



UNITED NATIONS

GENERAL
ASSEMBLY



Distr.
GENERAL

A/35/146/Add.1
3 October 1980

ENGLISH

ORIGINAL: FRENCH

Thirty-fifth session
Agenda item 75

IMPORTANCE OF THE UNIVERSAL REALIZATION OF THE RIGHT
OF PEOPLES TO SELF-DETERMINATION AND OF THE SPEEDY
GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND
PEOPLES FOR THE EFFECTIVE GUARANTEE AND OBSERVANCE
OF HUMAN RIGHTS

Report of the Secretary-General

Addendum

CONTENTS

	<u>Page</u>
SUMMARIES OF REPLIES RECEIVED FROM GOVERNMENTS	
Portugal	2

SUMMARIES OF REPLIES RECEIVED FROM GOVERNMENTS

PORTUGAL

/Original: French/

/19 September 1980/

1. The Portuguese laws on the recruitment of mercenaries contain no specific provisions stating that this practice constitutes an offence, although articles 142 and 148 of the Penal Code apply, where appropriate, as indicated below.
2. However, reference may be made to the general legal provisions of the individual work contract.
3. In fact, article 16 of Decree Law No. 49408 of 21 November 1969 approving the new legal system governing individual work contracts states that contracts whose purpose or aim is against the law, incompatible with public order or immoral are unlawful, which would certainly be true in this case. The penalty prescribed for this offence is that the party aware of the unlawful nature of the contract loses any gain derived therefrom and which, by its very nature, is susceptible of restitution to the other party, and this is clearly impossible in the case under consideration.
4. The information to be found in the criminal laws are more helpful. Article 156 of the Penal Code, which deals specifically with "recruitment or enlistment for foreign military or naval service", states:

"Anyone who, without authorization from the Government, recruits persons or causes them to be recruited, or remunerates them or causes them to be remunerated for foreign military or naval service, or procures weapons or craft for the same purpose, shall be punishable by the maximum term of imprisonment and the maximum fine."

"If the offender is an alien, he shall be sentenced to a term of imprisonment not exceeding six months."

5. In addition to this provision, which is clearly applicable, there are two provisions to be found in the chapter on offences against the external security of the State which could also be applied, namely, article 142, on incitement to acts detrimental to the Portuguese State, and article 148, on incitement to war and exposure to reprisals.

6. Article 142 states:

"Any Portuguese or alien residing in Portugal who commits any act, knowing that it could lead a foreign Power to take action detrimental to the State or who knowingly helps a foreign Power or its agents to commit acts of this kind or who, to that end, makes any arrangements, directly or indirectly, with it or its agents or who employs any other means for that purpose, shall be punishable by the penalty provided for in article 55."

/...

"In the case of exceptional extenuating circumstances, the penalty may be commuted to any other penalty provided for in article 55 or in paragraph 5 of the same article."

7. If, instead of being the victim of "action detrimental to the State", the State should be exposed to "a declaration of war", or if Portuguese citizens should be exposed to "reprisals on the part of a foreign Power", the provisions of the aforesaid article 148 would apply.

8. Where the recruitment measure or activity in question comes within the scope of one of the above-mentioned provisions, the recruiting agents would be guilty of the crime punishable by the aforesaid penalty, which is the most severe in the entire range of penalties in Portugal. And the mercenaries themselves, at least in theory, could be liable to the same penalty simply because they are mercenaries.

9. Mention may also be made of certain provisions in the Code of Military Justice which cover cases of recruitment of mercenaries.

10. In fact, it can be seen from the combined provisions of articles 65 and 66 of this Code that anyone who, in time of war, enlists military personnel or recruits or remunerates personnel for purposes detrimental to the security of an allied country or of the group of alliance to which the country belongs, is punishable by a term of rigorous imprisonment ranging from twenty to twenty-four years.

11. In such cases the agents who recruit mercenaries are clearly also guilty of the same offence.
