soviet Socialist Republic (E/CN.4/1985/26/Add.5) and Bulgaria (E/CN.4/1985/26/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 since its 1979 session.

Cuba

11. The fourth periodic report of Cuba was introduced by the representative of the State party, who emphasized that the Constitution of 1976 prohibited discrimination in all its forms and manifestations and guaranteed to every citizen the right of equality and mutual respect. He pointed out that the Penal Code prescribed severe penalties for any criminal act involving an element of racial discrimination or apartheid. He also stated that recently a new law on people's power had been enacted, which further guaranteed equality, particularly in appointments to public offices. Responding to the Group's request for further clarification, he stated that courses on the evils of apartheid as well as all forms of discrimination were given in schools up to the university level and that they included the actual text of the Convention. He further stated in this respect that many foreign students, particularly from Africa and Asia, received free education in Cuba, in most cases in their own languages. The Group commended the representative for his presentation of the report and took note with appreciation of the report whose form and content were in conformity with the guidelines; it further noted that the fourth periodic report had again demonstrated the consistent position of Cuba, both nationally and internationally, in the fight against racism and apartheid.

Union of Soviet Socialist Republics

12. The fourth periodic report of the Union of Soviet Socialist Republics was introduced by the representative of the State party, who pointed out that the International Convention on the Suppression and Punishment of the Crime of Apartheid had been elaborated and adopted on the initiative of his Government. He stated that the Soviet Union had always complied and would continue to comply with all the decisions taken by the United Nations in its efforts to eradicate racism and the crime of apartheid. With regard to the transnational corporations operating in South Africa, he stated that, according to the data of the United Nations Centre on Transnational Corporations, about 1,100 such corporations were currently operating in South Africa and pointed out that the economic, technological and military support they provided strengthened the system of apartheid in South Africa. He stressed that the countries in which those transnational corporations were located could control their activities. He further stated that the early adoption of the Code of Conduct on Transnational Corporations, which would provide effective control over the activities of transnational corporations, was of great importance. The Group commended the representative for the presentation of the report. It noted with appreciation the State party's consistent position in the struggle against apartheid and all forms of racial discrimination as well as its views on the extent and the nature of the responsibility of the transnational corporations for the continued existence of the system of apartheid in South Africa.

Byelorussian Soviet Socialist Republic

13. In introducing the fourth periodic report of the Byelorussian SSR, the representative of the State party stressed that the report was supplementary to the previous reports and stated that the system of public, political, social and economical life which had come into being in the Byelorussian SSR since the victory of the Socialist Revolution precluded the possibility of the occurrence of discrimination on racial or national grounds. He pointed out that, apart from the Byelorussian Constitution, a number of codes on labour, education, penal law, marriage and the family, guaranteed the equality of all nationalities. He stated that the Byelorussian SSR implemented fully the decisions of the United Nations in that regard, including the programmes of action of the First and Second World Conferences to Combat Racism and Racial Discrimination. On the question asked

about the views of the Byelorussian SSR with regard to the responsibility of transnational corporations operating in South Africa for the continued existence of the system of apartheid, he stated that the Byelorussian SSR participated fully in the elaboration of the Code of Conduct on Transnational Corporations. He emphasized that the celebrations of the fortieth anniversary in 1985 of the victory over nazism and facism and of the founding of the United Nations demonstrated once again the resolve of the international community and the United Nations to combat all crimes against humanity, including apartheid. The Group noted with appreciation the information contained in the fourth periodic report, and commended the representative of the State party for the presentation of the report, as well as the comprehensive answers he had given to the questions posed.

Yugoslavia

14. The third periodic report of Yugoslavia was introduced by the representative of the reporting State, who stated that his country resolutely condemned the policy of apartheid in South Africa and considered it a crime against humanity. He stressed that the legislation of Yugoslavia declared such criminal acts punishable by law. He stated that his Government accorded financial, material and diplomatic assistance to liberation movements. The representative also referred to a number of measures taken by his Government to implement the provisions of the Convention and emphasized the active participation of Yugoslavia in all international activities to combat the apartheid policy of the Government of South Africa. The Group took note with appreciation of the report of Yugoslavia and the information contained therein. Clarification was sought as to whether there were Yugoslav migrant workers in South Africa, on measures the Government had adopted in order to implement the extradition provisions of article XI and on the view of the Government concerning the extent and the nature of the responsibility of transnational corporations for the continued existence of the system of apartheid in South Africa. The representative assured the Group that the questions raised would be relayed to his Government and that full answers would be provided in the next periodic report.

Algeria

15. The initial report of Algeria was introduced by the representative of the State party who supplemented the information contained therein by describing the international activities of her Government concerning apartheid and racial discrimination. The Group expressed its appreciation for the comprehensive and precise report of Algeria. Clarifications were requested concerning the measures that had been taken to implement the extradition provisions of article XI of the Convention and those adopted to give effect to article IV; the opinion of the Government of Algeria was also sought on the extent and the nature of the responsibility of transnational corporations for the continued existence of the system of apartheid in South Africa as well as the applicability of article III of the Convention to the activities of those corporations. Finally, the Group expressed the hope that the general guidelines concerning the form and contents of reports would be taken into account by the Government of Algeria when submitting its future reports. In her reply, the representative stated that no one has been prosecuted in her country for the crime of apartheid or racist crimes. She assured the Group that her Government would comply with any decision of the international community that would contribute to the punishment of the crime of apartheid and stated that the Algerian Government had already expressed its opinion on the establishment of an international penal tribunal envisaged under article V of the Convention. The representative also stated that her Government strongly condemned the actions of transnational corporations in South Africa.

Madagascar

16. The second periodic report of Madagascar was introduced by the representative of the State party, who pointed out that his country resolutely condemned the policy of apartheid and co-operated fully with the international community in its efforts to prevent and suppress apartheid and racial discrimination. He highlighted certain provisions of Malagasy legislation guaranteeing the principles of equality and non-discrimination. The Group expressed its appreciation to the Government of Madagascar for its report and for the concrete measures the Government had adopted in order to implement fully the provisions of the Convention. Satisfaction was also expressed with the fact that the African National Congress (ANC) had a permanent bureau in Madagascar. The Group requested the Government of Madagascar to express its opinion, in the next periodic report, on the extent and the nature of the responsibility of transnational corporations for the continued existence of the system of apartheid in South Africa and on the applicability of article III of the Convention to the activities of those corporations. The representative of Madagascar undertook to transmit the Group's request to his Government.

Ukrainian Soviet Socialist Republics

17. The fourth periodic report of the Ukrainian SSR was introduced by the representative of the reporting State who referred to internal and international measures taken by his Government to combat apartheid and racial discrimination. He stated, in particular, that the Ukrainian SSR, as a member of the United Nations Special Committee against Apartheid, had actively participated for many years in the extremely important work of that body and had submitted or co-sponsored concrete proposals in the United Nations on various aspects of the struggle against the policy and practice of apartheid and all forms of racism and racial discrimination. Moreover, he stated that his Government supported all the efforts of the international community against apartheid, including the imposition of sanctions against South Africa in accordance with Chapter VII of the Charter of the United Nations and that it firmly condemns any attempts by South Africa to settle the Namibian question by circumventing the United Nations. He also informed the Group that the Ukrainian SSR contributed regularly to the United Nations Trust Fund for South Africa and granted scholarships to students from southern Africa. He referred in particular to constitutional provisions and other legislation which guaranteed equality among citizens and the principles of non-discrimination. The mass communication media, university courses, the celebration of days of solidarity and other means were used to publicize the struggle of the people of South Africa and Namibia for independence. The representative emphasized that the celebration in 1985 of the fortieth anniversary of the founding of the United Nations and of the victory over nazism and fascism during the Second World War should mobilize the efforts of the international community to combat the resurgence of nazism and fascism and the existence of apartheid. The Group commended the representative of the State party for the presentation of the report which showed the commitment of the Ukrainian SSR to the full implementation of all the provisions of the Convention and its valuable contribution to the international struggle against apartheid.

Bulgaria

18. The fourth periodic report of Bulgaria was introduced by the representative of the State party, who stressed that Bulgaria was firmly committed to support most actively the efforts of the United Nations aimed at eradication of the crime of apartheid. She stated that the celebrations in 1985 of the fortieth anniversary of the victory over nazism and fascism and of the founding of the United Nations should strengthen the resolve of the United Nations to eradicate the crime of apartheid.

Bulgaria considered that article III of the Convention was applicable to the activities of transnational corporations operating in South Africa and constituted a crime of apartheid. The representative expressed the view that the United Nations should take appropriate measures to combat the activities of such transnational corporations operating in South Africa. The Group commended the representative for the very able manner in which she had introduced the report and noted with satisfaction the very comprehensive report of the State party, in particular the reference in the report to the provisions of the Penal Code aimed at preventing and punishing the crimes of genocide and apartheid and noted with approval the similarity of treatment of the crime of genocide and that of apartheid.

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

19. In accordance with the request contained in Commission on Human Rights resolutions 1982/12, 1983/12 and 1984/7 and item 5 of its agenda, the Group of Three continued to consider whether the actions of transnational corporations operating in South Africa came under the definition of the crime of apartheid and whether or not some legal actions could be taken under the Convention.

20. The Group noted that several United Nations organs had repeatedly drawn 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 its racist regime in pursuing its policy of racial discrimination and apartheid, as well as the position of the home countries of those corporations vis-à-vis the racist regime of South Africa. The Group shared the view of the Special Committee against Apartheid, expressed in its report to the General Assembly, ^{1/} that the effectiveness of international action for the eradication of apartheid had been hampered by the activities of transnational corporations which were interested in deriving profits from that inhuman system.

21. The Group noted that a number of States parties whose reports had been considered at the current session had expressed the view that the activities of transnational corporations operating in South Africa perpetuated the continued existence of the system of apartheid in South Africa.

22. With that in mind and taking into account the information available to it, the Group reiterated the opinion that article III of the International Convention on the Suppression and Punishment of the Crime of Apartheid could apply to the actions of transnational corporations operating in South Africa.

23. In order to continue the evaluation undertaken at its current session, the Group felt that further examination of the matter was needed and that the views and opinions of the States parties to the Convention on the extent and 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.

^{1/} Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 22 (A/38/22).

V. CONCLUSIONS AND RECOMMENDATIONS

24. The Group of Three expresses its appreciation to the representatives of the reporting States for their presence at its meetings and for their participation in its work and notes with appreciation that all the reports considered by the Group at the current session were introduced by the representatives of the reporting States.

25. The Group commends those States parties which have submitted periodic reports. It notes with concern that more than half of the States parties to the Convention have not submitted any report and urges in particular those States parties which have not yet submitted their initial reports, to do so as soon as possible, as required under article VII of the Convention.

26. The Group reiterates its recommendation that the general guidelines regarding the form and contents of reports should be fully taken into account by all States parties when preparing their reports.

27. The Group expresses concern at the fact that only 79 States have, as at 31 December 1984, 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 are necessary for its effectiveness, the Group recommends 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 and Namibia.

28. The Group calls upon States parties to provide in their reports more information on the legislative, judicial and administrative measures they have adopted to give effect to the provisions of article IV of the Convention, or on the difficulties which they may have encountered in the implementation of that article.

29. The Group also calls upon States parties to provide in their reports more information on concrete cases in which measures to prosecute, bring to trial and punish persons responsible for, or accused of, the acts enumerated in article II of the Convention have been applied under their jurisdiction.

30. The Group calls upon States parties to identify in their reports, where possible, individuals, organizations, institutions and representatives of States deemed responsible for the crimes enumerated in article II of the Convention, as well as those against whom legal proceedings have been undertaken by the State party to the Convention, with a view to enabling the Commission to continue its progressive updating of the list referred to in article X of the Convention.

31. The Group wishes to appeal once again to States parties, through the Commission on Human Rights, to strengthen their co-operation at the international level to implement fully in accordance with the Charter of the United Nations the decisions taken by the Security Council and other competent organs of the United Nations aimed at the prevention, suppression and punishment of the crime of apartheid, in accordance with article VI of the Convention.

32. The Group wishes to draw attention to the similarity, in their racist nature, of the apartheid regime and the fascist and nazi regimes defeated during the Second World War, and recommends that the fortieth anniversary of the victory over fascism and nazism and the founding of the United Nations be celebrated with mobilization of the efforts of the international community in the struggle against the resurgence of fascism and nazism and the continued existence of the system of apartheid.

33. The Group wishes to note that the crime of apartheid is a form of the crime of genocide and as such falls under the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, and recommends to the Commission on Human Rights that its respective resolutions reflect this interdependence, as well as the fact that adherence in the International Convention on the Suppression and Punishment of the Crime of Apartheid is an indication of the implementation of the International Convention on the Prevention and Punishment of the Crime of Genocide.

34. 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 39/19, wishes once again to draw the attention of States parties, and intergovernmental and non-governmental organizations, through the Commission on Human Rights, to the desirability of disseminating more information about the Convention and acquainting the public as widely as possible through the information media at their disposal with the implementation of its provisions by States parties as well as the work of the Group of Three established under article IX of the Convention.

35. The Group wishes to express in particular the importance of measures to be taken in the field of teaching and education for fuller implementation of the Convention and invites the States parties to include ample information on these measures in their reports.

36. The Group wishes to draw the attention of the States parties to the importance of article XI of the Convention and invites the States parties to include in their reports more information on their implementation of the provisions of this article.

37. The Group wishes to draw attention once again to the importance of strengthening the assistance given to the national liberation movements in southern Africa.

38. The Group wishes 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.

39. The Group wishes 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 on Human Rights with relevant information concerning the types of the crime of apartheid, as contained in article II of the Convention, committed by transnational corporations operating in South Africa.

VI. ADOPTION OF THE REPORT

40. At its meeting on 1 February 1985, the Group considered the draft report on the work of its 1985 session. The draft report, as revised during the discussion, was adopted unanimously.