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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Report of the Secretary-General

CONTENTS

	<u>Page</u>
INTRODUCTION	2
SUMMARIES OF REPLIES RECEIVED FROM GOVERNMENTS UNDER COMMISSION RESOLUTIONS 1986/24 AND 1986/26	
Argentina	2
Benin	4
Bolivia	5
India	5
Kuwait	6
Qatar	6
Turkey	8
Ukrainian Soviet Socialist Republic	8

INTRODUCTION

1. In its resolution 1986/24 of 10 March 1986, the Commission on Human Rights, inter alia, reaffirmed the legitimacy of the struggle of the oppressed people of South Africa and their national liberation movements by all available means, as well as the inalienable right of the people of Namibia to self-determination, freedom and national independence. It also reaffirmed once again that the practice of using mercenaries against national liberation movements and sovereign States constituted a criminal act and that the mercenaries themselves were criminals, and called upon Governments to enact legislation declaring the recruitment, financing and training of mercenaries in their territory, and their transit through it, to be punishable offences, and prohibiting their nationals from serving as mercenaries, and to report on such legislation to the Secretary-General.

2. In resolution 1986/26 of the same date, the Commission urged all States to take the necessary measures under their respective domestic laws to prohibit the recruitment, financing, training and transit of mercenaries on their territory and other territories under their control, and invited the Secretary-General to prepare a report on this question.

3. Mention should also be made of Economic and Social Council resolution 1986/43 of 23 May 1986, by which the Council urged the Commission on Human Rights to appoint a special rapporteur on this subject and requested the Secretary-General to submit a report on the question of mercenaries to the General Assembly at its forty-first session (see A/41/433 and Add.1-4). It should further be recalled that the General Assembly, by resolution 35/48 of 4 December 1980, decided to establish an Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries and requested the Committee to elaborate the Convention at the earliest possible date. Since then the Assembly has considered the matter every year and has adopted resolutions 36/76, 37/109, 38/137, 39/84 and 40/74.

4. The present report contains summaries of replies received from Governments on action taken pursuant to Commission resolutions 1986/24 and 1986/26. Any additional replies received will be reproduced as addenda to the present document.

SUMMARIES OF REPLIES RECEIVED FROM GOVERNMENTS UNDER COMMISSION RESOLUTIONS 1986/24 AND 1986/26

ARGENTINA

[22 May 1986]
[Original: Spanish]

As the law stands at present, there is no provision dealing specifically with the offence of mercenarism, although certain aspects of it are covered by various provisions of the Argentine Criminal Code.

It should be mentioned that, in order to improve the legal armoury available to address the problem of mercenarism, and in response to the request made by the Commission on Human Rights in paragraph 18 of resolution 1985/6 of 26 February 1985, the Argentine Government is to

establish a special commission with the task of proposing for adoption by the Congress a suitable text for inclusion in the Criminal Code. The Commission will be composed of officials from the Ministry of Education and Justice and the Ministry of Foreign Affairs and Worship.

The current provisions of the Argentine Criminal Code dealing with various aspects of this offence are set out below.

Article 145 of the Criminal Code provides that:

"Any person who leads another person beyond the borders of the Republic with the aim of illegally placing him in the power of a third person, or enlisting him in a foreign army or subversive organization, shall be liable to rigorous imprisonment or ordinary imprisonment for a period of between three and fifteen years."

Commission of the offence extends throughout the period during which the person is led, since the action involves leading a person with the aim of placing him under the power of a third person or enlisting him in a foreign army or mercenary army or to serve in foreign legions - all activities involving conditions very close to those of true servitude.

Article 210 bis of the Criminal Code provides that:

"Any person taking part, co-operating or assisting in the formation or maintenance of an illegal association whose purpose is to commit offences, when the action would tend to endanger the application of the National Constitution, shall be liable to rigorous imprisonment or ordinary imprisonment for a period of between five and twenty years, provided that the association displays at least two of the following characteristics:

- (a) It is composed of two or more individuals;
- (b) It possesses a military or military-style organization;
- (c) It has a cell-based structure;
- (d) It possesses weapons of war or explosives with considerable offensive power;
- (e) It operates in more than one of the political subdivisions of the country;
- (f) It is composed of one or more officers or NCOs from the armed forces or security forces;
- (g) It has clear connections with other similar organizations existing in the country or abroad;
- (h) It receives support, assistance or leadership from public officials."

While article 210 bis of the Criminal Code does not expressly refer to mercenaries, it is understood that the recruiting, financing and training of mercenaries on Argentine territory impairs the full application of the

National Constitution, and it is precisely this which is legally protected by article 210 bis under the recent reform introduced by Act No. 23.077. The perpetrator of this offence may be a civilian or a member of the military, a man or a woman, and the typical act consists of taking part, co-operating or assisting in the formation or maintenance of an illegal association whose activities tend to endanger the application of the National Constitution.

Lastly, another provision worthy of mention is article 210 of the current Argentine Criminal Code, which states that:

"Any person taking part in an association or band of three or more persons whose purpose is to commit offences shall be liable to ordinary imprisonment or rigorous imprisonment for a period of between three and ten years, for membership of the association alone. The minimum sentence for the leaders and organizers of such an association shall be five years' ordinary imprisonment or rigorous imprisonment."

BENIN

[26 June 1986]

[Original: French]

1. The People's Republic of Benin several years ago adopted measures aimed at punishing offences of mercenarism.

2. Under Order No. 78-34 of 19 October 1978 which proclaims mercenarism a crime in the People's Republic of Benin and provides for its punishment:

(1) Any of the following acts by an individual or group of individuals constitutes the crime of mercenarism:

(a) Recruiting, organizing, financing or training armed groups or groups intending to take up arms against a sovereign State or a national liberation movement, whether or not such groups are composed wholly or in part of nationals of the State which is attacked or to be attacked;

(b) Enlisting or attempting to enlist in such groups;

(c) Supporting such groups by advertisements concerning recruitment or offers of service, by publicity or by any statement whatsoever of encouragement;

(d) Calling upon the services of such groups where already constituted;

(e) Granting transport or transit facilities or granting facilities of any kind whatsoever to such groups or to any of their members;

(2) The crime of mercenarism shall be subject to the death penalty;

(3) Any person who has knowledge of mercenary plans or acts and does not so inform the political, military, administrative or judicial authorities as soon as he becomes aware of such plans or acts, shall be punished with a period of forced labour;

(4) No extenuating circumstances may be pleaded, and no exemption granted, in respect of the act of financing and/or leading or giving orders to mercenaries,

(5) The crime punishable under Order No. 78-34 of 19 October 1978 shall be judged together with all related offences by a special revolutionary tribunal the organization and conduct of which shall be established by law.

BOLIVIA

[24 June 1986]
[Original: Spanish]

The Constitutional Government of Bolivia fully endorses the content of the two resolutions, and particularly paragraphs 20 and 21 of resolution 1986/24, on the situation in South Africa.

Concerning resolution 1986/26, the Government of Bolivia condemns the South African régime for its growing use of groups of armed mercenaries against the national liberation movements, and also in order to subvert the Governments of the States of southern Africa.

As far as paragraph 4 of resolution 1986/26 is concerned, the criminal law in Bolivia sets out penalties for the organization and activities of mercenaries, whether domestic or foreign.

INDIA

[14 October 1986]
Original: English

So far as the Government of India is aware, there is no recruitment, financing and training of mercenaries in Indian territory nor transit through it. Although there is no legislation in India prohibiting the recruitment, financing and training of mercenaries in Indian territory, no need has been felt for enactment of specific legislation on this subject. The Indian Criminal Procedure Code, the Penal Code and the Anti-Apartheid (United Nations Convention) Act 1981, along with the administrative measures undertaken under their provisions, have been considered adequate for dealing with this matter.

With reference to South Africa, India's opposition to apartheid is well known. The severance of India's relations with the Government of South Africa is total. The question of Indian territory being used for the recruitment, financing, training or passage of mercenaries utilized by the apartheid régime, therefore, does not arise. The Government and public opinion are both vigilant about any possible violation of India's policy towards South Africa. In fact, according to the provisions of the Anti-Apartheid Act of 1981, the International Convention on the Suppression and Punishment of the Crime of Apartheid has the force of law in India and an offender has criminal responsibility for violations and may be punished with death or imprisonment for life or imprisonment which may extend up to 10 years and shall also be liable to fine. This act, in conjunction with the existing domestic laws and regulations already in force, will ensure the prohibition of the recruitment, financing and transit of mercenaries in India.

KUWAIT

[17 July 1986]
[Original: Arabic]

The State of Kuwait does not finance, train or use mercenaries against national liberation movements or sovereign States since, as stipulated in article 157 of the Constitution, peace is the aim of the State and every citizen is duty-bound to safeguard the integrity of the homeland. Accordingly, Kuwait recognizes only defensive war, offensive war being prohibited (article 68 of the Constitution). Only the State and the public security authorities are permitted to establish armed forces in a manner consistent with the provisions of the law (article 159 of the Constitution). Any person who, without the permission of the Government, recruits troops or engages in any other act of aggression against a foreign State, in such a way as to expose Kuwait to the danger of war or the severance of diplomatic relations, is liable to a penalty of imprisonment for a period of not less than three years. If such act actually leads to the outbreak of war or the severance of diplomatic relations, the penalty is imprisonment for life, as stipulated in article 4 of Act No. 31 of 1970, which amended various provisions contained in the Penal Code promulgated under Act No. 16 of 1960.

In the light of the above, the competent Kuwaiti authorities see no need to promulgate legislation in this connection since they believe that the above-mentioned Acts are sufficient to prevent mercenarism.

QATAR

[14 July 1986]
[Original: Arabic]

The State of Qatar supports the affirmation contained in paragraph 20 of Commission on Human Rights resolution 1986/24 and paragraphs 4 and 5 of the Commission's resolution 1986/26 to the effect that the practice of using mercenaries against national liberation movements and sovereign States constitutes a criminal act and that the mercenaries themselves are criminals. The State of Qatar regards training and financing mercenaries on the territory of any State, or permitting them to transit through the territory of any State, as a punishable offence since such acts constitute a form of aggression and a violation of the principles of human rights.

The State of Qatar holds the view that mercenarism, in addition to being a punishable offence, also constitutes interference in the internal affairs of States, a violation of the right of peoples to self-determination, and a threat to international peace and security. The State of Qatar believes that the early formulation of an international convention prohibiting mercenarism and the use of mercenaries would represent a significant contribution to the progressive development of international law.

With regard to the responsibility of States which support or participate in the recruitment or training of mercenaries, it should be explicitly stipulated that all States must prohibit, within their territory, the activities of individuals, groups or organizations engaged in the recruitment or training of mercenaries with a view to overthrowing Governments or political systems or thwarting the endeavours of liberation movements

struggling for independence and freedom. A clear distinction must also be made between mercenaries, who do not enjoy the status of combatants or prisoners of war under the terms of article 47 of Additional Protocol I to the Geneva Conventions and are therefore regarded as professional assassins with no entitlement to international immunity, and freedom fighters serving with national liberation movements.

The State of Qatar recalls the historic declaration made by the General Assembly of the United Nations on 14 December 1960 and the subsequent recommendations concerning the granting of independence to colonial countries and peoples. The State of Qatar also recalls General Assembly resolution 2649 (XXV) affirming the legitimacy of the struggle of peoples under colonial and alien domination recognized as being entitled to the right of self-determination to restore to themselves that right by any means at their disposal, and General Assembly resolution 2787 (XXVI) confirming the legality of the peoples' struggle for self-determination and liberation from colonial and foreign domination, particularly in the case of occupied Palestine and southern Africa, by all available means consistent with the Charter of the United Nations.

The State of Qatar regards armed resistance in occupied Palestine, southern Africa and Namibia as modern examples of resistance aimed at eliminating violations of human rights as a result of policies of racial discrimination (apartheid), segregation and zionism, realizing the right to self-determination and eliminating colonialism. Consequently, the State of Qatar supports the Palestine Liberation Organization, the sole legitimate representative of the Palestinian people, as well as the liberation movements in southern Africa and Namibia, in accordance with its international obligations.

In its foreign policy, the State of Qatar is pursuing the principle of non-alignment and is giving its full support to the principle of the right of peoples to self-determination. This means that the State of Qatar will never allow mercenaries to transit through its territory.

Article 5 (e) of the Provisional Constitution of the State of Qatar stipulates that: "The foreign policy of the State shall aim to strengthen ties of friendship with peace-loving States and peoples in general, and with all Islamic States and peoples in particular, on a basis of mutual respect, common interest and non-interference in internal affairs. The State shall adhere to the principles of the Charter of the United Nations which advocate the right of peoples to self-determination and the development of international co-operation for the benefit of all mankind".

Although the State of Qatar has no basic legislation concerning the use of mercenaries, there is a chapter in the Penal Code of Qatar (chapter X) in which reference is made to crimes against the State that have an effect on relations with other States and external tranquility.

TURKEY

[30 May 1986]
[Original: English]

Turkish nationals are prohibited by law from serving in foreign armed forces. In this connection, the recruitment, financing and training of mercenaries as well as their transit through Turkish territory are punishable offences according to Turkish law.

UKRAINIAN SOVIET SOCIALIST REPUBLIC

[13 November 1986]
[Original: Russian]

The policy and practice of mercenarism is one of the most dangerous, gross and large-scale forms of violation and suppression of human rights and the rights of entire peoples, and first and foremost the right of peoples to self-determination. In recent years a significant rise has been observed in direct participation by imperialist States and their agencies in the recruitment, training, financing and use of mercenaries against national liberation movements and sovereign States which are pursuing a progressive and independent political line.

The use of mercenaries is of a piece with the attempts by imperialist forces to bend other States to their will using political, economic and military pressure and the methods of State terrorism. These forces are determined not to resign themselves to the principal proposition of international law - that it is the sacred right of States which have liberated themselves to decide on their own destiny and choose their own social and political system. Each people has the right to select its own path of development, to choose its own friends and allies, and if this right is not realized it is impossible to build normal inter-State relations.

Mercenaries are participating in undeclared wars against Afghanistan and Nicaragua, and are being used in aggressive subversive acts against Angola, Mozambique and Kampuchea. They are sowing terror, destroying the economies of those countries and frustrating efforts to institute peaceful construction. Attempts are being made using mercenaries to violate the territorial integrity of Lebanon and suppress the liberation struggle of the people of Namibia.

It is no accident that efforts to combat the heinous international crime of mercenarism has for a long time been a matter for special concern to the United Nations and its organs. As early as 1973 the United Nations General Assembly described the use of mercenaries as a criminal act, and the mercenaries themselves as criminals (resolution 3103 (XXVIII)). Subsequent United Nations decisions reaffirmed that mercenarism is a threat to international peace and security and consequently a crime against humanity (resolution 34/140), and that the sending of mercenaries should be regarded as an act of aggression (resolution 3314 (XXIX)).

In order to preserve universal peace and security for all peoples, it is essential to ban mercenarism at the international and State levels. Progress in this direction would be promoted, in particular, by the rapid preparation

and adoption of an effective international convention against the recruitment, use, financing and training of mercenaries, a draft of which has already been before a specially established committee for six years. However, those same forces of imperialism and reaction which are guilty of using mercenaries against "undesirable" independent States and national liberation movements are also obstructing the activities of the ad hoc committee, and this year have once again wrecked the work of its regular session. These same forces also oppose the adoption within the United Nations of any decisions designed to eliminate the shameful practice of mercenarism.

As one of the sponsors of Commission on Human Rights resolution 1986/26 and Economic and Social Council resolution 1986/43, adopted this year on the question of the use of mercenaries as a means to violate human rights and impede the exercise of the right of peoples to self-determination, the Ukrainian SSR considers that the United Nations General Assembly should, at its forty-first session, give due attention to consideration of this matter and devise urgent measures to put an end to the criminal policy and practice of mercenarism.

As far as the Ukrainian SSR itself is concerned, as it has already indicated several times, the social and political system within the Republic, its legislation and living conditions in a socialist society completely preclude such a practice, or any possibility of participation in it by citizens of the Soviet Ukraine in any form whatsoever.