Study of the International Convention on the Suppression and Punishment of the Crime of Apartheid (With special reference to questions of implementation and responsibility under international law)

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

(with special reference to cuestions of imple enation and responsibility under

by

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Professor I. P. Blishchnko

Zote: he Unit on A aarT4dQ'; a A blished in the becretariat of the United Nations,

in purs 4"YM Ase yr l -2I114(XI) of 26 October 1966, to deal exclusively with the policies of apartheid, in consultation with the Special Committee on Apartheid, in order that maximum publicity may be given to the evils of those policies. One of the functions of the Unit has been the preparation of studies and papers on a wide number of aspects of the problem of anartheid and international efforts towards its elimination.

This issue of Notes and Documents contains a paper prepared for the Unit by Professor I. P. Blishchenko, Doctor of Political Science and Deputy Chief of the International Law Faculty of the State Institute for International Relations, Moscow. Prof. Blishchenko is a member of the Presidium of the Association of Soviet Lawyers, of the Soviet AfroAsian Solidarity Committee, of the Soviet Committee for Peace and other organizations. He has written extensively on human rights and international law, and was a consultant to the United Nations Secretariat and the International Committee of the Red Cross.

The International Convention was adopted by the United Nations General Assembly

on 30 November 1973, by 91 votes to 4, with 26 abstentions. The text of the Convention was published in Unit on Apartheid Notes and Documents No. 22/737

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INTRODUCTION

The modern world is confronted with one of the most revolting phenomena imaginable, to which the overwhelming majority of people in the world has reacted with indignation, protest and the determination to eradicate it by every

possible means rightly considering that the development of modern society will be impossible unless it is eliminated. That phenomenon is aartheid.
Apartheid is a form of racial segregation and discrimination in which a legislative practice has been elevated to the rank of State ideology and policy.
In some countries - South Africa and Southern Rhodesia - 4partheid is a governmental and political system which disregards all fundamental human rights and freedoms and asserts racial exclusivity and the domination of one race over another.
As such, apartheid is viewed from the standpoint of generally accepted principles of international law as an international crime.l/
FOFULATION OF THE CONVENTION
The question of racial discrimination and apartheid in South Africa has been discussed in the United Nations since 1946. Beginning in 1962, the General Assmmbly has repeatedly adopted resolutions recommending that Member States take specific steps against the Goverrnment of South Africa. Since 1965, the Assembly has condemned the policies of apartheid practised by the Government of South Africa as a "crime against humanity".-2
At the twenty-sixth session of the United Nations General Assembly, a draft Convention on the Suppression and Punishment of the Crime of Aa,.rtheid was submitted by the Governments of the Union of Soviet Socialist Republics aitd Guinea. In the course of the discussion of the draft at the twenty-seventh session, Nigeria became a sponsor. It was deciddd at that session to transmit the draft for consideration by the Commission on Human Rights at its twenty-ninth session.
1/ See document E/JI.4/1075, Study concerning the question of apartheid from the point of view of international penal law; G. F. Tairov, AparthidL prstuplenie veka, LUscow, 1968; Apartheid, its Effects on Education, Science, Culture and Information, second ed., Paris, UNESCO, 1972; Review of studies of problems of race relations and of the creation and maintenance of racial attitudes, E/CN.4/1105, 14 November 1972; S. Penkov, Ratovaya diskriminatsia i mezhdunarodr.0o pravo, Sofia, 1971; J. F1. Frank, Race and Nationalism, N.Y., 1960; C. A. Rogers
and C. Frantz, Racial Theres in Suuthern Rhodesia, Yale, 1962.
j/ A review of the relevant decisions of the United Nations organs is omitted hcre as the information is available in other publications of the Unit on _rtheid.*

At the twenty-ninth session of the Commission on Human Rights, a draft convention which had been elaborated by a special working group and which contained all the basic provisions of the original draft was adopted by 21 votes to 2 (United States and United Kingdom), with 11 abstentions. Lastly, at its twenty-eighth session, the General Assembly adopted the draft convention by an overwhelming majority and recommended that it be signed.
What were the basic positions of States luring the elaboration of the fundamental provisions of the Convention?

It should first be noted that, following the submission of the proposed draft Convention, a proposal was submitted by Nigeria, Pakistan and the United Republic of Tanzania for a special protocol on the suppression and punishment of the crime of a~rtheid, to be annexed lo the International Convention on the Elimination of All Forms of Racial Discrimination. This idea was initially supported by a number of States, but a number of other States (for example, Norway, Sweden, Denmark, Madagascar) were in general opposed to the elaboration and adoption of a special convention on gaatheid, since they believed that the Convention on the Elimination of All Forms of Racial Discrimination was sufficient. On the other hand, a number of States (for example, Syria) thought it necessary to combine the draft Convention and draft additional protocol.

The position of the Soviet Union was that it was essential "to continue the elaboration of an international legal instrument on the suppression and punishment of the crime of a_.rtheid_ on the basis of the draft Convention submitted by the USSR and Guinea" and that at the same time "some provisions of the draft protocol designed to strengthen international responsibility for the crime of apartheid could be taken into account in the text of the draft Convention!'. ...

A large number of States made specific proposals ooncerning the draft Convention. Among them, mention should be made of the Philippines, which took an active position and played an important and constructive role in the elaboration of the Convention. On 26 February 1973, for example, the Government of the Philippines expressed general support for the revised draft Convention and submitted specific proposals on articles I, II, V, VI, VII and VIII (E .41 1231Add. 3).

The Philippines proposal stressed that "such acts -constituting apartheid shall be considered crimes in international law for which there shall be individual responsibility".

In March 1973, the Philippines proposed amendments concerning the posiibility of a revision of the Convention, which could be made when the General Assembly took certain steos (E/CN.4/L.1234). The Philippines aZso irux-e an S3ort&.nt-p- '-rosR- cnncerring articles II and IV (E/CN.4L.1238). The comments by the Governments of Egypt, Hungary, Iraq, Cman (E/aN.4/ll23/Add.2), Madagascar, Turkey, Zambia (E/CN.4/ll23/Add.4), Pakistan, the German Democratic Republic, the Libyan Arab Republic and Romania (ECN.4/1123/Add.5 and Add.6) expressed general support for the draft Convention.

_/ See A/8768, p. 16.

At its 1202nd meeting, the Commission on Human Rights deiided to set up a Working Group to consider the draft Convention on the Suppression and Punishment of the Crime of Axartheid and the amendments thereto, as well as the weitten comments received from Governments and written amendments submitted by the members of the Commission at the twenty-ninth session; the Working Group submitted to the Commission such draft provisions of the draft Convention as it was able to agree upon.

The composition of the Group was as follows: Bulgaria, Chile, Ecuador, Egypt, India, the Phi"2ippines, Senegal, the Union of Soviet Socialist Republics and Zalre.

The representatives of Austria and the Netherlands attended meetings of the Group as observers. They stated that their participation in an observer capacity would in no matter prejudice the position of their delegations with respect to the draft Convention in plenary meetings of the Commission or in the other organs of the United Nations.

The Group had before it the following documents: the text of the revised draft Convention on the Suppression and Punishment of the Crime of Aoartheid, submitted by Guinea, Nigeria and the USSR (A/8880, para. 42) and the amendments thereto submitted by Egypt (A/8880, para 43); the written amendments to the revised draft Convention submitted by the Netherlands (E/CN.4/L.1230), Chile and the Philippines (E/CN.4/L.1231), Chile (E/cN.4/L.1232) and the Philippines (E/ucN.4/L.1234 and L.1258).

At its first meeting, on 9 Iarch 1973, the Group elected unanimously without voting, 1r. K~ba M'Baye (Senegal) as Chairman-Rapporteur. Following the departure of Mr. K~ba 1I"Baye on 22 March 1973, the Commission decided that Mr. Jos6 D. Ingles (Philippines) would replace him as uhairman-Rapporteur.

Having considered the draft Convention and the amendments thereto, the Working Group agreed on the text of provisions of the draft Convention on the Suppression and Punishment of the Crime of Apartheid, which were subsequently adopted by the Third Committee of the General Assembly and then by the twentyeighth session of the General Assembly without any substantive changes.

ANALYSIS OF THE TEXT OF THE CONVENTION

The Convention as adopted consists of a preamble and 19 artibles. In the preamble, the parties to the Convention, recalling the provisions of the Charter of the United Nations, stress that States Members have pledged themselves "to take joint and separate action in co-operation with the Organization for the achievement of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion".

It is significant that the preamble to the Convention reproduces the provisions of resolutions of the United Nations General Assembly. This once again demonstrates the normative character of General Assembly resolutions and their significance as at least an indirec-t source of international law.

The printipal examples of this are the 1948 Universal Declaration of Human Rights and the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples.

The preamble to the Convention quite rightly emphasizes the link between this international legal instrument and a number of other international agreements which are of vital significance for the struggle against apartheid and which describe apartheid as an international crime. These are the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and the

1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

On the proposal of Burundi, an important provision was included in the preamble concerning the statement by the Security Council to the effect that apartheid seriously disturbs and threatens international peace and security.

The substantive part of the Convention is articles I and II, in which kpartheid is described as a punishable criminal act.

This may be said to be the first time that, in an international treaty in international criminal law, aparth eid has been described as an international crime. Apartheid is declared to be a crime against humanity, and a definition is given of the inhuman acts resulting from the policies and practices of apartheid and similar policies and practiJ.es of racial segregation and discrimination.

Article I stresses that these acts violate the principles of international law, in particular the purposes and principles of the Charter of the United Nations, and constitute a threat to international peace and security.

Article I, paragraph 2, in which the States parties declare criminal those organizations, institutions and individuals committing the crime of Partheid, must be regarded as an important achievement in the struggle of peace-loving forces for human rights, democracy and social progress.

Following considerable work, particularly by United Nations organs, to study the ideology, theory and practice of apartheid and following the heinous crimes which resulted and are resulting in the deaths of hundreds of pepple, it was possible in article II to specify the actual deeds which constitute "inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them".

Article II contains a precise list of these acts, which are enumerated below in full.

"(a) Denial to a member or members of racial group or groups of the right to life and liberty of person:

..

(i) By murder of members of a racial group or groups;

(ii) By the infliction upon the members of a racial group or groups of serious bodily or memtal haim by the infringement of their freedom or dignity, or by subjecting them to ,torture or to cruel, inhuman or degrading treatment or punishment;

(iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;

(b) Deliberate imposition on a racial gvoup or groups of living conditions calculated to cause its or their physical destruction in whole or in part;

(c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in

particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to ;-% ani t" .)
J,1 !r 'outr ,, 'Leright to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;
(d) Any measures, including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;
(e) Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;
(f) Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid."
The text is in essence concerned with the two component elements of an international crime - the means and methods of domination of one racial group by another and the annihilation of that group.
An element of the crime of aLparheid is that the means and methods mentioned above, the practice of apartheid and the physical annihilation of people are threatening international peace and security. This confirms the particularly dangerous nature of the crime concerned.
An important feature of the Convention is the inclusion of articles concerning responsibility and implementation, to which special attention will be given. Article XII specifies that disputes between States arising out of the interpretation, application or implementation of the Convention which have not ...

been settled by negotiation shall, at the request of the States parties to the dispute, be brought before the International Cou0rt of Justice, save where the parties to the dispute have agreed on some other form of settlement.
The universality of the Convention is important. The Convention establishes no restrictions regarding signature or accession by any State. This naturally enhances the effectiveness of the Convention, and is an important prerequisite for the mobilization of the efforts of all States for the prevention and punishment of apartheid. The onventicn, -' subject to ratification. The Secretary-GEneral of the United Nations is the depositary.
In his capacity as depositary, the Secretary-General of the United Nations notifies all States of signatures, ratifications and accessions, of the date of entry into force of the Convention, of denunciations and of notifications concerning revision of the Convention.
The Convention is to enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

The Convention provides for the possibility of denunciation, which requires written notification to the Secretary-General. Denunciation takes effect one year after the date of re eipt of the notification.
The possibility of revision of the Convention is contemplated in article XVII. A request for revision may be made at any time by means of a notification in writing addressed to the Secretary-General of the United Nations. In such a case, the General Assembly of the United Nations decides upon the steps, if any, to be taken in respect of such request. Quite correctly, and in accordance with accepted practice, the Chinese, English, French, Russian and Spanish texts of the Convention are equally authentic.
The Secretary-General of the United Nations is required to transmit certified copies of the Conventian to all States.
...

IMPLEMENTATION OF THE CONVENTION
The implementation of an internation'a agreement is never an easy process, and in many cases it takes a good deal of time. However, the very object of the Convention in question requires that States make every effort to put it into effect as soon as possible, and the text of the Convention itself contains specific undertakings in this respect.
The implementation of this Convention has two aspects: the first concerns the efforts of States to implement the Convention within their own territory; the second concerns States' efforts at the international level, particularly the efforts of United Nations organs and, first and foremost, of the Commission on Human Rights.
The first aspect raises the general problem of the relationship between international and municipal law, There are, as we know, several systems or implementing an international agreement within the territory of a State.L/ However, an agreement which has already come into force is considered as part of municipal law, has equal force with national legislation and, in a number of States, legally takes precedence over conflicting national law. Thus, a convention which has come into force for a given State as a result of the constitutional procedure of ratification or accession already applies within the territory of that State. Furthermore, States are obliged under article IV of the Convention to adopt any legislative or other measures necessary to suppress and prevent any encouragement of this crime and similar segregationist policies or their manifestations and to punish persons guilty of that crime.
The Egyptian proposal concerning article IV of the draft Convention was of great importance. It foresaw the need:
"(a) To adopt any legislative or other measures necessary to prevent any encouragement of the crime of apartheid and similar segregationist doctrines or their manifestations and to punish persons guilty of that crime."
(A/C.3/L.2017)
There was also a proposal by Guyana to supplement and replace the original text of article IV, subparagraph (b) by the words:
"... whether or not such persons reside in the territory of the State in which

the acts are committed or are nationals of that State or of some other State or are stateless persons." (A/C.3/L.2018/Rev.1)
Account was taken of the comment by the Government of Ecuador concerning article IV, subparagraph (b), and the final text makes it obligatory for States to adopt legislative, judicial and administrative measures to prosecute, bring to
4/ I. P. Blishchenko, lezhdunarodnoe i vnutri-aosudarstvennoe pravo (Hloscow, 19 1960); P. Fadeinov, Suasuvane no vutreshnodurzhavnoto u mezhdunarodnoto pravo (Sofia, 1971); L. Erades and Wesley L. Gould, The relation between international and municipal law (leyden, 1961); E. Hambro, The theory of transformation of international law into national law in Norwegian law. Law. State and international order (1964); W. Pigorshh, Die Einordnung v6lkerrechtlicher Normen in das Recht Bfl, (1959).

tiral and 7fnish in accordance with their jurisdiction persons resronsible for, or accused of, the acts defined in article II. States are further obliged to institute such nrosecution, trial and punishment, whether or not the p-ersons reside in the territory of the State in which the acts are committed or are nationals of that State or of some other State or are stateless persons. In other wcrds, we are concerned here with the formulation and adoption of special legislative, judicial and administrative measures connected with the Convention in cases where existing legislation is inadequate to ensure implementation of all propisions of the Convention.
In essence, the point is, as was underlined in the comments by th. Ukrainian SSR in support of the draft Convention, that:
"Every important decision of the United Nations which is in the nature of a recommendation should be followed up by an international legal agreement under which States would take upon themselves the obligation to implement provisions designed to ensure universal respect for, and observance of, human rights and fundamental freedoms." (E/c N.4/1123/Add.1)
The Convention enhances the role of the United Nations and its comretent organs in ensuring the implementation of the provisions of the Convention by all ,ember States.
On a proposal by the USSR, a new article was inserted in the Convention as article VIII. It took account of proposals by a number of States and provided that any State party to the Convention may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appro- riate for te suppression of the c~ime of a-artheid (A/C. /L.2019). The Soviet proposal envisaged a call for not 7nly the suprression, but also the punishment of arartheid. However, this rrovision was not acce-'ted.
It must be realized that the Commission on Human Rights of the United Nations General Assembly is relatively new to the task of implementation. As a general matter, it should be pointed out that the functions of the Commission on Human Rights in matters relating to the defence of human rights have now been expanded and that this raises a whole series of questions with regard to both the general

theory of international humanitarian law 51 and the practice and administration of the Commission itself as a United Nations body.
Article IX of the Convention provides for the establishment of a group, consisting of three members of the Commission appointed by the Chairman of the Commission who are also representatives of States Parties to the Convention, to consider the periodic reports which States Parties are obliged to submit in accordance with article VII.
/ I. 311shcheno, D_ _efi nieun_ des humanit~ren V61-kerrechts. Festschrift fUr F. 3erber (1973); I. Blishchenko, Conflit arm& et protection des droits de l'homne, Revuede droit contemporain, No. 1, 1971; G. Draper, Tie implementation of the modern law. of-armed conflicts. Israel law Review, v. 8, 1973.
...

Article IX, paragraph 2, states that:
"If, among the members of the Commission on Human Rights, there are no representatives of States Parties to the present Convention or if there are fewer than three such representatives, the Secretqi-r-General ... shall, after consulting all States Parties to the Convention, designate a representative of the State Party or representatives of the States Parties which are not members of the Commission on Human Rights to take part in the work of the group established in accordance with paragraph 1 of this article, until such time as representatives of the States Parties to the Convention are elected to the Commission on Human Rights."
Article IX, paragraph 3, states that:
"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 on Human Rights, to consider the reports submitted in accordance wdth article V1.."
It should be pointed out that, at the twenty-eighth session of -;.e General Assembly, the Third Committee noted that the administrative and finpcial implications of this article had been considered by the Secretary-Ge.eral in the light of his understanding that the three members of the group envisaged in paragraph 1 of the article would be serving in their capacity as reprtsentatives of States parties to the Convention. Consequently, the State party whose representativu would be serving on the group would be expected to bear he travel and subsistence costs of its representative for the annual five-day meetng foreseen in paragraph 3 of the article. Should the representative of a tate party to the Convention also be a member of the Commission on Human Right;, the costs of his travel at tourist rate would, however, be borne by the Unite- Nations as a consequence of his attendance at the session of the Commission which ould either follow or precede the: meeting of the group.
The Secretary-General would initially endeavour -to provide the confereice servicing requirements for the fie-day meeting from within the resources ava:lable to him. However, should the conference ser:icing requirements exceed the

avai.ble capacity, the Secretary-General would then be obliged to seek legislative approvwl. for the expenditures involved.
Article X of the Convention concerns the powers given by the States parties to the Commission on Human Rights. Examination of the provisions of the article shows the relatively broad competence of the Commission. In reality, the article is also concerned with the investigative functions of the Commission with regard to apartheid.
The Commission is empowered to request United Nations organs, when transmitting copies of petitions under article 15 of the International Convention on the Elimination of All Forms of Racial Discrimination, to draw its attention to complaints concerning acts of apartheid (article II).
The Commission must prepare a list of individuals, organizations, institutions and representatives of States which are alleged to be responsible for the crimes enumerated in article II. The Commission must do this on the basis of reports from competent organs of the United Nations and periodic reports from States parties to the Convention.

In addition, the Commission must prepare a list of those against whom legal proceedings have been undertaken by States parties to the Convention.
The Commission must request information from the competent United Nations organs concerning measures taken by the authorities responsible for the administration of Trust and Non-Self-Governing Territories, ard all other Territories to which General Assembly resolution 1514 (XV) of 14 December 1960 applies, with regard to such individuals alleged to be responsible for acts of apartheid (article II of the Convention) who are believed to be under their territorial and administrative jurisdiction.
The Convention contains a reservation to the effect that, pending the achievement of the objectives of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV) the provisions of the Convention shall in no way limit the right of petition granted to those peoples by otheriiez: aticral instruments or by the United Nations and its specialized agencies.
Thus, the Convention lays down a procedure for implementation and also defines a method whereby the United Nations, in the person of the Commission on Tuman Rights, can verify implementation.
In otrer words, the United Nations is empowered by States parties to the Convention to take all appropriate measures under the Charter to ensure the fullest possible implementation by States Members of the provisions of the Convention. In my view, this i% a definite achievnj)i-er-t by th it, ,Lational community in the struggle for the observance of human rights and freedoms.
RESPONSIBILITY FOR APARTJ{SID
OCne merit of the Convention is that it poses and answers the question of responsibility for anartheid. The main premise of the Convention is that States are responsible for observance of the provisions of the Convention. Article VII refers clearly to the obligation of States parties to submit periodic rerorts to the

Commission on 'Tuman Rights on the legislative, judicial, administrative or other measures that they have adopted and that give effect to the provisions of the Convention (copies of the reports are to be transmitted through the SecretaryGeneral of the United Nations to the Special Committee on Aparthei d).
From this we may deduce that the principle of responsibility for the observance of human
rights and freedoms has become established in contemporary international law and that, within the framework of this principle, the main burden of responsibility indisputably lies upon the Government of a State. It is particularly important to emphasize this when speaking of such a serious violation of human rights and freedoms as apartheid. In such a case, it is indeed necessary to adopt legislative and other measures and to prosecute individuals and organizations directly responsible for committing the crime of aRPrtheid. A State is internationally resronsible for committtig the crime of anartheid.6/ This responsibility is
6/ T. Kuris, ezhdunarodnyve Pravonarushenia i otvetstvennost gosudarstva (Vilnius, 1973); A/U4/-2-7/ida.l;Ad.l, 2 and 3.
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expressed, in particular, by the adoption of economic, political and other sanctions by the international community, and above all by the United Nations Security Council.
At the same time, international law and the Convention itself place special emphasis on international criminal responsibility.r7
Article III of the Convention specifically states that:
"International criminal responsibility shall apply, irrespective of the motive involved, to individuals, members of organizations and institAtions and representatives of the State, whether residing in the territory of the State in which the acts are perpetrated or in some other State, whenever they:
(a) Commit, participate in, directly incite or conspire in the commission of the acts mentioned in article II of the present Convention;
(b) Directly abet, encourage or co-operate in the commission of the crime of apartheid."
Thus, in defining this crime as international, and in establishing the international criminal responsibility of physical persons, the Convention is based on the premise that there must be a criminal act by physical persons who are found guilty of that crime both by States and by the special international organs created as a result cf an agreement between the States parties or by an international organization in accordance with its Charter or, where this is possible, by its principal organs.
The Convention states, in article V, that persons charged with the acts enumerated in article II may be tried by a competent tribun-.l of any State party to the Convention which may acquire jurisdiction over the person of the accused or by an international penal tribunal having jurisdiction with respect to those States parties which shall have accepted its jurisdiction. In other words, the Convention does not see apartheid as the internal affair of a particular State and

has the effect of internationalizing opportunities for its prosecution and punisnent.
In the comments by the Government of the German Democratic Republic, in particular, it was pointed out that:
"With the drafting of a Convention on the prohibition of apartheid, the fact is taken into account that apartheid is an independent international delict along with the crimes of genocide and racism. The Government of the German Democratic Republic attaches great importance to the characterization made in the draft Convention of apartheid as an international crime constituting a serious threat to international peace and security. This is based on the realization that apartheid systematically and abundantly violates human rights. The Government of the German Democratic Republic holds the view that pursuing a policy of apartheid can by no means be called an interaal affair of the State concerned. "
7_/ See also "Study concerning the question of apartheid from the point of view of international penal law" (E/CN.4/1075).

It is further stated that the Govenment of the German Democratic Republic supports th-" provision of the draft Convention according to which:
"Organizations, institutions and individuals which are pursuing a policy of aiy rtheid be declared criminal, and ... international criminal responsibility shall apply to individuals, members of organizations and in institutions and commission/of crimes of apartheid as well as when abetting or encouraging such acts."nOf particular importance in this connexion is the provision of article VI to the effect that the States parties to the Convention undertake to accept and carry out in accordance with the Charter of the United Nations the decisions taken by the Security Council aimed at the prevention, suppression and punishment of the crime of apartheid, and to co-operate in the implementation of decisions adopted by other competent organs of the United Nations with a view to achieving the purposes of the Convention.
This article confirms and strengthens the provisions of Article 25 of the United Nations Charter in this specific sphere. In particular, the States parties to the Convention are obliged, in pursuance of a decision by the Security Council, to punish the crime of a patheid. This is especially important where the crime of as -.rtheid constitutes a threat to international peace and security. The above-mentioned articles of the Convention not only envisage responsibility for committing, abetting, encouraging or co-operating in the commission of the crime of ap artIheid but also require States to prevent and punish "similar segregationist policies of their manifestations". Thus the Convention sets itself the task of eliminating conditions conducive to apartheid; this is unquestionably one- of the praiseworthy f-,atures of the Convention which redounds to the credit of the international community. Accordingly, under the terms of the Convention, the following agencies may be regarded as competent to try persons charged with committing the crime of apartheid : national tribunals, the competent organs of

the United Natinns and an international penal tribunal. Needless to say, these agencies differ in their attributes as regards criminal proceedings. Nevertheless, criminal proceedings are mandatory, and article XI of the Corv =ntion underscores this point by mentioning specifically that the acts enumerated in article II of the Convention shall not be considered political crimes for the purposes of extradition and that the States parties undertake in such cases to grant extradition in accordance with their legislation and with the treaties in force.
While the question of the jurisdiction of national tribunals and of Ihe competent organs of the United Nations is on the whole clear, the question of an international
penal tribunal requires special attention inasmuch as no such tribunal at present exists.
In writings on the subject and in the positions of States, basically three views on this question have been advanced.
The eminent Belgian author Graven wrote:
"International penal law will serve no useful purpose and will not be seriously carried into effect as long as an international criminal court,
_/ E/CN.4/1123/Add.6, PP. 2 and 3.
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which is the necessary tool for its effectiveness, does not etist. A law without a judge is a dead law; or one may say that it is a moral law, not a penal one: penal law can solely be a law armed with a sanction which a duly constituted penal authority is capable of imposing irrevocably with all the legal consequences of res judicata and with effective means of enforcement.
No doubt the establishment of such an international criminal court has been declared 'desirable' and 'possible', and the Convention on the Prevention and Punishment ,of the Crime of Genocide has opened the door to its realization."9_/
Although we cannot fully concur in the description of international penal law given by Professor Graven, for it is a reality even where jurisdiction is exercised by national courts, we would add that the Convention on the Suppression and Punishment of the Crime of Apartheid, like the Genocide Convention, speaks of the necessity of establishing an international penal tribunal. At a time when work on the definition of aggression in pursuance of General Assembly resolution 1187 (XIII)l/ is nearing completion, this question will come up again; in this context, apartheid as an international crime under the Convention is also subject to the jurisdiction of the intexnational criminal court. Among the most recent unofficial proposals for the establishment of an international criminal court, mention should be made of the draft statute for an international criminal court proposed by the Foundation for the Establishment of an International Criminal Court,i / under the leadership of Professor R. Woetzel. Another point of view holds that such an international criminal court should be established on an *d hoc basis when in a specific case there is evidenbe that an international crime has been committed.

Finally, there is the view which maintains that in the present circumstances it is not possible to establish such international juridical machinery (a court) because of the inviolability of State sovereignty.

Without advocating any particular view on this occasion, it should be stressed that any solution from the point of view of international law depends on recognition of the obligation of States to co-operate in combating and eliminating international crimes.

Thus, the question of responsibility for commission, participation in commission, direct incitement, conspiracy in the commission of acts of a direct abetment, encouragement or co-operation in the commission of the crime of apartheid is specifically covered in the Convention and punishment for such crimes is made mandatory.

9/ See Revue internationale de sciences difplmatiges et _Plitiaues, Gen'eve, 1950, p. 61.

10/ For the work of United Nations bodies on the question of an international criminal court, see Official Records of the General Assembly. Fifth Session Sup lement NoP. I (A/1316); bid., Seventh Session. Suplemnt -No. 11 (A/213); ibid., Ninth Session uplement No. _ (A/2645).

l/ See The establishment of an international criminal court, First and Second International Criminal Law Conference, 1973.

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INTERNATIONAL AGREEMENTS ON HUMAN RIGHTS AND THE CONVENTION

Reference has already been made to certain international conventions on human rights, but it should be emphasized here that the implementation of the Convention would be considerably impeded were it not for the existing extensive system of principles and norms for the international protection of human rights, which is specifically and directly designed to create conditions under which the crime of apartheid becomes impossible. The International Convention on the Suppression and Punishment of the Crime of Apartheid represents a further development of the system of international law relating to the suppression and punishment of violations of human rights and freedoms, focusing on the question of suppressing and punishing the most serious violation, one which poses a threat to international peace and security--apartheid. Clearly, existing instruments of international law had already outlawed apartheid; in the present instance, we have a concretization of obligations and a concentration of the efforts of States to combat this serious international crime. Above all, in this connexion attention should be drawn to the principles of equal rights for all without distinction as to race, which are specifically enunciated in the Charter of the United Nations (in the Preamble; Article 1, paragraph 1; and Articles 13, 55, 56 and 76). The provisions are closely related to the principles and norms laying down the principles of peace, friendly relations and co-operation among States.

In other words, the United Nations Charter underscores the direct connexion between systematic and serious violations of human rights and freedoms within a

country and threats to or breaches of the peace among States. This immediately raises the question of the role of collective action by States through United Nations organs in order to assert and protect fundamental human rights and freedoms.

The Convention spells out these provisions in relation to the Security Council, the Commission on Human Rights and the United Nations General Assembly. The articles of the Universal Declaration of Human Rights of 1948, together with the United Nations Charter, provided the general basis for the elaboration of all

the provisions of the Convention. Above all, attention should be drawn to articles 1, 2 and 7: "All human beings are born free and equal in dignity and rights"; "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status"; "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."

Numerous decisions and resolutions of the General Assembly have not only had an effect on the elaboration of the Convention but also, together with the Convention, constitute the legal materials which develop the provisions of the United Nations Charter and contribute to the struggle against apartheid and for its eradication. General Assembly resolution 103 (I) of 19 November 1946 explicitly states: "The General Assembly declares that it is in the higher interests of humanity to put an immediate end to religious and so-called racial persecution

and discrimination, and calls on the Governments and responsible authorities to conform both to the letter and to the spirit of the Charter of the United Nations and to take the most prompt and energetic steps to that end."

The 1948 Convention on the Prevention and Punishment of the Crime of Genocide had a great impact on the elaboration of the Convention on Apartheid. This impact can be seen in the elaboration of the elements of the crime of apartheid. Both apartheid and genocide, however, are two of the most serious international crimes against human rights and freedoms. A comparison of them leads to the conclusion that the International Convention on the Suppression and Punishment of the Crime of Apartheid and the Convention on the Prevention and Punishment of the Crime of Genocide are an important tool of the international community in the struggle for the realization of human rights and freedoms. In connexion with the Convention under discussion, mention should also be made of the United Nations Declaration of 20 November 1963 on the Elimination of All Forms of Racial Discrimination.

As is well known, that Declaration uas adopted on the basis of an initiative by the Soviet Union.

With the active participation of the Soviet Union, the United Nations General Assembly at its twentieth session adopted the Convention on the Elimination of

Pal Forms of Racial Discrimination. The Convention prohibits discrimination not only on account of race but also on account of national or ethnic origin. The Convention requires the prohibition not only of activities based on racial superiority but also of propaganda based on such ideas.
The Convention demands the absolute prohibition of racism in all its forms and nianifestations.
Article 2 of the Convention condemns racial segregation and apartheid and places States Parties under an obligation to prevent and eradicate all practices of this nature in territories under their jurisdiction.
In this connexion, it must once again be emphasized that, from the standpoint of international law, the racism practised by the Governments of South Africa, Southern Rhodesia and Portugal is qualified as an international crime.
Furthermore, the practice of apartheid - as, for example, in South Africa, Southern Rhodesia or in the territories under Portuguese domination - poses a threat to international peace and security, thus falling within the purview of the United Nations in accordance with the Charter.
Against this background, it was realized that apartheid must be singled out as an international crime sui Reneris. The International Convention on the Suppression and Punishment of the Crime of Apartheid points out the connexion with the Convention on the Elimination of All Foris of 'acial Discrimination and singles out racism/apartheid as an extremely serious type of crime which presents the gravest danger to society.

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The International Convenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights of 1966 declare, inter alia, that the States Parties to the Covenants undertake to Euarantee that the rights enunciated in the Covenants will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social orizin, property, birth or other status (article 2). This provision, together with the rights enunciated in the Covenants, is of great importance for preventing the crime of apartheid.
uinally, in connexion with the prevention of the crime of apartheid, account should be taken of the universally recognized principles and rules set forth in the Constitution of the International Labour Organization and the Declaration concerning the Aims and Purroses of the International Labour Organization of 10 Lay 1944, the special Declaration concerning the Policy of Apartheid of the Republic of South Africa, the ILO programme of action against apartheid in the field of labour, and the principles laid don in the Constitution of UN-ESCO.
Thus, the International Convention on the Suppression and Punishment of the Crime of Apartheid has marked a new step forward in the international community's struggle for human rights and freedoms, democracy and social progress. The Convention represents a further development of international humanitarian law. We note with great satisfaction the contribution made by the United Nations and its specialized organs to the elucidation of the complex

problems of the contemporary world in the interests of the overwhelming majority of peoples.
Today the task which lies ahead is to implement the Convention, to observe it strictly and to ensure compliance with it by all States.

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