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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

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ARGENTINA

[Original: Spanish]

[18 August 1982]

The Argentine Government considers that the reply given by the Argentine Republic on the item "Drafting of an international convention against the recruitment, use, financing and training of mercenaries" (A/35/366) is applicable in the present circumstances. It reads as follows:

"1. The Argentine Republic joined in the consensus on the adoption of General Assembly resolution 34/140 and also supported the relevant resolutions adopted previously in various international forums, in accordance with the principles governing the domestic legislation of the Argentine Republic.

"2. The Argentine Government therefore considers that an international convention on the subject would help to eliminate a factor that unsettles relations between States and international peace and security.

"3. The Argentine Government further considers that the next session of the General Assembly would be the appropriate time to adopt a resolution deciding that an international convention should be drafted. For that purpose, it would seem desirable to establish an Ad Hoc Committee to draw up the multilateral treaty, which would provide a basis for subsequent consideration by the General Assembly.

"4. Lastly, pending the entry into force of the Convention, the Argentine Government considers that all States should be guided by the provisions of General Assembly resolution 34/140, paragraph 2."

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

[Original: Russian]

[16 July 1982]

1. On 30 December 1982, the Soviet people will mark an important date - the sixtieth anniversary of the founding of the Union of Soviet Socialist Republics. The history-making course pursued by the Soviet Union clearly testifies to the unflinching strength of the socialist course for the realization of the right of peoples to self-determination. The founding of the USSR was a consequence of the victory of the Great October Socialist Revolution. That Revolution shattered the bonds of social and national oppression and raised all the peoples of our country to new levels of historic creativity.

2. Vladimir Ilyich Lenin deeply felt the need for a very close union of Soviet Republics to perform the tasks of socialist construction. He thought that complete mutual confidence, voluntary agreement and the elimination of any form of inequality in relations among nations would guarantee the durability of this union.

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3. History knows of no State that, in the space of a very short time, has done as much for the over-all development of nations and nationalities as the USSR - the socialist motherland of all our peoples.
4. The peoples and countries of the Soviets have found, from their own experience, that joining together in one union increases their strength and accelerates social and economic development. In a common system with the workers of all nations, the countries and peoples of the former national areas of Tsarist Russia which had previously been doomed to perpetual backwardness, have reached the peaks of social progress.
5. The entry of the Byelorussian SSR into the Union of Soviet Socialist Republics guaranteed a strong basis for the successful implementation of far-reaching social and economic transformations. Thus in the time since it came into existence, Soviet Byelorussia has entered a whole new era. In the friendly family of Soviet peoples, the Republic has developed tremendously in the political, economic and social spheres. It has acquired highly developed industries, adopted intensive farming and become a leader in the field of science and culture.
6. The formation and successful development of the USSR is of lasting international significance and represents an important historical landmark in the age-old struggle of progressive mankind for equal rights and for friendship among peoples and for the revolutionary renewal of the world.
7. Our country resolutely advocates the elimination of the vestiges of colonialism and is opposed to neo-colonialism and racism, to dictation of economic and political policy and to inequality of rights. Indeed, the Soviet Union initiated the adoption of the historic Declaration on the Granting of Independence to Colonial Countries and Peoples. In the years following the adoption of the Declaration, all the colonial empires were shattered.
8. However, the question of the final elimination of colonialism still remains on the agenda of the United Nations and is the urgent task of all progressive and peace-loving forces. The complete and final elimination of the vestiges of the system of colonial oppression, of all hotbeds of racism and apartheid and instances of infringement of the peoples' equality and independence is one of the main goals of our country's foreign policy.
9. The speediest possible achievement of the complete and final elimination of colonialism in all its forms and manifestations is a necessary prerequisite for the universal realization of the right of peoples to self-determination.
10. The newly independent countries, which only recently were subjected to merciless exploitation, having attained political independence, are now seeking to rid themselves of the legacy of colonialism.
11. It is well known that, for the peoples who have broken the chains of colonial bondage, freedom was not a gift from someone; it was won as a result of their courageous struggle.

12. "The heroic efforts and sacrifices made by the Africans in their struggle to eliminate colonial rule and to exercise their right to determine their own destiny have not been in vain", observed Comrade L. I. Brezhnev, General Secretary of the Central Committee of the Communist Party of the Soviet Union and President of the Presidium of the Supreme Soviet of the USSR, congratulating the States and peoples of Africa on the occasion of Africa Day, 25 May 1982.
13. It is also well known that the triumph of the just cause of oppressed peoples was facilitated considerably by the unswerving solidarity and support of the States of the socialist community.
14. As a strong and consistent supporter of the strict implementation of all resolutions and decisions of the Security Council, the General Assembly and other United Nations bodies aimed at the final elimination of racism, apartheid and the vestiges of colonialism in Africa, the Byelorussian Soviet Socialist Republic resolutely condemns and demands an end to political, diplomatic, economic, commercial, military, nuclear, strategic, cultural, sporting and other ties maintained by Western countries with the racist régime in South Africa, since such ties encourage that régime stubbornly to crush the peoples' yearning for self-determination and independence.
15. The regular Weeks of Solidarity with the peoples of southern Africa have become a manifestation of the Soviet people's immutable support for the national liberation movement of the peoples of Africa and their fight against the forces of imperialism and racism. From 25 May to 1 June, in many towns of the Republic, gatherings and meetings of community representatives were held and, during these, the participants expressed feelings of fervent sympathy with the struggling people of Namibia, thus highlighting the fact that our country, as was reasserted at the Twenty-sixth Congress of the Communist Party of the Soviet Union, has been and continues to be a sincere and consistent friend of the States and peoples of Africa, and unswervingly supports the struggle of the peoples of Africa for their national liberation, against the intrigues of imperialism and racism.
16. At a meeting of community representatives from the Byelorussian capital, the heroic city of Minsk, held on 24 May 1982 in honour of Africa Liberation Day, an address was given by the Deputy Chairman of the Presidium of the Supreme Soviet of the Byelorussian SSR, G. Z. Lopatik, leader of the fitters' brigade at the V. I. Lenin Production Combine in Minsk. She pointed out that Soviet people resolutely back the prompt realization of the legitimate rights of the peoples of southern Africa to self-determination and independence, and the complete eradication of the vestiges of the system of colonialism, racism and apartheid.
17. "Joint efforts by the African countries with the countries of the socialist community in the struggle for peace, disarmament and the prevention of aggression are of unsurpassed importance," she said, "to the strengthening of their independence."
18. A student from the Minsk Medical Institute who addressed the meeting, Kebede Gobena of Ethiopia, expressed his gratitude to the workers of the Soviet Union for their solidarity and support for the peoples of Africa in their just liberation struggle, and for their assistance in training highly skilled cadres and in developing the economies of newly independent African States.

19. The Byelorussian SSR recognizes the legitimacy of the peoples' struggle for independence, territorial integrity, national unity and liberation from colonial and foreign domination by all available means, including armed struggle.
20. The Byelorussian SSR favours collective efforts to find a comprehensive settlement to the situation in the Middle East on a just and realistic basis.
21. Such a settlement must provide for the complete withdrawal of Israeli troops from all Arab territories occupied in 1967, the realization of the legitimate rights of the Arab people of Palestine, including its right to self-determination and the creation of its own independent state, and must guarantee the right of all the States in the region to an independent and secure existence and development.
22. We demand the immediate and unconditional release of all persons detained or imprisoned for their part in the struggle against apartheid, racism and racial discrimination, colonialism, aggression and foreign occupation, and in favour of self-determination, independence and social progress for their peoples.
23. In the search for the swift and complete implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, it must always be remembered that numerous "small territories" and enclaves in the Pacific, Indian and Atlantic Oceans and the Caribbean region are still under the heel of colonialism.
24. The United Kingdom alone continues to hold sway over a dozen or so such colonial Territories, trampling on the right of the inhabitants of the Territories to self-determination and independence. The network of military bases located in those Territories poses a direct threat to the peoples fighting for their right to independent development.
25. The Byelorussian SSR resolutely condemns the use of armed force by certain Western countries in an attempt to hold on to the remnants of their colonial possessions.
26. The Byelorussian SSR fully supports the just demand of the State of Mauritius for the return to its sovereignty of the Chagos archipelago belonging to it, including the island of Diego Garcia.
27. One manifestation of the policy aimed at perpetuating colonial rule is the situation in Micronesia which has arisen through the fault of the United States. Acting in violation of the United Nations Charter, disregarding the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples and other relevant General Assembly decisions, and side-stepping the Security Council, the United States continues to take unilateral action aimed at the dismemberment and annexation of the Territory. Such expansionist activities on the part of the United States, which is occupying the Territory of Micronesia for military and strategic purposes, are clearly incompatible with the right of peoples to self-determination.

28. The Byelorussian SSR resolutely condemns the use of mercenaries against national liberation movements and sovereign States, considering it to be a criminally punishable action and the mercenaries themselves to be criminals. We advocate the drafting, as soon as possible, of an international convention to combat mercenarism. The social and political nature of the Soviet State (a socialist State of all the people united in the brotherhood of the workers of the various nations and nationalities) completely rules out the possibility of mercenary involvement by Soviet citizens in armed action against any sovereign State or national liberation movement.
29. The Byelorussian SSR gives many different forms of assistance and support to peoples fighting for their national liberation. In the Republic's higher education establishments and technical schools, there are students from Asian and African countries, as well as representatives of the Palestinian resistance movement and other patriotic organizations.
30. In the Byelorussian SSR, there is widespread public activity denouncing racism and apartheid and supporting peoples fighting against colonialism and national oppression.
31. Every year the Republic celebrates International Day for the Elimination of Racial Discrimination on 21 March and, on 1 January, the Day of Solidarity with the Struggle of the Arab People of Palestine for their Rights. From 25 May to 1 June, there is the Week of Solidarity with the Struggle of the Peoples of Southern Africa; 25 May is Africa Liberation Day; 16 June is the Day of Solidarity with the Struggling People of South Africa; 26 August marks the Day of Solidarity with the Struggle of the People of Namibia, and so forth.
32. The Byelorussian SSR will continue to maintain its position of principle in support of the just struggle of peoples for independence and liberation from the fetters of colonialism and against apartheid, racism and other forms of mass and flagrant violations of human rights.

GERMAN DEMOCRATIC REPUBLIC

[Original: English]

[2 July 1982]

1. The right of peoples to self-determination is a fundamental principle of the German Democratic Republic's policy. The people of the German Democratic Republic are shaping the advanced system of socialist society in accordance with their free and democratic decision. It is a foreign policy principle of this country that respect for the right to self-determination is essential for the development of friendly relations among States and peoples.
2. Being a party to the International Covenant on Economic, Social and Cultural Rights (General Assembly resolution 2200 A (XXI), annex) and to the International Covenant on Civil and Political Rights and Optional Protocol (ibid.), the German

Democratic Republic recognizes the peoples' right of self-determination as a fundamental human right. It believes that any denial of that right constitutes a gross violation of valid international law and a threat to international peace and security. The struggle to ensure that independence be granted without delay to still remaining colonial territories and peoples is a task of the utmost urgency.

3. The maintenance of colonial dependence very often goes together with reckless plundering of the natural wealth of the territory concerned and with ruthless colonial and racist discrimination and oppression. A striking example is the situation in Namibia, which is illegally occupied by South Africa.

4. The position and the demands of the German Democratic Republic concerning the solution of the problem of Namibia on the basis of Security Council resolution 435 are well known and were set out in detail in earlier statements. Yet it may be appropriate to reiterate here that the German Democratic Republic stands up for the legitimacy of waging the struggle against colonial oppression and exploitation by all available means, including for the legitimacy of armed struggle.

5. In South Africa itself, the policy of apartheid pursued by the white minority is tantamount to depriving the overwhelming majority of the population on a large scale of their political, economic, social and cultural rights.

6. Bonds of close and fruitful co-operation have linked the German Democratic Republic with the South West Africa People's Organization (SWAPO) and the African National Congress of South Africa (ANC) for many years. Apart from aiding them in token of its solidarity in their selfless struggle against colonial fascism and racism, the German Democratic Republic has afforded them extensive political and diplomatic assistance at the international level. Both SWAPO and ANC maintain official representations in the German Democratic Republic. Wounded Namibian fighters receive treatment in hospitals of the German Democratic Republic. At the request of Sam Nujoma, President of SWAPO, a book on Namibia, written in the German Democratic Republic, was also translated into English and made available to the Namibian liberation organization. The Seminar on Publicity and Role of Mass Media in International Mobilization against Apartheid held at Berlin in September 1981 drew a great international response. More extensive use should be made of the Berlin Declaration adopted at the Seminar for Mobilizing World Public Opinion for the Struggle against South Africa's Policies of Apartheid. When SWAPO President Sam Nujoma recently visited the German Democratic Republic, the Chairman of the Council of State of the German Democratic Republic gave the assurance that "the German Democratic Republic will also in future extend solidarity and support to the Namibian people in the struggle it is waging under the leadership of SWAPO, its sole and authentic representative."

7. The observance of the seventieth anniversary of the foundation of ANC, the leading political force of the South African national liberation movement, was marked by a broad solidarity campaign supported by the entire population of the German Democratic Republic. Material assistance is provided above all to fighters forced into exile in Angola, Zambia and Tanzania through the terrorism of the apartheid clique, as well as to their families.

8. Equally extensive assistance goes to the Palestine Liberation Organization (PLO) in its just struggle. The German Democratic Republic supports the legitimate demands of the Palestinian people for the exercise of its right to self-determination and for the establishment of a State of its own. When the PLO Chairman recently came to Berlin, the level of the PLO representation in the German Democratic Republic was raised to that of an embassy.
9. The Central Committee of the Socialist Unity Party of Germany, the Council of State and the Council of Ministers of the German Democratic Republic, echoing the sentiments of the entire population, most sharply condemned Israel's recent outrageous aggression against Lebanon. There is no doubt that this barbaric invasion - an outgrowth of the strategic alliance with the ruling circles of the United States - constitutes a large-scale attempt of the Israeli rulers to crush the national progressive movement in Lebanon as well as the PLO. The measures taken by the Lebanese and the Palestinian side to ward off the aggression have the full solidarity of the German Democratic Republic. What is at stake here is both the defence of the legitimate rights of those directly affected and the inalienable principles of the Charter of the United Nations, peace and security for all peoples.
10. The full implementation of the right to self-determination implies more than merely the achievement of political independence. It also stands for restoring sovereignty over the natural resources and for securing an independent economic, social and cultural development in the interest of the entire people. Therefore, the German Democratic Republic assists above all newly free national States in Africa, Asia and Latin America. Relations with these States rest on the full equality of all sides and are shaped pursuant to the principles of mutual benefit and anti-imperialist solidarity. They are designed to ensure the universal realization of the right of peoples to self-determination in accordance with the Charter of the United Nations. With the People's Republic of Angola alone, the German Democratic Republic has concluded over 40 bilateral agreements. Friendship brigades of the German Democratic Republic's youth organization are active in several young national States of Africa, Asia and Latin America; experts assist in the execution of large industrial projects.
11. However, some imperialist countries still seek to maintain the colonial status in the remaining dependent territories or to create relationships of neo-colonial dependence. This constitutes a denial of the right to self-determination and disregard for the dignity and integrity of peoples. Especially dangerous are attempts designed to reverse progressive developments in some countries by military means. In this context we resolutely condemn South Africa's continued acts of military aggression against Angola and other sovereign neighbouring States, which Pretoria has been encouraged to undertake by the policy of collaboration practised by imperialist States. One such action is the brazen invasion of the Republic of Seychelles launched by mercenaries from South Africa. The German Democratic Republic's position on the use of mercenaries as an instrument of terrorism employed by imperialism to preserve or restore relationships of dependence is well known. The German Democratic Republic's stand on the legal instruments designed to combat and punish mercenaries was made known in its 1981 report on the support of colonially and racially oppressed peoples. When the Security Council met in connection with the invasion of the Seychelles by mercenaries, the Permanent

Representative of the German Democratic Republic to the United Nations condemned the attack in the strongest terms. He stated, inter alia, that the report submitted by the Security Council Commission of Inquiry had confirmed that this act of international terrorism, prepared long in advance, was directed at the sovereignty of a Member State. Violence, murder and destruction were part of the plan. The evaluation of these facts and the identification of those responsible were all the more imperative since the aggression against the Republic of Seychelles was only one link in the chain of the flagrant violations of international law by the apartheid régime.

12. The German Democratic Republic emphasizes once more the urgency of the early conclusion of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries. As a member of the Ad Hoc Committee set up to draft that convention, the German Democratic Republic reiterates its willingness to play an active part in that endeavour.

KUWAIT

[Original: Arabic]

[1 July 1982]

In addition to its reply of 22 April 1982 on pages 9 and 10 of document A/37/317, the Permanent Mission of Kuwait provided the following information:

We wish to inform you that article 14, paragraph 1, of the Kuwaiti Nationality, Passports and Residence Act provides as follows:

"By a decree based on the application of the Director of Police and National Security, any person holding Kuwaiti nationality may be divested thereof if he enters the military service of a foreign State and remains therein in spite of the order issued to him by the Government of Kuwait to leave such service".

The Ministry of the Interior approves the promulgation of any international legislation on this subject.

POLAND

[Original: English]

[2 June 1982]

1. At various international forums, the Government of the Polish People's Republic stressed that mercenarism posed a serious threat to the just struggle of peoples for independence and social progress. Like slavery and apartheid, mercenary activities should be recognized as a criminal act and a violation of such fundamental principles of contemporary international law as the right of peoples to self-determination, sovereignty, independence and territorial integrity, the

non-use of force and non-interference in internal affairs of States. For these reasons, the Polish Government fully supports the efforts undertaken by the United Nations to draft an International Convention against the Recruitment, Use, Financing and Training of Mercenaries and hopes that, once adopted, such a convention will make a tangible contribution to eradicating mercenary activities. Poland is of the opinion that all States should adopt legislative, judicial, administrative and practical measures to prevent the recruitment and training of mercenaries in their territories.

2. On its part, Poland enacted legislation prohibiting Polish nationals from being recruited and serving as mercenaries. The law of 21 November 1967 on the common duty to defend the Polish People's Republic stipulates, in its article 228, that a Polish citizen who accepts military service in a foreign army or in a foreign military organization without the consent of an appropriate State organ is liable to punishment up to 10 years in prison. Any person who recruits Polish citizens or foreigners in Poland is also liable to punishment up to 10 years in prison.

3. Consequently, the Polish legislation fully prohibits mercenary activities and applies severe punishment against those who enter military service as mercenaries.

RWANDA

[Original: French]

[17 June 1982]

1. It should be pointed out first of all that the Rwandese Republic can never tolerate in its territory any activity that encourages or is aimed at encouraging mercenary activities, just as it cannot under any pretext allow its nationals to serve as mercenaries. It is from this perspective that Rwanda, as a member of the Organization of African Unity, promptly approved and ratified the OAU Convention on the Elimination of the Use of Mercenaries in Africa. Presidential Order No. 78/16 of 27 March 1979 constitutes the instrument of ratification of the Convention.

2. The use of mercenaries is a crime against peace and security in Africa committed by the colonialists against national liberation movements and sovereign States. Accordingly, the Rwandese Government has on numerous occasions condemned the acts of terrorist aggression perpetrated in southern Africa by mercenaries for the purpose of perpetuating the South African white minority's domination by supporting racial discrimination formalized into the system of apartheid.

3. Because the apartheid system is fundamentally evil, inhuman and degrading, it has been condemned by the international community. The Rwandese Government joined in that verdict by ratifying, under Presidential Order 430/16 of 11 November 1980, the International Convention on the Suppression and Punishment of the Crime of Apartheid (General Assembly resolution 3068 (XXVIII)), having also approved and ratified, by Decree-Law 8/75 of 12 February 1975, the International Convention on the Elimination of All Forms of Racial Discrimination (resolution 2106 A (XX)).

4. As evidence of the fact that the Rwandese Government has effectively committed itself to combating mercenary activities and mercenaries, it may be recalled that, in February 1979, Rwandese territory was used as a transit route by a band of adventurers recruited to overthrow the régime of a neighbouring country. Rwanda took prompt action, as a sovereign country, by bringing those criminals to justice, with the result that they were sentenced to terms of imprisonment ranging from one to nine years. Sentence was pronounced by the State Security Court in its judgement RP 11/CSE of 13 June 1979.

5. It would obviously have been more satisfactory for the competent criminal authorities if the OAU Convention on the Elimination of the Use of Mercenaries in Africa had provided for penalties and if the latter had been incorporated into our Penal Code. The competent departments of the Rwandese Government therefore intend to remedy that omission by submitting, in the near future, a draft law supplementing the Penal Code, so that Rwandese legislation may conform to articles 6 (f) and 7 of the OAU Convention and to paragraph 9 of resolution 36/9 adopted on 28 October 1981 by the General Assembly.

TRINIDAD AND TOBAGO

[Original: English]

[9 August 1982]

1. While Trinidad and Tobago does not have any legislation relating specifically to the activities of mercenaries, the Immigration Act of Trinidad and Tobago, chapter 18:01, section 8(1), prohibits the following persons, inter alia, from entering Trinidad and Tobago:

"(L) Persons who are or have been at any time before or after the commencement of this Act advocates of the overthrow by force or violence of the established Government of Trinidad and Tobago or any other country, or of all forms of law, or who advocate the abolition of organized government, or who advocate the assassination of public officials or who advocate or teach the unlawful destruction of property or who are or have been members of or affiliated to any organization which entertains and preaches any of the doctrines and practices specified in this paragraph;

"(M) Persons concerning whom there are reasonable grounds for believing they are likely to engage in espionage, sabotage or any other subversive activity of any kind directed against Trinidad and Tobago or detrimental to the security of Trinidad and Tobago."

2. It may also be noted that the authorities of Trinidad and Tobago may, on information received by any other lawful and recognized government authorities that such persons mentioned in (L) and (M) intend to enter or transit Trinidad and Tobago, take steps to refuse permission to those persons to so enter or transit. Where those persons are already in the country, they will be apprehended by the local authorities and will be dealt with under the provision of section 22 (1) of the above-mentioned act, which states:

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"(1) Where he has knowledge thereof, any public officer shall send a written report to the Minister in respect of paragraphs (a) to (c) and to the Chief Immigration Officer in respect of paragraphs (d) to (i), with full particulars concerning:

(a) Any person, other than a citizen of Trinidad and Tobago, who engages in, advocates, or is a member of, or associated with any organization, group or body of any kind that engages in or advocates subversion by force or other means of democratic government, institutions or processes;

...

(c) Any person, other than a citizen of Trinidad and Tobago, who, if out of Trinidad and Tobago, engages in espionage, sabotage or any activity detrimental to the security of Trinidad and Tobago."

Section 22 (2) states:

"Every person who is found, upon an inquiry duly held by a Special Inquiry Officer, to be a person described in subsection (1), is subject to deportation."

UNION OF SOVIET SOCIALIST REPUBLICS

[Original: Russian]

[30 June 1982]

1. The position of the Soviet Union on the question of the realization of the right of peoples to self-determination and to liberation from the colonial yoke is based on consistent principles.
2. The unconditional recognition of the right of peoples to self-determination forms the basis of both the domestic and the foreign policy of the Soviet State. The historic Declaration of Rights of the Peoples of Russia, adopted in 1917, proclaimed the equality and sovereignty of the peoples of our country and the right of each of them to free self-determination, including the right to secede and to form their own independent State.
3. As a result of the victory of the Great October Socialist Revolution, the fetters of social and national oppression were broken, and all the peoples of our country turned towards the historic task of producing independent, creative work. With the establishment of the power of the working class and social property as a means of production, a solid foundation was laid for the free development of all nations and nationalities and for their close unity and friendship.
4. Sixty years ago, through the will of the peoples of our country, there was created the Union of Soviet Socialist Republics - an indivisible union State of many nationalities, formed according to the principle of socialist federalism as a

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result of the free self-determination of nations and the voluntary union of equal Soviet Socialist Republics. The sixtieth anniversary of the formation of the USSR is an important event in the life of the Soviet people; moreover, it attests to the triumph of the Leninist nationalities policy of the Communist Party of the Soviet Union and to the historic achievements of socialism. Through this glorious anniversary, the Soviet Union appears before the entire world as a united family of republics which enjoys equal rights and which, together, are building communism.

5. In accordance with the principles of our foreign policy, which have been given legislative substance in the Constitution (Fundamental Law) of the USSR, our country resolutely advocates the elimination of the vestiges of colonialism, is opposed to neo-colonialism and racism, to economic and political dictates and to inequality and supports in every possible way the struggle of colonial peoples for national liberation.

6. This position was reflected and further developed in the decisions of the Twenty-sixth Congress of the Communist Party of the Soviet Union. Speaking at the congress, the General Secretary of the Central Committee of the CPSU and President of the Presidium of the Supreme Soviet of the USSR, L. I. Brezhnev, announced that "The CPSU will continue consistently to follow a course directed towards the development of co-operation between the USSR and liberated countries and towards the strengthening of the alliance between world-wide socialism and the national liberation movement."

7. The downfall of the colonial empires represents a significant success achieved by peoples in their struggle to exercise their right to self-determination and to attain freedom and national independence. Two thirds of the States in the world today are countries liberated from the colonial yoke. However, vestiges of colonialism still persist in various parts of the world.

8. As one of the States which initiated the elaboration and adoption by the United Nations General Assembly of the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples (resolution 1514 (XV)), the Soviet Union resolutely advocates the speediest possible implementation of the Declaration and of the United Nations decisions taken to supplement it, with a view to the eradication of the vestiges of colonialism and the elimination of racism, racial discrimination and apartheid. The complete fulfilment of the requirements of the Declaration on the Granting of Independence to Colonial Countries and Peoples, without any exclusions or exceptions, is one of the international community's most important and pressing tasks.

9. As history shows, the forces of imperialism and colonialism have not abandoned the policy of colonial oppression and suppression of the national liberation struggle, a policy which is based on an unwillingness to accept the right of peoples to arrange their own affairs as they see fit and a rejection of the social changes taking place in the world. This policy, which is incompatible with the United Nations Charter and the task of preserving peace, can be seen in the arbitrary declaration of various parts of the world to be areas in which their "vital interests" are involved and in the increasing tendency to export counterrevolution and suppress the peoples' national liberation movement.

10. Today, the key issue in eradicating colonialism is the problem of speedily eliminating the racist-colonial systems in southern Africa. The South African racist régime, contravening the Charter and decisions of the United Nations and ignoring the demands of the overwhelming majority of States, is stubbornly persisting with its inhuman policy of apartheid and its efforts to maintain its supremacy in Namibia, a country which it has illegally occupied, and is expanding its acts of aggression against independent African States. South Africa's actions thus pose a serious threat to international peace and security.
11. It has been established beyond all doubt that the main reason for the vitality of the South African racist régime, its continuing occupation of the territory of Namibia, and its increasing aggressiveness is the continuous political, economic, military and other assistance and support which it receives from a number of NATO member countries and, above all, from the United States. In many decisions, including resolution 36/9, the United Nations General Assembly has decisively condemned the policy of certain NATO members which provide the South African racists with all sorts of assistance. However, notwithstanding the demands of the United Nations, the forces of imperialism are becoming increasingly and more openly intimate with Pretoria. In that connexion, the course taken by the United States of strengthening and broadening ties with South Africa cannot fail to cause concern and provoke condemnation.
12. The peoples' just struggle against the last bulwark of colonial and racist oppression on the African continent in order to eradicate the shameful system of apartheid enjoys the complete support of the USSR. The greeting sent by L. I. Brezhnev, the General Secretary of the Central Committee of the Communist Party of the Soviet Union and President of the Presidium of the Supreme Soviet of the USSR, on 25 May 1982 to the States and peoples of Africa on the occasion of African Liberation Day, stated: "We form a united front with those fighting against imperialism, colonialism, neo-colonialism, racism and apartheid. We have provided and shall continue to provide the necessary support to the just struggle of the people of Namibia headed by SWAPO, the true representative of the Namibian people". Our country condemns the attempts by the Pretoria racists and a number of Western States to settle the Namibian issue outside the ambit of the United Nations and to foist a neo-colonialist puppet régime on the people of Namibia. The Soviet Union is consistent in its support for an end to the illegal occupation of Namibia by the South African régime and a speedy settlement of the Namibian question, preserving the unity and territorial integrity of Namibia. In the interests of such a settlement, the United Nations Security Council should apply the strictest comprehensive sanctions against the South African racists under Chapter VII of the United Nations Charter.
13. As A. A. Gromyko, the Foreign Minister of the USSR, stressed in his statement at the thirty-sixth session of the United Nations General Assembly: "It is a matter of honour and is the immediate duty of the United Nations to help the people of Namibia gain their freedom. The racists and all those on whom they rely must realize that the time of colonialism is past."
14. The need to implement fully the Declaration on the Granting of Independence to Colonial Countries and Peoples also applies to the numerous so-called small

Territories and enclaves in the Pacific, Indian and Atlantic Oceans still under colonial domination.

15. The policy of the imperialist Powers towards the small colonial territories continues to be aimed at slowing down or completely paralysing their economic and social development, keeping them as colonial appendages of the metropolitan country and turning them into military and strategic springboards to suppress the peoples' aspirations for national liberation and to carry out acts of aggression against independent States.

16. An example of this policy is the way in which the United States is keeping the island of Diego Garcia under its colonial dominion and turning it into a military base. Such actions, dictated by the military-strategic designs of imperialism are a gross violation of the right of peoples to self-determination.

17. Another manifestation of the policy of perpetuating colonial dominion is the situation which has developed in Micronesia through the fault of the United States. Acting in contravention of the Charter of the United Nations, heedless of the Declaration on the Granting of Independence to Colonial Countries and Peoples and other relevant decisions by the General Assembly, and bypassing the Security Council, the United States is pressing ahead with its unilateral moves to dismember and annex Micronesia. Such expansionist activities by the United States, which is occupying the Territory for military-strategic purposes, are clearly incompatible with the right of peoples to self-determination.

18. The events in the South Atlantic (where London is attempting by force of arms to return the Falkland Islands (Malvinas) to colonial rule, thus defying the international community, which has unreservedly condemned and rejected colonialism) are confirming, with renewed intensity, the danger to the cause of peace created by the imperialist policy of retaining domination over the remnants of colonial empires. As was rightly stressed in a TASS statement of 24 May 1982, the armed invasion of the Falkland Islands (Malvinas) by British forces "represents a threat to international peace and security and is in violation of the United Nations Charter and the underlying norms of international law".

19. The dangerous turn of events in the Near East, the continuation by Israel of its expansionist policy and its attempts to deny the Arab people of Palestine their inalienable right to self-determination are matters of deep concern.

20. Responsibility for Israel's defiant conduct is shared by the United States, which is arming and financing the aggressor and providing political cover for Tel Aviv's aggressive policy, thereby encouraging Israel to commit further crimes against the Arab people. These crimes are the direct result of United States-Israeli strategic co-operation, which allows Israel to pursue its goals and, at the same time, affords United States imperialism a means of achieving its military and strategic objectives in the Near East.

21. Like the other by-products of the Camp David agreement, the "Sinai operation" (as a result of which occupation by the Israelis is giving place to occupation by the Americans, who are gaining a spring-board for direct interference in the affairs

of the Near Eastern and neighbouring States), has nothing to do with the establishment of a just and lasting peace in the Near East.

22. The USSR believes that peace and stability in the Near East can be achieved only through a comprehensive political settlement that does not infringe the rights of a single country or a single people of the region. Such a settlement would have to provide for the withdrawal of Israeli troops from all the Arab territories occupied in 1967 and for the exercise of the national rights of the Arab people of Palestine, including its right to establish its own independent State.

23. The Soviet Union consistently voices support for the rights of the Arab people and calls for the elimination of the consequences of Israeli aggression. There is a growing awareness that the way to achieve a settlement in the Near East is to convene an international conference, with the participation of all the parties concerned, including the Palestine Liberation Organization.

24. The Soviet Union, which consistently supports the just struggle of peoples for national liberation and social progress, roundly condemns the imperialist forces' and reactionary régimes' practice of using mercenaries to perpetuate colonial oppression and exploitation of peoples and in aggressive activities against newly independent States such as Afghanistan, Angola, Mozambique, Seychelles and other countries. The USSR favours the immediate formulation of an international convention to combat mercenarism. The whole social and political nature of the Soviet State - a socialist State of the entire people, enfolding workers of various nations and nationalities in one fraternal family - absolutely rules out the possibility of mercenary involvement by Soviet nationals in armed operations against sovereign States or national liberation movements.

25. The elimination of all forms and manifestations of colonialism still remains one of the major tasks facing the international community. A radical improvement of the international situation, which has been aggravated by aggressive imperialist elements, the removal of the threat of war, the curbing of the arms race and the maintenance and strengthening of détente would contribute to the accomplishment of this task.

26. In accordance with the Programme of Peace for the 1980s, approved at the Twenty-sixth Congress of the Communist Party of the Soviet Union, the USSR will continue in the future, together with other peace-loving States, to pursue these noble goals and to seek the definitive elimination of colonialism, racism and apartheid and the complete liberation of the oppressed people.

VENEZUELA

[Original: Spanish]

[28 May 1982]

1. The theory of the fundamental rights of States originated in the eighteenth century, with Wolf and Vattel, and constituted an affirmation of the independence of States from papal and imperial power. Without going into a discussion of the

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theories that have been developed on this point, it must be agreed that international law recognizes that all States have certain rights without which they would be unable to achieve their proper purposes. In the absence of such rights, States would lack any protection in international affairs.

2. While those rights cannot be absolute and must be subject to certain limitations, they serve to facilitate international relations in a climate of peace and, ultimately, to accelerate the development of the weakest countries as a result of the protection they afford for the personality and integrity of each individual State.

3. These fundamental rights have acquired great importance, especially within the framework of the inter-American system. The Charter of the Organization of American States guarantees: 1/

(a) Juridical equality (art. 6);

(b) Political existence independent of recognition (art. 9);

(c) The right of each State to protect itself and to live its own life (art. 11);

(d) Jurisdiction over its territory (art. 9);

(e) The right to cultural, political and economic development (art. 13);

(f) Inviolability of national territory (art. 17);

(g) The right of self-defence (art. 18).

4. At the same time, the Charter informs Member States of their duties:

(a) Respect for the rights of other States (art. 7);

(b) Faithful observance of treaties, which should be public (art. 14);

(c) The duty of non-intervention (arts. 15 and 16);

(d) The duty not to use force, except in the case of self-defence (art. 18).

5. In the context of the United Nations, the International Law Commission has taken the view that the right to independence, the right to exercise jurisdiction over national territory, the right to juridical equality and the right of self-defence are fundamental rights.

6. In the context of international economic law, mention should be made of the Charter of Economic Rights and Duties of States (General Assembly resolution 3281 (XXIX)).

7. From among these fundamental rights and duties of States, we shall single out for discussion the right to independence and juridical equality, which are the main subjects of the inquiry addressed to us in connection with General Assembly resolution 35/35 A, and in particular the contents of paragraph 7 of that resolution, in which the Third Committee reaffirms that the practice of using mercenaries against national liberation movements and sovereign States constitutes a criminal act and that the mercenaries themselves are criminals.

8. The "problem of mercenaries" must of necessity be analysed from the perspective of independence and intervention.

9. Independence cannot serve as a legal criterion for statehood until the term has been defined. From this standpoint, the standard writings on international law provide little clarification, since most authors simply treat independence and sovereignty as identical, without taking the trouble to analyse the two terms systematically. Nor have international juridical bodies made the distinction clear. 2/

10. Current concepts of independence - the absence of political dependence or subordination - are negative concepts and are therefore incapable of providing a satisfactory criterion. In order to develop a more specific concept, one must take into account the fact that independence implies exclusive, autonomous and complete competence. The first two conditions are qualitative and the third quantitative.

11. The first element of independence is exclusive competence. This means that, in a given territory, only one State competence is in principle exercised.

12. This exclusive competence finds expression, in particular, in a monopoly of:

- (a) The use of force (exercise of coercive competence);
- (b) The exercise of jurisdictional competence;
- (c) The organization of public services.

Only the first of these monopolies is absolute.

13. The second element of independence is autonomous competence. An independent State does not only act by itself; in order for its independence to be effective, it must do so on its own initiative, without having to follow any guidelines or orders which another State may seek to impose, that being a characteristic of interventionist policies.

14. Autonomy, in its essential sense (freedom of decision within the scope of one's own competence), is the positive aspect of independence. It implies that State organs have discretionary competence or, in other words, authority, to a greater or lesser degree, to judge whether it is advisable for them to take certain decisions. The opposite of discretionary competence is controlled competence, a situation in which a State organ is not the judge of the advisability of taking or not taking action but, on the contrary, is legally bound to act or not to act, or

to do so in a certain way or at a certain time. The concept of discretionary competence has been taken into account in positive law, although equivocal terminology has sometimes been used; exclusive competence under the terms of Article 15, paragraph 8, of the Covenant of the League of Nations means competence to restrict the obligations of the States concerned in connection with the peaceful settlement of international disputes.

15. The third aspect of independence is complete competence. By definition, State competence is full competence. As the competence of other public authorities is an assigned competence, necessarily limited in purpose, State competence remains unlimited ratione materiae.

16. Every State has the duty not to interfere in the internal and external affairs of another State, thus respecting its right to independence and juridical equality. Any breach of this duty to refrain is intervention.

17. However, not only is this principle of the universal freedom of peoples frequently violated; there are still some peoples unable to exercise it as a result of colonialist practices. That is why the United Nations has been stressing year after year, by means of various resolutions, the 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.

18. Among the most important United Nations resolutions on the subject, we must mention the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV)), which accepts as an absolute principle the independence of peoples in the terms in which we have been analysing it, since the Assembly begins by recognizing that:

(a) There is a need for the creation of conditions of stability and well-being and peaceful and friendly relations based on respect for the principles of equal rights and of universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion;

(b) There is a passionate yearning for freedom in all dependent peoples and such peoples have a decisive role in the attainment of their independence;

(c) There are increasing conflicts resulting from the denial of or impediments in the way of the freedom of such peoples, which constitute a serious threat to world peace;

(d) The continued existence of colonialism prevents the development of international economic co-operation, impedes the social, cultural and economic development of dependent peoples and militates against the United Nations ideal of universal peace;

(e) Peoples may, for their own ends, freely dispose of their natural wealth and resources;

(f) The process of liberation is irresistible and irreversible;

(g) All peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory;

and then declares and recognizes the principle of independence when it affirms that:

"1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of The United Nations and is an impediment to the promotion of world peace and co-operation;

"2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development;

"3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence;

"4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected;

"5. Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom;

"6. Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations;

"7. All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity" (resolution 1514 (XV)).

19. On the basis of this resolution, the General Assembly has continued to press the point among many others, at each of its regular sessions. The following resolutions are especially important:

(a) Resolution 2621 (XXV) of 12 October 1970 on the programme of action for the full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples;

(b) Resolution 2649 (XXV) of 30 November 1970;

- (c) Resolution 2955 (XXVII) of 12 December 1972;
- (d) Resolution 3070 (XXVIII) of 30 November 1973;
- (e) Resolution 3246 (XXIX) of 29 November 1974;
- (f) Resolution 3382 (XXX) of 10 November 1975;
- (g) Resolution 34/44 of 23 November 1979;

(All the resolutions mentioned in subparagraphs (b) to (g) concern the 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.)

(h) Resolution 3324 (XXIX) of 16 December 1974, condemning the policies of apartheid of the Government of South Africa and imposing on it sanctions which could, in practice, be applied to the cases discussed here, since that resolution merely applies to one particular case the principles mentioned earlier.

20. All of these resolutions were supplemented by, inter alia, the following:

- (a) Resolution 1654 (XVI) of 27 November 1961;
- (b) Resolution 2548 (XXIV) of 11 December 1969;
- (c) Resolution 2588 B (XXIV) of 15 December 1969;
- (d) Resolution 2708 (XXV) of 14 December 1970;
- (e) Resolution 2963 E (XXVII) of 13 December 1972;
- (f) Resolution 3059 (XXVIII) of 2 November 1973;
- (g) Resolution 3103 (XXVIII) of 12 December 1973;
- (h) Resolution 3236 (XXIX) of 22 November 1974;
- (i) Resolution 3237 (XXIX) of 22 November 1974;
- (j) Resolution 3382 (XXX) of 10 November 1975;
- (k) Resolutions 34/65 A to D of 29 November to 12 December 1979.

21. These resolutions basically stress the following points:

(a) The legitimacy of the struggle of peoples for independence, territorial integrity and liberation from colonial and foreign domination and alien subjugation by all available means, including armed struggle;

(b) The right of peoples under colonial and foreign domination to exercise their legitimate right to self-determination and to request and receive moral and material assistance of every kind;

(c) That the acquisition and retention of territories in violation of the right of the population of such territories to self-determination is inadmissible and constitutes a serious violation of the Charter;

(d) That Governments which are denying the right to self-determination of peoples under colonial and foreign domination must recognize and respect that right in accordance with the relevant international instruments and with the principles and spirit of the Charter;

(e) Condemnation of Governments which deny the right to self-determination of peoples for whom this right has been recognized.

22. General Assembly resolution 2787 (XXVI) of 6 December 1971 urges the Security Council as well as States Members of the United Nations or members of specialized agencies to take effective steps to ensure the implementation of the relevant United Nations resolutions.

23. Resolution VIII of the International Conference on Human Rights, held at Teheran in 1968, and the Political Declaration of the Fourth Conference of Heads of State or Government of Non-Aligned Countries, held at Algiers from 5 to 9 September 1973, are equally important.

24. The Security Council, for its part, in resolutions 181 (1963) of 7 August 1963, 392 (1976) of 19 June 1976, 418 (1977) of 4 November 1977 and 437 (1978) of 10 October 1978, strongly condemned not only countries which do not permit independent movements, but also countries which collaborate with the former, whether directly or indirectly.

25. In this connexion, we cannot fail to draw attention to the relevant resolutions on the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, since this leads us to a new element for condemnation, and one of singular importance. We refer to the phenomenon of "mercenaries". The use of mercenary forces is as old as war, but in this case what is involved is a use of them that is repugnant to all free men and civilized nations, namely, the recruitment of mercenaries to impede the realization of one of the fundamental rights of peoples: freedom. The most important resolutions adopted by the General Assembly in this regard are:

- (a) Resolution 2465 (XXIII) of 20 December 1968;
- (b) Resolution 2548 (XXIV) of 11 December 1969;
- (c) Resolution 2708 (XXV) of 14 December 1970;
- (d) Resolution 3103 (XXVIII) of 12 December 1973;
- (e) Resolution 3314 (XXIX) of 14 December 1974.

26. All of these declare that the practice of using mercenaries against national liberation and independence movements is a criminal act and that the mercenaries themselves are criminals outside the law, and call upon the Governments of all countries to enact legislation declaring the recruitment, financing and training of mercenaries in their territories to be punishable offences and prohibiting their nationals from serving as mercenaries.

27. This concern, as we have already stated, stems from a recognition of the legitimacy of the struggle of colonial peoples to exercise their right to self-determination and independence.

28. The treatment that is being sought for mercenaries must therefore be seen in this context and, in particular, these General Assembly resolutions must necessarily be viewed in relation to the following:

- (a) Resolution 1654 (XVI) of 27 November 1961;
- (b) Resolution 1810 (XVII) of 17 December 1962;
- (c) Resolution 1956 (XVIII) of 11 December 1963;
- (d) Resolution 1970 (XVIII) of 16 December 1963;
- (e) Resolution 2105 (XX) of 20 December 1965;
- (f) Resolution 2189 (XXI) of 13 December 1966;
- (g) Resolution 2288 (XXII) of 7 December 1967;
- (h) Resolution 2326 (XXII) of 16 December 1967;
- (i) Resolution 2311 (XXII) of 14 December 1967;
- (j) Resolution 2425 (XXIII) of 18 December 1968;
- (k) Resolution 2426 (XXIII) of 18 December 1968;
- (l) Resolution 2446 (XXIII) of 19 December 1968.

29. These resolutions refer to:

(a) Condemnation of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples;

(b) Recognition of the legitimacy of the struggle of colonial peoples to exercise their right to self-determination and independence;

(c) Condemnation of Governments which impede the self-determination of peoples;

(d) Condemnation of forms of repression aimed at preventing the independence of peoples struggling for it.

30. General Assembly resolution 35/35 A must be viewed against this broad background and, in particular, in the light of the basic principles concerning the legal status of combatants struggling against colonial and foreign domination and against racist régimes; the principles which we have mentioned and which serve as legal imperatives can be summed up as follows:

(a) The struggle of peoples subjected to colonial and foreign domination and to racist régimes for the implementation of their right to self-determination and independence is legitimate and is fully in accordance with the principles of international law.

(b) Any attempt to repress the struggle against colonial and foreign domination and against racist régimes is incompatible with the Charter of the United Nations, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV)), the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples (resolution 1514 (XV)), and constitutes a threat to international peace and security.

(c) Armed conflicts involving the struggle of peoples against colonial and foreign domination and against racist régimes must be regarded as international armed conflicts in accordance with the 1949 Geneva Conventions, and the legal status granted by those Conventions and other international instruments to combatants must be applied to persons participating in the armed struggle against colonial and foreign domination and against racist régimes.

(d) Combatants struggling against colonial and alien domination and against racist régimes captured as prisoners are to be accorded the status of prisoners of war and their treatment should be in accordance with the provisions of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949.

(e) The use of mercenaries by colonial and racist régimes against the national liberation movements struggling for freedom and independence from the yoke of colonialism and alien domination is considered to be a criminal act and the mercenaries should accordingly be punished as criminals.

(f) The violation of the legal status of the combatants struggling against colonial and alien domination and racist régimes in armed conflicts entails full responsibility in accordance with the norms of international law (General Assembly resolution 3103 (XXVIII) of 12 December 1973).

31. In short, it can be said that General Assembly resolutions 1514 (XV) of 14 December 1960, 2621 (XXV) of 12 October 1970 and 3103 (XXVIII) form the immediate background to and are fully consonant with the other resolutions which have been referred to and which serve as the legal-institutional framework for resolution 35/35 A, which we are now considering.

32. In that connection, we must stress the political consistency of Venezuela's traditional principles and the position it has taken in the General Assembly in previous years.

33. Specifically, we would recall that paragraph 7 of the resolution, which begins "Reaffirms that the practice of using ...", merely restates, in the same language, the principle that was laid down in previous General Assembly resolutions, such as resolution 2465 (XXIII), 2548 (XXIV), 2708 (XXV), 3130 (XXVIII), 3314 (XXIX) and 35/35 A (1980).

34. It should be noted that paragraph 7 of resolution 35/35 A refers to the following elements, among which a distinction should be made:

(a) Criminal act: the practice of using mercenaries against national liberation movements and sovereign States constitutes a criminal act.

(b) Criminals: mercenaries.

(c) Punishable offences:

(i) The recruitment of mercenaries;

(ii) The financing of mercenaries;

(iii) The training of mercenaries;

(iv) The transit of mercenaries through a State's territory.

(d) Prohibition: States must prohibit their nationals from serving as mercenaries.

35. Undoubtedly, such resolutions are a means of exerting pressure on States Members of the United Nations to enact legislation relating to intervention, which must of necessity result in changes in the international and domestic legal order. At the international level, it has more or less been possible to exercise control over colonialist practices, especially given the entry of newly independent States into the United Nations and the independence of the United Nations and other organizations.

36. However, since the United Nations has no enforceable legal powers, internationally or over individuals, it has resorted to the approach proposed in paragraph 7 of resolution 35/35 A to induce States to enact legislation against mercenaries.

37. The effect of such legislation would be to declare the practice of using mercenaries to be a criminal act and those who enlist mercenaries to be criminals, and hence to deprive such individuals of coverage under the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949 and other relevant international provisions, which would ensure that they are treated as ordinary offenders. The adoption of the resolutions ensures that the provisions of the

Geneva Convention relative to the Treatment of Prisoners of War and the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 are applied to combatants struggling for freedom and self-determination.

38. In addition, declaring the acts described in paragraph 34 above to be punishable offences and introducing a provision to that effect in the domestic legal order of States compels the latter to take effective action to control and punish mercenary activities, something which it would otherwise be virtually impossible for the United Nations to do.

39. In adopting such an approach, the United Nations requires collaboration and co-operation by its Members going beyond mere declarations of principle.

40. In order to understand the position of the United Nations better, we should turn our attention briefly to the question of the legal force of these resolutions. Without going into the positions which the various schools of thought take on this point, we shall endeavour to situate the Charter of the United Nations within the international system of legal instruments. ^{3/} In our view, the Charter constitutes an exercise by the General Assembly of its powers under Article 13, paragraph 1 (b), of the United Nations Charter, which provides that:

"1. The General Assembly shall initiate studies and make recommendations for the purpose of:

...

(b) promoting international co-operation in the economic, social, cultural, educational and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

41. This provision necessarily leads us to inquire what the actual scope of the powers of the Assembly is. As a rule, any international organization with a general assembly is of a deliberative nature. This raises the question what legal force the resolutions of such a body have.

42. In the case of the United Nations, a distinction must be made between the resolutions of the General Assembly and those of the Security Council. We are concerned here with the former. In general, Assembly resolutions have the force of recommendations. However, some of them are binding, in particular those dealing with matters of internal organization (rules of procedure, budgetary decisions).

43. The difficulty one faces in accepting that a resolution of an international organization is legally binding stems from the fact that positive international law continues to be based on the notion of State consent, while resolutions may be adopted by no more than a majority of States.

44. Certain treaties setting up organizations make formal provision for the power of international bodies to enact regulations. This is true of the European Communities, but the solution is still an exceptional one.

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45. Turning now to General Assembly resolution 35/35 A, what is its real force? Although we agree with and abide by its principles and formulations, we are reluctant to include them among instruments which have full legal force at international level.
46. A resolution of the United Nations General Assembly cannot be equated, in terms of its legal force to an international treaty drawn up between two or more States. In a treaty, the participant States enter into a formal commitment and are clearly bound by all of its provisions, which are drafted with considerable care. Not only are its provisions legally binding on the State concerned, but the treaty's adoption is subject, by virtue of the corresponding constitutional rules, to the requirement that it be ratified by the organs of popular representation. Resolutions of the General Assembly, on the other hand, although drafted by specialized committees, are the outcome of considerable debate and are adopted by the vote of representatives of each country, usually appointed solely by the executive power.
47. However, between the recognition that the content of an Assembly resolution does not have the full binding force of a treaty and the refusal to acknowledge that it has any legal scope whatsoever there is a distance which it would be a terrible mistake to overlook.
48. The reasonable approach is to consider that resolutions of the General Assembly, although lacking the binding force of a normally concluded treaty, express a world consensus, especially if they were adopted by such an overwhelming majority as in the case of the resolutions mentioned here; thus they confirm or strengthen precedents existing in international law. Since they emanate from the organ representing the largest organization ever conceived by mankind, they must have considerable importance for the development of this branch of law. They recognize or confirm generalized practices or legal principles which, by virtue of such recognition or confirmation, can now be recognized as general principles of law.
49. In this connection, we do believe that General Assembly resolution 35/35 A entitled "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" must be included in the body of generalized practices or legal principles which can be recognized as general principles of law.
50. Hence, as we mentioned, the insistence of the United Nations on urging the governments of all countries to adopt legislation incorporating in positive law the agreements contained in the resolution in question.
51. We believe that, for the above reasons, the fact that Governments voted in favour of such a resolution binds them to take all necessary steps to incorporate into their domestic legal order the international commitments entered into in this way and at the same time to avoid any action or conduct which might jeopardize the implementation of that resolution.

52. We believe that the fact that a resolution has been adopted by the General Assembly by the vote of representatives of each country appointed by the latter's executive power does not relieve Governments of the commitments they have entered into and that such resolutions should be brought before the Congress of the Republic in the form of bills, so that United Nations resolutions can be implemented in accordance with the principle of good faith which must attend all international commitments.

53. Finally, we believe that this resolution is particularly important for geopolitical reasons, especially since its provisions and those of the resolutions immediately preceding it are applicable to all mercenaries fighting against "national liberation movements and sovereign States" and not, as in the case of some earlier resolutions, only to mercenaries fighting against peoples under foreign and colonial domination and the foreign yoke. Its scope is thus broadened by the inclusion of sovereign States.

Notes

1/ Charter of the Organization of American States, chap. III: Fundamental rights and duties of States.

2/ Rousseau, Ch., "L'Indépendance de l'Etat dans l'ordre international", Recueil des Cours, 1448, II, pp 171-253.

3/ See, inter alia, Polanco Alcántara Tomás, "La obligatoriedad y validez de la Carta de Derechos y Deberes Económicos de los Estados", Derecho Económico Internacional (Mexico, 1974); Colliard, Claude, Institutions Internationales (Paris, Dalloz, 1974); Constantinesco, Léontin-Jean, Traité de Droit Comparé (Paris, 1972).

YUGOSLAVIA

[Original: English]

[27 July 1982]

1. Under the existing laws of Yugoslavia, all acts referred to in General Assembly resolution 36/9 are treated as criminal offences. The Criminal Law of the Socialist Federal Republic of Yugoslavia ("The Official Gazette of the Socialist Federal Republic of Yugoslavia", nos. 44/76 and 36/77) incorporates such acts, in particular under the following criminal offences:

(a) Participation in hostile activities (art. 131);

(b) Recruitment and transit of armed forces, weapons and ammunition through the territory of Yugoslavia (art. 132);

(c) Association for the purpose of engaging in hostile activities (art. 132);

/...

- (d) Instigation to aggressive war (art. 152);
- (e) Incitement to racial and other forms of discrimination (art. 154).

2. Consequently, the positive criminal legislation of Yugoslavia already contains the provisions qualifying the acts specified in paragraph 9 of General Assembly resolution 36/9 as criminal offences and, therefore, there is no need to enact new legislation to that effect.

3. In connection with paragraphs 9 and 26 of the same resolution, and in keeping with the principles of its non-aligned policy, Yugoslavia strongly condemns the practice and use of mercenaries against the liberation movements and sovereign States and, within its possibilities, it renders material assistance to those movements and States, and extends its resolute moral and political support to their anti-colonial struggle.

II. SUMMARIES AND REPLIES RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS

CO-ORDINATING COMMITTEE FOR INTERNATIONAL VOLUNTARY SERVICE

1. The Co-ordinating Committee for International Voluntary Service informed the Secretary-General that it is very active in its concerns for human rights and considers that voluntary service is in itself an affirmation of one person's humanity in that of another. The Committee is active among the non-governmental organizations in human rights and is co-ordinator of the Committee on Racism and Racial Prejudice.

2. The Committee has sent General Assembly resolution 36/9 to its member organizations for further discussion and dissemination.

INTER-PARLIAMENTARY UNION

1. The Inter-Parliamentary Union transmitted a draft resolution adopted in April 1982 by the Union's Committee on Non-Self-Governing Territories and Ethnic Questions, which is entitled "Elimination of colonialism and combating of neo-colonialism, and particularly the need to take measures for the immediate and strict implementation of the United Nations Plan for Namibia".

2. It indicated that the draft would be considered for final adoption in September 1982 by the Sixty-ninth Inter-Parliamentary Conference.
