

UN 17345



JAN 27 1981

UNITED NATIONS
GENERAL
ASSEMBLY



UN/JA COLLECTION

Distr.
LIMITED

A/AC.207/L.3
23 January 1981

ORIGINAL: ENGLISH

AD HOC COMMITTEE ON THE DRAFTING OF AN
INTERNATIONAL CONVENTION AGAINST THE
RECRUITMENT, USE, FINANCING AND
TRAINING OF MERCENARIES
(20 January-13 February 1981)

DRAFT INTERNATIONAL CONVENTION AGAINST THE
ACTIVITIES OF MERCENARIES

Working paper submitted by Nigeria

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;
- (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 State mentioned in paragraph 1 of this article.
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 connexion 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.

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 organizations 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 damage/réparation

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 none the less 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.

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 authorized thereto by the respective Governments, have signed this Convention opened for signature at the United Nations Headquarters, in New York on
