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VII. Commentary**ASSESSING THE WORLD'S RESPONSE TO APARTHEID:
A HISTORICAL ACCOUNT OF INTERNATIONAL LAW
AND ITS PART IN THE SOUTH AFRICAN
TRANSFORMATION****KEVIN HOPKINS*****Introduction: The apartheid framework**

Discriminatory racial policy has long been at the heart of South African society. Few words have gained as much international notoriety as the word “apartheid.” The policy of apartheid, linked with white-Afrikaner nationalism, can be described under the wide prescripts of institutionalized racial segregation. In 1948 DF Malan and his associate HF Verwoerd, the architects of apartheid, began to implement the Afrikaner ideology. This ideology was committed to preventing Whites, particularly, Afrikaans speaking Whites, from losing their cultural identity through interaction with Black people. It was contended that the Afrikaner ideology could best be achieved through a program of separate development, where different races would co-exist independently of one another. Afrikaner nationalists initially sought to justify this policy by arguing that separate development was in the best interests of Black people, because they would be better off and indeed happier if they governed themselves in their own areas, and maintained racial purity within their ethnic groups.

Forced racial segregation occurred under a system of constitutionally organized population registration. Under the guise of population registration, apartheid became prescriptive and elevated to a principle of government. Racial classification was the key to this vast monument of separateness. South Africans were classified into various categories according to their race: White; Black; and Coloured. The latter to include not only those people who were historically the product of mixed race relationships, but also people of Indian, Pakistani or Malay origin.¹

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¹ The Population Registration Act 30 of 1950 made provision for the central population register in which all of these details were contained. Much of the apartheid legislation ignored the official categories and simply referred to “Whites” and “non-Whites.” For the purposes of this paper the distinction between two groups has been maintained but I have changed the politically offensive term “non-White” to “Black.” Black thus refers to any person not White—essentially Black Africans; Coloured people; and people of Indian, Pakistani, and Malay origin. Population Registration Act 30 of 1950 § 1 (v), § 4-5(1).

Once the total population had been racially classified, apartheid ensured that all of the organs of State power remained in the hands of the White minority. Under South Africa's constitutional system of Parliamentary sovereignty, this classification system effectively enabled the State legislature to enact a plethora of statutory provisions. The statutory provisions, when read as a whole, created a repressive regime that systematically deprived Black people of their basic civil liberties. The legislation was aimed at consolidating social, cultural, residential, economic and political apartheid.

Social and cultural apartheid was achieved by enacting legislation that prohibited interracial marriages² and criminalized sexual intercourse across the racial-divide.³ The idea of social apartheid was further endorsed by legislatively prohibiting Black people from using certain public facilities like elevators, toilets, parks, beaches, hotels, cinemas and restaurants.⁴ Interracial sport and culture activities were also prohibited. Additionally, Black people were compelled to use separate modes of public transport. The facilities and amenities available to Whites were vastly superior to those that were made available to Blacks, if they were made available at all.

Like social apartheid, residential apartheid was achieved through laws describing racially segregated areas, which resulted in certain places designated for classified race groups only. Those areas included places to live, trade, and own property.⁵ Once an area had been proclaimed "White," all Blacks were uprooted, forcibly removed, and relocated to other areas. Their homes were very often demolished, their lives unsettled, and their social self-image destroyed. The designated areas were marked by a great disparity of wealth and services; the plush opulence that characterized the White areas was in stark contrast to the impoverished areas designated to Black people. The Black areas, in particular, were neglected. Fresh water and electricity supply was inadequate or non-existent; living conditions were poor; roads, sanitary, and health-care facilities were primitive; and recreational amenities were scarce. A special constitutional dispensation was later devised for Black Africans in which "Bantustans" or separate homelands were created. Black African people were supposed to find a political and economic future in these homelands. Under the Bantustan system, 13% of South Africa's territory was allocated and made available to more than 70% of the country's population.⁶

2 The Prohibition of Mixed Marriages Act 55 of 1949 § 1.

3 The Immorality Amendment Act 21 of 1950 § 3.

4 The Reservation of Separate Amenities Act 49 of 1953 §1, § 2(2), § 3.

5 The Group Areas Act 41 of 1950 § 1(v), § 2.

6 The Promotion of Bantu Self-Government Act 46 of 1959 § 7.

Economic apartheid was achieved and maintained on two levels. First, there was direct economic apartheid aimed at controlling and oppressing Black business. Black Africans were hit the hardest by legislative measures that effectively enabled the White government to regulate almost every aspect of the Black economy, including access to business rights, farming, building, and land tenure.⁷ Second, indirect economic apartheid was achieved by depriving Black South Africans of the same educational opportunities that Whites had made available for themselves, resulting in minimizing their future career options and with also their prospect of economic success.⁸ Under apartheid, Whites continued to enjoy a privileged education in a superior educational system, while Blacks suffered under an inferior system with inadequate infrastructure, overcrowded classrooms, under-qualified teachers, and minimal textbooks.

Political apartheid was achieved by disenfranchising Blacks so that they had very little influence and realistically no political clout in the White government. The voteless Black majority was denied access to White governance. This was explained in the case of Black Africans in that the Bantustans were self-governing areas designated for them and their political voice must be restricted to representation in the particular homeland to which they were assigned. The plan was that all Blacks would become stripped of South African citizenship and, instead, be given the citizenship of one of the Bantustan-homelands. This process of 'denationalisation' effectively allowed the White government to justify the denial of Black civil and political rights.

Support for the Afrikaner National Party steadily increased during the 1950's and 1960's, because the White voters were satisfied that apartheid would protect them from economic competition and from Black political aspirations. Afrikaner-nationalist propaganda and pro-apartheid rhetoric preached that the justification for the prohibition against living together was the premise that peace and order can be ensured only if people of different races mix as little as possible. Separate development, they said, was the best guarantee of social and political peace.

An analysis of the dispute in South Africa must begin with the observation that apartheid was an oppressive system of government that

7 This was essentially facilitated by the Native Trust and Land Act 18 of 1936 which was supplemented by various amendments and proclamations over the years. In addition to this draconian piece of enabling legislation, the apartheid-machine also introduced, over the years, numerous ordinances and by-laws which openly discriminated against Blacks by stunting and thwarting their business opportunities. Native Trust and Land Act 18 of 1936 § 7.

8 There were two statutes in particular that dealt with segregation in education: the Bantu Education Act 47 of 1953 and the Extension of University Education Act 45 of 1959.

promoted racial discrimination and violated the dignity of Black South Africans by eroding many of their most basic human rights. The second observation must be that the history of apartheid in South Africa tells the story of great suffering, not only as a consequence of life under the repression of a racist regime, but also as a consequence of the huge sacrifice made by so many in the struggle to emancipate themselves from the shackles of apartheid's evil rule.

A. Life and law in apartheid South Africa

Life under apartheid for the majority of South Africans was a relentless, cruel and dehumanizing experience. It was these horrors that prompted Nigerian novelist Ben Okri to say of apartheid that it was "the whole world's howling pot of human misery."⁹

South Africa has a grim history of race laws. The first laws implemented along the lines of racial segregation were passed as far back as 1660, just 8 years after the Dutch East India Company established the first White settlement, a refreshment station for passing sailors, at the Cape of Goodhope. It was around that time that the first governor at the Cape, Jan Van Riebeck, planted a hedge of bitter almonds to keep the indigenous Hottentot people apart from the colonial Dutch burghers. The first separate school for Blacks was established in 1663. Then, in 1678 the Dutch forbade all interracial concubinage on pain of up to three years imprisonment with hard labor. In 1681, the Dutch East India Company issued prohibitions forbidding Whites to attend parties with Black slaves. The first law prohibiting interracial marriages was introduced in 1685.¹⁰

It is clear that when the Afrikaner-nationalists came to power in 1948 a system of racial segregation was already firmly entrenched in South African society. Although they inherited a legacy of race laws, the National Party government went on to enhance, refine and institutionalize racism in the apartheid doctrine. The legislation that was passed in furtherance of this doctrine prescribed severe penalties for those who broke the apartheid laws. Notwithstanding these penalties, the hideous doctrine survived and the struggle for freedom from it continued for almost half a century. The history of the South African dispute is an account of these 45 years.

The cornerstone of apartheid was the practice of racial classification. Race became the overriding consideration in organizing South Africa's complex society. A person's political, civil, economic and social rights hinged upon membership to a particular racial group. The system of population registration was implemented at a great cost of human suffering. Families were sometimes torn apart when husbands and

9 KADER ASMAL, LOUISE ASMAL AND RONALD SURESH, RECONCILIATION THROUGH TRUTH: A RECKONING OF APARTHEID'S CRIMINAL GOVERNANCE 4 (1997).

10 TRH DAVENPORT, SOUTH AFRICA: A MODERN HISTORY, 332-352 (1977).

wives, parents and children, brothers and sisters, were differently classified. This absurd horror of racial classification had tragic consequences. The well-known story of Sandra Laing illustrates the arbitrariness with which White-supremacy exercised the classification process. Laing was born into a White family in 1955, she attended a White school in the Eastern Transvaal, where the other children, their parents and teachers complained that her dark complexion was objectionable and offensive. She was driven from the school and forbidden to attend classes. Based on appearance alone, an eleven-year-old girl was reclassified by the state as Coloured. She was then forced to attend a Coloured school and forbidden to enter restaurants with her parents and siblings. Laing's life was one of tragic confusion. She fell in love with a Black laborer during her teen years. Her father, upon hearing of this relationship, threatened to shoot her black boyfriend forcing Laing and her Black lover to elope to a Black township near Springs. She continued to live there until 1991 while her White family continued to live in comfort elsewhere. Such was the importance of racial classification to South African society; such was the arbitrariness of its implementation. The humiliation endured by the few caught up in such nightmares was great, such as the probing of family histories and friendships, the scrutiny of physical features, noting the tone of one's skin color, the curl of one's hair and the thickness of one's lips.¹¹

The totality of one's rights was determined by one's race. The notorious Group Areas Act played a central role in apartheid's efforts to ensure that racial interaction was kept to a minimum. The Act provided for separate areas for different races. The implementation of this "separateness" was initiated with forced removals of Black people from areas demarcated as "White" and restricted for Whites only. Entire communities were uprooted and relocated, their precious homes and shattered lives left behind. The Group Areas Act, possibly more than any other apartheid enactment, led to capricious and arbitrary actions by corrupt White bureaucrats. Forced sales of the homes belonging to Black people enabled unscrupulous White government officials to collude with one another, or else with family and friends, so that valuable properties were acquired by friendly purchasers at a fraction of their true worth. An example of this exploitative greed is found in Natal, where thirty-eight Black owned farms in 1973 were taken and given to Whites. It was common knowledge that the area had wealthy coal resources

11 Chapman records that in South Africa, in 1985, the population register was amended by an official decree to show that 702 Coloureds turned White; 10 Whites became Coloured; 249 Blacks became Coloured; and 20 Coloureds became Black. ? CHAPMAN, *THE CHAMELEON DANCE*, 51 (1986).

underground. By 1982 sixteen of these farms had already been converted into extremely profitable coal mines.¹²

Another example of the greed and cruelty of apartheid's human removals is illustrated by the plight of the Black Batlounge people of the North West Province. They were forcibly removed in government vehicles and military trucks from their fertile lands at Putfontein, and taken some 100 kilometers away to a dry, arid and infertile place that later became known as Ramatlabama. Their homes at Putfontein were demolished to make way for the new White owners, and they were issued tents in which to live when they arrived at Ramatlabama. They were expected to simply adapt and get on with their lives in this barren place.

But, the hideous consequence of forced removals was not restricted to the greed, widespread looting and overt dishonesty of the White oppressor, but also to the suffering of the dispossessed people. The Sophiatown community is a case in point. Sophiatown, situated in Johannesburg, was described as a vibrant multi-racial and multi-cultural community of some 50,000 people. There are very few records that remain today of Sophiatown, but those that are in existence depict a small close-knit community of people living together in harmony. One finds South Africa's current Minister of Education, Kader Asmal quoting a former resident, "We were such a happy people, like one big family—it was safe and fun living in Sophiatown. We were the rainbow nation long before Mandela was even arrested."¹³ Former President and one-time Nobel Peace Prize winner, Nelson Mandela, recalls his memories of Sophiatown in his autobiography by saying that it "had a special character; for Africans, it was the Left Bank in Paris, Greenwich Village in New York, the home of writers, artists, doctors and lawyers. It was both bohemian and conventional."¹⁴ This happy, prosperous community was destroyed and the multi-cultural diversity of a quaint society was replaced with a new White residential suburb shamelessly renamed "Triomf" (an Afrikaans word literally meaning "victory"). The former residents of Sophiatown were scattered into other areas designated for them by apartheid.

The dreaded "pass laws" were used to control the separateness in society and to restrict Black access to White areas. Under the pass laws, Black Africans above the age of sixteen were required to carry "pass books" on their person permanently. These pass books were in effect identification papers which endorsed the carrier's access to certain White

12 INTERNATIONAL COMMISSION OF JURISTS, SOUTH AFRICA AND THE RULE OF LAW 24 (G Bindman, 1988).

13 See *supra* note 9 at 136-138.

14 NELSON MANDELA, LONG WALK TO FREEDOM, 178-179 (1995).

areas.¹⁵ The pass laws stipulated that Blacks found in White areas, and not in possession of the appropriate documentation, could be arrested, detained and deported without trial, or made to perform prison labor. Hundreds of thousands of people were arrested each year either because they did not have their pass books on them at the time of inspection, or else because their documents were simply not in order. It has been estimated that some 12 million Blacks were arrested and convicted in summary trials between 1948 and 1985.¹⁶

Pass books had to be produced upon demand and in many ways this exposed Blacks to a life of insecurity, harassment and humiliation. What has now become known as the "Sharpeville massacre" began as a peaceful demonstration in protest of the pass laws. Sharpeville is a black township, established under the Group Areas Act, situated outside the industrial town of Vereeniging approximately 60 kilometers south of Johannesburg. On March 21, 1960, a large crowd of Black Africans gathered around the local police station, as part of the anti-pass laws protest organized by the Pan-Africanist Congress. The plan called for a sustained, disciplined, non-violent protest, and from all accounts the demonstrators did comply with the non-violence edict. Nevertheless, White police dispersed the unarmed protestors by firing live ammunition into the crowd. The frightened masses turned to flee, but despite this, the police continued to fire upon them. Sixty-eight Black Africans were killed and 186 left wounded. Most of the victims were women and children, and almost all of them were hit in the back.

The next week in South Africa was filled with mourning in reaction to the Sharpeville massacre. The Black reaction, initially limited to the Johannesburg area, soon spread to Cape Town, Durban and Port Elizabeth. The reactions consisted of mass-gatherings, surrenders for arrest, and the public burning of pass books. This in turn was met with baton charges by the police, tear gas and shootings, and indiscriminate assaults on Blacks by White policemen. On March 30 of that same year, a state of emergency was declared and South Africa was placed under martial law.

During this emergency the Pan-African Congress (under the leadership of Robert Sobukwe) and the other main Black political organization, the African National Congress (under the leadership of Walter Sisulu), were outlawed.¹⁷ It became an offence, punishable by up to ten years' imprisonment, for any person to become or continue to be a member of these bodies; to take part in any of their activities; or to perform any act calculated to further the achievements of any of their

15 The passbook was a document of approximately 90 pages and contained the details of the carrier's identity, fingerprints, photograph, employment record and permit to be where he was.

16 RICHARD L. ABEL, *POLITICS BY OTHER MEANS*, 24 (1995).

17 The Unlawful Organizations Act 34 of 1960 § 2.

objectives. This Act read together with the Suppression of Communism Act¹⁸ denied Black people their right to open political association and expression outside the apartheid framework. The latter Act contained a “banning” provision which permitted the Minister of Justice to confine a person to a particular area (which may be a house or else a magisterial district); to forbid such person from publishing anything; to exclude that person from certain forms of employment (for example teaching); and to prohibiting them from communicating with more than one person at a time. Under this legislation, no court of law was competent to review the Minister’s decision.

Robert Sobukwe was arrested after the Sharpeville massacre for the role that he played in organizing the anti-government protest, and sentenced to three years imprisonment. At the end of his three-year term he was not released but was transferred to the maximum-security prison at Robben Island. The government was so fearful of his influence that a special legal amendment known as the “Sobukwe clause” was legislated by Parliament to make it possible to jail him indefinitely without trial, which the government did for the next six years. There were widespread international protests as a result of this treatment. In 1969, Sobukwe was released from prison but placed under a banning order, restricting him to his home area of Kimberley, situated in what is now the Northern Cape Province. He was not allowed to attend meetings, and he could not be quoted anywhere in South Africa.

Black leaders realized that they needed to reassess their attitude of using non-violence as a political tactic. Nelson Mandela, who until this point had retained the hope that non-violent pressures may persuade the White government to change their racist policies, concluded that “fifty years of non-violence had brought the African people nothing but more and more repressive legislation.” He went on to say that Black people have, in reality, only two choices: “submit or fight.”¹⁹ In June 1961, Mandela and other African National Congress leaders, agreed that the time had come to fight. Mandela, together with eight other leaders was arrested soon thereafter on grounds of treason. He was convicted and sentenced to life-imprisonment—of which he served 27 years, most of them on Robben Island.

During the years of Nelson Mandela’s imprisonment, however, the struggle for freedom continued with many impassioned African leaders inspiring the highly politicized generation of Black and Coloured youths. It was during this time that the “Black Consciousness Movement” gained momentum under its young charismatic leader, Steve

18 The Suppression of Communism Act 44 of 1950 § 2(1).

19 Nelson Mandela, on the eve of the inauguration of South Africa as a Republic on 31 May 1961, as quoted in *The Report of the Study Commission on US Policy Toward Southern Africa (U.S.), South Africa: Time Running Out* 175 (1981).

Biko. Black consciousness, as a philosophy, preached self-definition, self-reliance and Black pride. It was a response to what young Black intellectuals saw as being the immediate problem of apartheid—the psychological difficulty of overcoming Black attitudes of inferiority and subservience. A key slogan was “Black man, you are on your own.” Straightforward symbols of defiance were also used, including the clenched-fist salute of Black power.

Black students became more actively involved in the liberation struggle. The government’s reaction to this was to become even more oppressive and even more brutal. During the 1970’s, the White Afrikaner government prohibited Black students from learning in their own native language. Legislation made it compulsory for the education in Black and Coloured schools to be conducted in Afrikaans, the language of the oppressor. This was seen as yet another attempt to further humiliate the Black population and strip them of their human dignity by plunging them even further into subservience. Black schools had less to do with educating Black Africans than it did with oppressing them. For, as HF Verwoerd publicly proclaimed in 1953, “if the native in South Africa today in any kind of school in existence is being taught to expect that he will live his adult life under a policy of equal rights, he is making a big mistake ... there is no place for him in the European community above the level of certain forms of labor.”²⁰

School children too began to revolt against the racist regime’s insistence that Afrikaans be used as the official medium in their schools. There were episodes of scattered protest all over the country during the mid-1970’s, the most significant being the “Soweto Uprising” which took place on June 16, 1976. On that day, a large crowd of approximately 15,000 schoolchildren gathered in Soweto, a large Black township situated immediately south of Johannesburg. The child-protest was savagely broken-up by a detachment of White policemen who, without warning, fired into the crowd of schoolchildren killing several of them, including thirteen-year-old Hector Pieterse.

Mass funerals followed for the victims—but the Soweto uprising had triggered riots and violence occurred across the country. This was the start of several years of Black violence, directed at the oppressive White regime and aimed at crippling the apartheid beast and bringing it to its knees. The White police responded to Black violence in an equally violent manner. Many of the Black leaders were arrested and tortured.

²⁰ See *supra* note 9 at 34. The effects of apartheid’s racist discrimination were clearly evident in the workplace. See JOHN DUGARD, *THE LEGAL FRAMEWORK OF APARTHEID*, IN *SOUTH AFRICAN DIALOGUE* (? Rhodie ed., 1972) where there is some discussion on the legislation that reserved certain jobs for Whites only. What followed was the inevitable disparity in wages, for example, in 1967 the average monthly wage for a White mine-employee was R282 while it was only R17 for a Black-employee.

Some of them, like Black Consciousness leader, Steve Biko, died while in police custody. Others, deemed to be a threat to state security, were murdered by "hit squads," which were simply government funded assassins.

The country saw another twenty years of this kind of violence. On the one hand the oppressed Black freedom fighters engaged the liberation struggle with passion, while on the other the White government's brutal security forces took all measures deemed necessary to sustain the apartheid system.

B. The International Community's Response to Apartheid

South Africa provides the world with a very useful analysis of a dispute that was managed at both the international level as well as at a municipal level. It is also true that the dispute itself occurred on both these levels—on the International level it is evident that South Africa's indifference to human rights norms during the apartheid era displayed an extreme disregard and disrespect for the developing doctrine of international law; whilst the municipal level is characterized by the legislative authorization of large-scale human rights violations.

South Africa's contribution to the development of international law during the apartheid era was enormous—albeit unintentional. New rules developed in response to apartheid, and customary international law evolved in opposition to racist state-policy. A resourceful body of human rights doctrine was born out of this period of tragic human misery.²¹

There is little doubt that South Africa's new commitment to human rights is a direct result of the dynamic role played by the United Nations and the consistent pressure applied upon the apartheid government by the International Community. This much was acknowledged in October 1994 by South Africa's newly inaugurated President, Nelson Mandela, in his address to the General Assembly: "Historic change has come about not least because of the great efforts in which the United Nations engaged to ensure the suppression of the apartheid crime against humanity."

South Africa's discriminatory racial policy was raised in the very first session of the General Assembly, and has since occupied a central position on the agenda of the General Assembly for more than 40 years. Denise Prevost attributes this to the fact that South Africa, unlike other

²¹ For example: The prohibition on interference in the domestic affairs of states prescribed in U.N. Charter, art. 2, para. 7 was substantially weakened by the succession of resolutions condemning apartheid; certain forms of racial discrimination were elevated to the status of an international crime—see the International Convention on the Suppression and Punishment of the Crime of Apartheid of 1973; and humanitarian law was rewritten to confer prisoner-of-war status on combatants belonging to national liberation movements.

human rights violators at the time, was not part of a large voting block in the United Nations. For this reason it was unable to protect its own interests. She believes this made it possible for South Africa to serve as a test case for the development of the United Nations' policy on human rights.²²

India was the first State to challenge South Africa before the General Assembly on apartheid generally, but in particular on her treatment of people of Indian origin. South Africa's racial policy continued to enjoy debate in the General Assembly, and in 1952 a resolution was passed which effectively created the Commission on the Racial Situation in the Union of South Africa.²³ The Commission was mandated to investigate and report upon South Africa's racial policies. Three reports were submitted to the General Assembly by the Commission, and all three criticized the discriminatory practices of the apartheid government. The General Assembly adopted the reports in resolutions to the effect that apartheid constituted a threat to peaceful relations between nations.²⁴

At first, the large Western powers supported South Africa's challenge to the competence of the United Nations to intervene in her domestic affairs. South Africa protested that apartheid was a domestic issue, and that for this reason, it fell outside the jurisdiction of the United Nations on account of the non-intervention principle contained in article 2(7) of the Charter. But this international support disappeared after the Sharpeville massacre in 1960, when many of the world powers were morally outraged and began to view South Africa's brutal implementation of apartheid as a threat to international peace and stability. As a result of the Sharpeville incident and South Africa's persistent refusal to seriously consider the repeated concerns of the General Assembly, the question of stronger action was referred to the Security Council in terms of article 11(2) of the Charter. The Security Council was quick to deplore South Africa's racial policies and practices but no binding enforcement action was taken against South Africa because this line of action was vetoed by the three Western powers that are permanent members of the Security Council.

Pressure continued to mount against South Africa, and South Africa continued to ignore and disregard the pronouncements of the United Nations. The call for sanctions increased and, in 1962 General Assembly Resolution 1761 (XVII) was adopted. It expressly condemned

22 Denise Prevost, *South Africa As An Illustration Of The Development In International Human Rights Law*, S. AFR. Y.B. INT'L L. 211, 213 (1999).

23 G.A. Res. 616A, U.N. GAOR, U.N. Doc A/RES/616A (VII) (1952); G.A. Res. 616B, U.N. GAOR, U.N. Doc. A/RES/616B (VII) (1952).

24 G.A. Res. 721 (VIII), U.N. GOAR, (1953); G.A. Res. 820 (IX), U.N. GOAR, (1954); G.A. Res. 917 (X), U.N. GOAR, (1954).

racial discrimination in South Africa and called for member States to: break all diplomatic ties with South Africa; forbid their ships from entering her ports; boycott all South African goods and cease exporting to her; and refuse landing rights to South African aircraft. Although resolutions of the General Assembly, such as this one, are not binding on states, it nevertheless indicated that the International Community had voiced its strong dissent to apartheid.

This same resolution also created the Special Committee on Apartheid that was charged with the task of reviewing South Africa's policies. In 1967 the Special Committee was asked to promote the international campaign against apartheid. Although the Committee received a large amount of support in the General Assembly, the Security Council was rendered powerless because of the continued veto from France, Britain and the United States. Under the circumstances, the Committee sought to overcome the problem by targeting world public opinion directly. This action was directed chiefly at those states that had maintained political, economic or cultural relations with South Africa. This course of action proved to be fairly effective. It resulted in the mobilization of anti-apartheid NGO's, large-scale sports and cultural boycotts, and increased pressure on multinationals to disinvest from South Africa. In addition to this, the General Assembly consistently denounced South Africa's apartheid policy. This has led some commentators to suggest that a customary rule of international law was created by the General Assembly's consistent and frequent condemnation of apartheid in resolutions.²⁵

In light of the increasing number of General Assembly resolutions against it, South Africa changed her tactic somewhat by no longer claiming that article 2(7) was a bar to United Nations' competence, but rather claiming that the apartheid philosophy of "separate development" was in fact in line with international human rights law. South Africa contended that the creation of the Bantustan-homelands was in furtherance of the international practices promoting the right of all people to self-determination, as enshrined in the U.N. Charter. This justification was never taken seriously by the International Community because there was clearly no true commitment on South Africa's part to honor the values that underlie the philosophy behind self-determination. This was because Black people in South Africa had been stripped of their South African nationality against their will and forced to become citizens of fictitious homelands designed to "get them out of White-South Africa." In reality the homelands had become the dumping ground of Black African people. These people had not, by any stretch of the imagination, been permitted to "freely determine their political status" as is required by Resolution 1514 (XV)—the Declaration on the

²⁵ JOHN DUGARD, *INTERNATIONAL LAW: A SOUTH AFRICAN PERSPECTIVE*, 396-397 (2d ed. 2000).

Granting of Independence to Colonial Countries and Peoples, or by Article 1(1) of the International Covenant on Civil and Political Rights.²⁶

Yet the question remains: Why were the three Western powers of France, Britain and the United States blocking action against South Africa in the Security Council? The answer seems to be based on political rather than moral criteria. To isolate South Africa would have been contrary to Western interests for two main reasons: first, South Africa played a vital role in resisting communism during the cold war and South Africa used the threat of communism in Africa to gain the support of the West; and second, although it was not a member of NATO, South Africa played an important part in the Western defense system, due to its strategic position.²⁷

Yet despite the apparent ineffectiveness of the Security Council, the General Assembly continued to increase its anti-apartheid sentiment. It did this in two ways. First, the General Assembly effectively expelled South Africa from its meetings in 1974.²⁸ Secondly, it used its mandate under Article 13(1)(a) of the U.N. Charter to encourage the progressive development of international law. It did this by submitting a Draft Convention on the Suppression and Punishment of the Crime of Apartheid to the members of the United Nations for ratification. The Convention came into force on July 18, 1976, after twenty states had ratified it. There are currently 101 parties to the Convention. The Convention declares that "apartheid is a crime against humanity," and it criminalizes the principal features of apartheid, namely murder, torture, and arbitrary arrests of members of one particular race group. Parties to the Convention undertake to enact municipal legislation to prosecute persons responsible for the commission of this international crime. Some commentators have argued that the Convention is merely symbolic

26 *See id.* at 450-453. Professor Dugard advances reasons for the non-recognition of the Bantustan States. The resolutions of the Security Council and the General Assembly did in fact make it clear that the creation of the Bantustan-homelands violated a number of international law norms as well the Universal Declaration of Human Rights which expressly prohibits denationalization on the grounds of race.

27 *See Prevost supra* note 22 at 216; *see also* GEORGE W. SHEPARD, JR., *ANTI-APARTHEID*, 83-115 (1977).

28 U.N. Charter, art. 6 provides that a member may be expelled for persistent violation of the Charter's principles, but the General assembly may not expel without a prior recommendation from the Security Council. Although this prior recommendation was not made, the General Assembly was still able to achieve its aim indirectly by repeatedly refusing to recognise the credentials of South African representatives. This was because the Credentials Committee of the General Assembly held that South Africa's apartheid government, the National Party, did not represent the South African State.

because as a crime against humanity, apartheid confers universal jurisdiction on all States.²⁹

The year 1977 seems to have been the turning point for South Africa. The death of Steve Biko in police custody was the last straw, and after this tragic event South Africa finally lost the support of France, Britain and the United States. The veto-power barrier to the application of Chapter VII had finally been crossed. In November of that year the Security Council passed a binding resolution mandating an arms embargo against South Africa.³⁰ This was the only time that Chapter VII was ever invoked against South Africa. Security Council action under Chapter VI nevertheless continued throughout the 1980's. There were resolutions calling for the release of political prisoners,³¹ the granting of clemency to political prisoners facing execution,³² the lifting of the state of emergency,³³ and an end to attacks on neighboring territories.³⁴

The end of the Cold War resulted in further loss of sympathy for South Africa because the threat of communism was no longer imminent, and South Africa's strategic location was no longer a reason to afford her protection from international isolation. Crippling sanctions against South Africa were more widely implemented, and eventually the international stranglehold of repeated cumulative action forced change upon South Africa. State President FW de Klerk made the decision to dismantle apartheid in February 1990.

Conclusion

Since the dissolution of apartheid, South Africa has transformed itself from a pariah state to a leader in African and world affairs. Diplomatic ties have been re-established with States that refused to have anything to do with South Africa during the apartheid era. The United

²⁹ See *supra* note 25 at 144; see also Hercules Booyesen, *Convention On The Crime Of Apartheid*, 2 S. AFR. Y. INT'L. L. 56 (1976).

³⁰ S. C. Res. 418, 32d Sess., 2052d Mtg. At 5, U.N. Doc. S/PV.2052 (1977).

³¹ S.C. Res. 473, 35th Sess., 2231st Mtg. At 19, U.N. Doc S/PV.2231 (1980); S.C. Res 560, 40th Sess., 2574th Mtg. At 8, U.N. Doc. S/PV.2574 (1985).

³²S.C. Res. 503, 37th Sess., 2350 Mtg. at 15, U.N. Doc S/PV.2350 (1982); S.C. Res. 525, 37th Sess., 2404th Mtg. at 16, U.N. Doc. S/PV.2404 (1982); S.C. Res. 533, 38th Sess., 2452 Mtg. at 14, U.N. Doc. S/PV.2452 (1983); S.C. Res. 547, 39th Sess., 2512th Mtg. at 2, U.N. doc S/PV 2512 (1984).

³³ S.C. Res. 569, 40th Sess., 2602 Mtg. at 8, U.N. Doc. S/PV.2602 (1985).

³⁴ S.C. Res. 527, 37th Sess., 2407 Mtg. at 20, U.N. Doc. S/PV.2407 (1982); S.C. Res. 543, 38th Sess., 2502d Mtg. at 5, U.N. Doc. S/PV.2502 (1983); S.C. Res. 546, 39th Sess., 2511th Mtg. at 1, U.N. Doc. S/PV. 2511 (1984); S.C. Res. 567, 40th sess., 2597th Mtg. at 16, U.N. Doc. S/PV.2597 (1985); S.C. Res. 568, 40th Sess., 2599 Mtg. at ?, U.N. Doc. S/PV.2599 (1985); S.C. Res. 602, 42d Sess., 2767th Mtg. at ?, U.N. Doc. S/PV.2767 (1987).

Nations and International Community have once again welcomed South Africa into the world of global trade, finance, sport and culture. South Africa, in turn, has indicated her commitment to the values of the International Community by signing most of the principal human rights treaties.³⁵

³⁵ Although this paper focuses predominantly on the role played by the external forces (the international community and the United Nations), it must always be remembered that there was also a massive and invaluable internal liberation struggle which served to combine with this external pressure to ultimately ensure the death of the apartheid beast.