



SUMMARY RECORD OF THE 24th MEETING

Chairman: Mr. DENG (Sudan)

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The meeting was called to order at 10.10 a.m.

AGENDA ITEM 133: REPORT OF THE AD HOC COMMITTEE ON THE DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES (continued) (A/43/43; A/C.6/43/L.1; A/C.6/43/5; A/43/641-S/20201, A/43/649-S/20204)

1. Mr. SIBOMANA (Rwanda) said that his country was following with special interest the work of the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries. Rwanda knew that mercenarism was a flagrant violation of human rights and the rights of peoples. Mercenaries trampled on the most important of the basic human rights, the right to life, and had no respect for property rights either. Mercenarism was a deliberate violation of the right of peoples to self-determination, and the right of States to sovereignty, independence and territorial integrity. Mercenarism was an attack on the principles and norms of international law concerning friendly relations and co-operation among States.
2. There was an urgent need for the international community to take all necessary measures to eradicate mercenarism. The Ad Hoc Committee had been working for seven years and had not yet produced definitive results. In the international community, there was a lack of consensus on the condemnation of one of today's most serious violations of the rights of States and the rights of individuals.
3. The Sixth Committee should give the Ad Hoc Committee the necessary guidelines to enable it to finalize the draft convention in 1989, so that the General Assembly might adopt it at its forty-fourth session. His delegation fully supported the statement made by the representative of the United Republic of Tanzania on behalf of the Group of African States with regard to the articles of the Third Revised Consolidated Negotiating Basis.
4. Rwanda could not accept the notion that in order for a person to be defined as a mercenary, he had to take part in the hostilities for material compensation in excess of that received in the armed forces of the State. In most cases, the mercenary was unemployed and did not meet recruiting standards for his country's army, or he was an individual motivated not merely by the desire for material profit, but also by a morbid taste for adventure. Accordingly, a mercenary was simply a person taking part in the hostilities for an agreed amount of compensation.
5. With regard to the nationality criterion, he noted that all countries had legislation to punish treason. There should therefore be nothing in the convention concerning individuals who joined with the enemy to take up arms against their own country.
6. As to the protection of the mercenary before the law, he pointed out that the provisions of the International Covenant on Civil and Political Rights, which prohibited discriminatory treatment under a nation's penal code, offered guarantees to the captured mercenary.

7. Mr. TA-AMA (Togo) said that the representative of the United Republic of Tanzania, speaking as current Chairman of the Group of African States, had expressed the Group's views on the questions before the Ad Hoc Committee. In recent years, the problem of mercenarism had grown worse, had expanded in scope and had become more complex. The main victims were innocent civilians in developing countries. In a number of declarations, the United Nations had condemned the use of mercenaries to combat national liberation movements, impede the development of new States or the self-determination of peoples, or overthrow legitimate Governments.

8. The focus of United Nations condemnation had been on the activities of mercenaries, on the recruitment, financing, training, bringing together, movement and use of mercenaries, and on the activities of States that directly or indirectly participated in the activities of mercenaries or were their accomplices.

9. Mercenarism was contrary to international law, for it was always linked to activities contrary to certain basic principles of international law, such as non-interference in the internal affairs of States, territorial integrity, independence, self-determination of peoples, and the condemnation of colonialism, racism, apartheid and foreign domination. However, the international community had no weapons to combat that phenomenon since it lacked an international convention embodying the applicable law.

10. The report of the Ad Hoc Committee on the work of its most recent session made it clear how wide-ranging and complex the topic was. Despite the progress made at that session, there was a lingering suspicion that the will to reach a conclusion was somewhat lacking. The international community must focus essentially on institutionalized use of mercenary services. The Ad Hoc Committee's primary objective was not to deal with mercenaries as individuals, but to elaborate norms aimed at preventing and effectively punishing the recruitment, use, financing and training of mercenaries.

11. The definition of a mercenary was vital to the convention; but already the international community had firmly condemned mercenarism, and it was essential to proceed from the sound basis of that condemnation and avoid undermining it with conceptual problems that impeded consensus. The provisions of article 47 of Additional Protocol I to the Geneva Conventions of 1949 constituted the core of the definition of a mercenary. There already was a consensus on that definition, which had closed a loophole in international humanitarian law relating to international armed conflicts.

12. It must be borne in mind that in the 1960s the Security Council had demanded the withdrawal of mercenaries from the Congo, and in 1967 had called on States to prohibit the recruitment and training of mercenaries in their territory for the purpose of overthrowing the Governments of other States. It must also be borne in mind that in resolution 2465 (XXIII), the General Assembly had declared that the practice of using mercenaries against movements for national liberation and independence was a criminal act; in resolution 3314 (XXIX), it had adopted the Definition of Aggression, taking the view that mercenarism was an aspect of aggression. In the light of those developments, his delegation believed that the

(Mr. Ta-Ama, Togo)

definition in article 47 should be expanded. That was what the Ad Hoc Committee had done. The draft definition set forth in article 1, paragraphs 1 and 2, of the Consolidated Negotiating Basis had the merit of referring not only to the mercenary as an individual, but also to the various types of mercenary activities to be condemned.

13. His delegation considered it useful not only to retain in full the provision of article 2 to the effect that mercenaries would not have the right to the status of combatants or prisoners of war, but also to reflect the idea that the convention must contain all the fundamental elements needed to guarantee the rights of the offender from the time of arrest until the end of the proceedings. To that end, the provisions of article 75 of Additional Protocol I afforded an appropriate working basis.

14. His delegation hoped that the many square brackets in the Third Revised Consolidated Negotiating Basis would disappear by the end of the next session of the Ad Hoc Committee. It supported the renewal of that Committee's mandate.

15. Mr. ELTCHENKO (Ukrainian Soviet Socialist Republic) said that the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries was right to devote attention to the important subject of how to prevent and punish the activities of mercenaries. Such activities were not just a thing of the past; mercenarism was assuming new guises, engendering brutal crimes and threatening the peace and security of entire regions. The urgency of the subject was clear when gangs of armed terrorists mounted missions to overthrow Governments and take control in newly independent sovereign States, murdering public figures, attacking independent States, committing sabotage and spreading terror. Mercenarism was still current in southern Africa, where it was supported by the South African Government, and there were also reports of attacks by mercenaries in Suriname. Such reports made discussions of the subject in the United Nations both timely and urgent.

16. Concerning the report of the Ad Hoc Committee and the work accomplished at its seventh session, his delegation believed that the Committee had two main assignments: to condemn mercenarism as an international offence and punish mercenaries; and to prevent the use, recruitment, financing and training of mercenaries and punish those who engaged in such activities. There was no reason to restrict the applicability of the draft convention to international conflicts, since in the circumstances of some civil wars mercenaries were used and recruited. The draft convention should refer to all persons employed as mercenaries, even when they did not take part in hostilities, if their association with the hostilities was criminal.

17. Article 7, under which the recruitment, use, financing or training of mercenaries would constitute a crime against the peace and security of mankind, was important, for mercenaries violated the fundamental norms of international law, undermined peace and provoked conflict, while their activities were frequently accompanied by war crimes against mankind and displayed features similar to those

(Mr. Eitchenko, Ukrainian SSR)

of the class of offences dealt with in article 6 of the Charter of the Nürnberg Tribunal.

18. At its seventh session, the Ad Hoc Committee had been able to draw up a third revised consolidated negotiating basis; despite the brackets it contained, the consolidated text could, if the spirit of conciliation could be maintained, serve as an acceptable point of departure for the formulation of the convention. The Committee should try to complete its work in the near future, and he hoped that the preamble and concluding articles could be discussed at the forthcoming session.

19. Mrs. TON (Viet Nam) said that the report of the Ad Hoc Committee gave a clear idea of the areas of unanimity and disagreement and the matters left pending in the formulation of the draft convention; it thus provided a useful basis for the Sixth Committee's discussions on that important item.

20. Twenty years since the adoption by the General Assembly of resolution 2395 (XXIII), the persistence, not to say expansion, of the pernicious activities of mercenaries constituted a tangible threat to international peace and security. Her delegation supported the broad outline of article 7 in the third revised consolidated negotiating basis, and emphasized the importance of article 1, paragraph 2, which defined mercenaries in peacetime. Arranging mercenary operations in the context of armed conflicts should be firmly condemned, but the instigation of such operations in peacetime was among the most abominable violations of the principles of international law. The criterion of direct participation should be dropped from the definition: the preventive nature of the convention would be enhanced thereby.

21. The adoption in 1977 by the Organization of African Unity of a convention on the subject was not a matter of chance, because almost all the victims of operations by mercenaries were developing countries, and those operations constituted a major obstacle to their socio-economic development.

22. Over the half century since the Second World War, the world, in particular the developing world, had witnessed more than 100 armed conflicts, many of them civil wars, although decisive external factors had also been involved, as in the cases of Nicaragua, Angola and Mozambique. Her delegation joined others in calling for the nationality criterion to be dropped, and suggested that either the wording for article 1, paragraph 2, given on page 15 of the report should be retained without the brackets, or article 1, paragraph 2, as a whole should be dropped. It suggested that the words "nor in any other way facilitate the activities of mercenaries" should be added to the convention, specifically in the current article 8 of the third revised consolidated negotiating basis, after the words "States Parties shall not recruit, use, finance or train mercenaries", order to make the convention still more all-embracing.

23. A distinction must be made between activities relating to mercenaries, including such notions as recruitment, use, financing or training, and the activities of mercenaries themselves. Thus, the fourth and sixth paragraphs of the draft preamble proposed by the Chairman of the Ad Hoc Committee, should speak of

(Mrs. Ton, Viet Nam)

"mercenary activities and activities relating to mercenaries", while the fifth paragraph of the draft would refer only to "mercenary activities".

24. The activities of mercenaries themselves should be severely punished, but primary emphasis must be laid on the responsibility of those who were behind mercenaries, because the overall approach of the convention should be not merely punitive but preventive. Her delegation was in favour of removing the brackets and retaining article 19, which referred to the international responsibility of States to fulfil their obligations under the convention. On the other hand, the future convention should contain suitable provision for the protection of States that suffered from the activities of mercenaries, in the form given in article 12, paragraph 1 (c), and in article 20.

25. Viet Nam shared the concern of other developing countries at the problem posed by mercenary activities and activities relating to mercenaries, from which it had suffered even in peacetime; it hoped that the Ad Hoc Committee would continue to develop on what had already been achieved in order to submit a draft convention for the consideration of the General Assembly, if possible at the forty-fourth session.

26. Mr. BELHAJ (Tunisia) said that the activities of mercenaries caused serious problems in third world countries, particularly those in Africa. However, that did not mean that those countries alone were affected. No one was safe from the bands of mercenaries, which continued to sow death and devastation everywhere, to destabilize Governments and cause disruption in countries for the benefit of hidden interests.

27. Eight years earlier, the international community had decided by consensus to set up the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries, apparently as the expression of a collective desire to put an end to such an odious activity. Indeed, the most obvious course was to restrict the activities of mercenaries by identifying them as crimes against humanity and exposing the instigators. However, tangible results were yet to be seen. There was still no confirmation of the progress represented by the "consolidated negotiating basis". The Ad Hoc Committee continued to be a veritable tower of Babel, whose deliberations repeatedly came up against the problem of the definition of mercenaries, the very basis of the future convention.

28. His delegation considered it essential that the work of the Ad Hoc Committee should culminate in the early drafting of a clear restrictive and deterrent legal instrument which could be used effectively by the international community and would also serve as proof of the vitality of the United Nations system. He did not share the view that a careful analysis of the question would produce results satisfactory to all parties.

29. His delegation therefore supported the renewal of the Ad Hoc Committee's mandate. He supported unreservedly the statements made on behalf of the groups of Arab and African States by the representatives of Democratic Yemen and Tanzania.

30. Mr. LUKABU (Zaire) said that his country, which was situated in a highly sensitive geopolitical area, had, since its accession to independence, suffered repeatedly from the scourge of mercenarism. Having regained its political stability, it wished to contribute to the drafting of an international legal instrument which discouraged mercenarism, provided for the exemplary punishment of those devising or carrying out plans intended to wreak death, devastation and destruction in order to destabilize developing countries, and embodied an unequivocal commitment by all States to participate in the international community's campaign against mercenarism. The texts currently being drafted by the Ad Hoc Committee must therefore concentrate on the definition and punishment of mercenaries, and on the question of State responsibility.

31. The Ad Hoc Committee had as yet been unable to submit a draft convention to the General Assembly. His delegation, as a member of the Ad Hoc Committee, had repeatedly expressed its views on the draft articles contained in the third revised consolidated negotiating basis. He would therefore simply point out that others, aware that the developing countries were the most seriously affected, were demanding a special status for mercenaries and resorted to disgraceful tactics to prevent the Committee from making any progress.

32. He recalled that an African convention against mercenarism had been concluded within the Organization of African Unity and provided an adequate legal basis for dealing with cases occurring on the African continent. Nevertheless, in view of the fact that mercenarism was a phenomenon which often involved countries of different continents, his delegation would spare no effort to ensure that the Ad Hoc Committee succeeded in drafting a United Nations convention on the question. Accordingly, he called for the genuine co-operation of those countries acting as "defence counsel" in the Ad Hoc Committee in drafting the convention, just as the developing countries had co-operated in the adoption of such instruments as the International Convention against the Taking of Hostages and the Hague and Montreal Conventions.

33. His delegation supported the recommendation that the General Assembly should invite the Ad Hoc Committee to continue its work in 1989 with a view to drafting as soon as possible, an international convention against the recruitment, use, financing and training of mercenaries.

34. Mr. MIRZAI-E-YENGEJEH (Islamic Republic of Iran), after referring to the obligation of States to co-operate with the United Nations embodied in Article 1, paragraph 3, and Articles 55 and 56 of the Charter, said that the international community was currently facing a phenomenon which was hazardous to international peace and security. Throughout the twentieth century, mercenaries had repeatedly been recruited and used to overthrow governments, undermine the territorial integrity of States and repress the struggle of peoples against foreign domination. The activities of mercenaries were contrary to fundamental principles of international law and seriously impeded the process of self-determination of peoples. Moreover, mercenaries could be used against any State. Consequently, all States should strictly observe the principles of sovereign equality, political independence and territorial integrity of States and of the self-determination of

(Mr. Mirzaie-Yengejeh, Islamic
Republic of Iran)

peoples, embodied in the Charter of the United Nations and in other instruments, and should co-operate in the codification and progressive development of the rules of international law prohibiting mercenarism.

35. In the past three decades, the international community had succeeded in drafting a number of international instruments prohibiting specific acts. The most recent examples were the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, the adoption of which had been made possible by the goodwill of all States. If that same goodwill could be extended to the matter under consideration, it should not be difficult to reach an agreement.

36. His delegation had studied carefully the report of the Ad Hoc Committee on the Drafting of an International Convention against Recruitment, Use, Financing and Training of Mercenaries and, while congratulating the Committee on the work done at its seventh session, was disappointed that the Committee had not been able to complete its task. Having said that, he wished to comment on a number of key aspects of the question, with a view to assisting the Committee in its work.

37. Firstly, the very establishment of the Ad Hoc Committee by the General Assembly was an admission that the provisions of article 47 of Additional Protocol I to the 1949 Geneva Conventions were inadequate to combat mercenarism in all its forms. Consequently, the future convention should be comprehensive in dealing with all aspects of mercenarism. Secondly, it should be borne in mind that both foreigners and nationals could be recruited, used and financed for mercenary activities. Thirdly, it should be recognized that the right of peoples to struggle against colonial and alien occupation and against racist régimes was deeply rooted in international law and that there were a number of international instruments embodying that right. Fourthly, the future convention should outlaw not only direct participation in mercenary activities, but also the recruitment, use and financing of mercenaries. Failure to do so would be incompatible with the very purpose of the convention. Fifth, the future instrument should deal with the responsibility of States in the event of violation of its provisions.

38. In conclusion, he said that his delegation was in favour of the Ad Hoc Committee continuing its work in 1989 in order to complete its mandate.

39. Mr. TANOH (Ghana) said that his delegation shared the concern expressed over the dangerous repercussions of mercenarism on the political integrity and security of States, and particularly of the smallest among them. Condemnation of mercenarism in international life, far from being a recent phenomenon, could be seen in works produced by writers in the nineteenth century. The current efforts to draft and adopt the most comprehensive possible convention against the use of mercenaries demonstrated the need to fill a gap in the regulation of activities which were clearly prejudicial to inter-State relations, particularly in view of the fact that national legislation on the subject lacked uniformity.

(Mr. Tanoh, Ghana)

40. The drafting of a convention was also entirely consistent with the increasingly widespread view of the individual as a subject of international law. If a person was entitled to the protection of international law, he would also have to be punished when he acted, as an agent or a principal, in violation of its provisions. It would indeed be a strange legal system that considered certain acts committed by States to be illegal, only to give free reign to their perpetration by individuals or entities. Nevertheless, that absurd situation occurred frequently, particularly in powerful countries, as a result of the wide loopholes in the legislation governing recruitment of individuals for foreign military expeditions.

41. The current use of armed bands gave rise to doubts as to the sincerity of the commitment of States, and particularly of the largest among them, to respect international law and the Charter of the United Nations. Often, the use of mercenaries as a tool for destabilization was managed so covertly as to make it impossible directly to implicate the State responsible for violation of the principles prohibiting the use of force and intervention in the internal affairs of other States. To that end, use was often made of mercenaries who were nationals of the State subject to destabilization or attack, with a view to parading them before international public opinion as members of the legitimate opposition. However, those nationals of victim States who were trained, equipped, armed and financed by a foreign State or entity for the purposes referred to in article 1 of the draft convention were acting not on their own behalf but as instruments of another's will. The acts which they carried out were imputable to their principals and, to the extent that the principals' acts constituted offences, those of the perpetrators, whether or not they were nationals of the victim country, must be defined as mercenary offences. Furthermore, if a principal were to recruit and finance only nationals of the victim country, the exclusion of such nationals from the definition of mercenaries as contained in article 1, paragraph 2, would exempt him of any responsibility.

42. There was a further anomaly in the current text of the draft convention. According to draft article 3, a national of a State could be convicted for the recruitment, use or financing of mercenaries against his State of origin but could not, by reason of his nationality, be accused of committing a crime of mercenarism against that State.

43. His delegation was not insensitive to the arguments whereby such nationals could be tried on charges of treason, but those charges would only be valid if capture took place in the territory of the victim State of origin; even then, the acts of the recruiter would remain outside the scope of the offence as set forth in article 3. Such a distinction between non-nationals and nationals gave rise to other technical problems and could lead, in some cases, to the imposition of different penalties on individuals engaging in the same offence. His delegation believed that insistence on the exclusion of nationals from the scope of the offence of mercenarism represented an unhelpfully formal approach which could undermine the substance and intent of the draft convention.

(Mr. Tanoh, Ghana)

44. On the question of "direct participation" as a necessary condition for the crime of mercenarism, his delegation shared the views expressed the previous day by Professor Treves. It regarded the element of direct participation as being central to the classification of offences as extraditable or otherwise rather than as a necessary condition for the offence to exist. It therefore viewed positively the scheme of offences outlined in paragraph 100 of the report, which offered prospects for progress and agreement.

45. Another important element was that of the treatment of offenders, whom some wished to see tried under the provisions of national law and others on the basis of a minimum international standard. Currently, international penal legislation, and particularly the International Convention against the Taking of Hostages and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, accorded pre-eminence to national laws. That approach was consistent with the principle of equal treatment under local law for nationals and aliens in a given territorial jurisdiction, which was often applied in respect of alien property and should be even more valid in the context of proceedings governed by penal legislation.

46. With regard to the responsibility of States which trained, equipped, financed and armed mercenary forces, account should be taken of the conclusions of the International Court of Justice in the case of military and paramilitary activities in and against Nicaragua with respect to the prohibition under customary law of armed attacks and to classification of the concept of "armed attack" and of assistance to rebels in the form of the provision of weapons or logistical or other support. In the opinion of his delegation, the Court's affirmation of the breach of legal duty by a State employing armed bands against another had important consequences for application of the customary law of State responsibility. The breach of duty by a State had as its corollary the obligation to provide reparation for injury and loss to the victim State. Thus, articles 19 and 20 of the Third Revised Consolidated Negotiating Basis merely confirmed the situation under law whereby the transgressor State must accept responsibility and make reparation to the victim State as an indispensable complement arising from a breach of duty under international law.

47. On the question of whether a State could be absolved of responsibility by claiming legitimate intervention on behalf of a legitimate opposition, the International Court of Justice had, in the case of Nicaragua, noted that, if such were to be the case, any State could intervene at any moment in the internal affairs of another State, whether at the request of the Government or of its opposition, and had added that such a situation did not appear to correspond to the current state of international law. The Court had also been careful not to include in those remarks assistance to liberation movements engaged in the genuine exercise of self-determination in accordance with international law and United Nations resolutions.

48. With reference to draft article 1, paragraph 2 (c), his delegation believed that certain criteria demanded by some delegations in defining the term "mercenary", and particularly the comparison between the material compensation

(Mr. Tanoh, Ghana)

received by mercenaries and that of other combatants, were inappropriate. By way of illustration, he quoted paragraphs from an article published in the magazine Soldiers of Fortune, which was devoted to the illicit adventures of mercenaries. The article recounted a conversation between a mercenary and the Ghanaian national entrusted with the task of recruiting him for an - abortive - invasion of Ghana; no element of comparison was used in the conversation to determine the level of compensation, which was based on the assessment of risks involved in the venture and the recruiters' desperation to bring it off.

49. It was sufficient to note that international relations underwent immeasurable damage when individuals, regardless of their nationality, either on their own behalf or in collaboration with States, took up arms to violate important principles of law, and that such activities often led to the murder, rape or mutilation of innocent individuals.

50. In conclusion, he noted that it was the international community's duty to put an end to mercenarism and to conclude a convention on that subject by displaying realism and the willingness to compromise.

51. Mr. AL-ATTAR (Syrian Arab Republic) said that his delegation supported all the points made by the representative of Democratic Yemen, in his capacity as the Chairman of the Group of Arab States, and wished to add the following specific comments concerning the Third Consolidated Negotiating Basis:

(1) Paragraph 1 (b) of article 1 should be deleted.

(2) In paragraph 1 (c) of article 1, after the words "in fact, is promised by or on behalf of a party to the conflict" the words "through an intermediary or by resorting to false documents" should be inserted.

(3) In paragraph 1 (d) of article 1, only the following words should be retained "Is [not] a national of a party to the conflict", the rest being deleted so as not to leave outside the scope of the definition of "mercenaries" those who were recruited by the occupying authorities in their own interest and who carried out acts of war or sabotage against their fellow nationals.

(4) Paragraph 2 (b) of article 1 should be deleted because it reproduced the text of paragraph 1 (b) of that article, whose deletion had already been suggested.

(5) In the third subparagraph, in square brackets, of paragraph 2 (a) of article 1, which began with the words "Repressing the struggle of peoples", the words "or obstructing" should be inserted after the word "Repressing".

(6) The first part of paragraph 2 (c) of article 1 should be amended to read: "in fact, is promised or paid [substantial] material compensation through an intermediary or by resorting to false documents". The rest should remain unchanged.

(Mr. Al-Attar, Syrian Arab Republic)

(7) In article 3, the word "criminal" should be inserted before the word "offence" and the word "knowingly" should be deleted because it was obviously superfluous. It was for the competent legal authorities to determine, in each particular case, whether or not there had been criminal intent.

(8) The text of article 4 should be abbreviated to read "An offence is committed by a person who acts as a mercenary as defined in the present Convention".

(9) The text of article 5 should be replaced by the following: "The participation of a mercenary in acts of combat or any of the other actions referred to in article 1, paragraph 2, of the present Convention shall be regarded as an aggravating circumstance which shall justify an increase in the imposable penalty equivalent to half of that originally established by the national legislation of the States Parties to the Convention. If as a result of the participation of the mercenary, any of the acts mentioned should take place, namely, murder, torture, acts of mutilation, hostage-taking, rape or plundering or destruction of property, the penalty to be imposed shall not be less than double that originally provided for in the legislation of the States Parties to the present Convention".

(10) Article 6 should be reformulated so as to retain the text of paragraph (a) and delete that of paragraph (b).

(11) Article 7 should be deleted, since the use of mercenaries to violate the sovereignty of a State, to undermine its stability or to oppose national liberation movements constituted a crime against the peace of States and, consequently, a crime against the peace and security of mankind. That had been the majority opinion during the discussion on the item relating to the Draft Code of Crimes against the Peace and Security of Mankind, as part of the report of the International Law Commission, at the preceding session, in which it had been decided to include mercenarism among those crimes.

52. The legislation of the Syrian Arab Republic prohibited enlistment of a mercenary. It also prohibited all forms of assistance to mercenarism, including moral assistance. Article 280 of the Penal Code punished by 3 to 20 years' imprisonment anyone recruiting in Syrian territory, soldiers to fight in the service of another State without the authorization of the Syrian Government. Article 326 of the same Code established a more severe penalty, which could be the death sentence, whenever those acts led to murder, torture or acts of barbarism.

53. The Ad Hoc Committee still had a long and arduous task to perform, related primarily to the many words in square brackets which prevented the formulation of a consensus. His delegation hoped that countries would demonstrate the necessary political will to overcome current differences and make it possible to finalize the draft convention since, in principle, all parties agreed that mercenarism was unlawful.

54. Mrs. MULINDWA-MATOYU (Uganda) said that her delegation endorsed the views expressed by the representative of the United Republic of Tanzania on behalf of the Group of African States and, at the same time, wished to make some specific remarks on the item. Uganda abhorred the activities of mercenaries, who killed, raped, maimed and plundered indiscriminately, without conscience, and caused terror and inflicted suffering on their victims, violating their basic human rights. Their activities ultimately constituted a threat to international peace and security, as they violated fundamental principles of international law. At the same time, they impeded the process of self-determination of peoples and their fight against colonialism, racism and apartheid. In many developing countries, mercenaries had been used to overthrow Governments and to destabilize States. Those activities continued unabated in many regions of the world. Thus, the reasons which had prompted the inclusion of the item in the agenda of the General Assembly were still valid and it was important, both for the Assembly and for the international community, that the Ad Hoc Committee should conclude its work as a matter of urgency.

55. Her delegation noted the progress achieved by the Ad Hoc Committee at its 1988 session; nevertheless, it was somewhat disappointed because, after more than eight years of work, the convention had not yet been completed. While the goal of the Ad Hoc Committee was to elaborate a convention that was acceptable and universal, it should not be sidetracked from its mandate and from the reality of what it was intended to achieve. Looking at the text of the Third Revised Consolidated Negotiating Basis, her delegation was of the view that the convention should cover all situations, including international armed conflicts and other armed conflicts as well as situations occurring during peacetime.

56. The definition of a mercenary should include nationals of the States against which such activities were directed. Uganda did not subscribe to the view that a national could not be a mercenary; not everybody was a patriot. The Ad Hoc Committee should therefore not ascribe that assumption to individuals simply because their acts were directed against their own State. Similarly, it would be erroneous to categorize such individuals as common criminals, because they were not, they were worse. Even a hired killer singled out his victims, while a mercenary often killed indiscriminately.

57. Her delegation believed that it was not necessary for the mercenary actually to take part in the activities envisaged in the text; the mere fact that he had been recruited and trained and promised material gain was sufficient. Mens rea was present, and attempt usually constituted a crime. As to whether the mercenary should be treated as a combatant or a prisoner of war, her delegation believed that that issue should not arise, since the activities of mercenaries were distinct from those of soldiers and combatants and they should therefore be treated differently.

58. With regard to the question of whether those who recruited, used, financed or trained mercenaries did so knowingly or not, it should be left to the courts to decide intent and knowledge from the circumstances of each case. Though it would not be desirable for there to be a miscarriage of justice, it would be a serious omission to let an instigator of mercenary activities escape liability through mere

(Mrs. Mulindwa-Matovu, Uganda)

failure to prove that he knew what he was doing. With regard to compensation, the qualification "substantial" was subjective to whoever was receiving it; it did not have to be in excess of that received by the armed forces of the country. Accordingly, the wording in brackets in article 1, paragraph 2 (c), should be deleted.

59. While her delegation agreed that the convention should not be contrary to other international instruments, it should be autonomous.

60. With regard to consideration of the question of mercenarism in both the Third and Sixth Committees, her delegation thought that caution should be exercised in applying the concept of rationalization. The Third Committee dealt with mercenarism in the context of the violation of human rights, while the Sixth Committee was seeking to draft an international convention against mercenarism. The two questions were quite distinct, and the importance of neither of them should be compromised for the sake of rationalization.

61. In conclusion, she expressed the hope shared by many delegations that, at the conclusion of the next session of the Ad Hoc Committee, the Third Revised Consolidated Negotiating Basis would be retitled "Convention against the Recruitment, Use, Financing and Training of Mercenaries".

62. Mr. MAHNIC (Yugoslavia) said that his country was a member of the Ad Hoc Committee, and, as such, had actively participated in its 1988 session. Although his delegation was not satisfied with the pace of harmonization of the provisions of the future convention, it was pleased to note the progress made at the most recent session of the Committee, in particular, the agreement reached on the possible objectives of a mercenary operation directed against the constitutional order or territorial integrity of a State, which had led to an improved definition of a mercenary in the absence of armed conflict.

63. In the opinion of his delegation, the future convention should encompass all situations in which mercenary activities might occur. Mercenarism was a phenomenon that not only threatened the sovereignty, independence and territorial integrity of small, primarily non-aligned, countries, but also represented a form of intervention and interference in internal affairs with the aim of impeding the legitimate struggle of peoples against colonialism and other forms of foreign domination. His delegation therefore supported the inclusion of the third subparagraph of paragraph 2 (a), currently between brackets, in the definition of a mercenary.

64. In Yugoslavia's view, retention of the criterion of direct participation in the definition of a mercenary would contravene the goal of the future convention, since, in that eventuality, those who recruited, used, financed or trained mercenaries could not be punished until the commission of an act of violence by the mercenaries. His delegation also considered that the future convention should contain appropriate provisions on the responsibility of States and on compensation for damage. Accordingly, his delegation supported the inclusion of article 20, which remained between brackets in the current text.

(Mr. Mahnic, Yugoslavia)

65. In the opinion of his delegation, the Third Revised Consolidated Negotiating Basis provided a firm foundation for the early completion of the harmonization of the issues that were still outstanding. It was to be hoped that, with effort and goodwill on the part of its members, the Ad Hoc Committee could reach agreement on those issues and complete its work on the drafting of the convention at its next session. Accordingly, his delegation expected the General Assembly to adopt by consensus the resolution extending the mandate of the Ad Hoc Committee so that it could complete its work and submit the instrument to the General Assembly for adoption at its forty-fourth session.

66. Mr. LOULICHKI (Morocco) said that his delegation endorsed the statements by the Chairman of the Group of African States and the Chairman of the Group of Arab States, which reflected the importance that the non-aligned countries attached to completion of the Ad Hoc Committee's work.

67. The results of the Committee's first three sessions gave cause for hope that it would complete its work satisfactorily within a reasonable time-scale. Regrettably, the Committee's work had suffered various setbacks, including cancellation of the 1986 session. The initial enthusiasm that had led to the inclusion of the item in the agenda for the thirty-fourth session of the General Assembly had given way to disappointment on the part of delegations that supported the drafting of a convention.

68. It continued to be difficult to reconcile positions on fundamental questions. Given the complexity of the subject and the differences existing between legal systems, it had been predictable that differences would arise with regard to perceptions of the phenomenon of mercenarism and ways to prevent and eliminate it. His delegation interpreted the care with which delegations were negotiating each of those questions as indicating not only their desire to contribute actively to the codification and progressive development of international law on the matter, but also their political commitment to ensuring the effective implementation of the future convention. Although there had been no progress at the 1988 session either, there were indications that it would be possible to reach agreement on various difficult issues.

69. Building on the Third Revised Consolidated Negotiating Basis and taking some elements of the statement made by the Chairman of the Drafting Group, the Committee could make decisive progress in the discharge of its mandate and, on its tenth anniversary, submit the complete text of a draft international convention to the General Assembly for adoption. All participants should demonstrate imagination and political will so as to formulate an effective and universally applicable instrument as quickly as possible. In seeking reconciliation of positions on outstanding questions, such as the definition of a mercenary and the scope of the convention, the Committee could not be content with formulating provisions that were so general that they were void of all practical significance. The injurious nature of the activities of mercenaries and the threat that they represented to international peace and security necessitated the adoption of a rigorous, comprehensive and effective convention, intended to prevent and suppress such activities.

(Mr. Loulichki, Morocco)

70. As far as the definition of "mercenary" was concerned, if it was thought necessary to include the element of direct participation, the reference in article 1 (c) of the Third Revised Consolidated Negotiating Basis would suffice, and subparagraph (b) should therefore be deleted, as should the phrase "from the time when he participates directly" in the second variant of article 4, and the similar phrase in article 5, in order to avoid unnecessary repetition. For the same reason, the word "knowingly" between brackets in article 3 should also be deleted.

71. Regarding the criterion of the mercenary's motivation, the concept of the desire for private gain should not be qualified by establishing a comparison with the remuneration that the mercenary would receive if he were a member of the armed forces of his own State. The criterion of foreign nationality did not cover cases in which mercenaries were used by a third State or a foreign entity against the State of which they were nationals. His delegation therefore recommended that, in considering the definition, the Ad Hoc Committee should concentrate on the proposal in paragraph 86 of the report (A/43/43). On the question of responsibility, the proposal to insert two paragraphs in the preamble and to retain a safeguard clause in the operative part was very pertinent.

72. The Ad Hoc Committee's mandate was related to the criminal branch of international law, whose progressive development and codification the international community must encourage in order to achieve the basic purposes of the Charter. It was the Sixth Committee's task to act so as to ensure that that mandate was discharged in the shortest possible time and to resist any attempt to distort the character of what was essentially a legal task. In view of what he had just said, his delegation supported the renewal of the Ad Hoc Committee's mandate.

73. Mr. SOKOLOVSKY (Byelorussian Soviet Socialist Republic) said that the use of mercenaries constituted a serious threat to international peace and security and that it was urgent to fill the gap that existed in international law in that respect. Adoption of a legal instrument that would eradicate the deplorable activities of mercenaries, which violated the territorial integrity and independence of States and weakened national liberation movements, would make it possible truly to guarantee the freedom of peoples to choose their own path to development and put an end to attempts to destabilize legitimate Governments and to impose social and political systems from abroad. Such action would undoubtedly strengthen the bases of international security.

74. At its seventh session, which a large number of observers, including the Byelorussian SSR, had attended, the Ad Hoc Committee had made a certain amount of progress in drafting the future convention. The Third Revised Consolidated Negotiating Basis was a clearer and more coherent document than the previous versions, as far as structure and content were concerned. If the Committee continued to work on it and could eliminate certain artificial obstacles, it might be able to finish the draft and fulfil its mandate at its next session.

(Mr. Sokolovsky, Byelorussian SSR)

75. Although the Working Group and the Drafting Group set up by the Ad Hoc Committee had held intensive discussions on the draft articles of the future convention and achieved considerable success in many aspects, those advances were not always reflected in a generally acceptable wording of the draft articles in the Third Revised Consolidated Negotiating Basis. Among the positive results that had been achieved was the agreement on rules relating to attempts to commit the offence of mercenarism and complicity in the commission of the offence, and co-operation among States to prevent its commission. Reference should also be made to the agreement on the procedure whereby representatives of the International Committee of the Red Cross (ICRC) might communicate with and visit alleged offenders, and on the duty of States which had not extradited an alleged offender to bring him before the competent authorities for trial. Attention should also be drawn to article 16 on the mutual assistance of States in connection with criminal proceedings.

76. But in addition to those positive results, there remained pending a number of conceptual questions whose settlement could speed the Committee's work considerably. They included the definition of the concept of mercenary in cases of non-international armed conflict and the criterion of nationality. His delegation inclined towards a definition that covered all categories of mercenary currently in existence.

77. In addition, given the tremendous damage caused by the activity of mercenaries to the affected State, the draft convention should refer explicitly to the responsibility of States which violated their obligations under the Convention, as correctly noted in paragraph 63 of the Ad Hoc Committee's report (A/43/43). It should also be clearly established in article 9 that States had an obligation to prevent incitement to commit the offence of mercenarism.

78. Although it had made progress, the Committee was still moving too slowly. The interminable debates on the fundamental problems of the draft Convention led to an accumulation of drafting variants which could rob the text of any practical content. While the drafting of the Convention was an extremely complex task, because of the differing positions adopted by countries and the multiplicity of legal systems that existed in the world, if the delegations taking part in the work showed the flexibility needed to reconcile their positions and thus speed up the drafting of the text, it would be possible to conclude the process in the not too distant future.

79. His delegation was in favour of extending the Ad Hoc Committee's mandate to enable it to complete the drafting of the Convention at its 1989 session, a provision that should be included in the resolution which the Committee would adopt on the item.

80. Mrs. VALDES PEREZ (Cuba) said that although it was true that some ground had been gained at the Ad Hoc Committee's most recent session, the Third Revised Consolidated Negotiating Basis was not significantly different from the version submitted in 1987. There were still some basic provisions of the draft which remained in square brackets and on which no compromise had been reached. In that

(Mrs. Valdes Pares, Cuba)

connection, she noted that mercenarism constituted a crime against the peace and security of mankind and as such should be incorporated in the instrument that had been under preparation for so many years. The offence of mercenarism was committed not only by the individual who engaged in mercenary activities but also by those - whether individuals or corporate bodies - who recruited, financed or supported the mercenary. Furthermore, the act of mercenarism did not have to be consummated to be regarded as an offence. The simple act of recruiting, training or financing mercenaries constituted a criminal activity which should be taken into account in the draft Convention; not only activities engaged in during armed conflict but also those carried out in time of peace should be covered.

81. In her delegation's view, the square brackets should be removed from article 2 of the Third Revised Consolidated Negotiating Basis and the Ad Hoc Committee should adopt it immediately. Persons who were nothing but international offenders could not be regarded as prisoners of war or receive treatment corresponding to that status, although their right to a fair trial and human treatment should be recognized. The square brackets should also be removed from article 19 of the consolidated negotiating basis, since it was essential that the instrument being drafted should provide for the responsibility of States that failed to comply with their obligations under it. For the same reasons, Cuba was in favour of approving article 20 as currently drafted, without the square brackets.

82. Regarding the definition of "mercenary", although the desire for private gain was a characteristic, it was not necessary for the mercenary to have been offered or to have received substantial material compensation to be covered by the definition; in many cases, the mercenary could be motivated by an unlawful thirst for power.

83. The concept of nationality should not be taken into account in the definition of a mercenary. There were cases of nationals who were recruited, financed and trained by foreign Powers to attack their own country; such was the case of the so-called Nicaraguan contras and those who, in the service of the United States Government, had taken part in the invasion of Cuba at the Bay of Pigs.

84. Her delegation associated itself with those which had proposed that the title of the document under consideration should be changed to "draft Convention", since that was more appropriate for its current structure. Further, Cuba could support - provided certain changes were made - the draft preamble contained in annex II to the report of the Working Group.

85. The draft Convention was an essential document for outlawing a phenomenon which undermined the bases of international relations and violated the fundamental principles of international law, such as respect for self-determination, territorial integrity and the independence of States. The preparation of the draft Convention was, therefore, necessary and urgent. States which still opposed its adoption should show the necessary political will and co-operation. It was fair to demand that the peoples of Africa, Nicaragua and Cuba should not again suffer from the activities of mercenaries and that mankind should be freed once and for all from that scourge.

86. Mr. AUST (United Kingdom) said that, while the statement by the representative of Greece on behalf of the 12 States members of the European Community fully reflected the policy of the United Kingdom on the subject, he believed it was necessary to state his delegation's understanding of the results of the 1988 session of the Ad Hoc Committee, and how it believed the matter should be handled the following year.

87. Certain delegations had expressed their concern at the lack of progress made at the 1988 session of the Ad Hoc Committee. While that might be true in the sense that there had not been significant changes in the text, his delegation believed that there were very encouraging signs of movement on important matters of substance. As the Vice-Chairman of the Ad Hoc Committee had mentioned in his statement, new avenues had opened up for compromise on the most delicate of the issues involved. In particular, the Vice-Chairman had drawn attention to the three proposals contained in paragraph 100 of the report of the Ad Hoc Committee (A/43/43). The aim of those proposals was to determine whether the criterion of direct participation was a necessary component of the definition of mercenary. Each proposal reflected the idea that direct participation was required for the commission of an offence but not for the designation of a particular individual as a mercenary. All the delegations which had submitted proposals had had to move away, to varying degrees, from previously held positions. His delegation hoped that, at the next session of the Ad Hoc Committee, the same willingness to find a generally acceptable solution would prevail. It went without saying that willingness on the part of his delegation to find a solution was dependent on whether other delegations would also move away from entrenched positions.

88. The United Kingdom agreed with the representatives of Tanzania and Egypt and other delegations which had proposed that an informal group acting in a personal capacity, similar to the one which had been set up by the Drafting Group at the current session, should be established at the next session of the Ad Hoc Committee to deal with some of the key policy questions which remained to be resolved.

89. His delegation deplored the activities of mercenaries, which served only to prolong and complicate disputes. However, the task of drafting an instrument to deal with the matter was plagued with difficulties. Everyone knew what a mercenary was, but when an attempt was made to devise a definition precise enough for establishing appropriate offences and jurisdictional rules, problems and differences of perception arose. The Ad Hoc Committee must find answers to those problems.

90. His delegation hoped that, if there was again a desire to reach a compromise at the next session of the Ad Hoc Committee, it would be possible to make substantial progress towards bringing the exercise to a successful conclusion. His delegation would make every effort to make such progress a reality.

91. Ms. WILLSON (United States of America) said that the seventh session of the Ad Hoc Committee had set the stage for substantial progress during the next session. The discussion of the central issues in an increasingly constructive climate had led to a greater understanding of the concerns of participants, and

(Ms. Willson, United States)

that would make it possible to find a means of solving the problems which still divided the members of the Committee. The discussions had clarified the issues and the interrelationship of the key articles.

92. Although only 8 of the 22 articles which currently appeared in the consolidated negotiating basis were unbracketed, agreement on at least five more appeared to be quite close. For example, in article 17, only the reference to the International Committee of the Red Cross was bracketed, and most Committee members supported the deletion of those brackets. Another article on which agreement was possible was article 3, since there was a widespread view that the Convention should prevent, as well as punish, mercenary activities. Her delegation believed that the offences of recruiting, using, financing or training mercenaries referred to in article 3 must be committed "knowingly", that those offences should not be brought within the "prosecute" or "extradite" requirement of article 15, and that the Convention should not create universal jurisdiction with respect to them.

93. Article 7, which characterized the recruitment, use, financing or training of mercenaries as "a crime against the peace and security of mankind", was non-functional and could easily be eliminated.

94. Her delegation continued to believe that the definition of "mercenary" contained in article 47 of Additional Protocol I to the 1949 Geneva Conventions could apply to all situations that the Convention might cover. The distinctions between different categories of armed conflict were not relevant in that context. Nevertheless, the Ad Hoc Committee had continued to work on a two-part definition, although it remained unclear which parts would purport to govern which types of conflict. That uncertainty made progress difficult, as did the problem of reconciling the element of direct participation with the preventive nature of article 3.

95. Agreement had not yet been achieved on article 14. The draft Convention must ensure a fair trial and humane treatment to those accused or convicted of offences. Her delegation rejected the inclusion of nationals, which could be used to deny freedom-fighters their homeland or to punish political dissidents. Nor did it understand the position of those who wished to retain the word "necessarily" in brackets in article 1, paragraph 2 (d); that word should be deleted.

96. The use of working groups - Group A and Group B - to deal with specific issues had been productive. Unfortunately, such groups had been replaced by a proliferation of informal subgroups of various names. Those unofficial groups could be effective, but that had not been the case with the small group emerging within the Ad Hoc Committee at the current session. In contrast, the work of the Drafting Group had been productive, and her delegation welcomed the inclusion, in the report of the Working Group, of the statement by the Drafting Group's Chairman, which was extremely helpful in dispelling what might otherwise be a discouraging picture of the progress of the past sessions.

(Ms. Willson, United States)

97. In 1987, her delegation had expressed its concern that the work of the Third Committee on the subject was incompatible with the recommendations of the Special Committee on the Rationalisation of the Procedures and Organization of the General Assembly; it was therefore pleased to note that the Group of African States, the European Community and other delegations had expressed similar reservations. Mindful that some States had been victims of the illegal use of force by mercenaries, her delegation would continue to co-operate with the Ad Hoc Committee in order to assist it in discharging its mandate.

98. Mr. KANDIE (Kenya) said his delegation agreed with the statements made by the majority of delegations, and with the statement by the delegation of the United Republic of Tanzania on behalf of the Group of African States.

99. The developing countries had repeatedly underscored the importance of collective and concerted action against the activities of mercenaries, which represented a real threat to the territorial integrity, independence and sovereignty of States. In that regard, his delegation had called on the Ad Hoc Committee to work expeditiously on the drafting of the convention. It had also called on those delegations opposed to certain aspects of that Committee's work to show a measure of goodwill. The progress made by the Ad Hoc Committee at its 1988 session was encouraging. Although a number of key articles in the Third Revised Consolidated Negotiating Basis remained in square brackets, indicating disagreement among some delegations, there was still hope that the remaining problems could be solved.

100. The key problems in drafting the convention were, as the delegation of the United Republic of Tanzania had pointed out on behalf of the Group of African States, the definition, status and characterization of mercenaries. His delegation endorsed the suggestion made by the Group of African States that the Ad Hoc Committee should make more use of informal consultations and limited negotiating groups. His delegation was also in favour of raising the Third Revised Consolidated Negotiating Basis to the status of a draft convention.

101. In conclusion, the mandate of the Ad Hoc Committee should be renewed. His delegation hoped that the Committee would be able to adopt the draft convention at its 1989 session.

102. Mr. GUPTA (India) said that mercenaries had once been used relatively frequently in time of war, and, when captured, had been treated as prisoners of war. The situation had begun to change in the 1960s, during the early years of the decolonization process. That was especially so in Africa, where at times foreign mercenaries had been used to hinder the exercise of the right of self-determination or to overthrow or destabilize the Governments of countries which had recently won independence.

103. The identification of mercenarism as an illegal act and its classification as an offence constituted an important and relatively new area of international law. It had emerged in the context of the policy of the United Nations in the era of decolonization. The first step had been the adoption of General Assembly

(Mr. Gupta, India)

resolution 1514 (XV). The second important landmark had been the adoption of resolution 2465 (XXIII), in which the use of mercenaries against national liberation movements had been declared a punishable criminal act. None the less, as States had failed to adopt legislative measures against mercenarism, the activity of mercenaries proceeded uninterrupted.

104. The Eighth Summit Conference of Heads of State or Government of Non-Aligned Countries, held at Harare, had unanimously condemned mercenarism as an act of international terrorism. However, mercenaries of different denominations were still being employed to suppress national liberation movements and movements fighting against racial and other forms of discrimination. Their activities included inciting civil strife, attacking civilian populations, destroying public and private property and other common offences.

105. His delegation wished to stress the need for the United Nations to adopt a convention that was sufficiently comprehensive to cover all types of situations involving the recruitment, use, financing and training of mercenaries. The convention should prohibit and punish mercenary activities in all armed conflicts, both national and international. It should define a mercenary and distinguish him from other categories of persons who enjoyed the protection of the laws of war and other well-established principles of international law. It should deal not only with those persons or entities responsible for committing the offences, but also with those who aided and abetted the commission of such offences. It should define and provide for State responsibility as distinct from the criminal responsibility of individuals. Provision must also be made for judicial assistance among States, including extradition and communication of the action taken against the offenders. There was also a need to provide for humane treatment of the offenders, consistent with the modern and commonly acceptable standards of criminal justice. In every case, the punishment should be proportionate to the gravity of the act committed.

106. The work of the Ad Hoc Committee had progressed satisfactorily. His delegation continued to attach great importance to that Committee's work and believed that the recruitment, use, financing and training of mercenaries were incompatible with the principles of the Charter of the United Nations. Lastly, his delegation hoped that the Ad Hoc Committee would be able to complete its work at its 1989 session and supported the renewal of its mandate.

107. Mr. ACHITSAIKHAN (Mongolia) said his delegation agreed that some progress had been made at the 1988 session of the Ad Hoc Committee, for certain articles in the Third Revised Consolidated Negotiating Basis had been drafted with greater care and consistency. The new formulation reflected the constructive approach used to solve the problems raised at that session and there was good reason to expect that the Ad Hoc Committee would conclude its work in the near future. The positive turn in international relations should give fresh impetus to that important task.

108. The Government of Mongolia attached great importance to the drafting of an international convention against the recruitment, use, financing and training of mercenaries. Adoption of the new international instrument would be an important step towards the establishment of an effective mechanism for preventing the

(Mr. Achitsaikhan, Mongolia)

criminal activities of mercenaries in the interest of human rights and of strengthening international peace and security.

109. His delegation had already had an opportunity to state its position on the item on several occasions, but wished to reaffirm that position with some specific remarks. The correct definition of the term "mercenary" would be of great importance for the purposes of the convention. The definition must reflect clearly the essence of every respect of mercenarism and the motives of the mercenary. In that connection, his delegation deemed the criterion of "private gain", contained in article 1, paragraphs 1 (c) and 2 (c), as sufficient. Consequently, the last part of the text, beginning with the words "substantially in excess of ...", should be deleted from those paragraphs. Besides complicating the wording, that phrase could create a loophole which would make it possible to evade responsibility in certain circumstances.

110. The third paragraph of article 1, paragraph 2 (a) should be retained and the square brackets around it removed. The definition of a mercenary would not be complete without that important element, for mercenaries were frequently used on a large scale to suppress the struggle of peoples for self-determination and the right to choose their own form of economic and social development. In document A/C.6/43/5, the Mongolian Government stressed that the training and use of mercenaries were incompatible with the principles and norms of the Charter of the United Nations and constituted flagrant violations of the sovereignty and security of States, in particular the newly independent developing countries.

111. Referring to the question of the nationality of mercenaries, he said that paragraph 2 (d) should be deleted from article 1, for in many cases mercenaries were recruited from among the citizens of the countries against which they would be used. Mercenarism must be eliminated irrespective of the nationality of the mercenary.

112. Regarding the responsibility of organizers of activities involving mercenaries, the future convention's effectiveness would depend largely upon the way such organizers were dealt with. In principle, mercenaries simply followed orders from the persons or bodies that organized them. Consequently, the prosecution and punishment of persons and organizations engaging in the recruitment, training and use of mercenaries was an extremely important means of combating dangerous and criminal mercenary activities.

113. The even more serious issue of the financing of mercenaries must likewise be borne in mind. The future convention must clearly specify the liability and punishment implied by such financing. In that connection, his delegation believed that the word "knowingly" in article 3 should be deleted, as it created a loophole which persons and organizations might use to evade liability and legal prosecution.

114. Lastly, his delegation believed that the draft convention should cover the responsibility of States that allowed mercenary activities to be carried out in their territory.

115. The CHAIRMAN announced that the Committee had concluded its general debate on agenda item 133 and urged delegations wishing to submit draft resolutions to do so as soon as possible.

AGENDA ITEM 127: STATUS OF THE PROTOCOLS ADDITIONAL TO THE GENEVA CONVENTIONS OF 1949 AND RELATING TO THE PROTECTION OF VICTIMS OF ARMED CONFLICTS (continued)
(A/C.6/43/L.5)

116. The CHAIRMAN reminded delegations that, at its meeting on the previous day, the Committee had agreed to take a decision on the draft resolution contained in document A/C.6/43/L.5.

117. Mr. FERJANI (Libyan Arab Jamahiriya) said that his country had been the second to ratify the Protocols Additional to the Geneva Conventions of 1949 and worked with the International Committee of the Red Cross and other similar organizations; his delegation therefore wished to be included in the list of sponsors of the draft resolution.

118. Draft resolution A/C.6/43/L.5 was adopted without a vote.

119. Mr. ROSENSTOCK (United States of America), speaking in explanation of position, said that the President of his country had submitted Additional Protocol II to the United States Senate for advice and consent to ratification. Additional Protocol I had not been sent to the Senate because the Government had concluded that, although that instrument contained some appropriate provisions, it had fundamental defects which could not be corrected through reservations or interpretive declarations. Provisions such as article 1, paragraph 4, and article 44 undermined the basis of humanitarian law, endangered civilian populations and recognized as combatants groups which were not in a position to fulfil the obligations imposed by the Government. The Protocol also contained a series of provisions which his delegation considered to be militarily unacceptable.

120. Mr. BEN-RAFAEL (Israel), explaining his delegation's position, said that it had not objected to the consensus because it considered draft resolution A/C.6/43/L.5 to be generally acceptable, even though it had certain reservations. Israel had played an active role in the negotiation of the two Protocols Additional to the Geneva Conventions of 1949, and had even proposed several of the substantive provisions included in them. The Protocols contained positive elements that reflected considerable development of international law; however, they were not without defects. In particular, the political terminology and transient considerations that had been introduced into Protocol I had rendered it fundamentally flawed.

121. The effectiveness of international humanitarian law depended on the neutrality and non-politicization of the international organizations responsible for its implementation. However, rather than establishing objective criteria for defining the scope of application and general principles of Protocol I, subjective political concepts had been included in paragraph 4 of article 1. The ease with which any group, claiming the applicability of the political criteria set out in that paragraph, might consider itself entitled to privileges and status under the

(Mr. Ben-Rafael, Israel)

Protocol could only serve to encourage the activities of terrorists whose methods and objectives were totally contrary to any notion of humanitarian law and its underlying aims.

122. The fundamental condition combatants must meet was compliance with all the laws of war and other applicable rules of international law under any circumstances. Article 44 of Protocol I did not meet those conditions. The need for combatants to distinguish themselves clearly from non-combatants was of vital importance for the latter, as well as for the protection of combatants who became war victims. By weakening the requirements for differentiating the two categories, article 44 of Protocol I indirectly increased the danger to the life and safety of innocent civilians. Protecting those who did not fight openly could pose an imminent danger to the civilian population as a whole and produce results that were the opposite of those intended.

123. It was thus clear that article 44 did not reflect existing international law. It was an innovation towards which all States were free to determine their attitude, in accordance with their own interests. The attempt to bring elements unrelated to the State within the scope of the Protocol had created internal contradictions in a text based on the existence of organized States as subjects of international law. That had undermined the balance of legal rights and obligations necessary for the satisfactory implementation of international treaties.

124. His delegation considered that, in contrast to Protocol I, Protocol II was a sound international instrument: it strengthened the humanitarian law applicable to internal armed conflicts, upheld the right of Governments to maintain law and public order by all legitimate means and reflected the status of customary law, while elucidating certain norms in need of clarification.

125. As indicated by Israel's delegation to the twenty-fifth Conference of the Red Cross, held in 1986, Israel was considering becoming a party to Protocol II, although with an important reservation. It was unacceptable to Israel that the country's protective emblem, the Red Shield of David, and its national relief society, Magen David Adom, should not be mentioned in articles 12 and 18 respectively. Such discrimination was not unique to Protocol II, but could be found also in Protocol I and in the relevant articles of the Geneva Conventions of 1949. It was compounded by the decision taken by the twenty-first Conference of the Red Cross to add the name Red Crescent to Red Cross, unjustifiably excluding the Red Shield of David, which constituted arbitrary and politically motivated discrimination against Israel's emblem and society.

126. For those reasons, had the draft resolution been put to a vote, his delegation would have abstained.

127. The CHAIRMAN announced that the Committee had thus concluded its consideration of agenda item 127.

The meeting rose at 1.05 p.m.