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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

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* A/33/150.

I. INTRODUCTION

1. In resolution 32/14 of 7 November 1977, the General Assembly, inter alia, reaffirmed the importance of the universal realization of the right of peoples to self-determination, national sovereignty and territorial integrity and of the speedy granting of independence to colonial countries and peoples as imperatives for the enjoyment of human rights; reaffirmed the legitimacy of the struggle of peoples for independence, territorial integrity, national unity and liberation from colonial and foreign domination and alien subjugation by all available means, including armed struggle; reaffirmed that the practice of using mercenaries against national liberation movements and sovereign States constituted a criminal act and that the mercenaries themselves were criminals, and called upon the Governments of all countries to enact legislation declaring the recruitment, financing and training of mercenaries in their territory and the transit of mercenaries through their territory to be punishable offences and prohibiting their nationals from serving as mercenaries, and to report on such legislation to the Secretary-General; noted with appreciation the material and other forms of assistance that peoples under colonial and foreign rule continue to receive from Governments, United Nations agencies and intergovernmental and non-governmental organizations, and called for a maximization of that assistance; and decided to consider this item again at its thirty-third session on the basis of the reports that Governments, United Nations agencies and intergovernmental and non-governmental organizations have been requested to submit concerning the strengthening of assistance to colonial Territories and peoples under foreign domination and control.

2. The present report contains replies received as at 31 August 1978 from Governments of States Members of the United Nations (sect. II) and summaries of replies from non-governmental organizations (sect. III) on action taken pursuant to the above-mentioned resolution. One regional intergovernmental organization (Organization of American States) and one non-governmental organization (International Humanist and Ethical Union) indicated that they had no information to submit. Any additional replies will be reproduced in an addendum to the present document.

3. Information on action taken by the specialized agencies and the international institutions associated with the United Nations will be found in the report of the Secretary-General prepared in accordance with General Assembly resolution 32/36 of 28 November 1977 (A/33/109 and Add.1-3).

II. REPLIES RECEIVED FROM GOVERNMENTS

AUSTRIA

/Original: English/

/31 July 1978/

1. ... the Austrian laws in force conform with the aforementioned disposition of resolution 32/14.
2. Article 279 of the Austrian Criminal Code prohibits the formation of any armed forces within the territory of the Republic. It is, moreover, a punishable crime to establish organizations which are aiming at training their members for armed combat. In addition, any support given to the establishment of such organizations is punishable.
3. Any acts committed by individuals suitable to endanger Austria's neutrality are to be prosecuted as criminal offences under article 320 of the Criminal Code; the latter disposition being applicable only in cases of war or of armed conflict, to which Austria is a party.
4. Article 257 of the aforementioned code makes punishable any support of enemy forces; this article being applicable only if the Republic of Austria is directly involved in an armed conflict. Finally, article 316 of the Criminal Code has to be quoted which forbids any recruitment, any financing, etc., of mercenaries for aiming at an attack on a foreign country.
5. According to article 32 of the Austrian law on Citizenship, 1965, an Austrian citizen is ex lege deprived of his citizenship if he joins the armed forces of a foreign country voluntarily.
6. Article 33 of the same law provides for the deprivation of the Austrian citizenship if an Austrian citizen conducts himself in a way detrimental to the interest or the integrity of the Republic of Austria.
7. With reference to paragraph 14 of the aforementioned resolution ... Austria has made the following contributions:

	<u>1975</u>	<u>1976</u>	<u>1977</u>
	(in United States dollars)		
Trust Fund for Southern Africa	21,500	22,000	26,000
United Nations Educational Programme for Southern Africa	21,500	22,000	26,000
United Nations Fund for Namibia	10,000	10,000	12,000
Information activities of the Special Committee against <u>Apartheid</u>	-	-	2,000

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CHILE

/Original: Spanish/
/26 July 1978/

1. Chile, in the course of its development as an independent nation, has advocated the full establishment of the right of peoples to self-determination and to the abolition of all practices infringing that right, which it deems to be a prerequisite for international harmony and stability. As a member of the Organization of American States and of the United Nations, it has, in accordance with its traditional stand, supported and endorsed the declarations and resolutions establishing that right, among which we can cite both the American and the Universal Declarations of Human Rights, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. The inevitable corollary to this position is the vigorous rejection of all mercenary practices and of the attitudes giving rise to and promoting such practices.

2. It has not been necessary for Chile to enact special legislation, since its penal legislation, which has been in force since 1874, contains provisions prescribing penalties for mercenary practices. Article 114 of the Penal Code provides that it is an offence to raise troops without proper authorization within the territory of the Republic, for any purpose and irrespective of the identity of the nation to be attacked. The penalty for that offence is a term of imprisonment of up to 10 years and is applicable to both Chilean nationals and to foreigners. This provision is supplemented by article 8 of Act No. 17,798, on arms control, passed in October 1972, prescribing penalties to be imposed on persons who "organize, are members of, finance, supply, assist, instruct, incite or induce persons to establish and operate private militias, combat groups or groups organized along military lines". The penalty in such cases varies according to the potential of the weapons in the possession of the offenders. Furthermore, the mere possession of firearms that are not registered with the military authority specified in the Act is a punishable offence. It is also an offence in Chile to carry a weapon without proper authorization.

3. Finally, we wish to point out that the Government of Chile, in order to ensure effective respect for the principle of the right of peoples to self-determination, is prepared to consider all proposals aimed at eliminating mercenary and other similar activities.

FRANCE

/Original: French/
/25 May 1978/

1. At the thirty-second session of the General Assembly, France voted against this resolution, specifically because of paragraph 4, which "demands the immediate evacuation of the French administration and forces from the Comorian territory of Mayotte". Mayotte and its inhabitants are thus included in the category of

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territories and peoples under colonial domination, although the Mahorais have freely expressed their will in accordance with the principle of self-determination, by means of a ballot, conducted in accordance with article 21 of the Universal Declaration, by universal suffrage and secret vote.

2. This being so, I regret to inform you that, whatever my Government's view of the other paragraphs of this resolution, it does not feel able to respond to the Secretary-General's request for information.

IRAN

/Original: English/

/27 July 1978/

1. The Government of Iran is pursuing a policy which is commensurate with the principles of the Charter of the United Nations and as a result of that Iran has always supported the right of people to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights.

2. Furthermore there is a historical tradition in Iran to support the right of people under colonial rule to self-determination. Therefore any action in the field of recruitment, financing and training of mercenaries would be in clear contradiction to the spirit of the policy and tradition of Iran. Hence the Government of Iran deems it not necessary to enact specific legislation dealing with recruitment, financing and training of mercenaries.

KENYA

/Original: English/

/27 June 1978/

1. Kenya is among the independent African countries which fought for her independence. Kenya supports those liberation movements in southern Africa which are fighting for the cause of freedom, dignity and independence.

2. The relevant provisions of the Constitution of Kenya provides for protection of the fundamental rights and freedoms of individual regardless of race, colour, place of origin, residence or local connexion, political opinion or creed.

3. Further, although the laws of Kenya do not define a mercenary it is an offence in Kenya to promote warlike activities. And the penalty is imprisonment for life. Similarly, foreign enlistment is forbidden, except with the licence of the Republic's President in writing. The offence carries a penalty of two years in jail.

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KUWAIT

/Original: English/
/23 June 1978/

1. The Government of the State of Kuwait fully upholds the provisions of paragraph 6 of resolution 32/14. Kuwait has consistently supported liberation movements in their struggle against colonialism, racism and apartheid.
2. Kuwait shares the view that the practice of using mercenaries against national liberation movements and sovereign States constitutes a criminal act and that the mercenaries themselves are criminal.
3. Kuwait solemnly undertakes not to recruit, finance or train mercenaries in its territory. It also solemnly undertakes to prohibit its nationals from serving as mercenaries.
4. The Government of the State of Kuwait, however, does not believe that any specific legislation is needed to achieve this end.

MAURITIUS

/Original: English/
/21 July 1978/

The Government of Mauritius is contemplating legislation in the matter.

EL SALVADOR

/Original: Spanish/
/19 June 1978/

1. The General Assembly of the United Nations, inter alia, calls upon the Governments of all countries to enact legislation declaring the recruitment, financing and training of mercenaries in their territory and the transit of mercenaries through their territory to be punishable offences and prohibiting their nationals from serving as mercenaries, and to report on such legislation to the Secretary-General.
2. It must be stated in this respect that in El Salvador there is currently no legal provision directly condemning all activities connected with mercenaries. However, in accordance with the international policy of our country, which has always advocated respect for human rights and supported the principle of non-intervention in the domestic affairs of other States, we welcome the request from the Secretary-General of the United Nations and I have instructed the Legal Section of this Ministry to undertake preliminary studies concerning the possible inclusion of those crimes in the Penal Code.

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3. It should also be pointed out that the law of El Salvador contains provisions that could be applied to some of the activities mentioned in the United Nations document. Thus both the Political Constitution of 1950 and the Constitution of 1962, article 47, provide that only the Legislative Assembly may authorize or prohibit the transit of foreign troops through the territory of the Republic and the stationing of warships or military aircraft of other countries for periods longer than those established by international treaties or practice.

4. The Penal Code promulgated in 1973 contains a section entitled "INTERNATIONAL OFFENCES", comprising two chapters: "Offences against international peace" and "Offences of an international nature". Both in chapter I (Offences against international peace) and in article 494 of chapter II, there are certain categories of offences in which the conduct of persons who recruit, finance, train, or are employed as, mercenaries could be placed. The wording of those provisions is as follows:

"PART V - INTERNATIONAL OFFENCES -

CHAPTER I - OFFENCES AGAINST INTERNATIONAL PEACE

"Genocide

"Article 496. Any person who, with intent to destroy, in whole or in part, a particular human group, on the grounds of its nationality, race or religion, kills or causes bodily or mental harm to members of the group, inflicts on them conditions making their survival difficult, imposes measures intended to prevent births within the group or forcibly transfers persons to other groups, shall be liable to a period of imprisonment of from 10 to 25 years.

"The penalty may be increased to 30 years where the person directly responsible for any act of genocide is a civil or military official.

"Any person who proposes or conspires to commit an act of genocide shall be liable to a term of imprisonment of from 6 to 12 years; any person guilty of public incitement to commit genocide shall be liable to a term of imprisonment of from 4 to 8 years.

"Public incitement to a war of aggression.

"Article 487. Any person guilty of public incitement to a war of aggression shall be liable to a term of imprisonment of from 1 to 3 years.

"The provision contained in this article shall apply only where the law of the State against which the public incitement is directed provides penalties for the said offence.

"Offences against the laws or customs of war.

"Article 488. Any civilian not subject to military jurisdiction who fails to comply with humanitarian requirements in respect of prisoners of war or hostages who are wounded in action, in hospitals or places designated for the treatment of the wounded and any person who commits any inhuman act against the civilian population before, during or after an armed conflict shall be liable to a term of imprisonment of from 5 to 20 years.

"CHAPTER II - OFFENCES OF AN INTERNATIONAL NATURE

"Piracy

"Article 490. The following shall be liable to a term of imprisonment of from 3 to 15 years:

"1. Any person who, on the high seas, in coastal waters or on the continental shelf, commits acts of depredation or violence against a vessel or against persons or objects on board such vessel;

2. Any person who seizes a vessel or any part of its equipment or cargo or of the property of its crew by means of fraud or violence against its commanding officer;

3. Any person who, in connivance with pirates, surrenders to them a vessel, its equipment or cargo or the property of its crew;

4. Any person who, by means of threats or violence, seeks to prevent the commanding officer or the crew from defending a vessel attacked by pirates;

5. Any person who on his own or another's account equips a vessel that is to be used for piracy;

6. Any person who, against the will of the commanding officer, diverts or orders the diversion of, a vessel to a place other than its destination.

Any person who knowingly conducts transactions with pirates or gives them assistance shall be deemed to be an accomplice.

If the aforementioned acts of violence or hostility should lead to the death of any person on board the ship that is attacked or if such acts are committed with intent to demand ransom money, the penalty shall be increased by up to half of the prescribed maximum.

"Air piracy

"Article 491. The penalty laid down for the cases listed in the preceding article shall also apply when such acts are committed on board aircraft, either within or outside the national air space.

"Traffic in slaves

"Article 492. Any person who acquires, transfers or traffics in slaves shall be liable to a term of imprisonment of from 3 to 7 years.

"Traffic in women and children

"Article 493. Any person who, on his own account or acting as a member of an international organization, engages in traffic in women, for illegal purposes, or in children, for any purpose, shall be liable to a term of imprisonment of from 2 to 5 years.

"In the case of traffic in Salvadorian women or children, the penalty may be increased by up to one third of the prescribed maximum.

"International criminal organizations

"Article 494. Any person who controls or is a member of an organization of an international nature trafficking in slaves, women or children, narcotic or hallucinogenic drugs, or commits acts of terrorism or air piracy or contravenes the provisions of treaties approved by El Salvador for the protection of human rights, shall be liable to a term of imprisonment of from 5 to 15 years."

5. In conclusion, although there are provisions which in certain circumstances could be applied to punish persons who engage in mercenary activities, in order to give full effect to the principle of typification which governs penal law, this Ministry has seriously considered the possibility of inserting, in the near future, one or more articles in the Penal Code, in the section respecting international offences, which will typify mercenary activities.

SWEDEN

/Original: English/
/6 and 27 July 1978/

1. First of all it should be noted that the Swedish Government still supports the basic aims of General Assembly resolution 32/14. As to measures against the use of mercenaries, most of the measures recommended in paragraph 6 of the resolution have already been incorporated into Swedish national legislation.

2. The possibility of legally recruiting persons in Sweden for military service abroad requires the permission by the Swedish Government. Such a permission would not be consistent with the basic principles of the Swedish Government. Whoever tries to persuade persons to leave the country for recruitment to such service without permission is liable to be punished to imprisonment or fines according to the Swedish Penal Code (art. 12 of chap. 19).

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3. Preparatory measures for recruitment of mercenaries such as training or the passing of persons in transit are also punishable by law and supervised by the authorities. Article 4 of chapter 18 of the Penal Code makes it a penal offence to set up or participate in certain organizations with the aim to exerting pressure or power, such as a military unit could do. The sanction is imprisonment or fines. The acquisition or possession of arms, ammunition, explosives and other inflammable objects are also controlled by legislation.

4. Furthermore the passing in transit of mercenaries over Swedish territory is prevented by the requirement of a permission from the Swedish Government. The legislation on aliens would likewise bar mercenaries from using Sweden to any significant extent as a country for privately organized transit traffic.

5. The Swedish Government is at present studying the matters of prohibiting economic contributions to mercenaries and of forbidding Swedish citizens to enrol as mercenaries.

6. Of particular interest would be the Swedish allocation for assistance to liberation movements, refugees and victims of apartheid in southern Africa. For the fiscal year 1978/1979, 85 million skr have been set aside for such assistance, of which 48 million skr to liberation movements, the latter representing an increase of 15.5 million skr compared to 1977/1978. The South West Africa People's Organization of Namibia will receive 20 million skr, the African National Congress of South Africa 12 million and the Patriotic Front of Zimbabwe 16 million, equally divided between Zimbabwe African People's Union and Zimbabwe African National Union. Furthermore, 27 million skr have been earmarked for educational programmes, legal aid and for other humanitarian purposes for refugees or other victims of the repressive policies in the minority ruled countries of South Africa, Namibia and Southern Rhodesia. These resources will in their main part be channelled through the International Defence and Aid Fund, International University Exchange Fund and World University Service. The aggregate allocation for 1978/1979 also includes support to the United Nations programmes for southern Africa, such as the Namibia Institute, and the United Nations Trust Fund for South Africa and the United Nations Educational and Training Programme for Southern Africa. Sweden has furthermore declared its preparedness to contribute to the Nationhood Programme of Namibia. Such contributions will in its main part be in addition to the frame of 85 million skr.

7. During 1977/1978 Sweden contributed to the United Nations High Commissioner for Refugees relief programme in southern Africa as well as directly to the Mozambique Government for assistance to the Zimbabwean refugees. Recently the Government decided on an additional contribution of 10 million skr to Mozambique for refugee assistance.

III. REPLIES RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS

INTERNATIONAL COMMISSION OF JURISTS

/Original: English/
/18 July 1978/

The International Commission of Jurists sent a copy of an oral intervention concerning self-determination made by the Secretary-General of ICJ to the twenty-ninth session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and copies of two articles entitled "Mercenaries and the Rule of Law" (published in ICJ Review No. 17) and "Israeli Settlements in the Occupied Areas" (published in ICJ Review No. 19). 1/

INTERNATIONAL DEFENCE AND AID FUND FOR SOUTHERN AFRICA

/Original: English/
/19 June 1978/

The International Defence and Aid Fund for Southern Africa sent a copy of its report on education and family projects and legal defence in Rhodesia to the Fund's annual Conference in May 1978. 1/

INTER-PARLIAMENTARY UNION

/Original: English/
/22 May 1978/

The Inter-Parliamentary Union informed that the following item was on the agenda of its next annual Conference, to be held in Bonn from 5 to 13 September 1978: "The continuation of most strenuous efforts toward the complete elimination of colonialism in the world". The Inter-Parliamentary Union sent also the memoranda submitted on the subject at its last spring session at Lisbon in March and a draft resolution which will again be discussed in Bonn before its final adoption by the sixty-fifth Inter-Parliamentary Conference. The text of the final resolution will be sent to the United Nations in due time.

1/ Available in the Secretariat's file.

SOCIALIST INTERNATIONAL

/Original: English/

/21 June 1978/

The Socialist International sent a copy of its statement on dictatorships in Latin America which had been adopted by the meeting of the Bureau of the Socialist International held at Dakar on 12-13 May 1978, which read as follows:

"The Socialist International, at its Bureau meeting at Dakar, expressed its concern at the existence of military dictatorships in Latin America which have embarked on a process of arbitrary arrests of their political opponents and calls for effective and widespread amnesties in these countries.

"These amnesties should be guaranteed by the immediate abolition of repressive and anti-democratic laws.

"These amnesties must lead to full respect for human and civil rights, guaranteeing a free press, the free organization of political parties and trade unions and the holding of free elections."

WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM

/Original: English/

/17 July 1978/

1. The Women's International League for Peace and Freedom continues its modest contributions to funds for legal and other aid to victims of apartheid and to the liberation of Namibia and Zimbabwe.
2. WILPF informs its members and women's groups as well as the general public, to the extent that it can, about the prevailing situation in countries such as South Africa, Southern Rhodesia, Namibia, East Timor, etc., and encourages support for campaigns, lobbying and financial support to aid in the elimination of domination by minority or foreign rule.
3. WILPF also works together with other non-governmental organizations, and currently is actively engaged in the preparations for a conference against apartheid, with particular attention to action by non-governmental organizations in support of victims of apartheid, and co-operation between non-governmental organizations and the United Nations, specialized agencies and the Organization of African Unity in this field.
