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DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT,
USE, FINANCING AND TRAINING OF MERCENARIES

Report of the Secretary-General

Addendum

CONTENTS

	<u>Page</u>
VIEWS AND COMMENTS OF GOVERNMENTS	
Costa Rica	2
Czechoslovakia	2
German Democratic Republic	3
Mexico	6
Nigeria.	7
Ukrainian Soviet Socialist Republic.	17
Union of Soviet Socialist Republics.	18
Venezuela.	20

* A/35/150.

COSTA RICA

/Original: Spanish/

/22 July 1980/

With regard to the drafting of an international convention against the recruitment, use, financing and training of mercenaries I have pleasure in informing you that the Government of Costa Rica supports the drafting of such a convention as a matter of urgency.

CZECHOSLOVAKIA

/Original: English/

/19 August 1980/

1. The General Assembly of the United Nations adopted, at its thirty-fourth regular session, resolution 34/140 entitled "Drafting of an international convention against activities of mercenaries".
2. This resolution, adopted by consensus, expresses the readiness of the overwhelming majority of States Members of the United Nations to join their efforts in considering the question of the prohibition of the use, recruitment, financing and training of mercenaries and to elaborate a multilateral international convention on this subject.
3. The use of mercenaries against national liberation movements, democratic and progressive régimes in Africa, Asia and Latin America by the imperialist, hegemonist and other reactionary forces of the world represents today a grave threat against the very existence of many newly born independent States or Governments. As the mercenaries' activities are directed against one of the fundamental principles of the Charter, that is against the political independence of States, the need for a clear and unequivocal prohibition of the use, recruitment, financing and training of mercenaries becomes an imperative of current international relations. And that is why the Czechoslovak Republic fully supports the idea of an international convention to prohibit the activities of mercenaries advanced at the last session of the General Assembly.
4. In the field of codification and progressive development of international law, the question of the prohibition of mercenary activities has already been dealt with during the recent Conference on the Reaffirmation and Development of Humanitarian Law held in Geneva from 1974 to 1977. The obvious political importance of this question and the undisputable link between the over-all ban on mercenary activities and international peace and security led to a thorough discussion of this subject in the course of all four sessions of the Conference. And it is in relation to the heretofore allegedly unclear and contradictory legal status of mercenaries that the Conference played an important role in the development of international law. By outlawing the mercenaries and depriving them of the right to be treated as combatants or prisoners of war under article 47 of

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Additional Protocol I, 1/ the Conference has clearly and unequivocally established the concept of the illegality of all mercenary activities.

5. Czechoslovakia therefore maintains that this and only this conceptual premise should serve as a basis for any further consideration of this question, any departure from it being neither desirable nor acceptable.

6. What all States Members of the United Nations should bear in mind in connexion with the forthcoming consideration of this question in the United Nations is the fact that further codification of this field should and must serve the cause of preserving and strengthening international peace and security, promoting the right of peoples to self-determination and furthering the implementation of already existing fundamental political and legal United Nations documents, such as the Declaration on the Strengthening of International Security, 2/ the Definition of Aggression, 3/ the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 4/ and Additional Protocol I to the 1949 Geneva Conventions.

7. The Czechoslovak Socialist Republic is of the opinion that the initiative of a group of African States at the last session of the General Assembly is well timed and needed. Czechoslovakia is therefore prepared to make a contribution to the further positive development of this question within the United Nations.

GERMAN DEMOCRATIC REPUBLIC

/Original: English/

/21 August 1980/

1. The German Democratic Republic supports the initiative of Nigeria and of other African and non-aligned States to take appropriate measures under international law against the use of mercenaries for the purpose of fighting against national liberation movements which are struggling for their independence, and against sovereign States.

2. The use of mercenaries, which violates fundamental principles of international law such as sovereignty, territorial integrity and independence of States and tends to be accompanied by resort to brutal force, is designed to prevent peoples, especially those of Africa and Latin America, from exercising their inalienable right to self-determination and to the establishment of a political system of their choice. To an increasing extent the use, recruitment, training and financing of mercenaries is supported, facilitated and encouraged by certain States directly or indirectly.

1/ Reproduced in document A/32/144.

2/ General Assembly resolution 2734 (XXV).

3/ General Assembly resolution 3314 (XXIX), annex.

4/ General Assembly resolution 2625 (XXV), annex.

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3. The German Democratic Republic holds the view that such practices are a serious danger to peace and international security. Therefore, it is legitimate and necessary that the United Nations deal particularly with this form of international terrorism since it is the objective of the world organization to preserve international peace and security and to develop international co-operation and friendly relations among States on the basis of equality and the right of peoples to self-determination.

4. The German Democratic Republic is convinced that a comprehensive international instrument on the prohibition of the use, recruitment, financing, training and support of mercenaries would essentially contribute toward the progressive development and codification of international law.

5. In a great number of resolutions Members of the United Nations have repeatedly rejected the use, recruitment, training and financing of mercenaries and related gross violations of the basic principles of the United Nations Charter.

6. Therefore, the following points are of basic importance:

(a) The use of mercenaries against sovereign States and national liberation movements fighting for the realization of their right to self-determination is a criminal act.

(b) The use of mercenaries is a threat to international peace and security and a crime against humanity.

(c) The use of mercenaries by States against other States or national liberation movements or any assistance of States in establishing mercenary troops is prohibited.

(d) Mercenaries are outlaws and to be punished as criminals.

(e) Every State is obligated to prosecute the recruitment, financing, training or support of mercenaries on its territory and to prohibit its nationals to serve as mercenaries.

7. In this context, reference should also be made to the principles and norms of the OAU declarations and Convention for the Elimination of Mercenarism in Africa, to the trial of and sentences against foreign mercenaries in Luanda, Angola, and to the 1978 International Conference on Mercenarism.

8. The German Democratic Republic considers that a universal international convention against the use, recruitment, training and financing of mercenaries should be prepared for the purpose of prohibiting States to support and connive at mercenarism on the one hand, and of declaring service of their nationals as mercenaries a criminal offence on the other. The above-mentioned principles as well as a definition of the term "mercenary", as worked out for the first time in Article 47 of the Additional Protocol I to the 1949 Geneva Conventions with the active co-operation of the German Democratic Republic, should be important elements of such an international agreement.

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9. From the very beginning the German Democratic Republic has stipulated in its Constitution and in its Penal Code that the recruitment of GDR nationals for participation in warlike actions designed to oppress a people, and the participation of GDR nationals in such action are punishable by severe penalties.

10. Some excerpts from the Constitution and the Penal Code of the German Democratic Republic are annexed to these comments.

11. Finally, the German Democratic Republic reaffirms its willingness to co-operate with other countries in considering ways and means which may be suitable to prevent effectively the use, recruitment, training and financing of mercenaries on an international scale, and to actively participate in the preparation of a pertinent international convention.

Annex

Excerpt from the Constitution of the German Democratic Republic of 6 April 1968 as modified by the Law amending the Constitution of 7 October 1974

Article 23

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(2) No citizen shall participate in warlike actions which serve the oppression of a people, or the preparation of such actions.

...

Excerpt from the Penal Code of the German Democratic Republic as amended on 19 December 1974

Article 86

Preparation and Carrying out of Aggressive Acts

(1) A person who undertakes to carry out an aggressive act against the territorial integrity or political independence of the German Democratic Republic or any other State, or to participate in such an act or to organise or support schemes for the perpetration of aggressive acts is liable to imprisonment of no less than three years.

(2) In particularly serious cases, imprisonment for life or the death penalty may be imposed.

Article 87

Recruitment for Imperialist Military Service

(1) A person who recruits or helps to recruit, by affording facilities for contact or transport, citizens of the German Democratic Republic for participation in

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warlike actions which serve to suppress another people, or for enrolment in military formations for such purpose, is liable to imprisonment for two to ten years.

(2) A person who commits this crime in a planned way or at the order of organizations, institutions, groups or individuals that are engaged in struggle against the German Democratic Republic or other peace-loving countries, is liable to imprisonment for no less than five years and, in especially serious cases, to life imprisonment.

(3) Preparatory acts and attempts are punishable.

Article 88

Complicity in Acts of Oppression

(1) A citizen of the German Democratic Republic who participates in warlike activities for the oppression of a people is liable to imprisonment of one to eight years.

(2) This penalty may be reduced according to the principles of exceptional mitigation, or criminal prosecution may be waived, if the share of responsibility of the offender has been only of minor nature in the light of all circumstances.

MEXICO

/Original: Spanish/

/29 July 1980/

1. The Government of Mexico considers it highly appropriate for the United Nations to embark on the drafting of rules against the recruitment, use, financing and training of mercenaries, practices which continue to jeopardize the strict application of the prohibition on the use or threat of force in international relations which is embodied in the Charter of the United Nations.

2. As early as 1968 the United Nations, through the General Assembly, condemned the use of mercenaries against movements for national liberation and independence, expressly suggesting, in resolution 2465 (XXIII), that States should adopt legislation declaring the recruitment, financing and training of mercenaries in their territory to be an offence and prohibiting their nationals from serving as mercenaries. Since then many other resolutions of both the General Assembly and the Security Council (resolution 405 (1977)) have again drawn attention to the need to solve this problem. It is therefore our belief that the time has come to consider all aspects of the matter, beginning with the hardest, defining what is to be understood by "mercenaries".

3. In the work done outside the United Nations, culminating in the adoption of two Protocols in 1977, to bring up to date and strengthen the law applicable in

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armed conflicts, an attempt - not altogether successful - was made to define what was to be understood by "mercenary" by including in the first Protocol (international armed conflicts) a clause stating that mercenaries would not have the right to be combatants or prisoners of war and laying down as requirements for a person to be deemed to be a mercenary that he (a) must have been specially recruited locally or abroad in order to fight in an armed conflict; (b) does, in fact, take a direct part in the hostilities; (c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that party; (d) is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict; (e) is not a member of the armed forces of a party to the conflict; and (f) has not been sent by a State which was not a party to the conflict on official duty as a member of its armed forces.

4. While the Government of Mexico feels that this provision suffers from serious shortcomings, it believes that it might well serve as a basis for future work and, in view of the fact that the problem of "mercenaries" remains topical, as the cases of Zaire, Angola, Rhodesia and Namibia show, it believes that the drafting of an international convention on the subject should begin as soon as possible in an intergovernmental working group with equitable geographical representation, after a general discussion on the subject in the Legal or another Main committee of the General Assembly.

NIGERIA

/Original: English/

/31 July 1980/

1. The ever increasing menace of the activities of mercenaries in Africa and other developing countries within the last two decades has not gone unnoticed by the international community. The Organization of African Unity, the Security Council and the General Assembly of the United Nations in resolutions and decisions have expressed growing concern and condemnation of the atrocities committed by these soldiers of fortune. In spite of the impressive records of the condemnatory resolutions passed by both the OAU and the United Nations, the massive recruitment of white mercenaries for cruel and inhuman adventures in independent African countries has not shown any sign of abating.

2. Numerous advertisements for the recruiting of mercenaries to fight for pay in Africa, Latin America and other developing countries have become regular features in some of the dailies and magazines published in several Western European, American and South African cities. Efforts by responsible local authorities and concerned individuals to prevent these advertisements and recruitment exercises have not always gained the support of national governments which routinely profess their condemnation of mercenaries in international relations.

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3. It is pertinent to recall that the municipal laws of some countries contain promulgations on the law of hostile military expeditions and outlaw the recruitment of mercenaries for services abroad in other countries. These legislations, however, do not seem to cover all contingencies of recruitment, financing and illegal enlistment of their nationals for activities in those countries considered to be at peace with the respective countries from where these mercenaries take off. Regrettably, these municipal laws have often been flouted with the tacit acquiescence and at times connivance of the competent authorities of the countries concerned.

4. Faced with this despicable practice of recruiting, financing and equipping mercenaries to fight against national liberation movements, to re-impose colonial powers or to strengthen the position of foreign economic and other interests in African States, the Organization of African Unity has adopted an "OAU Convention for the Elimination of Mercenaries in Africa". ^{5/} Since this instrument is of regional application and in view of the diabolical threat which activities of mercenaries pose to the independence and peace of numerous countries of the Third World, the Government of the Federal Republic of Nigeria along with a number of African and other developing countries initiated resolution 34/140 with a view to calling on the international community to draft as a matter of urgency an international convention against the activities of mercenaries.

5. It may also be recalled that the request for such an international convention against the activities of mercenaries was in fact made by no less an august body as the International Commission of Enquiry on Mercenaries established by the Government of Angola to investigate the crimes of mercenarism committed against its people and territory. In the Luanda Declaration of 10 June 1976, the Commission noted inter alia that "the members of the International Commission of Enquiry on Mercenaries, called together at the initiative of the Government of the People's Republic of Angola, coming from all the continents and representing forty-two countries, at a plenary session held in Luanda on 10 June 1976, have decided to draw the attention of international public opinion to the seriousness of the menace which the armed intervention of mercenaries presents to peace in Africa and the whole world. It is urgent to act now to prevent the recruitment and travel of mercenaries to Namibia and Zimbabwe. The imperialist powers are wholly responsible for the destruction and the crimes done in the past and which can be repeated in the future on African soil. Public opinion can and must put an end to military intervention by intermediaries. The drafting of an international convention prohibiting recruitment, travel and arming of mercenaries, and all kinds of support whatsoever for their activities, should be strongly demanded of all countries." ^{6/}

6. The Nigerian Government strongly believes that in order to consolidate the gains of the hard-worn struggles against colonialism, racism and apartheid in Africa and to ensure rapid economic development and effective control over their natural resources, the United Nations must leave no loopholes for these "dogs of war" to

^{5/} OAU document CM/817 (XXIX), annex II, Rev.3.

^{6/} Comissão Internacional de Inquérito sobre os Mercenários, Documentos. Edição do Ministério da Justiça da R.P.A. Luanda, 1977.

operate in Africa. Since the bulk of these mercenaries come from outside Africa, the Nigerian Government is convinced beyond all doubts that only an international co-operation carefully worked out can rid Africa and the rest of the Third World of the menace of mercenarism. It will be a sad memorial therefore if the international community that has waged such a relentless war against other forms of international terrorism which culminated in the 1970 Hague "Convention for the Suppression of Unlawful Seizure of Aircraft", 7/ the 1973 New York "Convention on the Prevention and Punishment of crimes against internationally protected persons including diplomatic agents" 8/ and more recently the 1979 "International Convention against the Taking of Hostages", 9/ is unable to provide an international legal régime to complement its efforts in combating international terrorism of which mercenarism is an untoward manifestation.

7. The Nigerian Government believes that the grave concern often expressed in numerous resolutions of both the Security Council and the General Assembly branding the activities of mercenaries as criminal and as constituting threats to international peace and security will soon be translated into an international convention against the activities of mercenaries. Consequently it hereby submits a draft on the proposed convention to be published as an annex to these views and comments, which it hopes, will facilitate the work of an ad hoc committee to be set up by the General Assembly at its thirty-fifth session to deal with the elaboration and drafting of an international convention to prohibit the recruitment, use, financing and training of mercenaries.

7/ See United Nations Juridical Yearbook, 1970, p. 131.

8/ General Assembly resolution 3166 (XXVIII) of 14 December 1973, annex.

9/ General Assembly resolution 34/146 of 17 December 1979, annex.

Annex

International Convention against
the Activities of Mercenaries

The States Parties to this Convention,

Reaffirming the purposes and principles of the Charter of the United Nations concerning effective collective measures for the prevention and removal of all threats to international peace and security,

Bearing in mind the need for the strict observance of the principles of equality, sovereign independence, territorial integrity and self-determination of all peoples as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

Recognizing in particular that the General Assembly and the Security Council in several resolutions have condemned the activities of mercenaries aimed at overthrowing the Governments of Member States or jeopardizing the legitimate interests of national liberation movements,

Considering the urgent need by the international community to co-operate and to exercise utmost vigilance against the danger posed by the activities of mercenaries by all States in the interest of international peace and security,

Convinced that an international convention against the activities of mercenaries faithfully implemented will provide an effective collective measure against the menace of mercenarism,

Have agreed as follows:

Article 1

Definition

A mercenary is any person who:

(a) is specially recruited locally or abroad in order to fight in an armed conflict;

(b) does, in fact, take a direct part in the hostilities;

(c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;

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(d) is neither a national of a Party to the conflict nor a resident of the territory controlled by a Party to the conflict;

(e) is not a member of the regular armed forces of a Party to the conflict;
and

(f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.

Article 2

Definition of mercenarism

1. The crime of mercenarism is committed when an individual, group or association, or body corporate registered in that State or representative of a State or the State itself with the aim of opposing by threat or armed violence the territorial integrity of another State or the legitimate aspirations of national liberation movements jeopardizes the process of self determination or manifests by overt acts any of the following:

(a) organizes, finances, supplies, equips, trains, promotes, supports, or employs in any way individuals, bands or military forces consisting of or including persons who are not nationals of a Party to the conflict and who act for personal gains through payment of salary or any other kind of material recompense;

(b) participates as an individual, group or association or body corporate or enlists in any force;

(c) advertises, prints or causes to be advertised any information regarding paragraphs (a) and (b) of this article;

(d) allows or tolerates the activities mentioned in paragraphs (a), (b) and (c) of this article to be carried out in any territory or place under its jurisdiction or control or affords facilities for transit, transport, or other operation of the above mentioned forces;

(e) actually participates in any of the acts mentioned in paragraphs (a), (b), (c) and (d) of this article which result in the destruction of life and property.

2. Any person, group or association, representative of a State or the State who:

(a) attempts to commit any act of mercenarism (hereinafter referred to as 'the offence') mentioned in article 2;

(b) participates as an accomplice of any one who commits or attempts to commit the offence also commits the offence for the purpose of this Convention.

3. The offence if committed shall be deemed an offence against the peace and security of a State.

Article 3

Penalties

Each State Party shall by appropriate national legislation make the offences set forth in article 2 punishable by appropriate penalties which take into consideration the grave nature of the offence.

Article 4

Implementation

Each State Party shall take all appropriate administrative and legislative measures to implement fully the provisions of this Convention.

Article 5

Status of mercenaries

Mercenaries are not lawful combatants and if captured shall not be accorded prisoner of war status.

Article 6

Establishment of jurisdiction

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offence in the following cases:

- (a) when the offence is committed in its territory;
- (b) when the offence is committed by any of its nationals, or body corporate registered in that State;
- (c) when the offence is committed by the representative of a State;
- (d) when the offence is committed against that State.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offence in the case where the alleged offender is present in its territory and it does not extradite him pursuant to article 13 to any of the States mentioned in paragraph 1 of this article.

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3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 7

Concurrent jurisdiction

When a State Party is accused by virtue of the provisions of article 2 and article 8 for acts or omissions declared to be the offence under the present Convention, any State Party having jurisdiction may invoke the provisions of this Convention against the offending State before any competent international organization or tribunal.

Article 8

Preventive measures

Each State Party shall take all necessary measures to prevent the departure from its territory of any individual, group or association or body corporate, representative of a State reasonably believed to be involved in any of the activities mentioned in article 2 of this Convention, including denial of transit and other facilities to them.

Article 9

Mutual assistance

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offence stated in article 2 of this Convention. The law of the requested State shall apply.

2. Each State Party shall be obliged to communicate directly or through the Secretary-General of the United Nations to the other State Party concerned any information related to the activities of mercenaries as soon as it comes to its knowledge.

Article 10

Taking of custody

Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the alleged offender is present shall in accordance with its laws take him into proper custody or take such other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted. The State Party shall immediately make a preliminary inquiry into the facts.

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Article 11

Judicial guarantee

Any individual or group or association, or body corporate, representative of a State or the State itself, on trial for the offence defined in article 2 of this Convention shall be entitled to all the judicial guarantees ordinarily granted to an alleged offender in the same circumstances.

Article 12

Communication of final proceedings

The State Party where the alleged offender is prosecuted shall in accordance with its laws communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States concerned and the international intergovernmental organisations concerned.

Article 13

Extraditable offences

1. For the purposes of this Convention, any of the offences mentioned in article 2 shall be deemed to be included as extraditable offences in any existing or future extradition convention or treaty between the State Parties. This convention may also be the legal basis for extradition in respect of offences listed in article 2.

2. Each State Party having jurisdiction mentioned in article 6 of this Convention may request for extradition from the other State Party where the alleged offender is found.

Article 14

Extradition

1. For the purpose of extradition between State Parties, an offence of mercenarism shall not be regarded as a political offence or as an offence inspired by political motives.

2. Where however the State Party in whose territory the alleged offender is found fails to extradite him, that State Party shall be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution in accordance with the laws of that State.

Article 15

Action for damages/reparation

1. Where a State Party which suffers damage or whose national or juridical person suffers any damage or loss of life as a result of mercenarism is unable to prosecute or cause prosecution of the alleged offender because of the refusal or otherwise of the other State Party in whose territory the alleged offender is found or its national, it may nonetheless present a claim for damages or reparation as the case may be against that other State Party.
2. The State Party which has suffered damages by reason of the commission of the offence mentioned in article 2 of this Convention may also claim damages or reparation against any State Parties jointly or severally for any act or omission which constitutes the offence.
3. However a claim for damages or reparation may only be considered when attempts to secure criminal prosecution have failed.

Article 16

Settlement of disputes

1. Any dispute between two or more State Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall at the request of any one of them be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of the parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State Party may at the time of signature, or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other State Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.
3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 17

Signature and ratification

1. This Convention is open for signature by all States until -----
at the United Nations Headquarters in New York.

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2. This Convention is subject to ratification. The instrument of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Convention is open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 18

Entry into force

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twentieth instrument of ratification or accession with the Secretary-General of the United Nations.

2. Each State Party ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 19

Denunciation

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 20

Authentic Text

The original of this Convention of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Convention opened for signature at the United Nations Headquarters, in New York on -----.

UKRAINIAN SOVIET SOCIALIST REPUBLIC

/Original: Russian/
/14 August 1980/

1. The Ukrainian SSR favours the immediate drafting of an international convention against the use of mercenaries. Mercenaries are an instrument of the policy of international imperialism and neo-colonialism, and they constitute a serious threat to the peace and security of peoples. The drafting of a convention is particularly timely in view of the increasing frequency with which mercenaries are used for flagrant violations of the right of peoples to self-determination.
2. The representatives of the Ukrainian SSR at the United Nations, in other international organizations and at international conferences have repeatedly spoken out against the criminal activities of mercenaries and have joined in sponsoring relevant resolutions condemning the use of mercenaries in all its manifestations. These resolutions as well as other well-known international legal instruments relating to the activities of mercenaries should be taken into account in the drafting of the above-mentioned convention.
3. Work on drafting the convention should take as its starting point the fact that the use of mercenaries must be defined as a grave international crime and their large-scale use by States as an act of aggression. Mercenaries themselves must be regarded as criminals and brought to justice.
4. It is very important, in the view of the Ukrainian SSR, for the convention to establish the liability of States which do not prevent their nationals from being hired as mercenaries, which permit mercenaries to be recruited, trained or transported within their territory or which in any other way promote their criminal activities.
5. The Ukrainian SSR bases its support for the drafting of a convention on the fact that over a relatively short historical period - the 20 years that have elapsed since the adoption by the United Nations General Assembly of the historic Declaration on the Granting of Independence to Colonial Countries and Peoples - tremendous advances have been made towards eradicating the system of colonial and racial oppression.
6. The newly independent States are emerging, however, amidst a fierce contest between the forces of national liberation and progress and those of imperialism and reaction. In an effort to check this irreversible process and salvage the last outposts of colonialism and racism at any price, perpetuating their dominion in strategically, economically and politically important areas, the imperialist Powers, with the support of the Maoist hegemonists, often resort to undercover and underhand methods of fighting the peoples. One such method is the use of mercenaries, a practice which is incompatible with any standards of international law or human morality.
7. Despite protests, the profound indignation of international public opinion and the resolutions adopted by the United Nations and the Organization of African Unity,

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the imperialists continue to expand and "perfect" this shameful institution. The use of mercenaries has become an instrument of policy for a number of Western Powers in various parts of the globe which they declare to be areas of "vital interest" to them. There is no question that the use of mercenaries is yet another manifestation of the aggressive nature of international imperialism.

8. The Ukrainian SSR, true to the principles of Leninist foreign policy, consistently supports the just struggle of peoples for national liberation and social progress and opposes the preservation of the system of colonial oppression, racism and apartheid.

UNION OF SOVIET SOCIALIST REPUBLICS

/Original: Russian/

/18 August 1980/

1. The Soviet Union, true to the principles of Leninist foreign policy, consistently supports the just struggle of peoples for national liberation and social progress and strongly condemns all attempts by the forces of imperialism and reaction to preserve the system of colonial oppression, racism and apartheid by any means available and impose neo-colonialist institutions on the peoples of liberated countries by force. "Respect for the hallowed right of every people and every country to choose its own road of development is an immutable principle of Leninist foreign policy", stresses the report of L. I. Brezhnev, General Secretary of the Central Committee of the Communist Party of the Soviet Union to the twenty-fifth Congress of the CPSU.

2. In recent years, the national liberation movement and the struggle of peoples for freedom and radical social change have achieved enormous successes. The last bastions of colonialism, racism and apartheid are toppling. The emergence of liberated States continues unabated.

3. However, the positive advances made in international relations are encountering stubborn opposition from the forces of reaction. International imperialism, with the support of the Maoist hegemonists, is doing its utmost to halt the advance of the national liberation movement and nullify the progressive social conquests of the peoples. Efforts to preserve the last outposts of colonialism and racism and to activate a neo-colonialist and subversive policy in various regions of the world are fully in keeping with the interest of the imperialist Powers in perpetuating their domination in strategically, economically and politically important areas.

4. The imperialists will stop at nothing to attain their ends. They support and arm the racists of South Africa, who are drowning in blood the liberation struggle of the peoples of Namibia and the indigenous African population of South Africa; they connive at aggressive acts against independent countries, stir up armed conflicts among newly established States, and use puppets and reactionary elements to overthrow the legal governments of independent States and install régimes obedient to them.

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5. One weapon frequently used in the imperialist and neo-colonialist policy of diktat and interference in the internal affairs of newly liberated States is the use of mercenaries.

6. Mercenaries are a natural product of the development of bourgeois society. Today they are the shock troops of international imperialism. Their use is always connected with aggression, the seizure of foreign territory or the flagrant violation of peoples' right to self-determination. Mercenaries took part in the colonialist and subversive campaigns in the Congo, Zimbabwe, Zaire, Guinea, Benin and the Comoros and are being used as an instrument of foreign aggression against Angola, Mozambique, Afghanistan and the Arab States. Particularly extensive use is being made of them against the peoples and independent countries of Africa.

7. The renewed use of mercenaries is a result of the aggressive plans of international imperialism. The shift in the balance of forces in the world in favour of socialism and democracy has sharply curbed the opportunities for direct armed intervention by imperialism against young States and national liberation movements. Imperialist circles, colonialists and reactionaries of every stripe see a way out in such undercover and underhand methods as the use of mercenaries.

8. From the standpoint of contemporary international law, the use of mercenaries is unquestionably illegal. Repeatedly, in the United Nations and other forums, the world community has raised its voice against the use of mercenaries. In General Assembly resolution 3103 (XXVIII) of 12 December 1973, the use of mercenaries by colonial and racist régimes against the national liberation movements struggling for their freedom and independence from the yoke of colonialism and alien domination was deemed to be a criminal act, and it was stated that the mercenaries themselves should be punished as criminals. Under article 47 of the Protocol Additional (Protocol I), adopted on 8 June 1977, to the 1949 Geneva Conventions for the protection of war victims, mercenaries were stripped of the right to combatant or prisoner-of-war status. The use of mercenaries to attack sovereign States is regarded as an act of aggression in accordance with the Definition of Aggression approved by the United Nations General Assembly in 1974.

9. The drafting of an international agreement against the use of mercenaries, which is an instrument of imperialist and neo-colonialist policy posing a serious threat to the peace and security of peoples, is both timely and essential. The use of mercenaries must be defined as a grave international crime and their large-scale use by any State as an act of aggression by that State. Mercenaries themselves must be regarded as criminals and brought to justice.

10. The agreement must also establish the liability of States which do not prevent their nationals from being hired as mercenaries or which permit mercenaries to be recruited, trained or transported within their territory.

VENEZUELA

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The Venezuelan Government appreciates the desirability of drafting an international convention against the financing, recruitment, training and use of mercenaries, and we therefore wish to make the following observations:

1. The term 'mercenary' refers to a soldier who renders military service to a nation or a cause not his own in exchange for payment or the promise of some other kind of reward. The distinguishing feature of mercenaries is precisely their lack of spiritual motivation and the exclusively personal considerations which prompt them to act. What distinguishes them is not the fact that they are paid, since all career officers in modern States receive payment for the service they render in their national armed forces. Similarly, a volunteer fighting loyally for a cause he believes in and defends cannot be considered a mercenary even if he receives payment.
2. A mercenary is the embodiment of a figure that has been worn away over the course of history and has always been viewed with disdain because his services are not always used in just causes and because he is frequently pitted against nationalist groups which are motivated by the mystique of patriotism and morality.
3. In the modern age, the major colonial companies (private firms) waged veritable wars of invasion in some continents by using private mercenary armies. Needless to say, these were armies that did not represent any people but were motivated solely by gain. Similarly, some European States employed foreign troops, for pay, to wage their colonial wars. For example, the German troops which England hired in 1795 to carry on its war in America were mercenaries. The Duke of Brunswick worked out an arrangement with London whereby he provided contingents of soldiers in exchange for subsidies. Every man under arms, every casualty and each one of the dead had his price, clearly set out in the agreement.
4. Today, the use of mercenaries constitutes a serious threat to the developing countries. It is the African States that have been most affected in recent years by the activities of mercenaries sent to undermine order, overthrow Governments and oppose movements fighting against colonial domination. The role played by mercenaries in Africa has had an adverse effect on the independence and territorial integrity of African States and has served to aggravate situations on that continent which imperil international peace and security.
5. We therefore think it appropriate to draft an international convention against the financing, recruitment, training and use of mercenaries. Draft articles for the convention could be prepared by the International Law Commission and then referred to the Sixth Committee for consideration and ultimate approval.