THE LEGAL STATUS OF MERCENARIES: A CONCEPT IN INTERNATIONAL HUMANITARIAN LAW *

LENNOX S. HINDS **

I. INTRODUCTION

Mercenaries, those who undertake military service in exchange for payment in money, kind or land, have been used throughout history, even in the earliest civilization to maintain and bolster an existing regime against attacks within or without its borders.

Until the late nineteenth century, when universal military service and other forms of conscription finally replaced mercenary armies, it was the primary method of waging war and maintaining order.

Mercenarism and its impact on world peace has taken on fresh legal and political significance in this post-colonial period of the African Continent. Events in Zaire (formerly the Congo), Nigeria, the Sudan, and, most recently, Angola and Benin, are instances of the resurgence of the use of mercenaries to maintain governments which rule without popular support. These recent episodes also demonstrate the brutality to civilian populations and the protracted nature of the combat when it is waged by those who have no interest in the outcome of the struggle, no shared destiny with the nation on whose soil they fight and who can only benefit from protracted campaigns.

As liberation struggles intensify in Southern Africa, it is clear that the impulse to recruit and employ mercenaries to extend the meager manpower of the minority regimes will continue and increase.

As one of the three American delegates to serve on the International Commission on Inquiry on Mercenaries (Luanda, Angola, 1976) and as an observer at the trial of the British and American mercenaries in Luanda, I had an opportunity to consider the legal, political and human ramifications of contemporary mercenarism from close quarters. It convinced me as it did my forty-one colleagues from thirty six countries represented in the Commission, that mercenarism is, at once a threat to world peace and a violation of human rights that cannot be condoned by those members

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** *National Director,* National Conference of Black Lawyers, United States of America.

of the world community concerned with the advancement of international peace and order. It also established that mercenarism continues to exist upon the forbearance, if not the encouragement, of those states whose nationals are solicited to fight against the independence movements of majority populations in Africa.

With these considerations, the legal aspects of mercenarism are discussed in this paper.

II. HISTORICAL OVERVIEW OF THE USE OF MERCENARIES [1]

Ancient civilizations relied heavily upon trained military bands hired abroad to protect themselves. Repeated invasion by wandering and marauding armies forced early Asiatic and African centers of culture to employ mercenaries as their populations were disinclined to strenuous military service. In China, the caste armies of overlords were bolstered with permanent bodies of mercenary troops to maintain hegemony. In ancient Egypt, the defense of the existing political and religious structure was entrusted primarily to mercenaries rather than to the intermittently mustered militia. Successive empires in the Mesopotamia relied on mercenaries who were supplemented by a feudal and popular army while mercenary troops of the Persian Satraps were poised against the feudal army of native kings.

Three sets of forces determined the later evolution of the mercenary system. These forces transplanted the system to Europe which was comparatively immune to the nomadic invasions which perpetually challenged Asian and African civilizations. The *first* of these determinants is *the political character of the state.* Democratic forms and traditions tend to give rise to militias, while absolutism has tended to support itself by mercenary troops. The foreign guards of the pharoahs, the Germanic guards of the Roman emporors, and the Swiss regiments in Bourbon France are varying manifestations of the same autocratic techniques.

A *second* determining factor is the *economic character of the state.* Commercial cities like Tyre, Sidon, Syracuse, Tarentum and Carthage were drawn inevitably to the mercenary system to maintain their markets and their trade routes. Carthage employed Gallic footmen, Balacrean slingers, and Numidian cavalry to ensure its commerce throughout Africa and Europe. It is also the Carthagenean example that exemplifies the devastation and pillage that typically follow in the wake of the use of mercenaries. The spoils of war, looting and raping, were supplements to the meagre wage and keep paid to them. In later centuries, other commercial nations emulated Carthage: Venice, the German Hanseatic League, the commercial cities of Holland, and, most recently, England, Belgium and France

[1] Material in this section is derived from R.A. PRESTON AND S.F. WISE, MEN IN ARMS: A HISTORY OF WARFARE AND ITS INTER-RELATIONSHIPS WITH WESTERN SOCIETY (New York: 1970), and materials from the Bibliography (q.v.).

have relied heavily on mercenary armies to subdue captive populations and to ensure uninterrupted trade relations and the exploitation of natural resources in conquered territories.

A *third* disposive factor toward the reliance on mercenarism is in societies which develop *an aversion to political aggressiveness and war;* especially when military goals conflict with the economic interests of the masses of the people in rural and urban centers. Periods in which the populace is indifferent or hostile to governmental military ambitions tend to stimulate the use of mercenary troops. In Sparta, as early as the fifth century, the economic resources of the agrarian population were exhausted by perpetual wars. By the Peloponnesian Wars, mercenaries played an increasingly dominant role in the city-state. Athens maintained its imperialistic commercial dominance by a permanent mercenary army since a citizen militia could not and would not maintain their colonial empire. Other city-states paid their military obligations in money to the Greek tyrants. These mercenary units recruited at first from Greek city-states, were later manned with colonials and finally with barbarians, creating eventually a far-reaching system conducted by private entrepreneurs.

In Rome, it was possible to maintain a national army over a longer period than in Greece, relying on the populations of the Italic confederates. But the protracted nature of the Second Punic War and Rome's imperialistic policies made it impossible to maintain an army of Roman nationals. Imperialism transformed the National Militia into a standing mercenary army led by heavy infantry legions of Roman conscripts. By the time of Augustus Caesar, Roman soldiers drained by civil wars and the conquest of empires were completely replaced by mercenary aliens.

In the barter economies of late antiquity and the early middle ages, renumerations of mercenaries in kind rather than in money flourished, except in Byzantium, where the recruiting of soldiers was a flourishing business in the hands of private entrepreneurs.

By the thirteenth century, the destruction of feudal soldiery in the Crusades, the spread of money economy and the introduction of long-range weapons gave rise to formally organized mercenary units like the Brancons of Barbarossa, the Saracens of Frederick II, the English Mercenary Knights and the privately organized bands of *Condottieri* in Italy.

By the end of the Middle Ages, Swiss and German lansquerets, private foot mercenaries equipped with new weapons ushered in methods of warfare adapted to the modern state.

From the end of the fifteenth century to the end of the seventeenth, Europe relied almost exclusively on private mercenaries. Entrepreneurs like the explorers Pizzaro, Cortes, Mansfield and Wollenstein were commissioned by states to organize temporary armies for colonial and domestic conquest.

The colonial wars of the seventeenth and eighteenth centuries, especially the wars in the Americas subduing native populations, rendered mercenary armies more and more indispensible despite Machiavelli's warnings on their limitations:

> The mercenary and auxiliary are unprofitable and dangerous, and that prince who founds the duration of his government upon his mercenary forces shall never be firm or secure; for they are divided, ambitious, undisciplined, unfaithful, insolent to their friends, abject to their enemies, without fear of God or faith in men . . . in time of peace they divorce you, in time of war they desert you, and the reason is because it is not love or any principle of honor that keeps them in the field; it is only their pay, and that is not a consideration strong enough to prevail with them to die for you; whilst you have no service to employ them in, they are excellent soldiers; but tell them of an engagement, and they will either disband before or run away in the battle.[2]

Temporary private mercenary bands became transformed into the drilled standing armies of the absolute state. The recruiting of hired troops from alien populations to advance a nation's economic interests abroad permitted nationals to remain at home and produce goods. Numerous impoverished principalities were eager to sell their mercenaries abroad. The British fielded an army in the Colonies during the American Revolution of 30,000 soldiers from Brunswick, Hesse-Cassel, Waldeck-Ansbach and Zerbst, for which they paid these principalities 8,000,000 pounds sterling. England, of course, found it could not stave off the liberation of the Colonies by the use of mercenaries once the Colonists had determined to be free.

The legal and political status of mercenaries has varied at different periods. Often mercenaries have formed separate independent bodies which either acquired the status of alien units in the national life, as was the case with private mercenaries, or became integral parts of the state, as happened with national standing armies. Groups such as the Mamelukes and the Janizaries were castelike organizations with special privileges and responsibilities, which in many cases descended from generation to generation. All matters pertaining to salaries, maintenance and discipline were minutely regulated by a complicated administrative apparatus. In Rome the independent administrative process was exemplified by the organization of the praetorians and later by that of the various military units of the Germanic invaders; in the Middle Ages by the Norman mercenaries who were employed in the service of Russia and Byzantium and by Saracen troops, which were more than once hired by Christian rulers. The Italian *condottieri* created the so-called *compagnie di ventura,* specially privileged units which played an active role in the establishment and administration of the mediaeval city-states of Italy. In France there arose during the early

[2] MACHIAVELLI, THE PRINCE 38 (1952).

Middle Ages such self-sufficient private organizations as the Grande Compagnie, the Societe de l'gueste and later the savage *cameraderies* or the Armagnacs.

The Swiss organizations represented a particularly important variant of the administrative machinery. For economic reasons the state itself assumed in Switzerland the task of providing its citizens with military employment abroad. The right to recruit became of state monopoly. The various cantons made contracts with foreign states regulating the recruiting and delivery of troops. The units were organized on a local basis; each had its own constitution, officers and banners. Contracts were concluded with Austria, Burgundia, Milan, Venice, the Holy See, Spain, Savoy, Wurttemburg, Holland and above all with France, where most of the Swiss mercenary bands were hired. It was only in 1848 that a federal law was adopted forbidding the cantons to enter into such military agreements.

In democratic as well as in more authoritarian administrative systems the maintenance of discipline among the wandering mercenaries was one of the most difficult problems and often led to serious mutinies. Italy and France as well as Carthage and Rome at an earlier period were repeatedly menaced by mercenary wars and from time to time in periods of weak central government overrun by greedy mercenary bands.

In Russia, the Tsar may have owed his final demise to his reliance on mercenary armies. As Lenin observed, "The days have gone forever when wars (are) waged by mercenaries or by representatives of a caste divorced from the people. Wars are now waged by the peoples."[3]

Within the last decade, there has been a resurgence of the use of mercenaries to quell restive colonized populations attempting their national liberation in the Congo, Zaire, and Angola. At this moment, Americans and the British must be aware that serious recruitment is being undertaken in their countries to enlist mercenaries to fight in Rhodesia and South Africa.

In the hope of avoiding the historical fallacies of the past, the members of the world community might consider the contemporary use of mercenaries within its historical contexts and antecedents, and, in the interest of peace, declare mercenarism an atavistic blight on the world international order and a violation of international human rights.

III. Proposed Definition of Contemporary Mercenarism—The Luanda Convention

Historically, a mercenary has been simply defined as a soldier who serves primarily for monetary gain in the army of a foreign country.[4]

[3] V. D. Sokolovsky, Soviet Military Strategy 223 (1975).
[4] Webster's Seventh New Collegiate Dictionary 530 (1971).

However, since the advent of liberation movements in the African continent, this definition of a mercenary has taken on an additional element, that of *race*. This consists in the employment of Caucasian, European mercenaries by minority governments to attempt to subdue majority black populations seeking control of their national destinies. The most recent example is in Angola. Other countries affected by this tactic include Zaire, Nigeria, Benin and Zimbabwe. In each of these situations, white mercenaries from Europe, South Africa and the United States have been hired in significant numbers to prop up colonialist, neo-colonialist, racist or secessionist regimes.[5]

Because Africans have been most severely damaged by the use of mercenaries in recent times, representatives from African states have taken the lead in denouncing mercenarism. Their strategy at this time includes the adoption of an international convention by nation-states that makes mercenarism an international crime and provides for measures to punish those who act as mercenaries as well as to increase the responsibility of nations to prevent its citizens from participating in such illicit practices.

During the Third Session of the *Diplomatic Conference on the Re-affirmation and Development of International Humanitarian Law Applicable in Armed Conflict* held in Geneva in 1976, the Nigerian delegation took the initiative and introduced to the Working Group of Committee III a proposal to deal with the question of mercenaries. The proposal was for a new Article 42 *quarter* to be inserted in Protocol I on International Armed Conflicts. It reads in pertinent part:

> 1. The status of combatant or prisoner of war shall not be accorded to any mercenary who takes part in armed conflicts referred to in the Conventions [of 1949] and the present Protocol.
>
> 2. A mercenary includes any person not a member of the armed forces of a party to the conflict who is specially recruited abroad and who is motivated to fight or to take part in armed conflict essentially for monetary payment, reward or other private gain.[6]

The members of the Working Group had some difficulty in reaching a consensus on the exact wordnig of the draft text to be submitted to the Committee III. As a result, the issue was left to be considered at the Fourth Sessions of the Conference held in April of 1977.[7]

Much of the difficulty in reaching a consensus was due to the polarities of perception among nations on this issue: most Third World countries tended to see mercenarism as a crime involving illegal entry into foreign territories; violation of the sovereignty of a state; the killing of peoples and the destruction of property. Western countries generally supported the view

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[5] Akbarali H. Thobhani, "The Mercenary Menace," *Africa Today*, (January, 1977). "The African View of Mercenaries," *Africa Currents*, No. 6 (Summer, 1976).

[6] Doc. CDDH/236/Rev. 1 (1976), p. 32.

[7] Van Deventer, *Mercenaries at Geneva*, 70 AM. J. INT. L. 811 (1976).

that mercenaries should be treated as prisoners of war under the Geneva Convention.[8]

The Western view contains a significant irony since it is those countries who complacently, if not overtly, allow the recruitment of mercenaries within their territories that hold the commonly shared view that mercenaries should not be punished for the atrocities they commit. As in the past, those attempting to free themselves from oppression and repression continue to be brutalized unnecessarily by external forces.

After much difficulty, a significant breakthrough was reached by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts in June 1977. The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) which the Conference drew up and adopted now contains in its Article 47 the following provision:

> Article 47 — *Mercenaries*
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> 1. A mercenary shall not have the right to be a combatant or a prisoner of war.
> 2. A mercenary is any person who:
> (a) is specially recruited locally or abroad in order to fight in an armed conflict;
> (b) does, in fact, take a direct part in the hostilities;
> (c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combants of similar ranks and functions in the armed forces of that Party;
> (d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;
> (e) is not a member of the armed forces of a Party to the conflict; and
> (f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.

In Angola in 1976, national reaction to the use of mercenaries against their people took an affirmative direction. For the first time, mercenaries were forced to account for their actions to the people and society they had harmed before a legal tribunal. At the request of a new and independent Angola, an *International Commission of Inquiry on Mercenaries*[9] was held in Luanda to observe the trial of the mercenaries and to ensure that the elements of justice and due process were met.

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[8] Thobhani, *supra*, note 5, p. 67.

[9] The Commission included forty-two representatives from thirty-six countries. Lennox S. Hinds, National Director and Hope R. Stevens, Co-Chairperson of the Board of Directors of the National Conference of Black Lawyers served on the Commission and were involved in the drafting of the Luanda Convention on Mercenarism.

One of the Sub-Commissions prepared a draft *Convention on the Prevention and Suppression of Mercenarism* which was unanimously adopted by the members of the International Commission of Enquiry on Mercenaries who came from 37 countries in all the continents. (See Appendix I). This document now known as the *Luanda Convention* is the most comprehensive work to set forth the crime of mercenarism. The Convention defines mercenarism in the following manner:

> Article I. The crime of mercenarism is committed by the individual, group or association, representatives of state and the State itself which, with the aim of opposing by armed violence a process of self-determination, practices any of the following acts:
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> (a) organizes, finances, supplies, equips, trains, promotes, supports or employs in any way military forces consisting of or including persons who are not nationals of the country where they are going to act, for personal gain, through the payment of a salary or any other kind of material recompense;
>
> (b) enlists, enrolls or tries to enroll in the said forces;
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> (c) allows the activities mentioned in paragraph (a) to be carried out in any territory under its jurisdiction or in any place under its control or affords facilities for transit, transport or other operations of the above-mentioned forces.

While this definition eliminates most of the loopholes found in the domestic legislation of nation-states and the present body of international law, significant procedural safeguards are included within the Convention to allay concerns for possible abuses under its parameters.

As discussed above, the increasing use of mercenaries against struggles for liberation mandates that international, individual, and nation-state support be rallied for the Luanda Convention. Because the exacerbating conflict in Southern Africa is one of the last great challenges to be faced by the beneficiaries of imperialism, it is possible that the most ruthless methods will be used to sustain these bastions of colonialism and racism. It is, therefore, imperative that decisive action be taken immediately to prevent the continued and increased use of mercenaries in Southern Africa to bolster atavistic regimes which have no legitimacy in either history or equity.

IV. GENERAL CONSIDERATIONS OF INTERNATIONAL AND MUNICIPAL LAW

Typically, international law deals with the problem of mercenaries to some extent under the principles pertaining to hostile military expeditions. The law of hostile military expeditions applies specifically to the act of organizing in neutral territory an expedition for the purpose of engaging in military operations against a state with which the former is at peace.[10] This concept is set forth in the *Convention Respecting the Rights and*

[10] Garcia-Mora, *International Law and the Law of Hostile Military Expeditions*, 27 FORDHAM L. REV. 309 (1958).

Duties of Neutral Powers and Persons On Land, known as the Hague Convention No. V, and provides in pertinent part that:

> Art. IV Corps of combatants cannot be formed nor recruiting agencies opened on the territory of a neutral power to assist the belligerents.
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> Art. V A neutral power must not allow any of the acts referred to in Articles II to IV to occur on its territory.
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> It is not called upon to punish in violation of its neutrality unless the said acts have been committed on its own territory.
>
> Art. VI The responsibility of a neutral power is not engaged by the fact of persons crossing the frontier separately to offer their services to one of the belligerents.
>
> Art. VII A neutral power is not called upon to prevent the export or transport, on behalf of one or other of the belligerents, of arms, munitions of war; or, in general, of anything which can be of use to an army or fleet.[11]

The law of hostile military expeditions as reflected in the Hague Convention was initially developed in connection with the concept of neutrality.

The concept of neutrality, although referred to as early as the fourteenth century, did not become an integral part of the law of nations until the sixteenth or seventeenth century. During the World Wars of the twentieth century, neutrality became the province of the weaker nations which was a great contrast to the practice of the nineteenth century and earlier periods. Basically, the principles of neutrality were relied upon as a means of limiting external interference in localized conflicts.[12]

Traditionally, neutrality on the part of a state not a party to a war has consisted of refraining from all participation in the war, and in preventing, tolerating, and regulating certain acts on its own part, by its nationals, and by the belligerents. It is the duty of belligerents to respect the territory and rights of neutral states.[13]

International Law, in situations of internal conflict, generally aims, initially, to shield the conflict from outside interference until it reaches a certain intensity, i.e., until the threat to the existing government is quite serious. This objective is manifested by a general duty of outside states to remain neutral. However, when the situation is intensified, an outside government may grant one of two kinds of provisional recognition to the fighting factions: as "insurgents" or as "belligerents." Such recognition, unless widely condemned as premature on the facts, enables an outside state to enter limited relationships with one or another of the factions

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[11] Z. MALLOY, TREATIES INTERNATIONAL ACTS, PROTOCOLS AND AGREEMENTS BETWEEN THE UNITED STATES OF AMERICA AND OTHER POWERS 2290 (1910).

[12] W. FRIEDMAN, D. LISSITZYN & R. PUGH EDS., CASES AND MATERIALS ON INTERNATIONAL LAW 909-17 (1969).

[13] 11 WHITEMAN, DIGEST OF INTERNATIONAL LAW 372-79 (1968).

on the basis of their provisional right to exist as *bona fide* combatants. To some extent, recognition of belligerency or insurgency may take place in the context of, and not necessarily in opposition to, the general duty of neutrality of the same outside state. It is well known, that extending these kinds of provisional recognition is, as a matter of law, largely discretionary to the recognizing state: there are no duties to recognize, except perhaps in a situation where the conflict is long-standing and *every* other nation has treated the factions as either insurgents or belligerents. In that case, a state with interests in the territory could probably be said to be estopped from denying the belligerent or insurgent status of the factions.

It is clear that international law postulates that a neutral state must maintain an attitude of strict impartiality towards belligerents in the presence of a war.[14] This obligation includes the duty of a neutral state not only to abstain from participating in the conflict but also to refuse the use of its territory and resources for the organization of military expeditions against states with which it is at peace.[15] A similar obligation exists in the presence of a civil war or an insurgency in the territory of a foreign state. It can thus be seen that the duty to prevent the formation of military expeditions is not in any way limited by the relations of neutrality.[16]

The law of hostile military operations is only a phase of the general duty of a state to prevent the commission of injurious acts against friendly foreign nations. As a result this branch of law is equally applicable to situations involving civil strife as well as acts threatening the peace and security of a foreign state. However, in regard to civil strife, the law has its foundation in the obligation of every state to respect the independence of other nations. Thus, while in the presence of war the obligation of a neutral is one of impartiality, as applied to a civil war the duty is one of non-interference in the conflict.[17]

The duty of non-interference was clearly set out in the case of *The Santissima Trinidad*.[18] Therein, Mr. Justice Story stated:

> The government of the United States has recognized the existence of a civil war between Spain and her colonies, and has avowed a determination to remain neutral between the parties, and to allow each the same rights of asylum, and hospitality and intercourse. Each party is therefore, deemed by us a belligerent nation, having so far as concerns us, the sovereign right of war, and entitled to be respected in the existence of those rights. We cannot interfere, to the prejudice of either belligerent, without making ourselves a party to the contest, and departing from the posture of neutrality.

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14 7 HACKWORTH, DIGEST OF INTERNATIONAL LAW 372-79 (1943).
15 3 HYDE, INTERNATIONAL LAW 2254 (2d ed. 1945).
16 GARCIA-MORA, *supra*, note 10, p. 309.
17 *Ibid.*, pp. 309-10.
18 7 Wheat 283, 5 L.Ed. 454 (1882).

Nonetheless, despite the laudable principles espoused by Justice Story, history and recent events have demonstrated that the theory has not been applied in practice. For all practical purposes, the duty of impartiality and non-interference are basically the same with regard to the state's obligation to prevent hostile military expeditions from departing from its jurisdiction. This obligation is based on the theory that since international law confers upon every state a power of exclusive control over its territorial domain there is a corresponding duty to protect the rights of other states within its territory.[19] It is also well established that a state is bound to use due deligence to prevent the commission of criminal acts against another nation or its people within its dominions.[20]

It is clearly grounded in precedent, then, that the violation of this obligation engages the international responsibility of the state. There is no question that, as a matter of law, state inactivity in preventing the organization of a military expedition is tantamount to complicity in the hostile attack and can logically be regarded as actual government participation in the conflict. As a result, state tolerance of such activity raises a presumption of governmental complicity amounting to an international delinquency.[21]

While the principles developed under the law of hostile military expeditions appear to be sufficient to deal with the problem of mercenaries on its face, this body of laws is severely undermined by the fact that each state has the discretion to enforce the duty of prevention as it sees fit. This results in a high degree of instability in the law, since, in effect, the law and internal politics of the various nation-states become the controlling factors.[22]

Consideration of the national laws of the United States and other countries on neutrality demonstrate additional support for the proposition that there is an urgent need for the revision of the present principles of international law to adequately prevent and protect against the crime of mercenarism as it exists and is practiced today. This is primarily because national policies and politics make it impossible or at least untrustworthy to rely solely on the goodwill of a country to enforce its own laws on a matter that has broad political, social and economic implications outside of the nation's territory. Much more is involved than an injury to the state; that is, the duties of the state towards the international community are also vitally at stake in an era where commitment to social cooperation is manifest.

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[19] *Island of Palmas* (United States v. the Netherlands) 2 U.N. REP. INT'L. ARB. AWARDS 829 (1928).

[20] *Case of the S.S. "Lotus"*, P.C.I. J. ser. 4, No. 10 at 88 (1927).

[21] Garcia-Mora, *supra*, note 10, p. 311.

[22] *Ibid.*, pp. 312-313.

A caveat must be added to this discussion. The authority and respect given to the international law of neutrality has declined since World War II, in favor of a rising notion that neutrality as a legal concept is no longer suitable in a world where collective security is indivisible, and where such a concept may well be in conflict with the provisions of the UN Charter protecting international peace and security.[23]

Nevertheless, there still exists an obligation on the part of states to respect the sovereignty of other states and to minimize the danger of spreading local wars unless the UN Security Council obligates a member state to take peacekeeping or enforcement action under Article 24 or 25 of the UN Charter.

V. MUNICIPAL LAW OF THE UNITED STATES

American law addressed the issue of hostile military expeditions as early as 1794 by providing that it was a misdemeanor for "any person, within the jurisdiction of the United States to prepare the means for any military expedition or enterprise ... against the territory or dominions of any foreign prince or state with whom the United States are at peace..."[24]

The Act of 1794 was initially enacted as a temporary measure but was perpetuated by neutral duties arising out of the Napoleonic Wars.[25] With the codification of criminal law in the United States the Neutrality Act now survives as Title 18 U.S.C.A. §§ 958-967. Section 959(a) provides that:

> Whoever within the United States, enlists or enters himself, or hires or retains another to enlist or enter himself, or to go beyond the jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people as a soldier... shall be fined not more than $1000 or imprisoned not more than three years or both.

It has been held that the purpose of this provision of law was:

> ... to prevent entanglements between the United States government and foreign powers, by prohibiting expeditions from this country interfering with belligerents, or with the relations between a mother country and its insurgent people, in such a way as to entangle (the United States).[26]

Case History: Angola

During the conflict in Angola, the recruitment of Americans in the United States to fight as mercenaries against the MPLA forced the issue

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[23] BISHOP, INTERNATIONAL LAWS CASES AND MATERIALS 1020 (3rd ed., 1971).
[24] Act of June 5, 1794, ch. 50, § 5, 1 Stat. 381, 384.
[25] Garcia-Mora, *supra*, note 10, p. 313.
[26] U.S. v. Nuñez, 82 F. 599 (1896).

to be raised as to whether the term "expeditions" is limited to an organized fighting force departing from the United States to fight against a nation with which this country is at peace, or whether it also includes the "voluntary" departure of people from this country to fight, in a group something less than an organized military force, for one faction or another in the internal conflict of a foreign country.

When the United States recruiters publicly admitted that they were recruiting, organizing, training or arranging to train and paying Americans to provide medical assistance and to fight as combatants with forces opposed to the MPLA in Angola, legal questions were raised to determine whether sections 959 and 960 of the statute were applicable in order to prosecute these individuals.[27]

The most recent statement on the applicability of U.S. neutrality laws by a federal government official was made by Robert Kennedy, then Attorney-General of the United States, commenting on the "Bay of Pigs" invasion. On April 20, 1961, Mr. Kennedy in a press release, stated:

> There have been a number of inquiries from the press about our present neutrality laws and the possibility of their application in connection with the struggle for freedom in Cuba.
>
> First, may I say that the neutrality laws are among the oldest laws in our statute books. Most of the provisions date from the first years of our independence and, with only minor revisions, have continued in force since the 18th Century. Clearly, they were not designed for the kind of situation which exists in the world today.
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> Second, the neutrality laws were never designed to prevent individuals from leaving the United States to fight for *a cause in which they believed.* (Emphasis added). There is nothing in the neutrality laws which prevents refugees from Cuba from returning to that counrty to engage in the fight for freedom. Nor is an individual prohibited from departing from the United States, with others of like belief, to join still others in a second country for an expedition against a third country.
>
> There is nothing criminal in an individual leaving the United States with the intent of joining an insurgent group. There is nothing criminal in his urging others to do so. There is nothing criminal in several persons departing at the same time.
>
> What the law does prohibit is a group organized as a military expedition from departing from the United States to take action as a military force against a nation with whom the United States is at peace.
> There are also provisions of early origin forbidding foreign states to recruit mercenaries in this country. It is doubtful whether any of the activities presently engaged in by Cuban patriots would fall within the provisions of this law.[28]

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[27] See *International Commission of Enquiry on Mercenaries, A Special Report* prepared by Lennox Hinds, National Director and Hope Stevens, Co-Chairperson of the Board of Directors of the National Conference of Black Lawyers, Luanda, Angola, June 1976.

[28] 11 WHITEMAN, DIGEST OF INTERNATIONAL LAW 2361 (1963).

It should be noted that although the above does not constitute an Attorney-General's Opinion within the legal sense, yet it does reflect a political reaction to a legal statute which supports, then, American political foreign policy in respect to Cuba. It can be anticipated that 18 USC §§ 959 and 960 can be reinterpreted in light of changing American foreign policy.

Under the provisions of § 959 the essential elements of the crime are the enlistment in the United States, or the hiring within the United States of another person to be enlisted in the service of a foreign people as a soldier. The statute does not apply to individuals in the United States who who go abroad to enlist in foreign armies.[29] Rather, the statute covers the enlistment of persons *within the United States* for the purpose of, and with the intent of enlisting in a foreign military force.[30] It does not appear that the non-combatant nature of a person's activities when enlisted with a foreign military power should remove the statute's applicability. The only case found defining the term soldier as used in an earlier version of this statute held that "soldier must be taken in its ordinary sense, as one enlisted to serve on land in a land army." [31] Inasmuch as land armies use soldiers in such non-combatant roles as medics and communications personnel, the fact that one is serving or intends to serve only as a medic would not seem to change one's status as a soldier within the meaning of this statute.

Nor would the fact that a person has not been paid for enlisting, or has not yet paid another for enlisting, within the United States remove the transaction from the coverage of the statute, as long as there is some consideration to be paid.[32] Moreover, the court noted in *Hertz* that the consideration for the transaction need not be money, and that the provision of board and lodging would be sufficient consideration.[33]

At the time of the recruitment in the United States of mercenaries to fight against the MPLA the United States had not recognized the People's Republic of Angola as the legitimate government of that country. This fact should not remove the statute's coverage of those persons in the United States who seek to enlist with any of the opposition forces since the express language of the statute applies to enlistment in the service of "any foreign . . . *colony, district,* or *people.* (Emphasis added). And see, *Chacon v. 89 Bales of Cochineal (The Santissima Trinidad),*[34] where the Supreme Court held that a colony, not recognized as a state by the United States, but involved in a civil war with Spain, nevertheless had the status

[29] United States v. O'Brien, 75 F. 900 (1896); United States v. Nunez, *supra,* note 26.
[30] United States v. Nuñez, *supra,* note 26; United States v. Hert, 26 F. Case No. 15, 357 (1855).
[31] United States v. Kazinski, 26 F. Case No. 15, 508 (1855).
[32] United States v. Hertz, *supra,* note 30 at 294.
[33] *Ibid.,* p. 294.
[34] 20 U.S. 283, 337.

of a belligerent nation, and that its vessels of war were vested with the character of ships of state.

It should be pointed out, that in *The Santissima Trinidad,* the Court noted that the United States had recognized the existence of a civil war. *Quaere* whether the applicability of § 959 should depend on any official United States recognition of a civil war, or of the opposition forces to the MPLA as either belligerents or insurgents? Such formal recognition should not be necessary in light of the statute's express application to entitites other than states, and in light of the aforementioned decline in authority of the international law of neutrality which logically implies a diminished necessity for various formal recognitions necessary to toll that law, and in light of the general independence from restraining principles of international law of the President's constitutional power in foreign affairs, as a matter of U.S. law.

Those who take part in any military enterprise started within the United States against any of the Angolan or any other African people also appear to violate the provisions of 18 U.S.C.A. § 960, which states:

> Whoever, within the United States, knowingly begins or sets on foot or provides or prepares a means for or furnishes the money for, or takes part in, any military or naval expedition or enterprise to be carried on from thence against the territory or dominion of any foreign prince or state, or any colony, district, or people with whom the United States is at peace, shall be fined not more than $3000 or imprisoned not more than three years, or both.

For purposes of this statute, a military or naval expedition is an operation characterized by "concert of action, unity of action, by a body organized and acting together, acting by means of weapons of some kind, acting under command, leadership."[35]

As to the meaning of the phrase "at peace' in this section, it was held in *U.S. v. Elliot,*[36] that the phrase is to be taken in its common understanding, and that no formal declaration or pronouncement to that effect by the President is required. For purposes of this action, then, it would appear that the United States was "at peace" with the Angolan people.

Persons doing any of the prohibited acts described above are also subject to criminal liability for conspiring to commit an offense against the United States under the provisions of 18 U.S.C.A. § 371. Violation of this statute can result in a fine up to $10,000 or imprisonment up to five years.

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[35] United States v. Nuñez, *supra,* note 26 at 601.
[36] 266 F. Supp. 318 (1967).

Further, there has been indication in at least one case that where prosecutions under § 960 have been brought by the U.S., the Court will examine defendant's arguments stringently as to the admissibility of favorable evidence. Thus, where in prosecution for conspiring to lead a military expedition against a friendly nation, no government witness testified on direct examination as to any activity of the Central Intelligence Agency or of any other agency of the United States, refusal to permit defendants' counsel to cross-examine witnesses as to possible involvement of the CIA in defendants' enterprise without first proffering evidence that there was a factual basis for such examination was an abuse of discretion.[37] This would seem to bear directly on some mercenary recruiters' alleged involvement with the CIA, and it further preserves an opportunity for the Government to disown such involvement by refusing to supply a witness capable of such testimony.

More generally, with respect to questions raised under § 959 about the scope of that provision and the definition of "expedition," the cases indicate that § 960, and presumably § 959 also, were intended to be interpreted widely and not in a restrictive manner. Thus: "to any one who has provided the means of their transportation, even though with full knowledge of their purpose in securing transportation."[38]

It is to be noted that one key to the interpretation of the above is the situs and nature of "enlistment." "Enlistment" tends to be construed broadly under this statute.[39] The beginning of the enterprise or expedition must generally be from some territory under U.S. jurisdiction.[40] Further, the offense requires only intent plus an overt act, and not completion of the enterprise.[41]

Further, it has been held that neither prior recognition of legitimacy nor belligerency of the government or faction against which the expedition is directed, by this government, is necessary to make applicable the provision of this section.[42]

All of the above indicate the substantial overlap of interpretation of §§ 959 and 960.

Prosecution is also possible under 18 U.S.C.A. § 958, which reads:

> Any citizen of the United States who, within the jurisdiction thereof, accepts and exercises a commission to serve a foreign prince, state, co-

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37 Casey v. United States, 413 F. 2d 1303 (1969), *cert. denied,* 397 U.S. 1029 90 S.Ct. 1278, 25 L.Ed. 2d 540.

38 United States v. Murphy, 84 F. 609 (1898).

39 United States v. O'Sullivan, 27 Fed. Case No. 15, 975 (1851).

40 *Ibid.*

41 Jacobsen v. United States, 272 F. 399 (1921), *cert. denied,* 256 U.S. 703; United States v. Hughes, 70 F. 972 (1895), not even starting for its destination: United States v. Ubanez, 53 F. 536 (1892); United States v. Chakraberty, 244 F. 287 (1917); United States v. Sullivan, *supra.*

42 De Orozco v. United States, 237 F. 1008, 151 C.C.A. (1916).

> lony, district or people in war, against any prince, state, colony, district or people with whom the United States is at peace, shall be fined not more than $2000 or imprisoned not more than three years, or both.

A key issue here seems to be whether recruiters of mercenaries' activities including the offering of enlistments or otherwise, can be interpreted as the constructive acceptance and exercising of a "commission" from someone, in the absence, of course, of evidence of such express acceptance.

A final possible interpretation of the United States statutes' applicability to mercenaries is the extent that persons recruited actually participate directly or indirectly in acts against the Angolan people, they should be liable to loss of their U.S. citizenship. The applicable statute is the Immigration and Nationality Act of 1952, 8 U.S.C.A. §§ 1101-1503 (1964). 8 U.S.C.A. § 1481 (a) (3) raises the possibility of loss of nationality by "entering, or serving in, the armed forces of a foreign state unless, prior to such entry or service, such entry or service is specifically authorized in writing by the Secretary of State and the Secretary of Defense..." But the probability of mercenaries losing their citizenship for fighting in Angola is low after *Afroyim v. Rusk*,[43] which held that the citizenship conferred by the Fourteenth Amendment is absolutely vested and not subject to divestment by any branch of government without the individual citizen's assent. "Assent" means following the procedures of the renunciation provisions of the same Act. Moreover, citizenship has not been divested from persons fighting in the 1967 Arab-Israeli War, notwithstanding complaints from Arab states characterizing the United States as a belligerent for refusing to deny such people their citizenship. *Afroyim* is still good law and its effects has been the virtual impossibility of the government's denying citizenship, administratively.[44]

By permitting mercenary recruiters to enlist and send to Angola either medics (absent express permission) or combatants, the United States appears to be violating certain international legal obligations. Prosecution of both recruiters and mercenaries under 18 U.S.C.A. §§ 959 and 960 seems permissible. Prosecution of the mercenaries under § 958 is possible, but likely to be unsuccessful absent express evidence of a "commission" being paid by recruiters. Loss of nationality for those mercenaries who actually wind up participating in the fighting is even less probable.

The original intent of these 18 U.S.C.A. provisions was, generally, to prevent the United States from becoming mired in foreign conflicts in which it had no wish to be involved. The contradiction faced by the

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[43] 387 U.S. 253, 87 S.Ct. 1660, 18 L.Ed. 2d 757 (1967).

[44] See Dionisopoulos, *Afroyim v. Rusk: The Evolution, Uncertainty and Implications of a Constitutional Principle*, 55 MINNESOTA L. REV. 235 (1970), esp. at 250, *et seq.*; Duvall, *Expatriation under United States Law; Perez to Afroyim: The Search for a Philosophy of American Citizenship*, 56 VIRGINIA L. REV. 408 (1970), esp. at 431 *et eq.*

United States government, which may have parallels in other countries enacting similar legislation is that the Executive Branch seems to have acquiesced in the recruitment and training of mercenaries while the Congress and people of the U.S. were opposed to any United States involvement in the affairs of the Angolan people.

The Executive Branch of the government exercised its prosecutorial discretion and therefore chose not to enforce the existing laws. To date no charges have been brought against those persons who publicly admit they were recruited as mercenaries.

It is this type of discretion that makes it clear that the mere promulgation and adoption by member states of the convention and prohibitory rules and regulations against mercenarism is not sufficient. The difficult and complicated problem of enforcement must be confronted and dealt with.

VI. MUNICIPAL LAW OF OTHER COUNTRIES

The early promulgations of the law of hostile military expeditions in the United States suggests that the American legislation has served as a model for other nations. Some writers of international law would go as far as to say that much of the international law on this subject is traceable to the American experience.[45]

However, Great Britain enacted the Foreign Enlistment Act in 1819 which remained in force until 1870. It was subsequently replaced by a new Foreign Enlistment Act since the prior law proved to be inadequate to prevent the organization of hostile military expeditions as evidenced by the *Alabama* controversy.[46] (That case raised the international liability of Great Britain for her alleged failure to prevent the building and equipping in British ports of naval expeditions in the service of Confederate States during the American Civil War.)

The pertinent provisions of the Foreign Elistment Act of 1870 state:

> *Section 4*
>
> *Penalty of Enlistment in Service of Foreign State*
>
> If any person without the license of Her Majesty being a British subject, within or without her Majesty's dominions, accepts or agrees to accept any commission or engagement in the military or naval service of any foreign state at war with any foreign state at peace with Her Majesty, and in this act referred to as a friendly state, or whether a British subject or not within Her Majesty's dominions, induces any other person to accept or agree to accept any commission or engagement in the military or naval service of any such foreign state as aforesaid, . . .

[45] Garcia-Mora, *supra*, note 10, p. 314 and footnotes therein.
[46] United States v. Great Britain (1871), 7 Moore 1059-67 (1906).

> He shall be guilty of an offence against this act, and shall be punished by fine and imprisonment, or either of such punishments at the discretion of the Court before which the offender is convicted and imprisonment, if awarded may either be with or without hard labour...
>
> NOTE...The term of imprisonment may not exceed two years and hard labour may no longer be imposed (Criminal Justice Act 1948).
>
> *Section 3*
>
> *INTERPRETATION*
>
> ..."Foreign State" includes any foreign prince, colony, province, or people, or any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people.

There is a great deal of similarity between this statute and its American counterpart in respect to language and actual application. Both statutes have been applied to civil strife without the existence of a declaration of belligerency. This demonstrates that the operation of the Act is not dependent upon the existence of war in the technical legal sense.[47]

And the similarity does not end here, for just as those Americans who enlisted with the forces opposing the legitimate government of Angola under the MPLA should have been subject to prosecution for violation of U.S. neutrality laws so should the Britons who participated as mercenaries and mercenary recruiters for the same purpose. As far as can be determined, no action has been taken against any of the British mercenaries by the British government under this or any other applicable statute.

Despite law which applies to the recruitment of mercenaries within their territories, both Great Britain and the United States have failed to act despite public revelations and outcry about such recruitment.

Along much the same lines, France has adopted a provision within its Penal Code to protect its neutrality. While the French Penal Code does not specifically refer to military expeditions, it does prohibit any hostile action which would expose the State to a declaration of war. (See Appendix II).

A number of other countries have enacted similar legislation to deal with military expeditions or have entered into treaties to guard against such expeditions in particular areas.[48] These municipal laws indicate that there is at least some general agreement on the necessity and importance of respecting the sovereign rights of other States within each other's territory.[49]

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[47] Garcia-Mora, *supra*, note 10, p. 319.

[48] See Pan American Convention on the Duties and Rights of States in the Event of Civil Strife, February 20, 1928 in THE INTERNATIONAL CONFERENCES OF AMERICAN STATES 1889-1928, 435 (Scott ed. 1931).

[49] Garcia-Mora, *supra*, note 10, p. 320.

VII. POSITIONS OF INTERNATIONAL ORGANIZATIONS OF MERCENARISM

Although the preceding section points out the availability and existence of concepts under international and municipal law that can be made applicable to mercenarism, it should be noted that these laws in their present form are not sufficient largely because of the broad discretion involved in their enforcement. The situation which developed in Angola is a prime example. Individuals from the United States who have publicly admitted recruiting other Americans to fight in Angola as well as in Zimbabwe have not been charged with violation of U.S. laws. On the contrary, these individuals appear to operate as if they had government immunity against prosecution.[50] The ineffectiveness of the application of municipal law suggests the clear need for more effective international regulation on the contemporary use of mercenary forces.

A shortcoming of the present body of international law can be found in the Hague Convention No. V of 1907 on the *Rights and Duties of Neutral Powers and Persons in War on Land*.[51] While Article IV provides that, "corps of combatants cannot be formed nor recruiting agencies opened on the territory of a neutral power to assist the belligerents," Article VI states that, "the responsibility of the neutral power is not engaged by the fact of persons crossing the frontier separately to offer their services to one of the belligerents." These provisions give rise to the distinction of so-called "volunteers." This dichotomy is also present in the municipal laws of various nations:

> Although several states, as, for instance, Great Britain and the United States of America, by their Municipal Law prohibit their subjects from enlisting in the military or naval service of belligerents, the duty of impartiality incumbent upon neutrals does not at present include any necessity for such prohibition, provided that the individuals concerned cross the frontier singly and not in a body; moreover, . . . the subjects of neutral states who thus enlist do not thereby commit any offense against the rules of International Law.[52]

The basis of the distinction that is made under the *Hague Convention No. V* and the municipal laws is that persons who are "unorganized" pose no serious threat to the sovereignty of another state, therefore there is no violation of neutrality. But as has been pointed out:

> [N]o act, for example, could be more clearly unneutral than that of a citizen of a neutral country in going abroad and enlisting in the military or naval service of a belligerent; and yet this is an act which a neutral government is not obliged to prevent, and neutral governments do not in fact undertake to prevent it.[53]

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[50] *Washington Post*, May 6, 1977.

[51] See note 11.

[52] 2 OPPENHEIM, INTERNATIONAL LAW — A TREATISE 687, 703-4 (1966).

[53] R. GARCIA-MORA, INTERNATIONAL LAW — A TREATISE FOR HOSTILE ACTS OF PRIVATE PERSONS AGAINST FOREIGN STATES, (1962), p. 68 citing 3 C. C. HYDE, INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES 2306 (2d ed., 1945).

Other theories that have been advanced in support of the distinction for "volunteers" include the fact since the formation of corps is exclusively due to private initiative, it is quite possible to keep it hidden from any governmental knowledge or interference. This argument is not very convincing in light of the intense control and surveillance available and utilized by governments.[54] The other argument advanced is that prohibitions against the departure of volunteers would violate the provisions of the Universal Declaration of Human Rights which guarantees to each individual the right to leave his country and return to it at will.[55] However, this argument seems to be a gross distortion of the intent of the Declaration of Human Rights.

In effect, use of the concept of "volunteers" to avoid the application of Article IV of the Hague Convention No. V of 1907 only serves to vitiate the law and make it nugatory. The International Forum has had to redefine the problem in light of contemporary legal and human standards. On December 20, 1968, the General Assembly of the United Nations passed the following Resolution:

> 2465 (XXIII). IMPLEMENTATION OF THE DECLARATION OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES
> *The General Assembly,*
>
> * * *
>
> 8. Declares that the practice of using mercenaries against movements for national liberation and independence is punishable as a criminal act and that the mercenaries themselves are outlaws, and calls upon the Governments of all countries to enact legislation declaring the recruitment, financing and training of mercenaries in their territory to be a punishable offence and prohibiting their nationals from serving as mercenaries.

As the liberation struggles gained greater impetus on the African continent, there was a corresponding increase in the recruitment of mercenaries and a flouting of international resolve in this matter. The United Nations General Assembly reaffirmed its earlier condemnation of mercenaries and mercenarism in clear language. In Resolution 3103 (XXVIII), 1973, the General Assembly stated:

> *Reaffirming* the declaration made in General Assembly resolutions 2548 (XXIV) of 11 December 1969 and 2708 (XXV) of 14 December 1970 that the practice of using mercenaries against national liberation movements in the colonial Territories constitutes a criminal act.
>
> * * *
>
> 5. The use of mercenaries by colonial and racist regimes against the national liberation movements struggling for their 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.

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[54] Garcia-Mora, *supra,* note 53 at 69-70.
[55] *Ibid.,* p. 70.

These resolutions clearly express the resolve of the plenary body of the United Nations that the practice of using mercenaries constitutes a criminal act and was adopted by resounding majorities in the General Assembly. Nevertheless, the use of mercenaries continues. It has been necessary for the United Nations Security Council to adopt a resolution condemning mercenarism as recently as April of this year (1977). After a number of hearings were held, on the invasion of Benin which took place in January of 1977, the Security Council adopted the following:

> *The Security Council*
> * * *
>
> 3. *Reaffirms* its Resolution 239 (1967) which, *inter alia*, condemns any State which persists in permitting or tolerating the recruitment of mercenaries and the provision of facilities to them, with the objective of overthrowing the Governments of States Members of the United Nations.
>
> 4. *Calls upon* all States to exercise the utmost vigilance against the danger posed by international mercenaries and to ensure that their territory and other territories under their control, as well as their nationals, are not used for the planning of subversion and recruitment, training and transit of mercenaries designed to overthrow the Government of any Member State of the United Nations.
>
> 5. *Further calls upon* all States to consider taking necessary measures to prohibit, under their respective domestic laws, the recruitment, training and transit of mercenaries on their territory and other territories under their control;
>
> 6. *Condemns* all forms of external interference in the internal affairs of Member States, including the use of international mercenaries to destabilize States and/or to violate the territorial integrity, sovereignty and independence of States.[56]

Another international body that has clearly denounced and condemned the use of mercenary forces is the Organization of African Unity (OAU). As early as September of 1964, the OAU called for a halt in the recruitment of mercenaries to fight in Zaire and Southern Africa:

> The Council of Ministers of the Organization of African Unity:
> *Deeply concerned* by the deteriorating situation in the Democratic Republic of Congo resulting from foreign intervention as well as use of mercenaries principally recruited from the racist countries of South Africa and Southern Rhodesia;
>
> *Reaffirming* the resolutions of the Organization of African Unity inviting all African states to abstrain from any relationship whatsoever with the Government of South Africa because of its policy of *apartheid;*
>
> *Considering* that foreign intervention and the use of mercenaries has unfortunate effects on the neighboring independent states as well as on the struggle for national liberation in Angola, Southern Rhodesia, Mozambique and the other territories in the region which are still under colonial

[56] U.N. Doc. S/Res./405 (1977)

domination, and constitutes a serious threat to peace in the African continent.

1. *Appeals* to the Government of the Democratic Republic of the Congo to stop immediately the recruitment of mercenaries and to expel as soon as possible all mercenaries of whatever origin who are already in the Congo so as to facilitate an African solution.[57]

Within the past decade the Organization of African Unity has shown its commitment on a number of occasions to the struggle to end the oppressive results of mercenarism as it peculiarly manifests itself on the African continent. (See Appendix III.)

These resolutions by the Organization of African Unity, and the Security Council and General Assembly of the United Nations are clear indications of the concern of the world community on the use of mercenaries and mercenarism.

VIII. Conclusion: Mercenarism — A Threat to World Peace

As we have seen, international groups have recognized the pernicious impact of mercenarism on contemporary human and legal goals, yet, the recruitment of these "dogs of war" continues.

In light of media revelations, congressional hearings, and the international record, there appears to be some sectors in the United States which actively and effectively abet and protect mercenarism. And, in spite of the overwhelming condemnation of the practice of using mercenaries by the world community and its denunciation as a crime against humanity, a number of Western powers continue to ignore international public opinion and the rules of both international and their domestic laws on the matter.

The resolutions cited above leave little doubt of the elements of the crime of mercenarism; they have not, however, proved to be either a deterrent or a remedy. Each year new affirming resolutions have been adopted over the past ten years and each year increasing numbers of mercenaries appear on the African continent to fight, albeit fruitlessly, against the liberation forces.

While this paper has focused on the consequences of mercenarism as it relates to the experiences of the various national liberation movements in Africa, it should not be construed to condone the practice of mercenarism in any other jurisdiction. Just as nations have recognized that the continuation of *apartheid* in Southern Africa poses a grave threat to the peace and security of the world, so too they must recognize that the use of mercenaries in any other part of the world constitutes a similar threat.

[57] ECM/Res. 5 (III) 10 September 1964 (Addis Ababa)

The trial of the mercenaries in Angola substantiated the inhumanity of the practice of mercenarism.[58] The Convention to suppress and prevent the practice of mercenarism drafted, developed and unanimously adopted in Luanda, Angola by the members of the *Internatoinal Commission of Enquiry on Mercenaries*[59] is as relevant to the practice of mercenarism anywhere in the world.

The *Luanda Convention* defines the crime of mercenarism with sufficient specificity to avoid abuses[60] and to encourage, if adopted, deterrence. The Convention provides that mercenaries are unlawful combatants and therefore, are not entitled to prisoner of war status if captured.[61] There is a provision for the extradition of mercenaries to the country victimized by their activities *if they are not prosecuted* in their own countries.[62] To ensure that persons brought to trial under the Convention are treated fairly, certain procedural safeguards are provided for. These include the right to have the services of an advocate, participate in the preliminary investigations of the evidence and participate in the investigations of witnesses.[63]

The argument for the adoption of such a Convention is clear in light of the hiatus in municipal and international law. The impending struggle in South Africa makes the enforcement of the Convention against mercenarism a necessity. And we call upon members of this body to endorse it and support its adoption in their homelands.

Unchecked mercenarism will prolong the political resolution of Southern Africa and the agony of the African people by artificially bolstering the military power of the minority regimes. As events in Africa and elsewhere teach us, the outcome is inevitable. Justice and peace demand that the resolution ought to be bloodless and equitable. Mercenarism can not turn the inevitable tide of human events but will surely increase its grisly toll.

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[58] *International Commission of Enquiry on Mercenaries, A Special Report.* See note 26.
[59] *Ibid.* See Appendix I for text of Convention.
[60] Appendix I, article I of Luanda Convention.
[61] *Ibid.*, article IV.
[62] *Ibid.*, article VIII.
[63] *Ibid.*, article IV.

APPENDIX I

THE LUANDA CONVENTION

Documents from the
International Commission of
Enquiry on Mercenarism
Luanda, Angola.
June 1976

(a) Draft Convention on the Prevention and Suppression of Mercenarism
(b) Declaration of Luanda, 10th June, 1976
(c) Speech by Andre Mouele, People's Republic of Congo, President, International Commission of Enquiry on Mercenarism

DRAFT CONVENTION ON THE PREVENTION AND SUPPRESSION OF MERCENARISM

PREAMBLE

The High Contracting Parties

Seriously concerned at the use of mercenaries in armed conflicts with the aim of opposing by armed force the process of national liberation from racist colonial and neo-colonial domination;

Considering that the crime of mercenarism is part of a process of perpetuating by force of arms racist colonial or neo-colonial domination over a people or a State;

Considering the resolutions of the United Nations (Res. 2395 (XXIII), 2465 (XXIII), 2548 (XXIV) and 3103 (XXVIII) of the General Assembly) and of the Organization of African Unity (ECM/Res. 5 (III), 1964; AGH/Res. 49 (IV), 1967; ECM/Res. 17 (VII), 1970; and OAU Declaration on the Activities of Mercenaries in Africa — CM/St. 6 (XVII), which have denounced the use of these armed conflicts of mercenaries as a criminal act, and mercenaries as criminals, and which have urged States to take forceful measures to prevent the organization, recruitment and movement on their territory of mercenaries, and to bring to justice the authors of this crime and their accomplices;

Considering that the resolutions of the United Nations and the OAU and the statements of attitude and the practice of a growing number of States are indicative of the development of new rules of international law making mercenarism an international crime;

Convinced of the need to codify in a single text and to develop progressively the rules of international law which have developed in order to prevent and suppress mercenarism, the High Contracting Parties are convinced of the following matters:

Article One
DEFINITION

The crime of mercenarism is committed by the individual, group or association, representatives of state and the State itself which, with the aim of opposing by armed violence a process of self-determination, practices any of the following acts:

a) organizes, finances, supplies, equips, trains, promotes, supports or employs in any way military forces consisting of or including persons who are not nationals of the country where they are going to act, for personal gain, through the payment of a salary or any other kind of material recompense;

b) enlists, enrols or tries to enrol in the said forces;

c) allows the activities mentioned in paragraph a to be carried out in any ter-

ritory under its jurisdiction or in any place under its control or affords facilities for transit, transport or other operations of the abovementioned forces.

Article Two

The fact of assuming command over mercenaries or giving orders may be considered as an aggravating circumstance.

Article Three

1. When the representative of a State is responsible by virtue of the foregoing provisions for acts or omissions declared by the foregoing provisions to be criminal, he shall be punished for such an act or omission.

2. When a State is responsible by virtue of the foregoing provisions for acts or omissions declared by the foregoing provisions to be criminal, any other State may invoke such responsibility:

(a) in its relations with the State responsible, and

(b) before competent international organizations.

Article Four

Mercenaries are not lawful combatants. If captured they are not entitled to prisoner of war status.

Article Five

CRIMES OF MERCENARISM AND OTHER CRIMES FOR WHICH MERCENARIES CAN BE RESPONSIBLE

A mercenary bears responsibility both for being a mercenary and for any other crime committed by him as such.

Article Six

NATIONAL LEGISLATION

Each contracting state shall enact all legislative and other measures necessary to implement fully the provisions of the present Convention.

Article Seven

JURISDICTION

Each contracting State undertakes to bring to trial and to punish any individual found in its territory who has committed the crime defined in Article 1 of the present Convention, unless it hands him over to the State against which the crime has been committed or would have been committed.

Article Eight

EXTRADITION

1. Any State in whose territory the crime of mercenarism has been committed or of which the persons accused of the crimes defined in Article 1 are nationals, can make a request for extradition to the State holding the persons accused.

2. The crimes defined in Article 1 being deemed to be common crimes, they are not covered by national legislation excluding extradition for political offences.

3. When a request for extradition is made by any of the States referred to in paragraph 1, the State from which extradition is sought must, if it refuses, undertake prosecution of the offence committed.

4. If, in accordance with paragraphs 1-3 of this article, prosecution is undertaken, the State in which it takes place shall notify the outcome of such prosecution to the State which had sought or granted extradition.

Article Nine

JUDICIAL GUARANTEES

Every person or group brought to trial for the cirme set out in Article I is entitled to all the essential guarantees of a fair and proper trial. These guarantees include:

the right of the defendant to get acquainted in his native language with all the materials of the criminal case initiated against him, the right to give any explanation regarding the charges against him, the right to participate in the preliminary investigation of the evidence and during the trial in his native language, the right to have the services of an advocate, or defend himself if he prefers, the right to give by himself or through an advocate testimony in his defence, to demand that his witnesses be summoned and participate in their investigation as well as in the investigation of witnesses for the prosecution.

Article Ten

MUTUAL ASSISTANCE FOR CRIMINAL PROCEEDINGS

The Contracting Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the crimes defined in Article 1 of this Convention.

Article Eleven

DUTY OF STATES TO ENSURE EFFECTIVE PUNISHMENT

Every contracting State shall take all administrative and judicial measures necessary to establish effective criminal punishment for persons and groups guilty of crimes set out in Article 1 of this Convention. In particular, the State where a trial takes place shall ensure that effective and adequate punishment shall be meted out to the guilty.

Article Twelve

SETTLEMENT OF DISPUTES

Any dispute relating to the interpretation or application of the present Convention shall be settled either by negotiation or by any International Tribunal or Arbitrator accepted by all the Parties concerned.

INTERNATIONAL COMMISSION OF ENQUIRY ON MERCENARIES

DECLARATION OF LUANDA, 10TH JUNE 1976

I. For twenty years now, there have been armed interventions by mercenaries against the sovereignty of new states or against liberation movements. The mass media exposed at the time the massacre at Stanleyville, the armed interventions in Cuba, Southern Sudan, Nigeria during the civil war, in Guinea, Palestine etc. Thus several African leaders were assassinated.

II. In the most recent period, the independence of Angola and the proclamation of the People's Republic have been quickly followed by military intervention by the Republic of South Africa and the Republic of Zaire. Besides these interventions by regular armies, groups of mercenaries likewise invaded Angolan territory, where they engaged in armed actions of various kinds (attacks on detachments of the national Angolan army, ambushes, planting of mines, destruction of bridges and buildings), in the summary execution of prisoners and in the massacres of civilians.

III. The mercenaries who invaded Angola had been recruited in the United States, Great Britain, France, Belgium, Holland and Portugal. Some of them were contacted by way of advertisements in the press and television broadcasts. Not only do various documents establish the existence of private recruiting agencies in the United States and Great Britain, but there are also periodicals like *Soldier of For-*

tune, from Colorado, which campaign for the recruitment of mercenaries. It is clear that the recruitment, travel and equipment of mercenaries could not be accomplished without the tacit agreement of the governments in the countries where they are recruited and equipped. More particularly, inasmuch as the intervention of the mercenaries is directed against the liberation of peoples from colonial and neo-colonial domination, there can be no doubt that they act in the service of these who would like to suppress or prevent their liberation. This is all the more obvious since many of the countries concerned, in particular the United States of America, have legislation against mercenarism which is not applied.

IV. In fact, international organizations have condemned these activities on several occasions: Resolutions 2395 (XXIII), 2465 (XXIII), 2548 (XXIV) and 3103 (XXII) of the United Nations General Assembly; Statements of the Heads of State and Government of the OAU, Kinshasa 1967 and Addis Ababa 1971, but these condemnations of mercenarism, which we applaud, have had no practical effect and public opinion has not yet forced the relevant States to give them consideration. Unfortunately, the too frequent glorification of mercenary activity by the mass media has not made it any easier to mobilise the great force which international public opinion represents.

Moreover, despite the victory won by the People's Republic of Angola in its just fight against foreign intervention, there are reasons for thinking that new actions of a similar kind are now being prepared in Southern Africa and other parts of the world. The concentration of mercenaries has been discovered in Namibia and in Zimbabwe, under the aegis of the minority racist regimes now in power in these countries. Puerto Rico is similarly used as a base for mercenary aggression in Latin America.

Finally, new forms of mercenarism are continually being created in response to new needs to repress workers' struggles or movements for national independence throughout the world. Multinational corporations and espionage agencies make more and more use of them.

In all these aspects, mercenarism is revealed as the instrument of those who attempt to maintain, establish or restore fascism, colonialism, neo-colonialism and racism and, more generally, of imperialism's counter-offensive against the progress of liberty and peace in the world.

V. The members of the International Commission of Enquiry on Mercenaries, called together at the initiative of the Government of the People's Republic of Angola, coming from all the continents and representing forty-two countries, at a plenary session held in Luanda on 10th June 1976, have decided to draw the attention of international public opinion to the seriousness of the menace which the armed intervention of mercenaries presents to peace in Africa and the whole world. It is urgent to act now to prevent the recruitment and travel of mercenaries to Namibia and Zimbabwe.

The imperialist powers are wholly responsible for the destruction and the crimes done in the past and which can be repeated in the future on African soil. Public opinion can and must put an end to military intervention by intermediaries. The drafting of an International Convention prohibiting recruitment, travel and arming of mercenaries, and all kinds of support whatsoever for their activities, should be strongly demanded of all countries.

We appeal to all governments to adhere to the international principles set out in United Nations resolutions and declarations of the Organization of African Unity, to sign the International Convention, to ensure that their own national legislation accords with it, and to enforce its provisions effectively.

The members of the Commission hope that a White Book will be published on the activities of mercenaries in Africa and in all the world. They ask those who are able to provide information on this subject to send it to the Minister of Justice of

the People's Republic of Angola. They appeal to all progressive people and forces in the world to make every effort to destroy this scourge of humanity which is mercenarism.

LUANDA, 10 June 1976

INTERNATIONAL COMMISSION OF ENQUIRY ON MERCENARIES

Speech by Comrade Andre Mouele, Delegate of the People's Republic of Congo, the President of the International Commission of Enquiry on Mercenaries

Comrades

1. The International Commission of Enquiry on Mercenaries, formally opened on 7 June 1976 by the Comrade Minister of Justice of the People's Republic of Angola, began its work on 8 June. It divided into three sub-committees, each with specific tasks.

The first sub-committee was asked to prepare a draft international convention on the prevention and suppression of mercenarism.

The second sub-committee was asked to prepare a general declaration on mercenarism.

The third sub-committee was asked to check the fairness of the trial of the mercenaries.

The work was against time and after exciting and sometimes excited discussion which remained in an atmosphere of camaraderie, it was possible to adopt unanimously:

a) the draft international convention on mercenaries,

b) the general declaration on mercenarism.

2. As for the final results of the work of the third sub-committee, responsible for checking the fairness of the trial, these can not be published until after the trial.

The adoption of these texts by the members of the International Commission of Enquiry on Mercenaries is a victory for people of peace and freedom over the Imperialism which for some time has used mercenaries to oppose by armed violence the process of liberation and independence of peoples.

According to our draft convention, the crime of mercenarism is committed by the individual, group or association, representative of state and the State itself which with the aim of opposing by armed violence a process of self-determination, practices any of the following acts:

a) organizes, finances, supplies, equips, trains, promotes, supports or employ sin any way military forces consisting of or including persons who are not nationals of the country where they are going to act, for personal gain, through the payment of a salary or any other kind of material recompense;

b) enlists, enrols or tries to enrol in the said forces;

c) allows the activities mentioned in paragraph a to be carried out in any territory under its jurisdiction or in any place under its control or affords facilities for transit transport or others operations of the abovementioned forces.

3. The draft international convention on the prevention and suppression of mercenarism, which should become the Luanda Convention after its adoption, is a text which suppresses mercenarism in all its forms. The International Commission of Enquiry on Mercenaries asks States and peoples who are victims of the armed violence of imperialist powers and their lackeys to use all their influence in international organizations (UN, OAU), for the purpose of having adopted the convention on the prevention and suppression of mercenarism, just as there are international conventions to suppress hijacking and drug trafficking.

The ICEM instructs the Government of the People's Republic of Angola to present to the international organizations (UN, OAU), the draft Convention adopted

unanimously by the members of the International Commission of Enquiry on Mercenaries, whose members came from 37 countries in all the continents.

The Commission of Enquiry on Mercenaries has further elected a Liaison Office composed as follows:

President — People's Republic of Congo
Secretariat — People's Republic of Angola
Members — Australia; Chile; France; Iraq; German Democratic Republic; Tanzania; Vietnam.

Because of the need to inform international opinion of the serious phenomenon of mercenarism and of the dangers which it represents to peace, the International Commission of Enquiry on Mercenaries recommends the holding of an international symposium of Parties, groups and associations on the question of mercenarism. That is the gist of our work.

To close I must on my own behalf and on behalf of the delegates to the International Commission of Enquiry on Mercenaries, drawn from 37 countries in all the continents, thank the People's Republic of Angola, its people, its leaders and its president, Comrade Agostinho Neto, for the very warm welcome we received during our stay in Luanda. We have to give sincere thanks to the Comrade Minister of Justice, to his staff and to all the other workers of the People's Republic of Angola (the comrade drivers and the comrade workers of the Hotel Panorama) who have made our stay agreeable and have helped the achievement of our tasks by their concern, dedication and sacrifice. We congratulate the People's Republic of Angola for making it possible to present before world conscience the problem of mercenarism.
LUANDA, 17 June 1976

APPENDIX II

FRENCH PENAL CODE

No. 2

CODE PENAL, 1810
Text from *Codes de l'Empire Français*

ART. 84.—Quiconque aura, par des actions hostiles non approuvées par le Gouvernement, exposé l'Etat à une declaration de guerre, sera puni du bannissement; et si la guerre s'en suivie, de la déportation.

ART. 85.—Quiconque aura, par des actes non approuvés par le Gouvernement, exposé des Français à éprouver des représailles, sera puni du bannissement.*

* 1 DEAK & JESSUP, A COLLECTION OF NEUTRALITY LAWS, REGULATIONS AND TREATIES OF VARIOUS COUNTRIES 583 (1939).

APPENDIX III

RESOLUTIONS OF THE ORGANIZATION OF AFRICAN UNITY ON MERCENARISM

(a) September, 1967
(b) December, 1970
(c) June, 1971

ORGANIZATION OF AFRICAN UNITY RESOLUTIONS
AHG/Res. 49 (IV), September 1967

The Assembly of Heads of State and Government meeting in its Fourth Ordinary Session in Kinshasa, Congo, from 11 to 14 September, 1967:

Determined to safeguard and ensure respect for the integrity and sovereignty of Member States;

Considering that the existence of mercenaries constitutes a serious threat to the security of Member States;

Recognizing their sqered and solemn responsibilities to spare present and future generations the scourge of racial hatred and conflict;

Conscious of the danger that the presence of mercenaries would inevitably arouse strong and destructive feelings and put in jeopardy the lives of the foreigners in the continent:

1. *Strongly condemns* the aggression of the mercenaries against the Democratic Republic of the Congo;
2. *Demand* that the mercenaries who are new in Eastern Congo (Bukavu) leave immediately the territory of the Congo, if necessary with the help of the competent international bodies;
3. *Calls upon* all Member States that in case this generous offer is not accepted, to lend their wholehearted support and every assistance in their power to the Government of the Democratic Republic of the Congo in its efforts to put an end to the criminal acts perpetrated by these mercenaries;
4. *Calls upon* the U.N. to deplore and take immediate action to eradicate such illegal and immoral practices;
5. *Appeals* urgently to all States of the world to enact laws declaring the recruitment and training of mercenaries in their territories a punishable crime and deterring their citizens from enlisting as mercenaries.

RESOLUTIONS AND RECOMMENDATIONS OF THE SEVENTH EXTRAORDINARY SESSION OF THE COUNCIL OF MINISTERS

The Council of Ministers of the Organization of African Unity meeting in its seventh extraordinary session in Lagos from 9 to 12 December 1970,

Taking note of the report of the Administrative Secretary-General,

Having heard the statement made by the Head of the Guinean delegation,

Deeply concerned by the premeditated aggression by Portugal against the Republic of Guinea,

Considering that in perpetrating this aggression, Portugal made use of regular army troops and mercenaries of various origin,

Deeply concerned by this new and treacherous use of mercenaries against an African country,

Considering that this aggression constitute a serious infringement of the sovereignty and territorial integrity not only of the Republic of Guinea but also of all the African States,

Aware that the various attacks against African States like the invasion of Guinea are aimed at intimidating those States which in the name of African solidarity and in conformity with the OAU Charter are giving material and moral support to the liberation movements,

Aware that this aggression has caused and continues to cause heavy loses for the Republic of Guinea,

Recalling specific provision of the OAU Charter and all previous resolutions on decolonization, solidarity, intra-African co-operation as well as all previous decisions of the OAU on the question of mercenaries,

Further recalling the various UN resolutions and specific provisions of the UN Charter on decolonization, national sovereignty and territorial integrity,

Also recalling in particular the United Nations Security Council Resolution 290 of 8 December, 1970:

1. VIGOROUSLY CONDEMNS the treacherous aggression committed by Portugal against the Republic of Guinea,

2. CONDEMNS all mercenaries who invaded the Republic of Guinea as well as all those forces which participated in planning this aggression,

3. CONDEMNS all forces which directly or indirectly have collaborated with Portugal in this barbarous aggression,

4. CONDEMNS in particular the NATO powers which allow, through their complicity and assistance, the various attacks by Portugal against several African territories and States,

5. CALLS upon the international community and United Nations to put an end to the criminal acts of Portugal and, to this end, demands that all military assistance to Portugal should cease in any framework or form whatever,

6. DEMANDS that adequate and full reparations should be made by Portugal to the Republic of Guinea in conformity with United Nations Security Council Resolution 290 of 8 December 1970,

7. DECIDES that exemplary punishment should be imposed upon all those that participated in, aided and abated Portuguese aggression against the Republic of Guinea,

8. CALLS upon all Member States of the Organization of African Unity to prevent the entry, passage or any activity by any mercenary or by organization and individuals who use them against African States,

9. REQUESTS all Member States to immediately outlaw, arrest and handover all mercenaries to the country against which they are active,

10. REQUESTS Member States of the Organization of African Unity to provide immediate and complete assistance to the Republic of Guinea so as to enable it to face the consequences of aggression,

11. DECIDES to set up a special OAU Fund to be used to provide financial, military and technical assistance to Guinea and invites all African Member States to contribute to this Fund,

12. CALLS upon the Defense Commission to study ways and means of establishing an adequate and speedy defence of African States and the implementation of the present resolution to report through the Council of Ministers to the next Assembly of Heads of State and Government of the OAU,

13. REQUESTS the Administrative Secretary General to prepare a draft convention outlawing the recruitment, training, equipping, and use of mercenaries as well as prohibiting the passage of such mercenaries and their equipment in all countries for consideration by the Council of Ministers at its seventeenth session,

14. INSTRUCTS the Administrative Secretary General of the OAU to take special measures with a view to unmasking the activities of the mercenaries in Africa and to advise Member States in order to enable the Organization to take appropriate measures towards the total elimination of mercenaries from Africa,

15. DECIDES to observe the 22 of November as the day of the struggle against Portuguese colonialism in Africa.

The Council of Ministers of the Organization of African Unity meeting in Lagos from 9 to 12 December 1970,

Considering the intensified military activities of the Portuguese colonialists against the people of Angola, Mozambique and Guinea Bissau,

Aware that the Portuguese colonialists are encouraged in their aggression against Africa by the continued assistance they are being rendered by their allies and NATO,

Recalling all previous OAU and UN resolutions on Portuguese colonialism in Africa,

Conscious of the need for immediate and increased assistance to the national liberation movements of Angola, Mozambique and Guinea Bissau:

1. VEHEMENTLY CONDEMNS the criminal activities of the Portuguese colonialists in their genocidal war against the people of Angola, Mozambique and Guinea Bissau;

2. CONDEMNS those States, in particular NATO Powers, who sustain Portugal in her colonial aggression by their continued assistance to her;

3. CALLS UPON the NATO Powers to withdraw their assistance to Portugal,

4. DECIDES to increase adequately the assistance of the OAU to the liberation movements fighting against Portuguese colonialism,

5. DIRECTS the Executive Secretary of the Liberation Committee to forthwith substantially increase financial and material assistance to PAIGC to meet the new challenge from the colonialist forces.

OAU DECLARATION ON THE ACTIVITIES OF MERCENARIES IN AFRICA

We, Heads of State and Government of Member States of the Organization of African Unity, meeting in Addis Ababa, Ethiopia, from 21 to 23 June, 1971,

Considering the grave threat which the activities of mercenaries represents to the independence, sovereignty, territorial integrity and the harmonious development of Member States of the OAU,

Recalling Resolutions CM/Res. 49 (IX) and ECM/Res. 17 (VII) on Mercenaries,

Considering that, to perpetrate their crimes against Member States of the OAU, the mercenaries often use African territories still under foreign domination,

Considering that the activities of mercenaries and the forces behind them constitute an element of serious tension and conflict between Member States,

Considering that total solidarity and co-operation between Member States are indispensable for putting an end, once and for all, to the subversive activities of mercenaries in Africa,

Considering the undertakings made by various non-African States to take the appropriate steps to prevent their nationals from returning to Africa as mercenaries and to ensure that their territories should no longer be used for the recruitment, training and equipping of mercenaries:

1. REAFFIRM the determination o fAfrican peoples and States to take all the necessary measures to eradicate from the African continent the scourge that the mercenary system represents,

2. REITERATE our irrevocable condemnation of the use of mercenaries by certain countries and forces to further jeopardize the independence, sovereignty and territorial integrity of Member States of the OAU,

3. FURTHER EXPRESS our total solidarity with States which have been victims of the activities of mercenaries,

4. PROCLAIM our resolve to prepare a legal instrument for coordinating, harmonizing and promoting the struggle of the African peoples and States against mercenaries,

5. PLEDGE OURSELVES to co-operate closely to ensure immediate implementation of the previous decisions and directives of the policy-making bodies of the OAU before the proposed Convention on the subject enters into force:

6. DRAW the attention of world opinion to the serious threat that the subversive activities of mercenaries in Africa represent to the OAU Member States;

7. REITERATE the appeal made to Member States to apply both in spirit and letter, Resolution ECM/Res. 17 (VII) of the Seventh Extraordinary Session of the Council of Ministers held in Lagos in December 1970, and consequently invite them:

> (i) to take appropriate steps to ensure that their territories are not used for the recruitment, drilling and training of mercenaries, or for the passage of equipment intended for mercenaries and that,
>
> (ii) to hand ove rmercenaries present in their countries to the States against which they carry out their subversive activities.

8. INVITE all States which had pledged not to tolerate the recruitment, training and equipping of mercenaries on their territory and to forbid their nationals to serve in the ranks of the mercenaries, to fulfill their undertakings. Also invite other non-African States not to allow mercenaries, be they their nationals or not, to pursue their activities on their territory,

9. REQUEST the Chairman of the Assembly of Heads of State and Government to do everything possible to mobilize world opinion so as to ensure the adoption of appropriate measures for the eradication of mercenaries from Africa, once and for all;

10. APPEAL to all Member States to increase their assistance in all fields to freedom fighters in order to accelerate the liberation of African territories still under foreign domination, as this is an essential factor in the final eradication of mercenaries from the African continent.