

INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES

Following the adoption of the Declaration on the Granting of Independence to Colonial Countries and Peoples (resolution 1514 (XV) of 14 December 1960), the General Assembly adopted several resolutions declaring, *inter alia*, the practice of using mercenaries against movements for national liberation and independence punishable as a criminal act, and called upon States to take the necessary measures to prevent the recruitment, financing and training of mercenaries in their territory and to prohibit their nationals from serving as mercenaries (see, *inter alia*, resolution 2465 (XXIII) of 20 December 1968, resolution 2548 (XXIV) of 11 December 1969 and resolution 2708 (XXV) of 14 December 1970). Similarly, the Security Council condemned any State which persisted in permitting or tolerating the recruitment of mercenaries and the provision of facilities to them with the objective of overthrowing the Governments of Member States (see, *inter alia*, resolution 239 (1967) of 10 July 1967, resolution 405 (1977) of 14 April 1977 and resolution 419 (1977) of 24 November 1977).

Nigeria, in co-operation with other African States, had introduced a definition of mercenaries at the 1977 Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts. The definition, incorporated as article 47 of Protocol I Additional to the Geneva Conventions of 12 August 1949, denied mercenaries the status of combatants or prisoners of war. In a letter to the Secretary-General dated 5 December 1979, Nigeria, acting on behalf of a number of Member States, requested that an item entitled "Drafting of an international convention against activities of mercenaries" be added to the agenda of the General Assembly's thirty-fourth session. The General Assembly adopted resolution 34/140 of 14 December 1979, by which it decided to consider the drafting of an international convention to outlaw mercenarism in all its manifestations and invited, *inter alia*, all Member States to communicate to the Secretary-General their views and comments in this regard (Report of the Secretary-General on the drafting of an international convention against the recruitment, use, financing and training of mercenaries A/35/366 Add.1-3, 28 August 1980).

At its thirty-fifth session, in 1980, on the recommendation of its Sixth Committee, the General Assembly established an *Ad Hoc* Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries composed of thirty-five Member States, and requested, *inter alia*, the President of the General Assembly, after due consultation with the chairmen of the regional groups, to appoint the members of the Committee on the basis of equitable geographical distribution and representing the principal legal systems of the world (resolution 35/48 of 4 December 1980). The President of the General Assembly subsequently informed the Secretary-General that he had appointed as members of the *Ad Hoc* Committee thirty-four of the thirty-five States to be appointed by him (A/35/793/Add.1).

During its first session, held from 20 January to 13 February 1981, the *Ad Hoc* Committee decided to set up a working group of the whole in charge of drafting the convention. The work on the elaboration of the convention thus began, on the basis of a working paper submitted by Nigeria on the draft international convention against the activities of mercenaries (A/AC.207/L.3), together with a communication from the Permanent Representative of Trinidad and Tobago (A/AC.207/L.4), taking into consideration the information submitted by Member States compiled pursuant to General Assembly resolution 35/48 (A/AC.207/L.2 and Add.1) and the documents circulated by Benin (A/AC.207/L.5) (Report of the Ad Hoc Committee on the Drafting

of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries, first session, 20 January to 13 February 1981 (A/36/43)).

At its thirty-sixth session, in 1981, on the recommendation of its Sixth Committee, the General Assembly took note of the first report of the *Ad Hoc* Committee by resolution 36/76 of 4 December 1981, and decided, *inter alia*, that the *Ad Hoc* Committee should continue its work, taking into consideration the suggestions and proposals of Member States, bearing in mind the views and comments submitted to the Secretary-General, and those expressed at the thirty-sixth session of the General Assembly during the debate in the Sixth Committee devoted to the consideration of the report of the *Ad Hoc* Committee.

From 1982 to 1985, the *Ad Hoc* Committee held its second to fifth sessions, being annually reconvened by the General Assembly on the recommendation of the Sixth Committee (see resolutions 37/109 of 16 December 1982, 38/137 of 19 December 1983 and 39/84 of 13 December 1984). During these sessions, the *Ad Hoc* Committee decided to establish Working Group A, which dealt with issues of definition and with the question of the scope of the convention, and Working Group B, which dealt with all other issues relevant to the future of the convention. The reports of Working Groups A and B, together with a draft convention submitted by France in 1983 (A/AC.207/L.15) and one by Cuba submitted in 1985 (A/AC.207/L.22), were included in the *Ad Hoc* Committee's annual reports to the General Assembly (A/37/43, A/38/43, A/39/43 and A/40/43). At its fourth session, in 1984, the work of the two working groups (A/AC.207/1984/CRP.3 and A/AC.207/1984/CRP.4) was put together in a single document entitled "Consolidated Negotiating Basis of a convention against the recruitment, use, financing and training of mercenaries" (A/AC.207/1984/CRP.5). By resolution 39/84 of 13 December 1984, the General Assembly requested the *Ad Hoc* Committee to use the draft articles contained in such document as a basis for future negotiation on the text of the proposed international convention.

Although convened by General Assembly resolution 40/74 of 11 December 1985, the *Ad Hoc* Committee did not hold its sixth session in 1986 due to a financial crisis at the United Nations. The General Assembly renewed the mandate of the *Ad Hoc* Committee for the sixth to eighth sessions, held from 1987 to 1989, in which the *Ad Hoc* Committee transacted its business in the context of a working group of the whole (resolutions 41/80 of 3 December 1986, 42/155 of 7 December 1987, 43/168 of 9 December 1988 and 44/34 of 4 December 1989). During its sixth session, held from 19 January to 6 February 1987, the *Ad Hoc* Committee achieved tangible progress in the performance of its task through the preparation of the draft articles contained in the "Second Revised Consolidated Negotiating Basis of a convention against the recruitment, use, financing and training of mercenaries" (Report of the *Ad Hoc* Committee, A/42/43). At its seventh session, held from 25 January to 12 February 1988, the Working Group decided to continue the review of the draft articles and to refer certain articles that had reached a sufficiently advanced stage to a drafting group. The outcome of the work of the drafting group was reflected in the "Third Revised Consolidated Negotiating Basis of a convention against the recruitment, use, financing and training of mercenaries" (Report of the *Ad Hoc* Committee, A/43/43).

By 17 February 1989, during the eighth session of the *Ad Hoc* Committee, the drafting group had produced a document entitled "Draft articles for an international convention against the recruitment, use, financing and training of mercenaries". At this point, the *Ad Hoc* Committee was of the view that efforts could be made to produce the final text of a convention in a relatively short time. It therefore recommended that the Sixth Committee, at the forty-fourth session of the General Assembly, entrust a working group with the task of settling outstanding issues (Report of the *Ad Hoc* Committee, A/44/43).

Upon the recommendation of the *Ad Hoc* Committee, on 25 September 1989, the Sixth Committee set up an open-ended working group and a drafting group, entrusted with the preparation of a draft preamble and draft final clauses for the future convention. The Working Group met three times between 26 September and 2 November 1989. At its final meeting, on 2 November 1989, the Working Group decided to submit to the Sixth Committee for consideration and adoption the draft convention against the recruitment, use, financing and training of mercenaries (Report of the Working Group, A/C.6/44/L.9).

On 21 November 1989, the Sixth Committee adopted the draft resolution on this item without a vote (Report of the Sixth Committee, A/44/766) and recommended it to the General Assembly for its adoption in plenary. By resolution 44/34 of 4 December 1989, the General Assembly, having considered the draft convention prepared by the *Ad Hoc* Committee and finalized by the Working Group, adopted and opened for signature and ratification or for accession the International Convention against the Recruitment Use, Financing and Training of Mercenaries, which was annexed to the resolution. Pursuant to article 19, paragraph 1, the Convention entered into force on 20 October 2001, the thirtieth day following the date of the deposit of the twenty-second instrument of ratification or accession with the Secretary-General.