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The right of peoples to self-determination and its application
to peoples under colonial or alien domination or foreign
occupation

Report of the Secretary-General

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I. INTRODUCTION

1. In its resolution 1982/16 of 25 February 1982, the Commission on Human Rights, inter alia, reaffirmed the legitimacy of the struggle of the oppressed people of South Africa and their national liberation movements by all available means as well as the inalienable right of the people of Namibia to self-determination, freedom and national independence. It also reaffirmed once again that the practice of using mercenaries against national liberation movements and sovereign States constitutes a criminal act and that the mercenaries themselves are criminals, and called upon Governments to enact legislation declaring the recruitment, financing and training of mercenaries in their territory, and their transit through it, to be punishable offences, and prohibiting their nationals from serving as mercenaries, and to report on such legislation to the Secretary-General.

2. The present report contains summaries of replies received as of 15 November 1982 from Governments on action taken pursuant to the above-mentioned resolution. 1/ Any additional replies will be reproduced as addenda to the present document.

1/ The full texts of the replies received are available for consultation in the files of the United Nations Secretariat.

BELGIUM

[Original: FRENCH]

[26 May 1982]

3. The Government states that Belgium has enacted laws to combat the activities of mercenaries. In this connection, reference may be made to articles 135 bis et seq. of the Penal Code, the Act of 29 July 1934 prohibiting private militias and supplementing the Act of 3 January 1933 concerning the manufacture and possession of weapons and trade in arms and munitions, and lastly, the Act of 1 August 1979 concerning service with foreign armies or troops on the territory of a foreign State. 1/ Furthermore, Belgium is following very closely the work of the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

BOTSWANA

[Original: ENGLISH]

[8 June 1982]

4. The Government of Botswana states that it has enacted the Foreign Enlistment Act which prohibits Botswana nationals from participating in the activities of Foreign armies unless with the authority and permission of the President of the Republic of Botswana. Accordingly, it is a punishable offence for Botswana nationals to serve as mercenaries. The recruitment, financing, training and transit of mercenaries in Botswana is equally prohibited by law.

CUBA

[Original: SPANISH]

[21 July 1982]

5. The Republic of Cuba welcomes and places great value on the work being done by the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries for the purpose of establishing rules which will prohibit mercenary activities as an instrument of imperialist aggression to perpetuate the oppression and the exploitation that still exist in various countries of Asia, Africa and Latin America, and will determine the responsibility incurred by countries which encourage such activities.

6. The Government of the Republic of Cuba therefore states in article 127 of the Penal Code:

1/ See document A/34/46/1980.

"1. Any person who, with a view to obtaining payment of a wage or other kind of material remuneration, joins military forces entirely or partly made up of individuals who are not citizens of the State in whose territory they intend to take action shall be liable to a penalty of deprivation of liberty for 10 to 20 years or the death penalty.

"2. Any person who collaborates in or performs any other act designed directly or indirectly to achieve the objective referred to in the preceding paragraph shall be liable to the same penalty".

7. Finally, it should be reiterated that the legal ban on mercenary activities must also be fundamentally universal in keeping with the fact that intrinsically they constitute an international offence.

GERMAN DEMOCRATIC REPUBLIC

[Original: ENGLISH]

[4 June 1982]

8. The Government of the German Democratic Republic refers to the information on the question of mercenaries which it transmitted to the thirty-fifth session of the General Assembly. This information is summarized in document A/35/366/Add.1.

GREECE

[Original: ENGLISH]

[24 September 1982]

9. The Government refers to article 206 of the Greek Penal Code according to which "he who recruits Greek citizens for military purposes to a foreign State and he who facilitates such recruitment, is subject to imprisonment".

10. The Government further refers to article 20 of the Code of Greek Citizenship which provides that "a Greek citizen may be deprived of his citizenship if he has assumed duties with the Civil Service of a foreign State ... (including service in the foreign State's army)".

HOLY SEE

[Original: FRENCH]

[5 May 1982]

11. The Holy See states that it is not concerned with the problem of recruitment, financing, instruction and transit of mercenaries.

KENYA

[Original: ENGLISH]
[15 September 1982]

12. The Government of Kenya states that it condemns, as part of its foreign policy, the use of mercenaries against Liberation Movements and against sovereign States in all its forms.
13. The Penal Code which is Chapter 63 of the Laws of Kenya is the major legislation which deal with offences falling within resolution 1982/16 of the Commission of Human Rights.
14. Part II Chapter VII of the Penal Code deal with "Treason and Allied Offences". Part II, Chapter VIII deals with "Offences affecting Relations with Foreign States and External Tranquility". The foregoing provisions do not refer specifically to the mercenaries but fall within the spirit which promotes the Commission of Human Rights resolution under discussion.
15. Section 40 and 43 of the Penal Code make it an offence of treason or treasonable felony for a Kenyan national or a foreigner, for instance to plan the overthrow of the Kenyan Government by unlawful means and in furtherance of that plan to instigate in Kenya or elsewhere any person to invade Kenya with an armed force.
16. Furthermore, Sections 40 and 43 of the Penal Code give the Kenyan courts extra-territorial jurisdiction in dealing with mercenary activities. The provisions of Section 43A of the Penal Code which deals with Treachery and Section 44 of the Penal Code which deal with the offences of Promoting warlike undertakings are relevant to the resolution condemning the use of mercenaries for whatever reason. These Sections in essence make it an offence in Kenya for anybody to recruit, finance or train mercenaries or knowing certain persons to be mercenaries, to give them transit facilities, for such action would be deemed being acts designed or likely to give assistance to the enemy and interfering with public orders; or as being acts tending towards carrying on, making preparation for carrying on, aiding or advising the carrying on, of or preparation for, war or warlike undertaking.
17. Section 68 of the Penal Code amounts to a condemnation of the use of mercenaries. It provides that it is an offence for any person without written permission from the President (who is also the Commander in Chief of the Armed Forces) to:
 - (a) Prepare or fit out or engage or assist in the preparation or fitting out of any naval or military expedition to proceed against the dominion of any friendly State;
 - (b) Join the forces of a foreign State when a citizen of Kenya;
 - (c) Induce another to quit Kenyan forces and join foreign forces - this offence is prescribed as being capable of being committed by a citizen or non-citizen, therefore the same outlaws the recruiting of mercenaries;
 - (d) Carry, as master or owner of a ship, any illegally enlisted person i.e. a mercenary;
 - (e) Build, construct, equip, dispatch, or cause or allow to be dispatched any vessel he knows or ought to know will be used by or in foreign military or naval service against a friendly State.

MEXICO

[Original: SPANISH]

18. The Government of Mexico has no additional information on the question of mercenaries to that presented in note 10916 of 25 June 1980. This information is summarized in document A/35/146. It is further indicated by the Government that if its study of existing laws shows that this matter is not fully covered, steps would be taken to prepare a bill on this subject.

NORWAY

[Original: ENGLISH]

[24 August 1982]

19. The Government states that:

(a) Article 53 litra c of the Norwegian Constitution of 17 May 1814 provides that the right to vote is lost by persons entering the service of a foreign power without the consent of the Government;

(b) Under Act of 19 May 1937 the King may prohibit

(i) that anyone within the realm is recruited to military service for a country of which he is not a national and has not been a national for a specified period of time;

(ii) that anyone leaves Norway to such a country to participate in war.

A person infringing such a prohibition, or aiding or abetting thereto, shall be punished with fines or imprisonment up to three months;

(c) According to Section 133 of the Penal Code of 22 May 1902 anyone who, without the King's permission, recruits troops in Norway for foreign military service, or is accessory thereto, shall be punished with fines or imprisonment up to one year.

20. As Norwegian criminal jurisdiction to some extent is applicable to Norwegian nationals abroad, a Norwegian serving as a mercenary in another country may be subject to punishment under the Penal Code when committing certain offences of a serious nature.

POLAND

[Original: ENGLISH]

[2 June 1982]

21. The Government states that mercenaries posed a serious threat to the just struggle of peoples for independence and social progress. Like slavery and apartheid, mercenarism 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 aimed at an elaboration

of an International Convention against recruitment, use, financing and training of mercenaries and hopes that the Convention will make a tangible contribution to eradicating mercenarism. The Government of Poland is of the opinion that all States should adopt legislative, judicial, administrative and practical measures to these ends;

22. Poland has 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 of prison. Any person who recruits Polish citizens or foreigners in Poland is also liable to punishment up to 10 years of prison.

PORTUGAL

[Original: PORTUGUESE]

[15 September 1982]

23. The Government states that the action referred to in the Commission resolution 1982/16 does not directly constitute a criminal offence, although articles 142 and 148 of the Criminal Code may be applicable, as specified below. The general provisions on individual work contracts may be invoked. Article 16 of the regulatory law (Decree Law No. 49, 408 of 24 November 1964) establishes a penalty in respect of contracts whose purpose or aim is contrary to the law or public order or offends against morality; the latter at least would be the case with the recruitment of mercenaries. The penalty entails the loss, by the party who knowingly committed the unlawful act, of the advantages gained which by their very nature are returnable; this is obviously impracticable in the case under consideration.

24. Article 156 of the Criminal Code specifically concerns "recruitment or incitement for foreign military maritime service". This article reads as follows:

"Any person who, without authorization from the Government, recruits or orders the recruitment of, pays or orders payment of, persons for foreign military or maritime service, or procures arms, vessels or ammunition for that purpose, shall be sentenced to the maximum term of imprisonment and the maximum fine.

"If the person concerned is an alien he shall be sentenced to imprisonment for up to six months."

25. In addition to this provision, which is obviously applicable, the chapter concerning crimes against the external security of the State contains two articles which may possibly be applicable: article 142, on incitement to acts harmful to the Portuguese State, and article 148, relating to incitement to war and exposure to reprisals.

Article 142 reads as follows:

"Any Portuguese national or alien resident in Portugal who commits an act knowing that it may lead a foreign Power to take action that is harmful to the State, or who knowingly assists a foreign Power or its agents in carrying out such acts, concerning which he reaches a direct or indirect understanding with that Power or its agents, or who uses any other means for such purposes, shall be sentenced to the penalty referred to in article 55.

If there are exceptionally important extenuating circumstances, the penalty may be replaced by any of the others prescribed in article 55 or in paragraph 5 of that article."

If, instead of "action that is harmful to the State", reference was made to the State being exposed "to a declaration of War" or Portuguese nationals being exposed "to reprisals by a foreign Power", the above-mentioned article 148 would be applicable.

26. To the extent that the act of recruitment in question is covered by the provisions of one of the articles referred to above, the agents involved would in practice be guilty of a crime punishable by the penalty specified, which is the highest on the Portuguese penal scale. And the mercenaries themselves, at least in theory, could be punished under this provision, by the simple fact of being mercenaries.

27. Reference should also be made to certain provisions of the Code of Military Justice which cover cases in which the recruitment of mercenaries may occur.

28. Reading articles 65 and 66 of this Code together, it is in fact clear that any person who, in time of war, incites military personnel or recruits or pays personnel, thereby jeopardizing the security of an allied country or of a group or alliance of which Portugal is a member, is liable to rigorous imprisonment for 20 to 24 years. 1/ If it was proved that this was the case in respect of the recruitment of mercenaries, their agents could obviously also be charged under these articles.

QATAR

[Original: ENGLISH]

[14 May 1982]

29. The Government of Qatar refers to the information on the question of mercenaries which it submitted to the General Assembly on 22 April 1982. This information is summarized in document A/37/317.

SEYCHELLES

[Original: ENGLISH]

[6 October 1982]

30. The Government of Seychelles states that there is no specific legislation dealing with mercenaries, but such legislation is currently being prepared and will be communicated to the United Nations.

TONGA

[Original: ENGLISH]

[24 May 1982]

31. The Government of Tonga states that it has no information to offer as regards Commission on Human Rights resolution 1982/16.

1/ The text of these provisions reads as follows:

"Article 65. Any person who, in time of war:

(a) Incites or attempts to incite military personnel to desert to the enemy, or directly or indirectly facilitates such an act, being aware of its purpose;

(b) Recruits or pays personnel to serve the enemy;
shall be sentenced to rigorous imprisonment for 20 to 24 years.

"Article 66. The provisions of this section are applicable to acts committed against the security of an allied country or a group or alliance of which Portugal is a member."