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SUMMARY RECORD OF THE 26th MEETING

Chairman: Mr. JESUS (Cape Verde)

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The meeting was called to order at 3.05 p.m.

AGENDA ITEM 129: REPORT OF THE AD HOC COMMITTEE ON THE DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES (continued) (A/41/57-S/17690, A/41/70-S/17708, A/41/76-S/17716, A/41/79-S/17722, A/41/89-S/17737, A/41/90-S/17738, A/41/95-S/17751, A/41/133-S/17786, A/41/134-S/17789, A/41/160-S/17820, A/41/162-S/17825, A/41/165-S/17832, A/41/205-S/17905, A/41/211-S/17912, A/41/217-S/17920, A/41/221-S/17924, A/41/227-S/17933, A/41/239-S/17953, A/41/258-S/17962, A/41/263-S/17970, A/41/267-S/17973, A/41/281-S/17988, A/41/284-S/17995, A/41/300-S/18017, A/41/307-S/18027, A/41/309-S/18029, A/41/311-S/18034, A/41/312-S/18038, A/41/321-S/18045 and Corr.1, A/41/331-S/18054, A/41/336-S/18059, A/41/347-S/18068, A/41/357-S/18078, A/41/390-S/18125, A/41/400-S/18137, A/41/405-S/18142, A/41/418-S/18167, A/41/429-S/18183, A/41/436-S/18186, A/41/442-S/18200, A/41/446-S/18207, A/41/451-S/18213, A/41/487-S/18242, A/41/488-S/18245 and Corr.1, A/41/489-S/18247, A/41/497-S/18255, A/41/524-S/18286, A/41/540-S/18294, A/41/574-S/18310, A/41/575-S/18311, A/41/589-S/18329, A/41/590-S/18330, A/41/625-S/18351, A/41/657-S/18367, A/41/659-S/18369, A/41/684-S/18385, A/41/693-S/18388, A/41/711-S/18402, A/41/718-S/18408)

1. Mr. ABDELRAHMAN (Sudan) said that his country, like all the members of the African Group, had only unwillingly accepted the postponement of the 1986 session of the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries. However, it did not believe that the debate on the item in the Sixth Committee was liable to be counterproductive, in the absence of a report, as had been claimed.
2. The activities of mercenaries, which had been unequivocally condemned in numerous resolutions of the United Nations and the Organization of African Unity, caused not only political and economic damage but also untold suffering. It was a political and legal imperative and also a moral duty for all civilized nations to join the common effort to combat that scourge.
3. South Africa continued to defy the international community and to carry out overt and covert activities against the front-line States, thereby thwarting their socio-economic development. The African countries had suffered more than any others from the activities of mercenaries, which were by no means on the decline. From Angola to the Seychelles, from the Comoro Islands to Suriname, mercenaries continued to flourish, financed from many quarters.
4. The international community needed a universally accepted convention against the recruitment, use, financing and training of mercenaries. The terms of General Assembly resolution 40/74 were very clear in that respect: a mere declaration was not sufficient. It was not enough to condemn mercenarism; it must also be regarded as an offence against the peace and security of mankind. The activities of mercenaries were not only contrary to the fundamental principles of international law but also violated the principles of non-interference in the internal affairs of States and respect for the territorial integrity and independence of States. Those activities were impeding the process of self-determination of the peoples

(Mr. Abdelrahman, Sudan)

struggling against colonialism, racism and apartheid and all forms of foreign domination. The Sudan therefore hoped that the current debate would lead to the Ad Hoc Committee's mandate being renewed until it completed its work.

5. Mr. VREEDZAM (Suriname) said that mercenarism, which had existed for centuries, had been on the increase since the downfall of the colonial empires. It was then that the former metropolitan States and financial interests had resorted to mercenarism in an attempt to regain their lost paradise. They were thus endeavouring to restore their spheres of influence and their hegemony by interfering in the political process of the newly independent States, which was contrary to the established rules of international law. The practice of mercenarism was therefore a violation of the sovereign equality, political independence and territorial integrity of States and of the right of peoples to self-determination. It constituted a threat to international peace and security and merited condemnation by all peace-loving and law-abiding States.

6. The Government of Suriname also considered that mercenarism was a crime against mankind because it caused not only immense political and economic damage to the young States which were its victims but also suffering to innocent people. On several occasions in the past, mercenaries had tried to enter Suriname, but without success. Recently, however, they had entered the territory of Suriname over the eastern border. In collusion with local elements, they had succeeded in capturing two aeroplanes. Because of those mercenary attacks, the Government was forced to pay more attention to the protection of the territory and less attention to the improvement of the economy, which was undermining development.

7. His Government would greatly appreciate it if States Member of the United Nations in general and States and other entities involved in mercenary activities in particular would consider thoroughly the concept of sovereignty with regard to the activities of mercenaries in their territories. Since his Government was unable to protect its interests in the territory of other States, that task fell to those States. That obligation was based on the concept of territorial sovereignty entailing the international responsibility of States. Territorial sovereignty, as a right, entailed a corresponding obligation to protect within one's own territory the rights of other States, in particular their right to integrity and inviolability. If States endangered the interests of other States by allowing mercenaries to operate in or from their territories, they must bear responsibility for the damage which resulted.

8. His Government hoped that the Ad Hoc Committee would be able to resume its work as soon as possible, because any delay in completing the proposed convention would leave small and weak States at the mercy of the arbitrary behaviour of the former colonial Powers and their financial circles.

9. Mr. RIACHE (Algeria) said that resolution 40/74 revealed the concern of the General Assembly that the process of drawing up an international convention against the recruitment, use, financing and training of mercenaries, which had begun five years previously, should be completed. The activities of mercenaries were

(Mr. Riache, Algeria)

contrary to the fundamental principles of international law and jeopardized international peace and security. In particular, they constituted a grave violation of the principles of the sovereign equality of States, non-interference in their internal affairs, and respect for their territorial integrity and national independence; they were also an obstacle to the process of self-determination of the peoples struggling against colonialism, racism, apartheid and zionism. Their objectives were morally and legally reprehensible - political and economic destabilization, political assassination and the overthrow of legitimate Governments - and were directed against young, independent nations and legitimate national liberation movements. In Angola, in Mozambique, in southern Lebanon with the puppets of the SLA and in Nicaragua, the same phenomenon was to be found.

10. The progress made by the Ad Hoc Committee since its establishment was clearly inadequate. The Consolidated Negotiating Basis established in 1984 had not been followed up as expected at the fifth session of the Ad Hoc Committee. Instead, that session, like the discussions in the Sixth Committee at the fortieth session, had demonstrated the far-reaching differences of views persisting on the subject of most, if not all, of the essential provisions of the draft convention. That was an additional reason for making further efforts and showing a greater spirit of co-operation so that the Ad Hoc Committee would be able to respond to the appeal of the General Assembly and complete its task as soon as possible. Moreover, since the Ad Hoc Committee had not been authorized to meet in 1986, the General Assembly would have to do justice to it and give it the necessary time and resources to complete its important task.

11. Mr. HABIMANA (Rwanda) said that the international community should draft without delay a convention on the recruitment, use, financing and training of mercenaries, because mercenarism, by its very nature, was a threat to international peace and security. Such a convention should be aimed primarily at persons who, taking orders from foreign, colonialist or racist circles, invaded the territory of a State in time of peace for the purpose of overthrowing its legal Government, paralysing economic growth and terrorizing the population. The convention should also be aimed at persons who, regardless of their nationality, placed themselves in the service of a group of individuals attempting to counteract the efforts made by national liberation movements to exercise their right to self-determination.

12. There was unanimous condemnation of terrorism in all its forms, because deliberately placing the lives of human beings in danger had always been considered a serious crime. Mercenarism was a form of terrorism that must be condemned in all its aspects and variants. Accordingly, States were duty-bound to prevent their territories from being used for the purpose of recruiting, using, financing or training mercenaries. In that context, Africa had taken the first step by adopting within the framework of the Organization of African Unity, a convention that condemned all forms of mercenarism on the African continent.

13. The task conferred on the Ad Hoc Committee was very important, and that Committee should not be the sole victim of the financial situation of the United Nations. Those States that condemned terrorism, mercenarism and all other attacks on international peace and security should reiterate, in the International Year of Peace, their condemnation of that scourge by voting to extend the mandate of the Ad Hoc Committee.

14. Mr. KANDIE (Kenya) said that if his delegation had correctly understood the reasons that had led to the cancellation of the 1986 session of the Ad Hoc Committee it would like to voice the following reservations: firstly, the cancellation should not in any way be construed as a statement on the relative importance of the work of the Ad Hoc Committee in relation to the other subsidiary organs of the Sixth Committee, namely, the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations and the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization; secondly, the cancellation did not imply that the work of the Ad Hoc Committee should be shelved or delayed in any manner; thirdly, the Ad Hoc Committee should be given absolute priority in 1987, and its meeting should be convened at the earliest possible date.

15. That stance was based on the importance his Government attached to the question. His delegation abhorred the use of soldiers of fortune to destabilize the countries of the third world, which, to defend themselves, had to divert scarce resources needed for their economic and social development. The activities of mercenaries had a pernicious impact on international peace and security. His delegation urged the international community to speak with one voice against the scourge by supporting the early conclusion of the convention. It was not unduly optimistic to expect that work on the Consolidated Negotiating Basis would proceed expeditiously and that the remaining questions would be resolved so that the Ad Hoc Committee could submit a draft convention at the forty-second session of the General Assembly.

16. Mr. SENE (Senegal) said that the use of mercenaries continued to be a real scourge in several parts of the third world, wherever there were hotbeds of war or internal or international conflicts and wherever mercenaries continued to be recruited for sordid tasks in disregard of the elementary rules of moral conduct.

17. Africa had been a victim of the scourge for the past three decades. Several African States had had to face invasions of mercenaries at a time when they had needed all their resources for their development. It gave cause for concern that the phenomenon of mercenarism had been spreading in the southern part of the continent and also continued to run rampant in young States whose structures were still fragile and means of defence limited.

18. It was also very disquieting that the mercenaries currently exercised an occupation that was in demand and well paid although they had been outlawed by the international community for a long time. The highest organs of the United Nations had repeatedly condemned the activities of mercenaries as illegal and contrary to the principles of moral conduct and international law.

19. For example, the Security Council in resolutions 161 and 169 of November 1961 had denounced the activities of mercenaries in Katanga and in resolution 239 of July 1967 had condemned the invasion by mercenaries of Kisangani, in what was now Zaïre. More recently, the Security Council had adopted a series of resolutions in which it had, inter alia, condemned any State that 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 of the United Nations [resolutions 405 (1977), 419 (1977), 496 (1981) and 507 (1982)].

(Mr. Sene, Senegal)

20. The General Assembly had repeatedly stressed the criminal nature of mercenary activities, and the establishing in 1980 of the Ad Hoc Committee testified to the importance it attached to the question. It had also adopted declarations in which the activities of mercenaries were outlawed, in particular the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations and the Declaration on the Granting of Independence to Colonial Countries and Peoples.

21. Furthermore, new developments in international humanitarian law in that area had been enshrined in Additional Protocol I to the Geneva Conventions of 1949. Breaking with the long tradition of silence, indifference and, indeed, indulgence, article 47 of Protocol I stated that a mercenary did not have the right to be a combatant or prisoner of war, thus depriving him of the protection provided for under the Geneva Conventions. In 1977, the member States of the Organization of African Unity had adopted the OAU Convention for the Elimination of Mercenarism in Africa giving a very complete definition of such activities, which he read out.

22. Faithful to the ideals of peace and justice that inspired the United Nations, his Government denounced recourse to force in relations between States, in particular in its basest form, that of mercenarism. It had signed and ratified the OAU Convention for the Elimination of Mercenarism in Africa, was a member of the Ad Hoc Committee and participated actively in its work and sponsor of resolutions 1986/26 and 1986/43 adopted on the question by the Commission on Human Rights and the Economic and Social Council respectively.

23. Senegal's commitment to the struggle against the scourge of mercenarism activities was not confined to the adoption of international legal instruments. Senegal also prohibited all mercenary activity in its territory. As part of that policy, the competent Senegalese authorities had arrested in February 1984 a band of 20 mercenaries recruited to infiltrate a neighbouring country.

24. Although Africa had equipped itself with a convention to eliminate mercenarism, the struggle against that scourge required more active co-operation on the part of the whole international community. Economic and Social Council resolution 1986/43, adopted on 23 May 1986, in which the use of mercenaries was condemned as a means to impede the exercise of the right to self-determination or to destabilize sovereign States, must be welcomed. It was significant that that resolution urged the Commission on Human Rights to appoint a special rapporteur on that subject with a view to preparing a report for consideration by the Commission at its forty-fourth session. The consideration of certain aspects of mercenarism by the Commission on Human Rights, far from overlapping with the Ad Hoc Committee's mandate, constituted a positive input. His delegation hoped that the Ad Hoc Committee's mandate would be extended in order that it might hold its annual session in 1987.

25. Mrs. MEDINA KRAUDIE (Nicaragua) said that for five years her country had been the victim of criminal activities on the part of mercenary forces, financed and organized by the most powerful country in the world. The drafting of a convention which would put an end to mercenary activities came within the category of

(Mrs. Medina Kraudie, Nicaragua)

codification and progressive development of international law and should enjoy the support of all Members of the United Nations with the political will to defend the international legal order and to maintain international peace and security. That political will would be demonstrated by the extension of the Ad Hoc Committee's mandate which might thus complete its work and submit an international convention containing a clear, precise definition of a mercenary, as well as the rules and sanctions to be applied and the relevant obligations and responsibilities of States.

26. Her delegation drew the attention of the Sixth Committee, in that connection, to the Judgment given by the International Court of Justice in 1986 concerning military and paramilitary activities in and against Nicaragua. In the Judgment, the Court reaffirmed the principles of customary international law which were being flagrantly violated by the mercenaries and condemned the United States of America, which had acted in breach of its obligations under international law not to intervene in the internal affairs of other States.

27. Ms. WILLSON (United States of America), speaking on a point of order, said that the representative of Nicaragua was digressing from the item under consideration and addressing an item which lay before another United Nations body. She asked the Chairman to request the representative of Nicaragua to confine herself to agenda item 129, namely, consideration of the report of the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

28. The CHAIRMAN asked the representative of Nicaragua to continue her statement and to confine her remarks to the item under consideration. It would be preferable, where the conduct of business was concerned, if the representative of the United States were to exercise her right of reply after the conclusion of the statement to which it referred.

29. Mrs. MEDINA KRAUDIE (Nicaragua) said that the Court had condemned the United States of America, which had acted in breach of customary international law.

30. Ms. WILLSON (United States of America), speaking on a point of order under rule 113 of the Assembly's rules of procedure said she believed that her first statement had been misunderstood. She had not wished to exercise her right of reply but to request that the representative of Nicaragua should confine her remarks to the item under consideration.

31. Mrs. SILVERA NUÑEZ (Cuba), speaking on a point of order, suggested that the representative of the United States, instead of constantly interrupting the proceedings, should await the end of the statement by the representative of Nicaragua in order to exercise her right of reply.

32. Mrs. MEDINA KRAUDIE (Nicaragua) asked the Chairman to exercise his authority in order that work might proceed. If the representative of the United States were to persist in her interruptions, she would request the Chairman to take a vote on whether or not she should be permitted to continue her statement.

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33. The CHAIRMAN, invoking rule 113 of the rules of procedure of the General Assembly, said that the representative of Nicaragua might continue her statement provided that she refrained from addressing questions which had no direct bearing on the item under consideration. If he heard no objection to that decision, he would take it that the Committee gave its assent.

34. It was so decided.

35. Mrs. MEDINA KRAUDIE (Nicaragua) said that the Judgment of the International Court of Justice proclaimed the true character of the mercenary war which had been inflicted on Nicaragua by a State Member of the United Nations, a signatory of the Charter and a permanent member of the Security Council. The United States had again violated international law and ignored the Judgment of the International Court of Justice by signing the law which appropriated a sum of \$100 million for continued financing of the mercenary forces in Nicaragua. Under such circumstances, her country believed that the Ad Hoc Committee should continue its work of codifying the rules of international law to prohibit the activities of mercenaries.

36. Those States which opposed the drafting of an international convention on that subject were thereby rejecting the principle of the peaceful settlement of disputes and permitting the law of the jungle to triumph over the United Nations objective of maintaining peace and security. She believed it might be useful, in that connection, to refer to an incident which had occurred recently near the border between Nicaragua and Costa Rica. Nicaraguan forces had shot down an aircraft piloted by Americans which was transporting war matériel to the mercenaries. A lone American survivor had been picked up and important documents had been recovered which demonstrated the full responsibility of the United States in the mercenary war inflicted on Nicaragua.

37. Ms. WILLSON (United States of America), speaking on a point of order, said that she had duly accepted the decision of the Chairman authorizing the representative of Nicaragua to continue her statement provided that she did not address contentious questions. She asked the Chairman once again to request the representative of Nicaragua not to digress from the item under discussion.

38. Mrs. MEDINA KRAUDIE (Nicaragua) said that both the documents recovered from the American aircraft and the statements made by the prisoner Eugene Hasenfus, had revealed the existence of a complete system of air support organized by the American Government for the mercenaries operating in Nicaragua.

39. Her delegation supported the extension of the Ad Hoc Committee's mandate and requested that a paragraph authorizing participation by observers in the work of the Committee and its working groups should be included in the draft resolution on that subject which would be submitted to the General Assembly.



40. Mr. ROBINSON (Jamaica) said that he regretted the General Assembly's decision to postpone until 1987 the session of the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries. That decision had not only deprived the Sixth Committee of an opportunity to comment on the substantive aspects of the question but had also failed to take account of the direct relationship between political stability and economic progress.
41. The poor developing countries continued to be victims of mercenary activities, which adversely affected their capacity for economic growth and prevented them from making any tangible contribution to the improvement of the financial situation of the world Organization. The General Assembly's decision therefore seemed to run counter to the objective sought, since the viability of the United Nations could hardly be enhanced by postponing the Ad Hoc Committee's session.
42. Jamaica had been a member of the Ad Hoc Committee since its establishment and attached the greatest importance to the completion of that Committee's task. The Sixth Committee must support the continuation of the work of the Ad Hoc Committee, which must be given sufficient time at its forthcoming session to redouble its efforts and to fulfil its mandate as early as possible. It was important to note that the Economic and Social Council, in its resolution 1986/43, had encouraged the Ad Hoc Committee to submit a draft convention to the General Assembly. His delegation supported that resolution and hoped that the Sixth Committee would take all necessary steps to permit the Ad Hoc Committee to continue its work.
43. Miss DLAMINI (Swaziland) reaffirmed her country's commitment to the principles enshrined in the Charter of the Organization of African Unity and the Charter of the United Nations. Swaziland strongly condemned the recruitment, use, financing and training of mercenaries, which were contrary to Article 2, paragraph 4, of the Charter of the United Nations and to the other fundamental principles enshrined therein. The mercenary activities constituted a threat to international peace and security and should be treated as a crime against the peace and security of mankind.
44. Articles 8 to 12, as submitted by the Ad Hoc Committee in the Consolidated Negotiating Basis, should be worded in such a way as to make it clear that no State had the right to recruit, use, finance or train mercenaries, or to allow its territory to be used as a base for mercenary activities.
45. The Ad Hoc Committee's previous report (A/40/43) contained a positive examination of the question and could constitute a basis for the drafting of a convention. Her delegation was therefore in favour of renewing the Ad Hoc Committee's mandate and invited other delegations to support the draft resolution on that vital question.
46. Mr. GBEHO (Ghana) said that it was extremely regrettable that the Ad Hoc Committee had been unable to submit a report at the current session. Mercenary activities continued to increase in Africa, Asia and Central America, and the need to draft an international convention against the recruitment, use, financing and training of mercenaries was more imperative than ever.

(Mr. Gbeho, Canada)

47. The progress achieved by the Ad Hoc Committee was not negligible. His delegation endorsed the definition of a mercenary contained in paragraph 23 of the report (A/40/43). Mercenary activities jeopardized the stability and the economic development of newly independent States and made it more difficult for them to obtain international economic assistance. Such activities, moreover, violated the fundamental principle set forth in Article 2, paragraph 4, of the Charter. It was not possible to enhance the principle of non-use of force in international relations without condemning mercenary activities. Such activities were tantamount to terrorism, and even more reprehensible since they had no motive other than the desire for gain. Article 1 (c) as presented in paragraph 23 of the report should be amended so as to avoid any ambiguity about the importance of material compensation.

48. It was not sufficient to condemn mercenaries; those who financed them and who should be regarded as the ones really responsible for mercenary activities should also be condemned. That would serve to dissuade Governments and other powerful interests from organizing and financing such abominable activities.

49. In order to give developing countries a chance to live in peace and stability and to pursue their national development goals, as well as to free the world of the scourge of mercenary activities, his delegation was in favour of renewing the Ad Hoc Committee's mandate to enable it to complete its work. In that regard, draft resolution A/C.3/41/L.14 submitted to the Third Committee, did not infringe on the mandate given to the Sixth Committee with respect to the question of mercenaries. The Third Committee's task was to consider the social and humanitarian aspects of the problem, whereas the Ad Hoc Committee was charged solely with the drafting of a convention against mercenary activities. There was no overlapping between the mandates of the two Committees, and the proper balance had been maintained.

50. Mr. ELTCHENKO (Ukrainian Soviet Socialist Republic) said that the use of mercenaries had been condemned on numerous occasions both by the Security Council and by the General Assembly. He regretted, however, that the efforts of the international community had not been successful and that the Ad Hoc Committee had been prevented from carrying out its mandate by countries which continued to have recourse to mercenaries in order to pursue their foreign policy objectives.

51. The list of countries that were victims of mercenary activities was growing steadily longer and included Angola, Mozambique, Benin, the Congo, Seychelles, Chad, Afghanistan, Lebanon, Viet Nam, Laos, Kampuchea, Cuba, Nicaragua and Suriname. The imperialist Powers used mercenaries against newly independent States and national liberation movements whose policies were not to their liking. Consequently, mercenarism currently constituted one of the grossest and most dangerous violations of human rights.

52. It was regrettable that the Ad Hoc Committee had been unable to hold its annual session in 1986. The drafting of an international convention remained none the less an urgent necessity. At its 1987 session the Ad Hoc Committee would therefore have the task of completing the drafting of an international convention and thus justifying the hopes which had been raised when it had been established.

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53. Mr. DANESH-YAZDI (Islamic Republic of Iran) said that he, like many other delegations, was concerned at the stalemate which hampered the work of the Ad Hoc Committee. That concern was shared principally by the States whose stability, integrity and independence had frequently been threatened by mercenary activities.

54. When in 1979 the item on mercenarism had been included in the agenda of the General Assembly, many developing countries had welcomed the positive and promising approach reflected in the relevant General Assembly decisions. After five years of extensive negotiations, however, the outlook remained bleak. His delegation was inclined to attribute that failure to the desire of a few countries to minimize the significance of the issue under discussion. Although mercenarism was considered a threat to the peace and security of the international community as a whole, its victims were the developing countries, particularly the newly independent States, which were exposed to the satanic manoeuvres of the colonialist and imperialist Powers and their lackeys. Examples abounded in Africa, Latin America and Asia - and in the Islamic Republic of Iran, which was itself a victim of mercenary activities.

55. Along with State-sponsored terrorism, armed aggression, the use of force, invasion, occupation and other kinds of illegal behaviour, mercenarism was one of the main problems encountered by the developing countries. In view of its growth, collective measures must be taken by the international community, and especially by those developing countries directly affected, in order to eliminate it, and there was no doubt that one such measure was the drafting of an international convention.

56. He cautioned suspicion, however, regarding the attitudes of those countries which were themselves resorting to the use of mercenaries as an instrument of their foreign policy. Such States might either attempt to adopt a position inconsistent with the will of the overwhelming majority of countries, thus hindering the work of the Ad Hoc Committee and other competent forums, or, paradoxically, go so far as co-sponsoring a resolution against mercenarism with the aim of deceiving the international community and covering up their own conduct in the recruitment, use and financing of mercenaries.

57. Referring to the draft text entitled "Consolidated Negotiating Basis of a convention against the recruitment, use, financing and training of mercenaries", he said that in drafting the Convention, particular attention should be paid to defining the term "mercenary", the obligations and responsibilities of States in respect of the recruitment, use, financing and training of mercenaries and the nature of the offences perpetrated by States when resorting to mercenarism. The definition given in Additional Protocol I to the Geneva Conventions of 1949 was interesting from the legal point of view and the nationality criterion must not be overlooked. In that regard, due consideration should be given to the position of those liberation movements which resorted to military operations in order to liberate their occupied territories. The Iranian delegation was prepared to consider any proposal which could pave the way to an agreement on the definition of the term "mercenary". On the question of the crimes of mercenaries, it believed that such offences should be regarded as crimes against the peace and security of mankind, particularly if a State had participated in acts of armed aggression.

(Mr. Danesh-Yazdi, Islamic Republic of Iran)

58. Great importance should be attached to the obligation of States not to participate in any way in mercenary activities. Obligations should be clearly spelled out and the right of victim States to reparation should not be undermined.

59. Although the General Assembly and the Security Council had adopted numerous resolutions condemning the use of mercenaries, in particular against developing countries and national liberation movements, drafting an international convention prohibiting the activities of mercenaries would undoubtedly supplement the various instruments in existence and would contribute to the codification and progressive development of the rules of international law. The existing differences of opinion, which concerned, for example, the scope or the definition of the term "mercenary" and the obligations and liabilities of States in respect of the recruitment, use, financing and training of mercenaries, could be resolved only if a spirit of conciliation prevailed. Since mercenarism constituted a growing threat to the peace and security of many countries, it was more urgent than ever to complete the drafting of the convention, which would be achieved if the political will so permitted. The mandate of the Ad Hoc Committee should therefore be extended so that it could complete the draft convention at the earliest possible opportunity.

60. Mr. RASHID AHMED (Pakistan) said it was regrettable that the Ad Hoc Committee had not been able to meet in 1986 and thus submit a report. His delegation expressed the earnest hope that the Ad Hoc Committee would meet in 1987 and would submit a draft convention to the General Assembly at its forty-second session, using as a basis the proposals submitted to the Secretary-General by the Member States and the views expressed at meetings of the Sixth Committee.

61. Mercenarism was not new. It had been resorted to in the past by foreign Powers to destabilize Governments of the third world. At the diplomatic conference responsible for drafting the two Additional Protocols to the 1949 Geneva Convention, Nigeria and several other States had introduced a proposal designed to discourage mercenarism. That proposal, later reflected in article 47, paragraph 1, of Additional Protocol I, stated in effect that mercenaries should not enjoy the status of prisoner of war. Paragraph 2 of the same article contained a definition of a mercenary which, while not exhaustive, was a useful guide. Pakistan had also supported the Nigerian proposal regarding the need for urgent consideration of the question of the drafting of an international convention on the recruitment, use, financing and training of mercenaries.

62. His delegation made a clear distinction between mercenaries used by a State or a group with a view to destabilizing or overthrowing Governments established by law, and liberation movements fighting against colonialism, racist régimes, foreign occupation forces or puppet administrations. It felt that the question should be examined as a matter of urgency and therefore hoped that the Ad Hoc Committee would resume its work.

63. Mr. EKE (Benin) said that his country, which had been the target of aggression by mercenaries in the past, attached great importance to the drafting of a convention to combat mercenarism, which constituted a threat to international peace and security and was a flagrant violation of the United Nations Charter.

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(Mr. Eke, Benin)

64. The use of mercenaries to undermine the national sovereignty of independent States was on the increase and was capable of causing a widespread armed conflict. It was of the utmost importance that the Ad Hoc Committee, which had made significant progress during the 1985 session, should continue its work on the Consolidated Negotiating Basis with a view to ironing out the persisting differences of opinion with regard to some articles. His delegation regretted that the Committee, of which Benin was a current member, had not been able to meet. It would support any draft resolution aimed at extending the mandate of the Ad Hoc Committee.

65. Mr. VENKATRAMIAH (India) said that India was in favour of the early drafting of an international convention against mercenarism to supplement existing instruments and national legislation. The convention should prevent and punish mercenary activities in international armed conflicts and similar situations. It should define a mercenary and distinguish him or her from other categories of persons protected under laws of war and other well-established principles of international law. It should cover not only those who took a direct part in hostilities or who intended to do so, but also those who aided and abetted them, including States. The criminal responsibility of individuals, on the one hand, and the responsibility of States, on the other, needed separate treatment. The convention should also provide for judicial co-operation among States, including extradition measures and notification of the action taken against offenders, who should be treated humanely, in accordance with the standards of criminal justice. In particular, punishment should be proportionate to the gravity of the offence.

66. The Eighth Conference of Heads of State or Government of the Non-Aligned Countries, held at Harare in September 1986, had unanimously condemned mercenarism, in particular, the recent attack on Ghana. The Conference had called on the members of the international community to discharge their obligations under the various international conventions on mercenarism and to punish severely captured mercenaries.

67. India trusted that the Ad Hoc Committee would be able to meet, if only for three weeks a year, from 1987 onwards, with a view to completing its work.

68. Mr. ALI (Democratic Yemen) said that mankind had suffered from mercenaries for many centuries, but that their activities had become a veritable scourge since the accession to independence of certain nations. In fact, the imperialist and colonialist States had not accepted those nations' independence and had made use of mercenaries against the Governments in office. The General Assembly had frequently condemned such activities, in particular, in resolution 38/137, by which it had renewed the Ad Hoc Committee's mandate.

69. It was extremely regrettable that the Ad Hoc Committee had not made more marked progress, the most recent session having merely resulted in an increase in the number of alternative formulations in the draft convention. A minority of States sought to hinder the work of the Ad Hoc Committee by adopting an intransigent attitude or by postponing the Committee's meetings, even going so far

(Mr. Ali, Democratic Yemen)

as to state that the Committee was useless and should be abolished. That minority did not want the Organization to formulate a legal instrument condemning mercenary acts, since it was itself behind such acts, directed against weak peoples striving to live in peace and security.

70. With regard to the definition of a mercenary, Democratic Yemen agreed with many other States that a single definition should be adopted so as to avoid differences of interpretation. Moreover, the convention must be general in character and proscribe mercenary activities in both armed conflicts and other situations. Mercenarism was a full-blown crime, whether committed or attempted. It was thus important for the convention to cover those who recruited, used, financed or trained mercenaries.

71. In so far as their status was concerned, mercenaries should not be considered combatants or treated as prisoners of war, although they did have the right to a fair trial and legal representation, in accordance with the national legislation.

72. With a modicum of good will and flexibility, the Ad Hoc Committee could discharge its mandate. His delegation saw no reason why the Ad Hoc Committee should not resume its work the following year.

73. Mr. LOULICHKI (Morocco) said the fact that the question of mercenarism had been included in the agenda of the General Assembly, in 1979 as the result of a Nigerian proposal was not surprising since it was the African countries which had been and remained the main targets of mercenary activities and the primary victims of the scourge of mercenarism. The unanimity which had attended the establishment of an ad hoc committee entrusted with the formulation of an international convention to prevent and punish mercenary activities reflected the international consensus on the need to outlaw the recruitment, use, financing and training of mercenaries.

74. Morocco's commitment to the undertaking remained firm, despite the lack of vigour which seemed to have characterized the Ad Hoc Committee's work at recent sessions, and the persistence of fundamental differences regarding various substantive points. His delegation deeply regretted that the Ad Hoc Committee had been unable to hold a session in 1986 and had accordingly not submitted a report. In common with all the other African delegations, his delegation thought that the work of drafting the convention should be resumed in 1987, and that steps should be taken to secure the necessary financial resources.

75. The growing use of mercenaries in armed conflicts and even where no conflict existed, posed an agonizing problem. Their use was both convenient and dangerous in that it was anonymous and less costly for the instigators of such acts and their accomplices. It should, however, be noted that the collective reaction of States had not been commensurate with the real dangers inherent in the use of mercenaries against the sovereignty of States, their territorial integrity, their political and economic options and the right of peoples to self-determination.

(Mr. Loulichki, Morocco)

76. An important stage had, however, been reached with the inclusion, in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, and in the Definition of Aggression, of a provision requiring States to abstain from organizing or encouraging the organization of irregulars or armed bands, including bands of mercenaries, with a view to incursions into the territory of another State. In 1977, moreover, two legal instruments had been adopted which had marked an epoch in the codification of that branch of international penal law: the 1977 African Convention and, more particularly, Additional Protocol I to the Geneva Conventions of 1949 which, in article 47, proposed for the first time a definition of the term "mercenary". There was, however, a need to go beyond the definition so as to pinpoint more effectively the multiple facets of mercenary activities. The lacunae that needed to be filled by the future convention related, in particular, to the range of reprehensible activities, the criteria for the identifying mercenaries and State responsibility.

77. His delegation noted and welcomed the declaration made at Harare at the most recent summit of the heads of State or Government of the non-aligned countries, which had condemned mercenary activities and their noisome effects on the maintenance of peaceful and good-neighbourly relations among States, and had appealed to States to discharge their international obligations by prohibiting the recruitment, use, financing, training and transit of mercenaries. His delegation did not doubt that the Ad Hoc Committee would overcome the differences which were hampering its work, and, for its part, was ready to participate in the search for generally acceptable and truly effective solutions in order to reduce, if not eliminate, mercenarism.

78. Mrs. SEMGURUKA (United Republic of Tanzania) said that her delegation regretted that the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries had been unable to meet in 1986 owing to the financial crisis, particularly since it had made considerable progress and since other Committees, the work of which was less important, had been able to meet. She trusted that it would be able to resume its work in 1987.

79. At its 1985 session, the Ad Hoc Committee had had before it the draft articles, or "Consolidated Negotiating Basis", contained in chapter V of its report on the work of its fifth session. Although some articles and clauses had been kept in square brackets, the Committee had agreed on certain basic principles. Agreement was necessary as to which mercenary activities were to be prohibited. Differences of opinion on the definition of the terms "mercenary" and "mercenarism" must not impede the work of the Committee. Priority must be given to the adoption of a draft convention. Indeed, it was the mercenaries who benefited from the absence of a convention prohibiting their activities. Africa, the major victim of mercenarism, could not sit back idly. The Security Council, in various resolutions, had condemned the use of mercenaries against Benin (resolutions 405 (1977) and 419 (1977) and against Seychelles (resolutions 496 (1981) and 507 (1982)). Mercenaries were still being used to destabilize Governments of

(Mrs. Semguruka, United Republic of Tanzania)

certain developing countries. They were terrorists who violated the sovereignty and territorial integrity of States. Mercenarism was among the activities condemned in the draft Code of Offences against the Peace and Security of Mankind.

80. Moreover, the work of the Organization in that area should be rationalized. The Third Committee of the General Assembly was considering a draft resolution (A/C.3/41/L.14) on the use of mercenaries as a means to violate human rights and to impede the exercise of the right of peoples to self-determination. If the Sixth Committee had discharged its responsibility in that area, there would be no need for the Third Committee to take up the issue of mercenaries. The Sixth Committee had considered the question since 1979, and had it concluded the elaboration of the draft convention, it would not be necessary to discuss what should be done to combat mercenarism.

81. Her delegation requested that urgent and concrete measures should be taken to combat the scourge of mercenarism and believed that the mandate of the Ad Hoc Committee should be renewed, so that the General Assembly, at its next session, could adopt a convention against the recruitment, use, financing and training of mercenaries.

82. Mr. SANGSOMSAK (Lao People's Democratic Republic) noted that it was not surprising that, since the issue of mercenarism had been placed on the agenda of the General Assembly, an increasing number of countries, in particular developing countries, had participated actively in discussions on that subject. Indeed, mercenarism which was steadily increasing, had become a new weapon of subversion and destabilization used against independent and sovereign States, and an instrument of the colonialist and imperialist forces in the policy of intervention, domination and exploitation directed against the small and medium-sized countries which had chosen the path of justice, equality and social progress. Moreover, the same forces used mercenarism to undermine the stability of Governments whose policy was not in conformity with their interests, and to fight against national liberation movements. A number of those movements and several countries in Africa, Central America, Asia and the Middle East had been attacked by gangs of mercenaries in 1986 and other countries remained threatened by that scourge. For that reason, the international community had insisted on the urgent need to draft an international convention designed to eliminate mercenarism forever.

83. The Lao People's Democratic Republic, having itself been a victim of mercenary activities, joined the international community in condemning those activities and the countries which allowed the recruitment and training of mercenaries in their territory, and in calling for the successful conclusion of an international convention against mercenaries. In that regard, it welcomed the progress already achieved by the Ad Hoc Committee in 1985 in the elaboration of draft articles which might serve, as stipulated in resolution 40/74, as a basis for negotiation for drafting the future convention. Like the great majority of delegations, his delegation had expected that, in view of its progress, the Ad Hoc Committee would submit a draft convention to the Assembly during its current session.

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(Mr. Sangsomsak, Lao People's  
Democratic Republic)

84. For that reason, it was extremely regrettable that the Ad Hoc Committee had not been able to meet in 1986. It was not surprising that the States which had contributed to that situation by invoking the financial crisis, were the very ones which had opposed the elaboration of an international convention against mercenarism or had spared no effort to limit its scope. Although the financial crisis was indeed real, it was nevertheless unacceptable that it should be exploited for political purposes or used as a means of pressure for restricting the exercise, by developing countries, of their right to a legal instrument of international scope which could protect their independence and their sovereignty against the pernicious activities of mercenaries. Therefore, the Sixth Committee must renew the mandate of the Ad Hoc Committee to enable it to complete its work in 1987.

85. Mr. AZZAROUK (Libyan Arab Jamahiriya) said that the elaboration of a convention against mercenaries, proposed by Nigeria in 1979, had received the support of the international community, in particular, the States which had acceded to independence while mercenarism and acts of terrorism had become an instrument of imperialism against the sovereignty of States and territorial integrity.

86. It was regrettable that the Committee had not been able to meet in 1986, when the issue of mercenarism was of paramount importance in the eyes of States. His delegation regretted that attempts had been made to nullify the efforts of the Ad Hoc Committee to reach an agreement, because that did not serve the interests of international peace and security. The progress already achieved showed that the Ad Hoc Committee could overcome the difficulties encountered if its members demonstrated the requisite political will.

87. It was necessary to elaborate a clear legal instrument, which affirmed the responsibility of States and groups that committed offences linked to mercenarism. The proliferation of acts committed by mercenaries was a serious threat to the independence of States, a violation of the right of peoples to self-determination and of the principle of non-interference in the internal affairs of States. Mercenarism came under the definition of an international crime adopted by the International Law Commission, and it was necessary to draft clear measures against it.

88. It was important that the convention should deal with mercenarism in all its forms, in order to cover any person who assisted or incited others to commit the offences in question. It was essential that the definition of the term "mercenary" should include the activities undertaken within the framework of armed conflicts, as contained in article 47, paragraph 2, of Additional Protocol I to the Geneva Conventions, as well as non-international armed conflicts and situations of peace. The convention must clearly take up the question of the responsibility of States and the compensation of injured States.

89. The Ad Hoc Committee must resume its work in 1987 in order to discharge its mandate.

90. Mr. CAVE (Barbados) regretted that the Ad Hoc Committee had not been able to meet in 1986 and deplored the apparent attempts to remove the item from the consideration of the Sixth Committee. As had been proposed, no effort should be spared to rationalize the work of the various committees of the General Assembly.

91. Moreover, although the circumstances which had prevented the Ad Hoc Committee from meeting in 1986 were indeed real, those who were responsible for the management of the resources of the Organization should be warned: mercenarism threatened the very existence of the Organization. It was nothing but undeclared warfare, and those who used it resorted to the pretexts and methods which characterized the worst aspects of the Second World War, namely, contempt for human life and for the safety of innocent people.

92. The outbreak of an armed conflict was always to be regretted but it was encouraging that States had found it necessary to establish certain rules of warfare and to respect certain principles of international law. The United Nations was the product of mankind's horror of war. Mercenarism recognized no rules, norms or guidelines. As such, it rejected the perception of war which had given birth to the Organization. The existence of the Organization would remain in jeopardy until mercenarism was eliminated, and for that reason the question of mercenarism must be accorded major priority.

93. His delegation had taken note of the submission to the Third Committee of a resolution on the problem of mercenarism. It was, perhaps, a positive sign that the various aspects of mercenarism were beginning to engage the attention of delegations in the United Nations. Nevertheless, Barbados considered that, since the Sixth Committee had been the first to take up that problem, it should be given the opportunity to conclude what was essentially a legal matter, even if the human cost of mercenarism could not be ignored. Mercenarism impinged on the freedom of peoples to determine their own patterns of development, violated their fundamental freedom and, in so doing, undermined the fundamental objectives of the Organization.

94. Barbados called upon all delegations to demonstrate the responsibility which would permit the Ad Hoc Committee, when it resumed its meetings, to proceed rapidly to the elaboration of an appropriate instrument which would make it possible to eradicate mercenarism.

95. Mr. BILOA TANG (Cameroon) said that the agenda item under consideration posed several problems, since for lamentable reasons which his delegation considered to be the result of the current crisis, the Ad Hoc Committee had not been able to convene in 1986 and had therefore not been able to submit a report to the Committee. Cameroon, which considered itself to be a law-abiding State, could not but support any initiative aimed at the drafting of binding legal instruments in the political, economic and humanitarian fields and, in that respect, accorded special attention to the adoption of a convention on mercenarism.

96. Although the recruitment, use, financing and training of mercenaries should be a cause of concern for all States, Africa suffered the most from the pernicious and criminal activities of mercenaries and their accomplices. That was why the African

(Mr. Biloa Tang, Cameroon)

countries, within the framework of the Organization of African Unity (OAU), had drafted a convention in that field and were continuing their efforts within the United Nations.

97. Unlike certain delegations, Cameroon considered that the Ad Hoc Committee had made substantial progress, and that was why it hoped that, in spite of the Organization's financial crisis, it would resume and conclude its work so that sanctions could be imposed against mercenaries, irrespective of their nationality, since nationals were all too often sought and recruited in operations aimed at destabilizing their own country. That was why the criterion of nationality should not be retained in the definition of mercenary. Moreover, a distinction should be made between mercenaries and fighters in national liberation movements.

98. Mrs. SILVERA NUÑEZ (Cuba) regretted that, for financial reasons, the Ad Hoc Committee had not been able to meet in 1986, and considered that the Sixth Committee should ensure that certain delegations did not use the financial crisis as a pretext for eliminating certain issues which were not in keeping with their political interests. The Ad Hoc Committee should fulfil its mandate and continue its work until it completed a draft convention on mercenarism.

99. Cuba participated actively in the work of the Ad Hoc Committee and had submitted a draft convention. That was a token of the importance which it attached to the adoption of an international instrument which would put an end to that scourge.

100. Both in the past and recently, mercenaries had been used to destabilize or overthrow legitimately constituted Governments or to strangle the aspirations of peoples in Africa, Asia and Latin America. The Cuban people still remembered the Bay of Pigs, which had been the first major defeat of North American imperialism. The Nicaraguan people had also fallen victim to aggression from mercenaries financed and trained in neighbouring countries by North American imperialism. The capture of the mercenary Hasenfus provided irrefutable proof, and the participation in the operation in question of a well-known CIA agent, one of the confessed authors of a 1976 attack on a Cubana Airlines airplane which had claimed the lives of 63 persons, revealed the close links which existed between mercenaries and the CIA. South Africa was also among the countries which used mercenaries against national liberation movements.

101. The need to respect the principles of sovereign equality, territorial integrity, political independence and self-determination enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations took on special importance for progressive peace-loving forces. The phenomenon of mercenarism had been condemned many times and in many forums, including the Movement of Non-aligned Countries, OAU, the General Assembly and the Security Council. Moreover, Additional Protocol I to the 1949 Geneva Conventions contained precise norms and condemned mercenary activities, which should not be confused with the legitimate activities of national liberation movements.

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(Mrs. Silvera Nuñez, Cuba)

102. Her delegation considered that the convention in question should contain a clear and precise definition of the term "mercenary"; recognize the responsibility of States which, in one way or another, contributed to mercenary activity; refuse prisoner-of-war status to mercenaries; prohibit propaganda by governmental agencies in favour of the recruitment of mercenaries; not equate the activities of fighters in national liberation movements with those of mercenaries; and take account of all aspects of the phenomenon. Finally, Cuba considered that there was no overlapping of the mandates of the Third and Sixth Committee on the question of mercenarism.

103. The CHAIRMAN, replying to a question from the representative of the USSR regarding a possible overlapping of the mandates of the Third and Sixth Committee with regard to the question of mercenaries, said that, after a discussion with the Chairman of the Third Committee, during which he had explained the Sixth Committee's position, he had sent a note to the Chairman of the Third Committee stating that the Sixth Committee was concerned at a possible overlapping of its work with that of the Third Committee regarding the question of mercenaries and considered that efforts should be made to avoid such an overlap; that the Sixth Committee considered that each Committee should adhere strictly to its mandate when it considered the question of mercenaries; and that when each Committee took decisions on the subject, the Third Committee should not proceed in a way which would hamper unnecessarily negotiations in the Sixth Committee regarding a draft international convention against the recruitment, use, financing and training of mercenaries.

The meeting rose at 6.10 p.m.