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POLICIES OF APARTHEID OF THE GOVERNMENT OF SOUTH AFRICA

Implementation of national measures adopted against South Africa

Report of the Secretary-General

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CONTENTS (continued)

I. INTRODUCTION

1. The present report has been prepared in accordance with General Assembly resolution 42/23 B of 20 November 1987, in which the Assembly requested the Secretary-General to submit to it at its forty-third session a report on measures taken by States against South Africa and the implementation thereof. In the resolution, the Assembly urged all States that had not yet done so, pending the imposition of comprehensive and mandatory sanctions, to adopt legislative and/or comparable measures so as to impose effective sanctions against South Africa and to monitor strictly the implementation of such measures and impose penalties on individuals and enterprises within their jurisdiction that were involved in violating those measures.

2. The report focuses on measures in the economic field, more specifically on economic sanctions that are held to have an important potential for contributing to a peaceful dismantling of apartheid. It therefore deals mainly with restrictive measures adopted by States that have traditionally had trade and other economic relations with South Africa. The report does not discuss as such measures stemming from the mandatory arms embargo of South Africa imposed by the Security Council in its resolution 418 (1977) since they are beyond the scope of the mandate. A separate report of the Secretary-General (A/43/699) contains the individual replies of States on concerted international action for the elimination of apartheid, submitted in compliance with General Assembly resolution 42/23 G of 20 November 1987. Those replies focus on a wider range of measures than those covered by the present report. In addition, annex I of the annual report of the Intergovernmental Group to Monitor the Supply and Shipping of Oil and Petroleum Products to South Africa (A/43/44) contains replies from States regarding the oil embargo against South Africa, in accordance with Assembly resolution 42/23 F of 20 November 1987.

3. Section II deals with the nature and scope of measures taken against South Africa, the degree of their applicability and the machinery for monitoring and reporting. Section III discusses some problems relating to the implementation of these measures, in particular the existence or absence of co-ordination and the degree of enforcement. The annex provides a description of the measures regarding trade in commodities, financial flows and investment, transfer of technology and transport and services, prepared by a consultant to the Centre against Apartheid.

II. NATURE AND SCOPE OF MEASURES TAKEN AGAINST SOUTH AFRICA IN THE ECONOMIC FIELD

A. Background

4. Sanctions against South Africa as a means to induce its authorities to dismantle apartheid were proposed as early as the 1950s but it was in the aftermath of the 1960 Sharpeville massacre that the General Assembly, in its resolution 1598 (XV) of 13 April 1961, first recommended such measures. With the independence of former colonial countries, in particular in Africa, and the formation of the

Organization of African Unity (OAU) many non-aligned States and practically all African ones as well as socialist countries adopted policies of avoidance of the Republic of South Africa, limiting, if not eliminating, diplomatic, commercial and communications ties. The adoption of mandatory sanctions against Southern Rhodesia by the Security Council in 1966 led to the creation of statutory mechanisms in the legislation of national Governments for implementing and administering sanctions, thus providing an infrastructural basis for sanctions as well as practical experience.

5. However, the measures taken in the 1960s against South Africa did not go beyond simple policies of avoidance, had limited effect and were not co-ordinated. The most significant measure of this period was the decision of the Japanese Government in 1969 to prohibit investment in South Africa.

6. In 1973 the Organization of Arab Petroleum Exporting Countries banned exports of oil to South Africa. In the following years other oil-producing States gradually came to adopt such bans and after the late 1970s the possibilities of an oil embargo were increasingly proposed in international forums, partially as an outgrowth of a similar oil embargo against Southern Rhodesia.

7. The adoption of Security Council resolution 418 (1977), while limited largely to the export of arms, brought the issues of implementation, enforcement and co-ordination to the fore by its very nature as a mandatory measure under Chapter VII of the Charter of the United Nations. National Governments responded by creating new statutory mechanisms for implementation of sanctions or by applying previously existing ones to South Africa.

8. In 1978 the Foreign Ministers of the Nordic countries agreed upon a common programme of action, which included, inter alia, national measures for banning new investments in South Africa. Although the original measures adopted by the Nordic countries then and in the following years have since been superseded by more comprehensive ones, the basic design of that ban was later followed by the adoption by the European Economic Community (EEC), the Commonwealth and United States of America of measures that banned new investments in South Africa.

9. With the unfolding of the 1984 crisis in South Africa, national measures of this type increased and, for the first time, were enacted, co-ordinated and applied by intergovernmental groups. Another significant development was the inclusion of trade bans on commodities previously considered subject to free-trade obligations.

10. The meeting of the Nordic Foreign Ministers in October 1985 led to the adoption of further and more comprehensive sanction measures by Nordic countries in the succeeding years. The decisions of September and October 1986 in the EEC led to the implementation of restrictive measures in most of its member countries. The passage by the United States Congress of the Comprehensive Anti-Apartheid Act of 1986 as well as the adoption of further co-ordinated sanction measures within the framework of the Commonwealth increased the range of anti-apartheid measures at the disposal of the international community.

11. The measures adopted in the years 1985 to 1987, by reducing investment levels and financial flows and affecting the current account of South Africa through trade restrictions, particularly on coal, appeared to have a significant impact on the country's economy. Recent measures by the United States and the Nordic countries, which include bans on technology transfer and new comprehensive sanctions provided in pending United States draft legislation, suggest a trend towards the further strengthening of economic sanctions against South Africa.

12. In February 1988, the Commonwealth created an ad hoc organ, the Commonwealth Committee of Foreign Ministers on Southern Africa, which is the first instance of a mechanism for co-ordination and enforcement of sanction measures against South Africa created by an international organization outside of the United Nations.

B. Content and approach of restrictive measures

13. The measures that individual States have adopted in the economic field against South Africa differ significantly in their scope, coverage, degree of implementation and enforcement.

14. In the first instance, many States, particularly socialist and non-aligned, have applied long-standing policies of total avoidance and have not had diplomatic, cultural or economic relations with South Africa. The policy of total avoidance has had the effect of making South Africa more dependent upon its traditional trading partners and leaving South Africa few options to substitute new markets or trading partners for those lost to more stringent sanctions.

15. In recent years a number of countries, including virtually all the traditional economic partners of South Africa, have introduced a number of restrictive policies vis-à-vis South Africa either unilaterally or in concert with other countries. All five Nordic countries now have a total ban on all trade with South Africa. Denmark, Finland, Norway and Sweden also ban new investments. Air links have been severed and the transport of oil on Nordic-registered ships has been almost totally banned. Norway also prohibits the transport of other cargoes on its ships. Financial services of most kinds and the transfer of technology are prohibited. Long-term leasing of capital equipment is included in the ban of new investments.

16. The territorial scope of such measures is normally fairly wide as far as individuals are concerned, but not as to corporations. In addition, the legislative provisions of these countries tend to avoid abrupt changes in the status quo and exclude retroactive application.

17. Measures adopted by the United States in 1986 ban imports of South African gold coins, uranium, iron and steel, coal, agricultural products, including sugar, and textiles. They prohibit exports of crude oil and petroleum products and restrict exports of computers. New loans to and new investments in South Africa are prohibited and South African governmental bodies (including parastatal companies) may not hold deposits in United States banks. Air links have been severed and a double-taxation agreement has been abrogated.

18. United States statutes are extensive in their territorial scope as far as both individuals and companies are concerned and occasionally have retroactive effect. These measures can be very rigorous but are only applied at certain points, leaving certain economic relationships intact while rigorously banning others. United States law also makes a distinction between "apartheid enforcing" and "non-enforcing" parts of the South African State. United States measures of a coercive or sanctions-like nature may also be included in the same laws with other provisions related to the country's policy towards southern Africa (scholarships for students, studies on health conditions, etc.), which are not coercive.

19. The EEC bans oil exports to South Africa as well as the import of krugerrands and iron and steel. It also prohibits exports of computer equipment to the South African army and police and bans new investments in South Africa, including long-term loans.

20. Packages of EEC measures tend to include provisions of a positive nature (e.g. educational programmes for black South Africans) as well as of a restrictive nature. EEC countries rely very much on the discretionary use of government influence and ownership in severing or discouraging economic links with South Africa, links that are thus not banned by legal statute. Furthermore, they tend to single out certain "sensitive" items or activities rather than attempting global bans. The territorial scope of the measures is limited. Activities forbidden by law in the framework of these policies are dealt with less strictly and occasionally not made punishable offences. Many measures taken by these countries may be based more on considerations of "avoidance" than of coercion.

21. Austria prohibits imports of krugerrands and iron and steel from South Africa. It bans exports of computer equipment for use by the South African army and police and has ceased government guarantees for export credits. It also prohibits new investments in South Africa.

22. All Commonwealth countries have banned the export of oil and petroleum products and of computers or the granting of loans to South African governmental bodies, as well as the import of krugerrands and iron and steel. With the exception of the United Kingdom of Great Britain and Northern Ireland, they prohibit imports of agricultural products, coal and uranium and have severed any previous air links and double-taxation agreements. They either prohibit or discourage new investments in South Africa and have largely eliminated all government support activities for trade with South Africa.

23. Japan prohibits exports of computer equipment to the South African army and police, prohibits the import of iron and steel and has imposed a voluntary ban on the import of krugerrands. Since the 1960s it has prohibited any direct investment in South Africa. Japan has imposed restrictions on travel between the two countries and has severed air links. It relies heavily on voluntary agreements and discretionary actions by government authorities. Its measures are quite similar to those of the EEC.

24. Israel in 1987 introduced measures amounting to a policy of non-expansion of its relations with South Africa, and even a decrease of some of its ties. It has also stated a commitment to abstain from abetting the evasion of sanctions decreed by third parties (see A/42/22/Add.1-S/19217/Add.1, annex).

C. Measures taken by intergovernmental groups and organizations

25. Intergovernmental groups and organizations have adopted measures similar to the ones adopted by individual countries. The Nordic countries exemplify a group of States that have closely co-ordinated the adoption of measures against South Africa. The measures introduced at the level of national law have normally been discussed, in certain cases decided upon, in advance at periodic meetings of the Foreign Ministers of these countries.

26. EEC measures that fall within the bounds of the Common Commercial Policy are binding. However, this does not eliminate all state activity on the issue concerned because the exact implementation of such Community measures is left up to member Governments. In fact, one member State, Denmark, has taken measures on South Africa that go beyond the ones agreed on jointly by EEC member States. There has been some variation among the EEC members in the formulation and implementation of these measures.

D. Degree of coercion

27. The degree of coercion that States exercise in order to ensure compliance with measures against South Africa varies. In the case of voluntary sanctions and "gentlemen's agreements" no coercion is used. Legislation by the United States and the Nordic countries, however, provides explicitly for penalties against the violators of sanctions.

28. For instance, United States law makes possible the imposition of the following penalties: for corporations in violation of the Comprehensive Anti-Apartheid Act of 1986, a fine of up to $1 million; for individuals a fine of up to $50,000 or five years imprisonment (or both); and for South African subsidiaries failing to report information required by the compliance provisions of the Code of Conduct, the United States parent corporation can be fined $10,000. Efforts to evade the provisions of the law are also punishable under United States law.

29. Violations of Danish laws that prohibit new investment in South Africa and Namibia are punishable with up to one year of imprisonment or fines. Under Norwegian sanction laws against South Africa, violations are punishable with up to three years of prison or a fine in case of intentional violation, and with up to six months deprivation of liberty or a fine in cases of negligence. The law forbidding the carriage of oil on Norwegian vessels contains provisions according to which members of the crew who have some part in the decision making on the destination can be punished for violations of the law. Swedish sanction laws against South Africa render violators punishable with up to two years' imprisonment or fine in case of wilful violation, and with up to six months imprisonment or fine

in case of negligent violation. Non-reporting or false reporting on subsidiary activities in South Africa is punishable by a fine according to article 13 of the relevant law (Law 98 of 1985).

30. Stricter penalties are applied for violators of arms embargo laws owing to the more serious nature of the offence and because these laws have been generated by mandatory sanctions. In the Federal Republic of Germany infractions of the arms embargo can be punished with deprivation of liberty from one to five years; in particularly severe cases the term can be extended up to 10 years. In the United Kingdom violations of the Export of Goods (Control) Order of 1970 (as amended, present wording as at 3 June 1985) are punishable with imprisonment of up to two years or a fine in case of conviction upon indictment; in case of summary convictions the maximum penalty is a £1,000 fine. However, certain of the infractions can only be punished according to customs procedures where the maximum penalty is a fine of £1,000. Infractions of the arms embargo in Canada are punishable with a $25,000 fine or five years imprisonment. Violations of the Danish law prohibiting the export of arms to South Africa were originally punishable by up to three years in prison; by Decree of 14 June 1986 the maximum penalty has now been raised to four years.

E. Scope of applicability

31. Governments may ban economic ties with South Africa only in those spheres which they directly control, such as parastatal industries, or they may use their discretionary authority as large-scale purchasers to boycott South African products without banning the importation of South African goods as such. The French Government's decision to cease purchasing South African coal for its parastatal electric utility, Electricité de France, is the most significant example of such a measure.

32. Previously, attempts had been made occasionally to discourage South African products within certain limited spheres without prohibiting their importation. In Ireland, the Department of Health, by circular of the Minister of 4 September 1984, discouraged the purchase of South African goods for use within its area of responsibility. This was renewed through a reminder of 9 October 1986. Sweden for a while had a law (1052 of 1985) that allowed, but did not require, provincial and local authorities to refrain from the purchase of South African goods for reasons of solidarity. This provision has since been superseded by a general trade ban.

33. In other cases a State withdraws structural support from specific economic relations with South Africa without banning them entirely: this is the case where export credits have been stopped or tax credits are disallowed. Thus, while trade with South Africa is allowed, the Government in this case refuses to subsidize or facilitate such activities.

34. Finally, a State may proceed to prohibit its citizens from engaging in certain forms of economic relations with South Africa; first, by removing the legal provision for such an activity; and then, by making the activity a punishable offence. In the case of States that have traditionally had economic ties with

South Africa the trend over time is to progress from the simpler measures outlined above to the more stringent ones.

35. Another feature of unilateral measures relates to the branch of national law under which they are treated, for instance, foreign relations, trade, financial control etc. The table following section IV, containing examples of different measures adopted by different States to ban new investments in South Africa, illustrates the various approaches for implementing the same type of measure.

36. The extent to which measures against South Africa apply to acts or activities outside the territorial jurisdiction of the Government concerned determines the external scope of the measures. They may or may not apply to free zones, to the acts of citizens outside the national territory or to the activities of subsidiaries in foreign countries.

37. For instance, the Nordic laws have a wider external scope as far as individuals, but not as far as subsidiaries, are concerned. Swedish laws banning the commercial handling of goods to and from South Africa extend to free zones and bonded warehouses. This feature of the law is relatively rare in sanction laws against South Africa.

38. Certain provisions of the Comprehensive Anti-Apartheid Act of 1986 in the United States encompass a rather broad external scope. Provisions of the law using the term "nationals of the United States" refer to all natural persons wherever they are and to all businesses domiciled in the United States. The external scope of United States sanctions differs from section to section of the Act. Thus section 5055 of the Act, banning loans, would apply to United States nationals, even those living in South Africa or third countries, while section 5054, dealing with the export of computers, does not extend beyond United States territory. Section 5060 relating to new investments also contains the wider-scope wording. In addition, provisions of the law also apply to third countries or companies therein, at least to the extent that they may not take advantage of United States sanctions. The law makes provision for legal action against such countries and companies in United States courts, including private action.

F. Monitoring and reporting systems

39. Some States have instituted procedures and mechanisms for monitoring compliance with the measures adopted and for reporting thereon, but not all governmental measures are the object of monitoring and reporting, and the scope and nature of monitoring and reporting systems vary.

40. In Sweden, the Board of Trade monitors the activities of subsidiaries of Swedish companies to the extent that the latter are required to report thereon to the Government on a consistent basis in order to comply with the provisions of the ban on new investments. Thus articles 7-11 and 20 of Ordinance 99 of 1985 require companies to report detailed data of capital transactions between parent company and subsidiary, as well as on the conditions of employment in and certain activities of their South African subsidiaries. The Board of Trade summarizes

these reports and in turn issues an annual report to the Parliament on the subject. Both the companies' reporting to the Board and the Board's annual report are public documents.

41. Norway previously required the reporting of ships' movements to and from South Africa. However, these provisions are now superseded by the Act of 20 March 1987, which contains a provision calling for the Government to assess compliance and enforcement after the first year of the law's operation.

42. In the United States, the Government Accounting Office is now charged with reporting on the enforcement and status of the Comprehensive Anti-Apartheid Act of 1986. Given the scope of United States legislation, the annual report of the Government Accounting Office also contains information on measures taken by other countries. This is a case where one country is actually monitoring the enforcement of measures taken by other countries against South Africa.

43. The Commonwealth does not have any particular system of monitoring or reporting, but the meetings of the Commonwealth Committee of Foreign Ministers on Southern Africa have commissioned studies that will require considerable monitoring of sanctions against South Africa, including those adopted by countries outside the Commonwealth.

III. PROBLEMS RELATING TO IMPLEMENTATION OF MEASURES AGAINST SOUTH AFRICA

A. Shortcomings in policies and legislation

44. The implementation of sanctions can suffer as a result of imprecise language used in the legislation that, at times, makes enforcement problematical. Once a measure has been spelled out in a national law, there is a possibility that the wording could give rise to potential loopholes. Importers and exporters, used to examining statutes carefully, can identify and exploit such loopholes. A case in point is the mandatory arms embargo on South Africa. The range of objects covered by the embargo is defined either narrowly or broadly in the governmental measures, thus giving rise, for example, to debates on the applicability of the embargo to "dual-purpose" equipment, namely that which can be used for both military and non-military purposes.

45. Voluntary measures are even more likely to be ineffectual. Thus, in some cases imports from and exports to South Africa appear to be coming from third countries or certain types of banned products can be presented under a different category which is not banned. For instance, iron and steel could be disguised as scrap and may still be imported in alloyed form (see E/C.10/1988/8, p. 7). The wording of legislation has often given rise to legal disputes. At present litigation is pending in the United States over whether or not uranium hexafluoride is to be considered "uranium ore", which is the mineral covered in the United States law. Another importer is arguing in United States courts that certain types of semi-treated steel are permissible because the law bans only steel in its most basic form.

46. Full enforcement of the law may at times appear difficult, if not impossible, for other reasons. Some countries ban exports of computer equipment for use by the South African army or police. In most such cases the purchaser is required to make a declaration that the equipment will not be resold or otherwise put at the disposal of parties that are, under the ban, prohibited from using such equipment. Beside the difficulties involved in monitoring these measures, such a declaration is problematical in that South African law permits the country's defence forces to commandeer such equipment in an emergency. A South African purchaser, even if acting in good faith, is not, strictly speaking, in a position to give such assurances.

B. Enforcement mechanism and scope

47. A major difficulty in the implementation of national measures against South Africa is that the authority charged with carrying out, monitoring, defining or administering the measures is often not the authority charged with the country's foreign affairs. Such measures are sometimes carried out by operational ministries whose personnel often do not have the same background in international affairs. They also traditionally have close relations with those sectors of the business community directly affected by the measures, and are likely to be more concerned with the problems of the latter rather than with the views of foreign ministry officials. Because these measures must necessarily take the form of prohibitions or restrictions on foreign economic relations, they may seem to the authorities charged with their implementation to be nothing more than routine economic regulatory measures or mere customs regulations.

48. Equating sanctions with customs regulations has a number of other negative ramifications for international co-ordination and enforcement. Penalties are less stringent and international co-operation in enforcement is not as well developed. The territorial scope of such regulations also tends to be limited. This may partly account for the fact that bonded warehouses, free ports and other such areas are often outside the scope of these measures.

49. Over time, one can discern a trend towards the gradual extension of the external scope of economic measures against South Africa, undoubtedly because Governments have often seen their previous endeavours frustrated by more sophisticated methods of evasion that make greater use of multiple trans-border or off-shore operations. Restrictive measures often do not extend to bonded warehouses, free ports or other transit facilities on the territory of the State implementing the law, or to the commercial operations of its nationals abroad and foreign subsidiaries of companies headquartered within its borders. The greatest degree of external jurisdictional scope is found in the Comprehensive Anti-Apartheid Act adopted by the United States in 1986, of which many provisions apply widely to nationals abroad and to foreign subsidiaries. The measures of the Nordic countries generally apply very widely to nationals abroad but not to foreign subsidiaries.

C. Issues relating to co-ordination of measures

50. As the circumstances, rationale and timing of measures taken by individual States have varied, co-ordination of such measures has been limited. While, for instance, the importation of coal from South Africa is prohibited in some countries, it is not prohibited in others. Even measures adopted by groups of countries may not be standardized. The implementation of broadly defined measures adopted by individual States against South Africa presents problems and opportunities due to different legislative structures and traditions. Within the 11 months following the 1986 decision of the EEC Council of Ministers, five member States enacted binding measures prohibiting new investments in South Africa; two others had taken such measures before the Council's decision. One more was planning to do so. 1/ It should also be noted that the ways in which these measures were subsequently implemented differed by country. One country had applied these measures by legislative enactment and another one was planning to do so; four had done so by decree, four did so by a non-binding recommendation or agreement, and two had taken no action. The EEC oil export ban has also led to similar variations in implementation. 2/

D. Advance notices and "gentlemen's agreements"

51. In recent years increasing use has been made of delayed-action measures, which are decreed at one point in time and are to go into effect at a later stage provided that certain conditions are met. These measures are useful as warnings and in order to prepare interested third parties (the business community, importers and exporters) for full-force sanctions at a later stage. The Commonwealth Meeting of Heads of Government, at Nassau in October 1985 (see A/40/817, annex I), agreed on certain measures to go into effect six months later if no progress towards dismantling apartheid had been made in the interim (the measures went into effect in August 1986). In the Nordic countries, government appeals to the business community to decrease its involvement in South Africa have preceded statutory action. Although such measures are not binding, they are not without effect because they deter the business community from further commercial dealings with South Africa. They may also have ramifications in commercial insurance law. The United States Comprehensive Anti-Apartheid Act of 1986 contains a clause under which certain sanctions imposed would be terminated if certain conditions were met, conditions that are actually specified (sect. 5061).

52. In certain situations when a Government is not prepared to take legally enforceable measures against South Africa, "gentlemen's agreements" with the business community have been used. Such agreements depend for their effectiveness on perceptions about Governments' intentions and traditional relations between the authorities and the business community.

E. Third-country exploitation of sanctions

53. The impact of economic measures against South Africa has now resulted in a problem that derives from the failure to apply sanctions uniformly. States that

have voluntarily deprived themselves of certain commercial opportunities out of solidarity with the struggle against apartheid are thereby creating commercial opportunities for other countries that do not wish to do so. A report presented to the meeting of the Commonwealth Committee of Foreign Ministers on Southern Africa, held at Toronto in August 1988, disclosed that while certain traditional trading partners of South Africa had reduced their trade, some other countries had actually increased their trade with South Africa in the past year. 3/

54. On such cases and in parallel circumstances States have at times agreed voluntarily not to profit from a situation created by measures with which they are not compelled to comply. Some States have declared that they would not allow their territories to be used for the purpose of evading measures enacted by other States against South Africa. 4/

55. The United States Comprehensive Anti-Apartheid Act of 1986 contains wide-ranging provisions directed at other countries that benefit from the void created by United States sanctions. One provision (sect. 5082) authorizes, but does not require, the President to limit imports from countries that benefit from or take commercial advantage of United States sanctions. The law further gives United States nationals who have been hurt financially by their compliance with their country's sanctions the right of private action in United States courts against individuals and companies in other countries. It permits claims for the recovery of lost profits. In the absence of broadly accepted international norms, the use of unilateral counter-measures to face this problem could lead to bilateral disputes.

IV. CONCLUSIONS

56. To implement restrictive measures against South Africa, some States have issued policy statements, while others have enacted binding legislation. In some cases such legislation provides penalties for violators. In the long run formal and explicit statutes tend to provide a basis for co-ordinated multilateral enforcement and for achieving standardization, although they need not be specifically enacted in response to recommendations of the General Assembly. The critical requirement is that the acts referred to by the relevant resolutions be ultimately treated as punishable offences and not merely as undesirable acts. The different approaches used by States in the implementation of coercive measures against South Africa, the diversity in the degree of coercion exercised, the differing internal and external scopes of applicability as well as the lack of standardized definitions of items or areas covered tend to weaken the effect of the measures and create loopholes that can be used to evade sanctions.

57. Although most of the measures reviewed have been taken after appeals by the General Assembly and other United Nations organs and international forums, the measures adopted by States rarely make direct reference to such decisions, recommendations or appeals. This circumstance may have also weakened the legal and practical basis for international enforcement within the ambit of the United Nations. The relative lack of participation by the foreign affairs sectors of national Governments and the lack of recourse to the branch of law regulating

foreign relations have also had a similar effect. Possibilities of intergovernmental co-operation in enforcement are weakened because different countries may be treating the same measure under the provisions of different branches of law and under the supervision of different governmental authorities.

58. Restrictive trade measures against South Africa have heretofore been limited almost exclusively to trade in commodities rather than in services. More recent measures adopted by the Nordic countries and the United States have, however, included services. In addition, in particular cases, bans on new investments have also included certain forms of leasing (as in the case of the Nordic countries) or even long-term loans (as in the case of measures taken by the United States and EEC) because the latter are considered to be de facto forms of investment. These trends may stem from the realization on the part of some Governments that earlier measures were too easily circumvented because they lacked these provisions. They may also reflect contemporary trends in general economic regulatory legislation.

59. Measures enacted by States on the basis of joint decisions by intergovernmental groups or organizations are particularly effective because they eliminate simultaneously large commercial or geographical areas as trading partners for South Africa. The areas thus eliminated are often coherent sub-systems of trade or economic co-operation in the world economy. Evasion of such measures becomes more difficult because the evasive strategy used most immediately, that is, to try to re-route trade through a neighbouring State or a State with similar commercial ties, has already been made impossible in this case.

60. Finally, the undermining of sanctions by countries that take advantage of the economic void created by measures adopted by other countries is emerging as an issue of serious concern. This problem is inherent in situations where sanctions are not universally applied or when internationally accepted principles and procedures have not yet evolved.

Table 1. Ban on new investments in South Africa: examples of different measures adopted by different States

Country	Date of enactment	Statute type/ decision level	Applicable branch of law	Monitoring official of government branch
Denmark	29 May 1985	Act of Parliament	Foreign affairs/commerce	Minister of Industry
France	24 July 1985	Decree	Capital transfer control	Minister of the Economy, Finance and the Budget
Ireland	November 1986	Ministerial Instruction	Capital transfer control	Central Bank
Japan	September 1969	Decision of Government		Minister of Finance
Spain	5 June 1987	Royal Decree	Foreign trade	Minister of Economy and Industry (with duty to inform Minister of Foreign Affairs of certain aspects hereof)
Sweden	7 June 1979	Act of Parliament followed by Government Decree	Foreign trade	Minister of Foreign Trade, and National Board of Trade
United States of America	2 October 1986	Act of Congress, followed by Executive Order	Foreign Relations and Intercourse (Title 22 United States Codes)	Secretary of the Treasury

Notes

1/ European Parliament Session Documents, Series A, Document A 2-151/87, report drawn up on behalf of the Committee on External Economic Relations on the Implementation by the member States of the Community of economic sanctions against the Republic of South Africa, Rapporteur: Mrs. Barbara Simons, 2 October 1987.

2/ The implementation of the decisions to impose and, later, to widen the ban on oil exports from the EEC showed similar differences in national measures. The original decision of the Foreign Ministers of 10 September 1985 applied only to EEC-produced oil and excluded petroleum products. The decision of 31 January 1986 included oil which had already been introduced into the community commercial area, but still excluded oil in bonded storage. However, some countries have included petroleum products although the exact range of petroleum products is not uniform.

3/ Commonwealth Secretariat, "Statistics on Trade with South Africa", News Release, London, 2 August 1988.

4/ For example, Israel. See A/42/22/Add.1-S/19217/Add.1, annex, and Switzerland, see the Declaration by Mr. Achille Casanova, Vice-Chancellor of the Confederation, concerning South Africa, 23 September 1986.

ANNEX*

Economic measures adopted against South Africa

CONTENTS

* This annex was prepared by Mr. Paul Conlon, consultant to the Centre against Apartheid.

CONTENTS (continued)

I. INTRODUCTION

1. The annex gives an illustrative description of restrictive measures taken mostly by traditional trading partners of South Africa in the field of commodities, financial flows, including direct investment, and technology transfers and in other exchanges and terms. The discussion of the measures is not exhaustive, nor does it cover the most recent changes and adjustments in those measures. It indicates in a preliminary way the types of measures adopted and highlights variations among them.

II. RESTRICTIONS ON TRADE IN COMMODITIES

2. As a number of Member States have totally prohibited all trade with South Africa, bans on specific items become superfluous in such countries. The Nordic countries, for example, have adopted general trade bans, as have the socialist countries, where external trade can be carried out only by permit of the relevant authorities. Since such permits are not granted, trade is therefore made impossible and illegal. A large number of countries, particularly non-aligned ones, have traditionally avoided any trade with South Africa, although laws specifically prohibiting it are seldom in place. One of the oldest recorded instances of an explicit trade ban with South Africa is that of Barbados, which, through the Importation and Exportation of Goods (Union of South Africa) (Prohibition) Order 1960, effectively severed trade ties with that country with effect from 1 September 1960. Another example of early measures by non-aligned countries is that of Algeria, which in 1964 banned exports of any Algerian commodity to South Africa. The most recent example is that of Iceland whose Law No. 67/1988, banning all trade with South Africa and Namibia, went into effect on 29 May 1988.

A. Exports to South Africa

1. Exports of petroleum to South Africa

3. The General Assembly has attached such importance to this measure that by resolution 41/35 F of 10 November 1986 it established an Intergovernmental Group to Monitor the Supply and Shipping of Oil and Petroleum Products to South Africa. The Intergovernmental Group is the only instance in which the Assembly has established an intergovernmental group to monitor a non-mandatory sanctions measure. The Intergovernmental Group reported to the forty-second session of the Assembly on the first year of its activities. a/

4. A number of countries have adopted measures against the export of oil to South Africa. The Organization of Arab Petroleum Exporting Countries (OAPEC) has banned export of its members' oil to South Africa since 1973. The ban on the export of oil is also covered in an Algerian law (64-167 of 8 June 1964, art. 2), which banned all exports to South Africa. In Norway a "gentlemen's agreement" that had originally prevented Norwegian oil shipments to South Africa was later superseded by a specific law of 10 June 1986; now the general export ban has superseded that

law. The United States Comprehensive Anti-Apartheid Act of 1986 (sec. 5071) bans "exports of crude oil and petroleum products" to South Africa.

5. The EEC foreign ministers on 10 September 1985 decided to recommend a prohibition on the export of EEC-produced oil to South Africa. One country, the United Kingdom, exports oil only to countries party to the agreement on the International Energy Agency (IEA) (thus excluding South Africa). On 31 January 1986, the ban was expanded to include non-EEC-produced crude oil, although not oil in bonded warehouses on EEC territory. Neither measure prohibited the export of refined products. In the Netherlands a "gentlemen's agreement" originally existed that prevented the export of Dutch North Sea petroleum to South Africa. b/ This was later incorporated into the South Africa Import Export Decree of 14 August 1986 and applies only to crude oil. Exports of oil from Luxembourg have been subject to licensing regulations since 27 November 1986. A decision of the Greek Minister of Trade (13 February 1986) banned Greek exports of crude oil to South Africa, and in Italy licences are not granted for such exports. In France the export of crude and petroleum products was banned in 1986 (art. 1 of decree 86-34 of 9 January 1986). Belgium prohibited the export of oil and refined products to South Africa in 1986 (art. 1 of Ministerial Order of 28 November 1986).

6. Australia banned the export of oil or petroleum products to South Africa by decision of 19 August 1985. Later in the same year the Nassau meeting of the Commonwealth Heads of Government agreed to ban the exportation of oil to South Africa.

7. Brazil banned petroleum exports to South Africa by a Presidential Decree (9 August 1985, sect. 2); the ban included refined products and also exports to Namibia. Argentina does not authorize the export or transport of petroleum to South Africa or Namibia. c/ Israel banned the "sale or transfer of oil and petroleum products" to South Africa by governmental decision of 16 September 1987.

2. Exports of computer equipment

8. Since 1985, exports by many countries of computer equipment to South Africa have been specifically restricted, mainly because of their possible use by the South African police and military. However, the scope of such restrictions varies widely. Software is rarely included in these measures. Implementation often becomes difficult because there are few producers of computer equipment but many re-sellers.

9. In 1985 by Executive Order the United States prohibited the export of computers to apartheid-enforcing agencies of the South African Government. This ban was later incorporated into section 5054 after the Comprehensive Anti-Apartheid Act of 1986.

10. EEC provisions did not originally specify computers, but the Foreign Ministers' decision of 10 September 1985 noted "sensitive equipment" used by the police and armed forces, which was generally taken to mean computers. Among the EEC countries, France, the Netherlands and Ireland introduced specific regulations

on this matter. French decree 86-34 of 9 January 1986 subjected to licensing requirements materials "likely to be used for purposes of maintaining order". In the Netherlands, South Africa Import Export Decree (14 August 1986, appendix E) specifically lists computer hardware as items whose export is prohibited. Ireland does not grant export licences for computer equipment to South Africa unless assurances are received from the South Africa consignee that the goods in question are not destined for the South African security forces. d/

11. The Commonwealth Heads of Government, at their meeting at Nassau in October 1985, agreed to ban the export of computers for use by the South African military and police. Australia had already banned the export of computer hardware on 19 August 1985 (see A/40/817, annex I). New Zealand undertook a similar measure on 14 October 1985 when the Minister of Customs withdrew her consent to any further exports of such material to South Africa.

12. In Canada, export permits have until recently been refused for objects listed in groups 3-8 and 10 of the Export Control List if they were being exported to the South African Government or any agency thereof, with the exception of medical, humanitarian and life-saving goods. Permits for private exports of the same items required an end-user statement that they would not ultimately be conveyed to the military or the police or be transferred to the South African Government or its agencies; in cases of doubt the law provided for the authorities to review applications. However, on 26 September 1988, the Canadian Government extended the ban on high-technology items to the South African private sector as well. e/

13. By government decision of 13 September 1985 Austria banned computer equipment exports for use by the South African army and police.

3. Commodities exempted from export bans

14. Certain items are exempted from export bans on humanitarian grounds or because they help alleviate the plight of the victims of apartheid or undermine apartheid. Similar exemptions, in particular regarding medical supplies, were made to the sanctions adopted by the international community against Southern Rhodesia. In this vein, Norway excludes "medicine or equipment for medical purposes, news items, printed matter or electronic audio or visual recordings" (para. 4 of sect. 1 of the Norwegian Act of 20 March 1987 banning trade with South Africa). Denmark's law exempts goods "for purely medical purposes", and the Swedish ordinance prohibiting trade with South Africa and Namibia (477 of 1987), in article 1, exempts "publications and news copy, goods intended for religious use, humanitarian assistance, goods used for medical purposes".

B. Imports from South Africa

1. Imports of coal from South Africa

15. As South African coal production has rapidly increased in recent years and coal has become second to gold in the country's export earnings, several countries have focused their measures on the prohibition of imports of South African coal in the past two years. Australia, Canada, Denmark, New Zealand, Norway, Sweden and the United States have prohibited imports of coal from South Africa.

16. In November 1985 the Government of France took the decision that the existing contracts for South African coal signed by the national electricity utility, Electricité de France, would not be renewed. Shipments of South African coal under existing contracts continued up until the beginning of 1987.

17. The Commonwealth Heads of Government, at a meeting in London in August 1986, agreed to ban imports of South African coal, but the United Kingdom did not participate in this agreement. Japan announced that it was freezing South African coal imports at existing levels. Both the United Kingdom and Japan have declared that they would follow an EEC ban on coal imports, but the EEC has not dealt with this issue thus far this year.

18. South Africa was able to compensate partially for the effect of these sanctions by shifting its coal exports to the Far East and by increasing its coal sales to those European countries that had previously been minor importers of its coal. Nevertheless, the loss of Danish, French, United States and Commonwealth coal markets after 1985-1986 cost South Africa about 10.7 million tons of annual coal exports, or about 24 per cent of total coal exports.

19. The marked drop in South African coal exports (from a high of about 45 million tons in 1985 to around 38 million tons in 1987) has been the result of sanctions as well as other economic factors. f/ In March 1987 the South African authorities declared exports of coal to be a state secret and no longer publish trade figures on coal. For the major importers of South African coal, see the table at the end of annex.

20. The second meeting of the Commonwealth Committee of Foreign Ministers on Southern Africa, held at Toronto in August 1988, targeted import bans on coal as a priority for its campaign for tighter and more effective sanctions (see A/43/544, annex I).

2. Imports of gold and other minerals

21. Given its functions in international finance, a ban on the import of gold bullion from South Africa has remained outside the scope of sanctions. g/ However, imports of gold coins from South Africa, especially krugerrands, are now commonly banned by many countries. For instance, Sweden and Australia banned the import of krugerrands in 1985; the United States, the EEC and Austria in 1986. Canada, in a measure of 6 July 1985, discouraged but did not forbid the importation of gold coins from South Africa.

22. Many South African minerals are considered to be of strategic importance to some industrialized countries since there are limited supplies outside South Africa. Nevertheless some limited-supply minerals have been included in sanctions measures.

23. In the case of the Nordic countries, the import of South African minerals as such is banned, although exemptions may be allowed by special permit. In the United States, (section 5059 of the Anti-Apartheid Act) bans imports of uranium. The import of minerals is also prohibited by Australia, Canada, France and New Zealand.

3. Imports of general manufactured goods

24. Among South African manufactures, iron, steel and textiles have been banned in certain countries. Since 1986, section 5070 of the Anti-Apartheid Act prohibits the importation of iron and steel into the United States. By decision of the Council of Ministers of the EEC (86/459 of 16 September 1986), the import of certain types of iron and steel (largely pig and cast iron, including scrap, semi-finished bars, rods and sheets) was prohibited. h/

25. Japan banned imports of iron and steel on 19 September 1986. Israel, by a government decision of 16 September 1987, committed itself to keeping the import of iron and steel imports at current levels. The United States also prohibits imports of textiles (Anti-Apartheid Act, sect. 5059 [a][4]).

4. Imports of agricultural products

26. A number of countries have banned the import of South African agricultural products, but this restriction normally covers fruit and vegetables and does not include wine, which is a significant South African export. The prevalence of non-free labour practices in the South African agricultural sector has occasionally been cited by Governments as a justification for this measure.

27. Sweden had for some time a special law prohibiting the importation of agricultural products from South Africa (1050 of 1985), but that has now been superseded by a general trade ban. A general trade ban in the other Nordic countries has had the same effect. In the United States, the Comprehensive Anti-Apartheid Act of 1986 bans agricultural products and, additionally, sugar (sects. 5069 and 5073). Ireland banned all South African agricultural imports as from 1 October 1986. i/ The Minister of Agriculture is empowered to determine the origin of agricultural products in cases of doubt.

28. At the Commonwealth Heads of Government meeting in Nassau on 20 October 1985 a ban on the import of agricultural products was placed on a list of measures to be enacted within six months if no substantial progress towards dismantling apartheid was made (see A/40/817, annex I). At a subsequent meeting in London on 5 August 1986, the Commonwealth countries, except the United Kingdom, agreed on a ban of the import of agricultural products from South Africa.

5. Commodities exempted from import bans

29. Import restrictions may occasionally exempt certain minerals that may be in short supply and can only be obtained from South Africa, although the Nordic countries achieve the same purpose by allowing individual companies the right to apply for exemption. United States law exempts strategic minerals for which substitutes or secure domestic supplies are unavailable (Anti-Apartheid Act, sect. 5053 [a][2]). The law does not define such minerals; it is rather the executive branch that is empowered to issue a list of such minerals and, should the supply situation change, minerals may be added to, or deleted from, that list.

III. BANS ON FINANCIAL FLOWS AND SERVICES

30. Unlike trade restrictions in commodities, bans on financial flows and services as economic measures against South Africa are less problematic because there are no major international treaties or agreements such as the General Agreement on Tariffs and Trade (GATT) that require free trade in capital and financial services. In addition, investment in foreign countries implies the export of capital, and many countries have traditionally applied restrictions to outbound currency transfers.

A. Direct equity investments

31. Restrictions on direct investments in South Africa are now one of the most common economic measures taken by Governments in the area of direct equity investments. The scope and form of the restrictions vary widely.

32. Japan banned direct investment in South Africa as early as 1969. Consequently there are no subsidiaries of Japanese companies in South Africa and Namibia.

33. Upon a recommendation by their Foreign Ministers in 1978, the Nordic countries enacted relevant measures shortly thereafter, though all of these have since been superseded by more advanced measures implemented later. These measures ban new investments although they do not require outright disinvestment. Measures adopted later by other countries have tended to follow these same general principles.

34. Sweden banned new investments through laws and decrees (98 and 99 of 1985) that went into effect on 1 July 1985. It defined new investments in a fairly rigorous manner by including leasing of capital equipment, but allowing exceptions similar to the ones mentioned below in connection with the EEC. A similar prohibition was enacted by Finland in paragraphs 1 and 2 of Law 1105 of 1985, and by Norway in paragraph 4 (c) of the Act of 20 March 1987, which also includes investment through leasing. Norway had originally banned new investments by denying them the required licences in accordance with an Act of 14 July 1950 requiring such permits for capital currency transfers.

35. In the United States, section 5060 of the Anti-Apartheid Act bans new investment, defined in section 5001 as a commitment or contribution of funds or other assets and a loan or other extension of credit. The law does not include the

reinvestment of profits and expenditures incurred in complying with the Code of Conduct, for United States subsidiaries are not considered investments in the terms of this law. Section 5066 of the same title bans the use of public funds for the promotion of investments in South Africa.

36. The EEC Council of Ministers' meeting of 27 October 1986 took the decision (517 of 1986) to suspend new direct investments in South Africa by natural or legal persons resident within the Community. Direct investment was defined as the establishment or acquisition of branches or undertakings, increased participation in new or existing undertakings, as well as long-term loans (more than five years). The "existing economic activity" of investments already made could be maintained. Exemptions are allowed for new investments in the "training, health and the social sectors", i.e. to improve the lot of black employees. Decision 86/517 does not apply to Namibia. Denmark had already banned new investments as of June 1985 in a law that included Namibia and that also covered the leasing of capital goods as a form of investment. France had, by Law and Decree of 27 July 1985, suspended new investments by subjecting them to licence. Through Royal Decree 744/1987 of 5 June 1987, Spain put the EEC decision into effect with almost the exact same wording, allowing for the addition of a number of exceptions (para. 7 of Royal Decree 2374/1986 of 7 November 1986). Italy has done the same through Decree No. 9 of 13 January 1987. Since Irish law requires the permission of the Central Bank for such investments, the Government implemented the measure by instructing the Bank not to grant such permits in the future. In the Federal Republic of Germany the measure was implemented by a non-binding "gentlemen's agreement" on new investments. Luxembourg issued a non-binding directive on the subject. The Government of the United Kingdom issued a "recommendation to industry for compliance" with the EEC ban.

37. A ban on new investments or the reinvestment of profits was recommended by the Commonwealth Heads of Government meeting in Nassau in October 1985 in case no progress was made towards dismantling apartheid within six months (see A/40/817, annex I). The matter was brought up again at the Foreign Ministers' meeting in London on 5 August 1986, where it was agreed that the ban should be put into effect, but the United Kingdom agreed only to a voluntary ban at that meeting. Australia had previously, by decision of 19 August 1985 (see A/40/565-S/17411, annex), banned new investments by Australian governmental or public authorities.

38. The Government of Austria banned investments by decisions of 13 September 1985 and 7 October 1986. The Government of Israel, in a decision of 16 September 1987, prohibited new investments, citing the EEC ban as a point of reference. But it made provision for exceptions upon the concurrence of the ministers of foreign affairs and commerce with the central bank.

39. The common feature among most of these laws is that they permit existing levels of investment, but prohibit further investment through the new infusion or transfer of capital, or expansion of economic activities. Most of them allow the reinvestment of profits generated in South Africa, as well as certain exceptions connected with humanitarian or anti-apartheid activities. The Nordic laws in addition include specifically the long-term leasing of capital equipment as a form of investment. United States and EEC measures also include certain types of

loans. The possibility of reinvesting profits generated in South Africa has occasionally been criticized as violating the spirit of the ban on new investments (see E/C.10/1988/8, p. 7).

B. Loans and credits

40. Originally many countries limited themselves to banning loans to the South African Government and its parastatals or banning guaranteed export credits for trade with South Africa. Gradually these bans were extended to include private credits to private South African borrowers.

41. In the case of Denmark, Norway and Sweden, loans and credits are banned as an outgrowth of investment restriction legislation. Finland also prohibits loans to South Africa (para. 3 of Law 1104 of 1985). Norway forbids any Norwegian domiciled person or institution to lend to any creditor in South Africa or Namibia (para. 4 [d] of the Act of 20 March 1987). The Nordic Foreign Ministers' meeting of 18 October 1985 had agreed on a ban of loans to South Africa and had further required the participants to abstain from taking part in any international loans to South Africa.

42. United States Executive Order 12532 of 9 September 1985 prevented United States loans to the South African Government or its entities, making certain exceptions for loans granted before its enactment or connected with education or housing. In 1986 this provision was incorporated into the Comprehensive Anti-Apartheid Act, section 5055, which allowed for short-term trade credits. In section 5060 all loans to the private sector were prohibited as well. United States law, however, exempts loans made for "education, housing and humanitarian" benefit (sect. 5055 [b][1]). It is interesting to note that, whereas the original executive order 12532 had prohibited loans by "financial institutions in the United States", the Comprehensive Anti-Apartheid Act of 1986 forbids even United States citizens, regardless of their domicile, from lending money to South African creditors.

43. According to EEC law, long-term loans (over five years) are considered investments in terms of Decision 86/517 of 27 October 1986. This is also reflected in Italy's decree No. 9 of 13 January 1987 prohibiting new investments.

44. Japan first banned loans to South Africa in 1974, but as the wording of the measure appeared to be weak, with the passage of time, it came to be interpreted as not binding. The Japanese Government has since renewed its appeals to banks to refrain from lending money to the South African Government. Israel, by government decision of 16 September 1987, prohibited the granting of government loans to South Africa.

45. The Commonwealth Heads of Government, meeting in Nassau in October 1985, had agreed and commended to other Governments that all new government loans to the South African Government or its agencies should cease. At a meeting of the Commonwealth in London on 5 August 1986 it was agreed (with the exception of the United Kingdom) to extend this measure to all bank loans granted to private or

public South African creditors. The Australian Government, on 19 August 1985, had already called on banks to suspend loans and credits to South Africa. The Canadian Government had also in 1985 asked banks to ban loans to South African government agencies. In 1986, it imposed a voluntary ban on new lending by Canadian banks and, most recently, it persuaded them not to increase trade credits. j/

46. The Commonwealth Committee of Foreign Ministers on Southern Africa, at a meeting at Lusaka on 1 and 2 February 1988, decided on a study of South Africa's ties with the international financial system. This study was released at the same Committee's meeting in Toronto on 2 and 3 August 1988. k/

C. Export/import financing and promotion

47. Recent bans on new investments and longer-term loans have left short-term trade credits intact. According to a recent Commonwealth study, short-term trade credit is about the only form of credit now available to South Africa.

48. In the United States, section 5066 of the Anti-Apartheid Act prohibits the use of public funds for assistance to trade with South Africa. In addition, section 5034 (b) of the Anti-Apartheid Act prohibits any export assistance to companies not applying the Code of Conduct (for South African subsidiaries of United States companies).

49. The Australian Government on 19 August 1985 removed all government facilities for trade with South Africa, and Canada on 6 July 1985 rescinded the applicability of the Government Export Programme and also declared export insurance policies inapplicable to transactions with South Africa.

50. Some Governments began curtailing or eliminating their trade promotion activities with respect to South Africa a quarter of a century ago. The number has increased to the point that at present even those Governments that do not restrict trade with South Africa often decline to allow their resources or facilities to be used to promote it. Such measures range from banning South African exporters and importers from government trade fairs and exhibits to tightening travel restrictions for South Africans, particularly businessmen. For instance, Japan has twice, through immigration policy changes (19 September 1986 and 14 August 1987), restricted the travel of South African nationals to Japan.

51. Australia closed its trade office in Johannesburg by a decision of 19 August 1985. The Commonwealth in 1985 prohibited government funding for any kind of trade promotion with South Africa. The Peruvian Government, together with a foreign trade association, has instituted a South African desk the function of which is to recommend alternate sources of trade to importers and exporters of South African goods. l/

D. Non-direct investments in South Africa

52. The bans on investment previously discussed apply in most cases only to direct investments by subsidiary companies. However, indirect investments and the promotion of indirect investments may be prohibited by the provisions of other restrictive measures relating to financial flows.

53. Thus, Sweden prohibits any persons or entities domiciled in Sweden from acquiring portfolio investments in South African or Namibian commercial enterprises (paras. 1.1 and 1.2 of Law 99 of 1985).

54. The Anti-Apartheid Act of the United States (sect. 5060) makes it impossible to take up new issues in the United States; anyone acquiring such newly-issued shares or bonds in South African companies would be contravening the law. A strict interpretation of the law indicates that even United States citizens and subsidiaries of United States trading and brokerage firms may not do so either, and a foreign subsidiary of a United States financial institution may not underwrite a new share or bond issue by a South African company. However, the exact extent of this provision has not been tested in court.

55. No law in any Western country specifically prohibits the listing or trading of shares in South African companies; however, the stocks of only a few South African companies are traded on Western stock exchanges. The laws discussed here do not specifically prevent participation in underwriting or subscription to South African debentures; however, it is possible that such underwriting may be prohibited by laws banning loans or credits in some countries. The wording of Swedish Ordinance 99 of 1985, which accompanied Law 98 of 1985 banning new investments, appears to cover such underwriting as well.

E. Double-taxation agreements and bank accounts

56. The abrogation of double-taxation agreements as well as the elimination of tax credit provisions have also been used in anti-apartheid legislation packages. In 1987, the United States (sect. 10231 of PL 100-203) abolished the possibility for United States tax entities to obtain tax credits for taxes paid by them or their subsidiaries to South Africa.

57. The Commonwealth Meeting of Heads of Government at Nassau in October 1985 recommended a similar measure if no progress was made in the following six months. The Commonwealth meeting in London on 5 August 1986 put this provision into effect, but without the participation of the United Kingdom. Canada had already abrogated a double-taxation agreement with South Africa on 6 June 1986.

58. One country, the United States, restricts the right of South Africa to use bank accounts or hold assets in foreign banks. The South African Government or its branches are prohibited from having United States banking accounts, except for diplomatic or consular purposes (Anti-Apartheid Act, sect. 5058). In addition, the President is empowered, in the future, to recommend to the Congress a similar ban on accounts held by South African citizens in United States banks.

IV. RESTRICTIONS ON TECHNOLOGY TRADE OR TRANSFER

A. Patents, licences and manufacturing rights

59. Thus far only the Nordic States among the countries of the Organisation for Economic Co-operation and Development (OECD) prohibit the transfer of technology in the form of patents, licences or manufacturing rights to South Africa. However, critical forms of technology transfer may be banned if they fall under the technology provisions of laws prohibiting military or nuclear collaboration with South Africa.

60. Paragraphs 9.1 and 9.2 of the relevant Swedish law banning new investments (Law 98 of 1985) exhaustively cover the most common forms of technology transfer. Norway also prohibits transfer of technology by any person or entity domiciled in Norway to any person or entity domiciled in South Africa (para. 4 [d] of the Norwegian Act of 20 March 1987). Finland covered the same matter in its legislation in 1985 (para. 4 of Law 1104). The legislation of all three countries covers Namibia as well.

61. The concluding statement of the second meeting of the Commonwealth Committee of Foreign Ministers on Southern Africa, held at Toronto on 2 and 3 August 1988, recommended the prohibition of technology transfers which enable South Africa to circumvent existing sanctions, particularly in the areas of arms, oil and computers (see A/43/544, annex I).

B. Data and software

62. The transfer of information, data or software to South Africa has not been expressly banned, although it is dealt with in relation to nuclear or military collaboration.

63. The United States President's Executive Order 12532 of 9 September 1985 in section 1 (c) (1) included data and software in its prohibition of the transfer of nuclear technology to South Africa. Software is specifically included in section 5054 (a) of the Anti-Apartheid Act. However, it only applies to those branches of the South African Government which are "apartheid-administering or enforcing".

64. Certain types of information are specifically exempted from trading bans because, as in the case of Sweden's relevant law, it is considered that the free flow of information to South Africa is of critical importance. However, the exemptions refer to news reporting rather than technical data. On the other hand, a Swedish law of 1985 (100 of 1985), in updating the provisions of an older one banning nuclear collaboration with South Africa (1977:1127, more specifically para. 1), included a reference to "computer hardware and software". Its transfer to the South African military for military purposes and/or adaptations thereof for the use of the police was specifically included in the ban.

V. RESTRICTIONS ON EXCHANGES OF OTHER SERVICES

A. Transportation

65. Several States have introduced restrictions on the use of their transportation facilities for transport of persons or goods to or from South Africa. As early as the 1960s many African countries began to deny South African aircraft landing or overflight rights with the result that normal flight operations have been disturbed. Since 1985 measures severing air links with South Africa have been also increasingly applied.

66. Denmark, Norway and Sweden, which own the Scandinavian Airline Systems, severed their air links with South Africa in accordance with a ministerial agreement of 27 June 1986. Japan banned air links with South Africa on 19 September 1986. The Norwegian Act of 20 March 1987 (art. 3) specifically forbids air freight traffic between Norway and South Africa or Namibia.

67. The United States (Anti-Apartheid Act, sects. 5056 and 5056a) effectively eliminated all air traffic links between the United States and South Africa, save for emergency landings. Canada severed all air links with South Africa in 1985. The Commonwealth meeting in Nassau on 20 October 1985 placed the severance of air links on a list of measures to be adopted in six months if no appreciable progress had been made towards dismantling apartheid. The measure was taken at the London meeting on 5 August 1986 (except for the United Kingdom).

68. Some countries have banned maritime links as well. Article 2 of the Danish law of 30 May 1986, prohibiting trade with South Africa and Namibia, forbids the carrying of oil or petroleum products on Danish-owned ships. Article 2 of the Norwegian Act of 20 March 1987 forbids the carrying of crude oil on Norwegian-registered or Norwegian-owned ships, if such shipments are deliberately destined for South Africa. The law makes provision for re-routed shipments being off-loaded in South Africa. Danish law requires the master of a Danish ship transporting to South Africa items covered by the arms embargo to inform his Government of such transport and to await instructions before proceeding. m/ The Swedish Government on 10 October 1985 appealed to the Swedish maritime industry to avoid traffic through South African ports.

69. Brazil does not allow the use of the national territory for the shipment or trans-shipment of any article whose export to South Africa it has banned from its own country, regardless of its origin.

70. One of the measures adopted on 16 September 1987 by the Government of Israel states that "all necessary steps will be taken to prevent Israel from becoming a transit station of any kind for goods and services from and to South Africa, if that might involve circumventing sanctions imposed by a third party".

B. Tourism

71. The promotion of tourism has also been banned by some OECD and other countries. In Norway, according to article 4 (e) of the Act of 20 March 1987, "organizing or offering public tours to South Africa" or "acting as an agent for such tours" is a punishable offence. The Canadian Government banned the promotion of tourism to South Africa on 16 June 1986. At the Commonwealth meeting in Nassau on 20 October 1985 the ban on tourism was placed on the list of measures to be considered after six months if no appreciable progress towards dismantling apartheid was made. The measure was adopted by the Commonwealth with the exception of the United Kingdom, on 5 August 1986. Japan, on 19 September 1986, decided on "voluntary restraints on tourism", and Israel since 1987 prevents government bodies from actively promoting tourism to South Africa. The United States (Anti-Apartheid Act, sect. 5065) prohibits the use of public funds for the promotion of tourism to South Africa.

C. Rendering of services

72. Although some States prohibit the export of services from their own territory, their bans on services do not prevent their citizens from providing their own personal labour or expertise, in whatsoever capacity, to the South African Government outside their territory. It appears that the only national measure prohibiting a citizen from rendering a service to South Africa is a provision in a Danish ordinance (of 3 February 1978, as amended on 7 April 1982) making it a crime for Danish nationals, wherever they reside, to help South Africa develop nuclear weapons.

73. Measures adopted by the Nordic countries and the United States contain provisions that could possibly be used to prohibit their nationals from rendering such services to South Africa, but there have as yet been no cases where the exact scope of the law has been tested in court.

74. It has been more common for States to prohibit persons or entities domiciled on their territory from rendering services to persons or entities in South Africa. The Norwegian law of 20 March 1987 in article 4 prohibits any person domiciled in Norway from providing any service to any South African government unit or to any individual in South Africa on a commercial basis. Furthermore, article 4, paragraph 2, of the Swedish ordinance prohibiting trade with South Africa (477 of 1987) seems to suggest that a person domiciled in Sweden could not render marketing or consulting services on a commercial basis for any person or entity in South Africa.

Major importers of South African coal

(in thousands of metric tons)

	1983	1984	1985	1986
Japan	5 944	7 775	8 560	8 834
Italy	3 867	6 045	6 860	5 685
Republic of Korea	1 500	1 500	4 300	5 000
Germany, Federal Republic of	2 360	2 298	3 196	4 055
Spain	1 114	1 636	2 243	3 979
Denmark	2 891	2 738	3 496	2 662
Hong Kong	1 411	1 751	2 242	2 524
Belgium	1 896	1 860	2 112	2 133
Israel*	1 270	1 451	2 176	2 084
France	4 149	5 601	6 304	1 546
Netherlands	318	776	892	1 451
United Kingdom of Great Britain and Northern Ireland	58	257	724	317
Yugoslavia	-	-	-	11
Sweden	2	17	19	-
Austria	16	1	-	-
Other countries	1 974	3 457	137	693
Taiwan (Province of the People's Republic of China)*	1 361	998	998	2 026
TOTAL	30 131	38 161	44 259	43 000

* International Energy Agency secretariat, United States Bureau of Mines statistics.

Source: Energy Unit, Department of International Economic and Social Affairs, United Nations Secretariat.

Notes

a/ Official Records of the General Assembly, Forty-second Session, Supplement No. 45 (A/42/45).

b/ Contents were enclosed in the letter of the Minister of Foreign Affairs to the President of the Second Chamber, dated 24 May 1984.

c/ Declaration by Mr. Raúl Olocco, Under-Secretary for Fuels, in a note to Mr. Dante Caputo, Minister for Foreign Affairs and Worship, cited in note verbale No. NU 129/88/155/406 dated 29 July 1988 from the Permanent Mission of Argentina to the United Nations addressed to the Inter-Governmental Group to Monitor the Supply and Shipping of Oil and Petroleum Products to South Africa.

d/ Note verbale dated 5 August 1988 from Permanent Mission of Ireland to the United Nations addressed to the Chairman of the Special Committee against Apartheid.

e/ Speech by the Right Honourable Joe Clark, Secretary of State for External Affairs, at Laval University, Quebec, on 26 September 1988.

f/ Presidential address by T. I. Steenkamp, Chamber of Mines of South Africa, ninety-eighth annual general meeting, 21 June 1988.

g/ A non-governmental organization, the World Gold Commission, was established in London in May 1988 to promote the feasibility of a ban on South African gold bullion.

h/ An exact list of the items was published in the Official Journal of the European Communities, 19 September 1986. See also E/CN.10/1988/8, p. 7.

i/ Through Statutory Instrument 291/1986, dated 14 August 1986, based on authority deriving from section 2 of the Restriction of Imports Act (No. 20 of 1962).

j/ Speech by the Right Honourable Joe Clark, op. cit.

k/ Commonwealth Committee of Foreign Ministers on Southern Africa, South Africa's Relationship with the International Financial System, Report of the Inter-Governmental Group, Commonwealth Secretariat, London, July 1988.

l/ Note verbale 7-1-SG dated 19 August 1988 from the Permanent Mission of Peru to the United Nations addressed to the Secretary-General.

m/ Article 1, paragraph 3 of the Ordinance of 3 February 1978 (as amended on 7 April 1982).
