



UNITED NATIONS

CENTRE AGAINST *APARTHEID*

DEPARTMENT OF POLITICAL
AND SECURITY COUNCIL AFFAIRS

3/80

NOTES AND DOCUMENTS*

April 1980

MERCENARIES AND SOUTHERN AFRICA

For the adoption of an International Convention
against Mercenaries

by

Deborah A. Jackson

Note: This statement, published at the request of the Special Committee against Apartheid, was made by Miss Jackson at a meeting of the Special Committee held on 11 February 1980. Miss Jackson is co-chairperson of the International Affairs Task Force of the Conference of Black Lawyers (NCBL). The views expressed are those of the author .

Today, as progressive forces throughout the world struggle to throw off the yoke of neo-colonialism and imperialism, they find themselves not only struggling against direct military aggression from within their respective countries but also against military aggression from without through paid intermediaries - hence, the problem of mercenaries.

The use of mercenaries and its impact on world peace have taken on increased legal and political significance particularly since the post-colonial period of the African continent. Events in Angola, Benin, the Sudan and Zaire are instances of the resurgence of the use of mercenaries to maintain Governments which rule without popular support. Additionally, these recent episodes 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.

The National Conference of Black Lawyers takes note of the fact that, as the liberation struggles intensify in southern Africa, the impulse to recruit and employ mercenaries to extend the meager manpower of the minority régimes will continue and increase. It is important to bear in mind that the problem of mercenaries in Zimbabwe has not diminished because of the meetings held in Lancaster House to establish the basis for new elections. As evidence of this fact, we point to the increasing number of South African soldiers employed in Zimbabwe despite the earlier efforts by Lord Soames to deny their existence.

Most third-world countries view mercenary activities 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 support the view that mercenaries should be treated as prisoners of war under the Geneva Convention.

The Western view contains a certain irony since it is those countries who tacitly, if not overtly, allow the recruitment of mercenaries within their territories and hold the common 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.

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 for an expedition for the purpose of engaging in military operations against a State with which the former is at peace. This concept is set forth in the Convention Respecting the Rights and Duties of Neutral Powers and Persons on Land, known as the Hague Convention, No. V.

It is clearly grounded in precedent 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 a military expedition is tantamount to complicity in the hostile attack and can be logically 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.

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.

An analysis of the national laws of the United States and other countries on neutrality demonstrate the necessity to support the proposition that there is an urgent need for the revision of the present principles of international law adequately to prevent and protect against the crime entailed by mercenary activities as they exist 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 national 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 co-operation is manifest.

For example, mercenary recruitment has been carried out openly in a half dozen American magazines including Shot Gun News, Gun Week, Sports Afield, Shooting Times and Gun^s Magazine. The most well known magazine of this nature is Soldier of Fortune. Other recruitment has been done directly through the United States military, albeit unofficial and fiercely denied. Examples of this may be seen with the "Phoenix Associates" recruitment of United States Marines at Quantico, Virginia and with the Chairman of the Department of Military Science at the University of California at Berkeley.

Furthermore, despite the overwhelming evidence of United States mercenaries in Angola and the open acknowledgement by individuals responsible for mercenary recruitment from within the United States in clear contravention of United States laws, to date there has not been a single prosecution for any of these acts.

International bodies such as the United Nations Security Council, the United Nations General Assembly and the Organization of African Unity have recognized the pernicious impact of the use of mercenaries on contemporary human and legal goals, yet the recruitment of these "dogs of war" continues unabated. These resolutions leave little doubt of the elements of the crime but they have not been a deterrent or a remedy to the problem. It is therefore imperative that a convention be adopted which makes the use and activities of mercenaries an international crime against humanity to fill the void presently existing in municipal and international law.

Unchecked use of mercenaries will prolong the political resolution of the situation in southern Africa and the agony of the African people. While it is clear that mercenaries cannot turn the inevitable tide of human events which supports the forces of progress and change, it will surely increase its grisly toll.

The National Conference of Black Lawyers therefore urges the Special Committee against Apartheid to take appropriate steps that would lead to the development of a convention on the use and activities of mercenaries and we pledge our support and assistance toward this end.