



**SUMMARY RECORD OF THE 25th MEETING**

Chairman: Mr. FRANCIS (Jamaica)

later: Mr. JESUS (Cape Verde)

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**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**

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The meeting was called to order at 10.30 a.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 (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, A/41/729)

1. The CHAIRMAN recalled that because of the current financial crisis of the United Nations, the session of the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries scheduled for 1986 had been deferred until 1987.

2. He referred the Sixth Committee to resolution 1986/43 of the Economic and Social Council, in paragraph 5 of which the Council encouraged the Ad Hoc Committee to make every effort to complete its mandate and to submit a draft convention to the General Assembly.

3. Mr. BAGE (Nigeria) said that his delegation was very concerned about the postponement of the sixth session of the Ad Hoc Committee, which would seriously slow down the momentum of its work on the convention. He hoped that the session could be held early in 1987. The mandate of the Ad Hoc Committee was an important and difficult one. However, it was imperative for the remaining issues to be addressed and the convention drafted speedily. He hoped that it could be submitted to the General Assembly at its forty-second session.

4. The activities of mercenaries in whatever form were a contemptible breach of the fundamental principles of international law. Mercenarism included the misdeeds of individuals acting in a personal capacity, which some industrialized States claimed could not be imputed to States or regarded as breaches of international law. His delegation considered the use of mercenaries to be a violation of the sovereign equality, political independence and territorial integrity of States, and a serious threat to the inalienable right of peoples to self-determination. The activities of mercenaries also had a pernicious impact on international peace and security.

(Mr. Bage, Nigeria)

5. The international community must strive to eliminate mercenary activities and their destabilizing consequences. Mercenarism posed a particular threat to the third world, where local conflicts had been transformed into regional wars, sometimes with global implications.

6. Mr. BERNAL (Mexico) said his delegation regretted that the General Assembly had been forced to postpone the sixth session of the Ad Hoc Committee because of the financial crisis. He hoped that the Committee's work in 1987 would not in any way be affected.

7. Since the basic problem of the definition of a mercenary had not yet been solved, the Ad Hoc Committee should concentrate at its next session on defining the crime and deciding on ways not only of punishing the mercenary soldier, but also of putting a stop to the activities of organizations which trained, armed, equipped or financed paramilitary, individuals or groups. Once the crime or crimes had been defined, the other articles of the convention could be adopted relatively quickly. The problem of classifying mercenarism as a crime against the peace and security of mankind could be deferred until the International Law Commission had completed its work on the draft Code of Offences. His delegation believed that prior consultations on the composition of the Bureau and organization of work would facilitate the work of the Ad Hoc Committee.

8. Mr. ABDEL KHALIK (Egypt) said that there was an urgent need to elaborate a legal instrument on the question of mercenarism. The international community still firmly believed that the Ad Hoc Committee should continue its codification role in that important area, overcoming the differences that had emerged on such issues as the definition of mercenarism and preventive measures. What was needed was the political will to negotiate to overcome such difficulties.

9. In that respect, his delegation had supported the proposal to hold informal consultations in order to advance the work of the Ad Hoc Committee. The fact that it was taking so long for the Ad Hoc Committee to finalize an agreed text, or the fact that mercenarism was being dealt with in other bodies concerned with humanitarian issues, should not be used as an excuse to terminate efforts to reach a universally acceptable legal instrument.

10. He regretted that the Ad Hoc Committee had been unable to meet in 1986, and hoped that the 1987 session would be long enough to compensate for the time lost. The meetings of the Ad Hoc Committee should be given high priority when the distribution of financial resources for 1987 was being considered.

11. The Sixth Committee should adopt the draft resolution on the item by general agreement as in previous years. He urged all delegations to show the necessary political will in that respect.

12. Mr. OUEDRAOGO (Burkina Faso) said that the large-scale and sophisticated use of mercenaries destabilized the least protected States and those most concerned with reconstruction and development. While mercenaries were universally the subject of scorn and hatred, the problem was not so much the individual mercenary as his employer, who indirectly violated the principles of law and justice.

(Mr. Ouedraogo, Burkina Faso)

13. His delegation therefore regretted that a convention against the recruitment, use, financing and training of mercenaries had not yet been elaborated in the United Nations. International solidarity demanded that it should be completed as soon as possible. The United Nations already recognized that mercenary activities were endangering international peace and security.

14. The definition of mercenarism should cover all mercenary activities, whether in peacetime, in international armed conflicts, in international unarmed conflicts, or in conflicts not of an international nature. Such a definition should go beyond that contained in article 47, paragraph 2, of Additional Protocol I to the Geneva Conventions of 1949, which applied to armed conflicts and did not cover all mercenary activities. The criterion of material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of a party to the conflict, used in article 47, paragraph 2, should not be used to determine the existence of a violation. Mercenaries would be able to act with relative impunity by using the loophole relating to the level of remuneration. It would be easy for their employers not to pay them such material compensation and thus for both groups to escape responsibility. The employers would also escape responsibility if a mercenary was defined as a person who took a direct part in mercenary acts.

15. His delegation vigorously condemned the use of mercenaries, and believed that the recruitment, financing or training of mercenaries in itself constituted a violation. The prohibition should extend not merely to the mercenaries themselves, but also to those who contributed to their existence, even if no mercenary activity was undertaken. Mercenaries could not have the status of legitimate combatants or prisoners of war.

16. The convention must prohibit all forms and manifestations of mercenarism and establish the strict obligation of States not to recruit, train, finance or use mercenaries. If they violated that obligation, they must be obliged to make reparation for any damage caused by their mercenaries. In such cases, they could only be considered as accomplices, for there could be no mercenaries without the financing, recruitment and training of the individuals who were used as political instruments to undermine the stability of States and violate the principles of sovereign equality and independence.

17. Burkina Faso supported the renewal of the mandate of the Ad Hoc Committee to enable it to complete the elaboration of a convention as soon as possible.

18. Mr. HAMPE (German Democratic Republic) said that his delegation attached the highest priority to the proposed convention. A number of recent mercenary activities, especially those directed against Nicaragua, showed that there was an urgent need to complete the preparation of the draft convention. It was regrettable that, owing to the financial difficulties, the Ad Hoc Committee's sixth session had been postponed for one year.

(Mr. Hampe, German Democratic Republic)

19. From the very outset, his delegation had been in favour of defining, in the proposed convention, the recruitment, use, financing and training of mercenaries as an international crime against the peace and security of mankind. The definition of the term "mercenary" was one of the main issues yet to be settled by the Ad Hoc Committee, and account must be taken of the latest developments, which called for close consideration of the criteria for defining a mercenary who acted or intended to act in time of peace. It was essential that the criteria set forth in article 47, paragraph 2, of Additional Protocol I to the Geneva Conventions of 1949 should be adapted so as to cover that specific situation. His delegation opposed any attempt to encroach on the law of Geneva and thus to blur both the distinction between international and non-international armed conflicts, and the applicable definitions of the term "mercenary".

20. Although one of the main tasks of the proposed convention was to define the acts to be prohibited under it, little progress had been achieved in that respect. Changes were called for in the provisions under which mercenaries would be punished only for such acts as murder, and plundering and destruction of property - in other words, for offences that were as a rule punishable under domestic law. Other activities, such as support for and assistance to mercenaries, should be defined as separate offences, the punishment of which must not be dependent on the actual commission of mercenary acts or on attempts to commit such acts. His delegation welcomed the clarifications provided in the case of articles 8 to 10 of the Consolidated Negotiating Basis at the Ad Hoc Committee's 1985 session. At the same time, it wished to draw attention to the fact that the proposed convention's effectiveness would depend on a clear-cut definition of the obligations of States to refrain from recruiting, using, financing, training and equipping mercenaries, to prohibit such acts, to punish and prosecute offenders, to prevent the transport and transit of mercenaries through their respective territories, and strictly to prohibit propaganda activities by individuals, groups and organizations that encouraged, instigated, organized or engaged in the preparation or perpetration of mercenary activities.

21. His delegation hoped that the Ad Hoc Committee would be able to complete its work in 1987 and submit a complete draft convention to the General Assembly at its forty-second session. The German Democratic Republic was therefore in favour of renewing the Ad Hoc Committee's mandate as laid down in General Assembly resolution 40/74.

22. Mr. GÜNEY (Turkey) said that his delegation remained convinced of the need for the proposed convention, and considered it regrettable that the Ad Hoc Committee had not yet completed its work. The international community was already aware of the implications of mercenary activities for international peace and security, as demonstrated by: the 1964 statement by the Organization of African Unity (OAU) that the use of mercenaries was a serious threat to peace in Africa; the adoption of General Assembly resolution 2465 (XXIII) condemning the use of mercenaries against national liberation movements; and article 47 of Additional Protocol I to the Geneva Conventions of 1949.

(Mr. Güney, Turkey)

23. The Ad Hoc Committee's most recent report (A/40/43) showed that it would not be impossible to overcome the differences of opinion on key issues, if all States members of the Ad Hoc Committee showed the necessary political will and displayed a greater willingness to accept compromise solutions. The Ad Hoc Committee had made progress on the Consolidated Negotiating Basis, which contained all the elements of a generally acceptable convention. At its next session, the Ad Hoc Committee must deal with such major questions as the exact scope of the definition of the term "mercenary", the goals to be achieved through concerted action and the definition of the major offences under the proposed convention. The Ad Hoc Committee's mandate must of necessity be renewed, since the sixth session had been deferred.

24. In view of the vulnerability of the developing countries to mercenary activities and the unfortunate developments that had taken place in Africa over the past two decades, Turkey would do everything within its power to ensure that the Ad Hoc Committee completed its task of promoting the elimination and suppression of all manifestations of mercenarism, and left no legal loopholes for those who practised mercenarism.

25. Mr. Jesús (Cape Verde) took the Chair.

26. Mr. DA COSTA (Angola) said that mercenary activities were contrary to such fundamental principles as non-interference in internal affairs, and territorial integrity and independence of States. They seriously impeded the self-determination of peoples struggling against colonialism, foreign domination, racism and apartheid.

27. Owing to the Angolan people's experience with mercenarism, his delegation attached great importance to the relevant General Assembly and Security Council resolutions denouncing the practice of using mercenaries, particularly against developing countries and national liberation movements. The development and codification of the rules of international law on mercenaries would contribute immensely to the implementation of the purposes and principles of the Charter of the United Nations. Mercenary activities, which represented a threat to the peace and security of countries, particularly developing countries, were a matter of great concern to Angola. Such activities included the killing of innocent civilians, the commission of acts of genocide, the destabilization of independent States and the suppression of national liberation movements. They had been condemned not only in many resolutions adopted by the United Nations, but also a great number of resolutions adopted by OAU, and both organizations had stressed the obligation of States in respect of crimes committed by mercenaries.

28. A number of Asian, African, Latin American and Caribbean countries were victims of mercenary activities. Cuba and Nicaragua were threatened by an imminent invasion of mercenaries, who were being trained and organized in the territory of a neighbouring State. Moreover, South Africa was being supplied with mercenaries mainly by the United Kingdom and the United States so that it could commit acts of aggression and destabilize neighbouring States. Mercenary activities impeded economic development in third world countries, and the economic, strategic and

(Mr. Da Costa, Angola)

infrastructural vulnerability of newly independent States encouraged mercenary attacks on them. If such States were to be able to implement their development plans, an end must be put to violations of their political independence, such as attacks and acts of sabotage launched against them from abroad.

29. With the collapse of the colonial system, mercenaries were increasingly being used by imperialist Powers either to prolong certain colonial régimes or to keep newly independent States under their domination. Some Western European and United States governmental agencies were directly involved in the use of mercenaries against developing countries, particularly where a Government was not willing to involve its own regular forces in hostile acts. The governmental agencies in question recruited, financed, trained, equipped and ultimately used mercenaries, in the erroneous belief that the Government would thus be dissociated from all responsibility for the acts committed.

30. Mercenary activities must be recognized as a crime against humanity and international peace and security. They were one of the most serious forms of the use of force, and the global character of the mercenary problem called for a global instrument to counteract mercenary activities. The drafting of an international convention on the subject would also complement the various conventions on international terrorism. Moreover, the international community had a duty to prepare a legal instrument on mercenarism as part of the task of the codification and progressive development of international law laid down in Article 13, paragraph 1, of the Charter of the United Nations.

31. Mr. GAEFELE (Botswana) said that there was an urgent need for a new, legally binding instrument, with express provisions on how to deal with the phenomenon of mercenarism, which would make mercenary activities a crime against the international community and prohibit mercenarism in all its forms and manifestations. If the proposed convention was to be effective, States must also enact domestic legislation to deal with mercenary activities. His delegation urged States that wished to become parties to the proposed convention to make mercenarism a crime under their domestic legislation. A mercenary was an enemy of mankind, and whatever crime he committed was committed for private ends.

32. In southern Africa, mercenarism had become an institutionalized profession. For example, in Angola and Mozambique, the South African régime was using mercenaries whom it had recruited, financed and trained. The liberation movements of South Africa were also the victims of mercenary activities.

33. It was regrettable that, owing to the financial constraints of the United Nations, the Ad Hoc Committee had not been able to meet and submit a report to the General Assembly in 1986. The Ad Hoc Committee's mandate should be renewed, since there were some important outstanding issues. His delegation hoped that in the coming year the Ad Hoc Committee would redouble its efforts so that the proposed convention could be adopted. The item should be included in the agenda of the forty-second session.

34. Mr. ROMPANI (Uruguay) said that the various concepts covered by the topic under consideration must be delimited and defined. The starting-point must be the concept of a "mercenary". It was also absolutely essential to establish the relationship between the issue of mercenarism and such other fundamental concepts as non-interference in the internal affairs of States and the concept of security.
35. The term "mercenary" had a perjorative connotation and referred to individuals who engaged in warfare for the sake of money, not for the sake of ideas or patriotism. The two aspects involved (interference by a soldier in a war that was not his concern and the pecuniary motive) were not very different from the criteria used by the Ad Hoc Committee, which had established that a "mercenary" was any person who was motivated essentially by the desire for personal gain substantially in excess of that promised or paid to other combatants. Nothing was more difficult than interpreting the psychological component of crimes and other acts carried out by individuals. There had been many soldiers of all types who had fought for countries other than the countries of their birth, who had been unable to do so without remuneration, and whom nobody would dare to brand as mercenaries. The concept of a mercenary would not apply there.
36. Another course of action that could be taken in the attempt to define the term "mercenary" was to consider domestic legislation. Uruguayan legislation laid down penalties for any person who, for example, committed crimes involving attacks on Uruguay's territory, independence or unity; provided military or political services to a foreign State at war with Uruguay; or practised collusion with foreign States for the purpose of war against Uruguay.
37. Another approach would be to consider the principle of non-interference, which had been subsumed under the prohibition of the use or threat of force laid down in Article 2 of the Charter of the United Nations, was recognized as a fundamental principle of international law 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. The Declaration prohibited all States from intervening in another State's internal struggles and defined as violations of international law, in addition to armed intervention, all forms of interference in or threats to the State or its political, economic or cultural components.
38. When considering the issues of the recruitment, use, financing and training of mercenaries, the international community must take account of similar activities in the field of international terrorism. There too, the goal was to destabilize the institutions of the State. There too, the international community was dealing with violations of the obligation not to intervene in the internal affairs of States.
39. Mr. ORDZHONIKIDZE (Union of Soviet Socialist Republics) said that despite the condemnation by the General Assembly of the use of mercenaries, they continued to carry out their criminal activities against sovereign States and national liberation movements. They were used on a massive scale by imperialism to attain its geopolitical ends, but they were now disguised as "freedom fighters". It required a distorted political logic to describe as acts of freedom fighters such terrorist acts as the blowing up of schools and hospitals and the taking of hostages by mercenaries in Angola, Afghanistan, Nicaragua, Kampuchea and other countries.



(Mr. Ordzhonikidze, USSR)

40. On the premise that money could buy everything, enormous financial resources were being spent on mercenary activities against non-aligned States in Asia, Africa and Latin America. The fact that powerful forces were using the "dogs of war" to attain their political ends explained why mercenarism persisted and why the elaboration of a draft convention was being delayed. Key aspects of the draft convention had still not been agreed on, in particular the definition of a mercenary and the question whether the term could be applied to a citizen of the State against which the mercenary operation was directed. In practice, citizens, including those who had become refugees, were increasingly being used by elements which played on religious and other feelings to achieve their selfish political goals. The mercenaries used by the racist régime of South Africa against neighbouring States were often citizens of those countries. Mercenaries in Central America, the Middle East and South-East Asia were usually citizens of the countries against which they were used. It was therefore clear that attempts to exclude such persons from the definition of the term "mercenary" were intended to limit the scope of the convention and leave a loophole for the continuing use of mercenaries.

41. The criterion of personal gain was an important one. There could be no objection to the provision that a mercenary was motivated essentially by the desire for personal gain. However, the criterion of material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of a party to the conflict was unrealistic. In many instances, mercenaries received the same compensation; that had been the situation in Southern Rhodesia, and was now the case in South Africa. Moreover, it was almost impossible to receive reliable information on what was paid to mercenaries. It would therefore be preferable to use the criterion of a promise of material compensation acceptable to the mercenary.

42. His delegation considered it essential that the responsibility of States to stop the recruitment, training and use of mercenaries should be clearly set out in the convention. It was also essential to establish that States had a responsibility to prohibit mercenary propaganda. Official bodies should be forbidden to grant mercenaries the use of their facilities for the preparation or perpetration of acts of terror. Failure by States to meet their obligations in that area should give rise to international responsibility.

43. It was unfortunate that the Ad Hoc Committee had not been able to meet in 1986; that had delayed the preparation of the convention. In the light of recent events, it was becoming a matter of urgency to elaborate an international legal instrument on the subject.

44. Mr. BRENNAN (Australia) said that Australia would support a convention against the recruitment, use, financing and training of mercenaries which met the following three criteria: it should not be too broad in scope; it should focus on the actions of mercenaries rather than on their motives; and it should not unduly restrict the right of individuals to serve in the armed forces of States of which they were not nationals. The second criterion was based on a principle common to all national systems of criminal law, namely, that an offence was committed only when a prescribed act was performed. Australia had followed that approach in its 1978 legislation on the subject.

/...

(Mr. Brennan, Australia)

45. The possibility of including mercenarism among the offences against the peace and security of mankind should be left to the International Law Commission, which was already considering that issue. Australia supported the extension of the mandate of the Ad Hoc Committee, but believed that the duration of the Committee's 1987 session should be limited to three weeks in view of the financial situation of the United Nations. It urged Committee members whose absence and inactivity had been criticized to improve their attendance and play a more active role.

46. His delegation was concerned about an initiative before the Third Committee regarding the proposed appointment, by the Commission on Human Rights, of a special rapporteur on the question of mercenaries. The Chairmen of the Third and Sixth Committees should have consulted each other on that matter. It would be useful to know whether consultations could still be held, particularly in the light of the General Assembly's preoccupation with efficiency and the need to avoid duplication. Furthermore, it was unclear how such a rapporteur could function effectively in the absence of any agreed definition of terms such as "mercenary", or while other matters germane to the drafting of the proposed convention were unresolved.

47. Mr. BOUABID (Tunisia) said that the 1980 consensus which had led to the establishment of the Ad Hoc Committee, and the regular extensions of the Committee's mandate were proof of a collective awareness of the danger of mercenarism to all nations. Tunisia noted that despite the general desire to prevent and put an end to mercenary activities, the Committee's results had not been very encouraging. Indeed, differences of opinion continued to emerge, particularly with regard to the definition of the term "mercenary" and the definition of offences. Nevertheless, the Consolidated Negotiating Basis in document A/40/43 was a significant accomplishment. All the basic elements of the future convention were contained in it, and it was likely to engage the parties concerned in a genuine negotiation process.

48. No effort should be spared by the Sixth Committee to expedite the elaboration of the convention, which would be a powerful weapon against mercenarism and would establish a system of co-operation in preventing and suppressing mercenary activities. He hoped that the Ad Hoc Committee could resume its work in 1987.

49. Mrs. SINJELA (Zambia) said her delegation regretted that the Ad Hoc Committee had not been able to meet in 1986, because it had the potential to fulfil its mandate in the near future. Mercenarism threatened the sovereignty of new, small States such as Zambia, as well as other countries of southern Africa, Asia and Latin America, hindering their development and stability. Her delegation urged the General Assembly to renew the mandate of the Ad Hoc Committee so as to enable it to complete its work, and urged the Ad Hoc Committee to finalize the draft convention. While there was already a framework for the convention, members of the Committee must make the requisite compromises so that it might be adopted.

50. Ms. FOAKES (United Kingdom), speaking on behalf of the 12 States members of the European Community, said that they were concerned about some aspects of draft resolution A/C.3/41/L.14. For example, in paragraph 7, the Secretary-General would

(Ms. Foakes, United Kingdom)

be requested to report on the question of mercenaries to the General Assembly at its forty-second session, under the agenda item relating to the right of peoples to self-determination. That was a deplorable example of duplication. The Twelve regretted that the draft resolution had moved away from the consensus language which had been used within the Sixth Committee. That might hinder the Ad Hoc Committee in its work on an international convention.

51. In the continuing absence of an agreed definition of the term "mercenary", it would be inappropriate to appoint a special rapporteur. It was difficult to understand why the issue of mercenaries was being addressed by the Third Committee, because it was primarily a matter affecting relations between States, rather than a human rights issue. The Twelve proposed that the Chairman of the Sixth Committee should inform the President of the General Assembly and the Chairman of the Third Committee of the current responsibilities of the Sixth Committee and the Ad Hoc Committee in the matter of mercenaries. The Twelve wished to emphasize their continuing readiness to help in the preparation of an acceptable international convention.

52. Mr. CICANOVIĆ (Yugoslavia) said that although the preparation of the Consolidated Negotiating Basis had led his delegation to believe that the work of the Ad Hoc Committee had entered its decisive stage, the results achieved by the Committee in 1985 had disappointed those expectations. Within the Ad Hoc Committee, there had been a constructive exchange of views on a wide range of topics and a harmonization of positions on most of them, which was a sign that tangible results were attainable in the near future. The cancellation of the Committee's 1986 session had been a considerable concession on the part of small- and medium-sized countries, for they were most likely to benefit from the international convention.

53. Mercenarism threatened the sovereignty, independence and territorial integrity of countries. It was a form of foreign interference in internal affairs, and a means of impeding the legitimate struggle for liberation of peoples under colonial and other forms of foreign domination. It threatened peace and security in the world. Further postponement of the work on the draft convention was unjustifiable. Rationalization and cost-saving measures should not threaten such important United Nations activities. The resumption of the work of the Ad Hoc Committee could help promote mutual trust and restore faith in multilateral co-operation. His delegation favoured the adoption by the General Assembly of a resolution enabling the Ad Hoc Committee to hold a four-week session in 1987, with the aim of finalizing the draft convention and submitting it to the General Assembly for adoption at its forty-second session.

54. Mr. AL-WITRI (Iraq) said that his delegation wished to stress the principles of territorial integrity of States and non-interference in internal affairs. Since the activities of mercenaries were incompatible with such principles and since they impeded the process of self-determination for peoples struggling against colonialism, racism, apartheid and foreign domination, the Ad Hoc Committee should be given the opportunity to complete its work at its 1987 session.

(Mr. Al-Witri, Iraq)

55. In drafting an international convention, the Ad Hoc Committee should focus its efforts on defining mercenarism in a clear and precise manner, so that such a definition would not extend to enlistment in national liberation movements struggling for independence and self-determination. It might be guided, in that connection, by the definition contained in Additional Protocol I to the Geneva Conventions of 12 August 1949. The responsibility of States for any acts that might encourage mercenary operations must be established, and States must enact laws imposing appropriate punishments for mercenary activities.

56. The proposed convention should cover not only direct participation in mercenary operations, but also the recruitment, use, financing and training of mercenaries. Mercenaries must not be equated with the combatants envisaged in the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto, particularly the Geneva Convention relative to the Treatment of Prisoners of War.

57. The proposed convention should concern itself with the punishment of mercenaries regardless of where their crimes were committed. All States must either bring mercenaries to trial or hand them over to other States for trial. Appropriate legal, penal and administrative measures must be taken to prevent mercenary activities.

58. Mr. BASSIROU BA (Mali) said that the international community had constantly condemned mercenarism as a practice which was contrary to international law and posed a serious threat to international peace and security. The General Assembly, in its resolution 40/74, had recognized that the activities of mercenaries were contrary to fundamental principles of international law, such as non-interference in the internal affairs of States, territorial integrity and independence, and seriously impeded the process of self-determination of peoples struggling against colonialism, racism and apartheid and all forms of foreign domination.

59. His delegation was of the view that the draft convention should cover all the situations in which mercenaries were involved, as well as all the aspects of mercenarism. The process of codification should not only aim to ensure the implementation of preventive measures, but should also impose specific obligations on States. Non-fulfilment of those obligations would give rise to international responsibility.

60. Mali strongly supported the work of the Ad Hoc Committee on the drafting of an international convention. It had already signed and ratified the OAU Convention for the Elimination of Mercenarism in Africa. His delegation hoped that the Consolidated Negotiating Basis would be useful in future deliberations. Not only should the mandate of the Ad Hoc Committee be renewed, but the Committee should be instructed to complete the text of the draft convention in 1987, if possible.

61. Mr. NGUYEN QUY BINH (Viet Nam) said his delegation regretted that the Ad Hoc Committee had not been able to meet in 1986; priority must be given to its work in 1987. Further delays in the adoption of an international convention against mercenaries would be unacceptable. Close attention must be paid to defining the

(Mr. Nguyen Quy Binh, Viet Nam)

term "mercenary". It would be useful to examine the legal issues raised by the definition contained article 47, paragraph 2, of Additional Protocol I to the Geneva Conventions of 1949, with a view to eliminating all legal loopholes, for example, those making interference in the internal affairs of States possible by means of de facto mercenary activities. The convention should cover all persons who recruited, trained, financed or used mercenaries. The inclusion of certain criteria for the definition, inter alia, private gain, nationality, residence and direct participation in the hostilities, would thwart all efforts to suppress mercenary activities.

62. The Ad Hoc Committee should do its utmost to finalize the draft convention at its next session.

63. Mr. KULOV (Bulgaria) said that his Government attached great importance to the conclusion of an international convention against the recruitment, use, financing and training of mercenaries. The use of mercenaries seriously impeded the self-determination of peoples, undermined the economies of the countries affected, and caused the death of innocent people. Moreover, the use of mercenaries in a number of regional conflicts was aggravating tensions in international relations. It was regrettable that the Ad Hoc Committee had held no session in 1986. His delegation felt that the completion of the drafting of the convention had been artificially delayed, and it therefore hoped that the draft resolution to be adopted would request the Ad Hoc Committee to discharge its mandate at the 1987 session and submit a draft convention to the General Assembly. If the Committee could not reach consensus on some of the provisions, they might be put to a vote in the General Assembly with a view to concluding the work of the Ad Hoc Committee as soon as possible, in the light of the Organization's financial difficulties.

64. The draft convention, in order to be effective and unambiguous, should encompass the obligations of States to take all possible measures for the total elimination of mercenarism, and establish the international responsibility of States which failed to carry out their obligations under the convention. Mercenaries had always been supported by certain States in pursuit of political objectives, as could be seen in Nicaragua, South Africa, Angola and Afghanistan. It was therefore important for the definition of a mercenary to contain precise criteria which would encompass all possible aspects of mercenarism. The definition should have a sufficiently wide scope of application in view of the variety of cases of the use of mercenaries outside international armed conflicts. The convention should also define mercenarism as an offence against the peace and security of mankind. Such a definition would help the International Law Commission in its drafting of a list of offences against the peace and security of mankind. Not only were the activities of mercenaries having an adverse effect on the victim States, but they were destabilizing the world situation as a whole.

65. Mr. KHVOSTOV (Byelorussian Soviet Socialist Republic) said that although the sixth session of the Ad Hoc Committee had been postponed, the question of the speedy elaboration of an international convention concerning the odious crime of mercenarism remained very relevant. Despite General Assembly resolutions to the effect that mercenarism constituted a violation of the principles of international

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law, mercenaries were being widely used against Angola, Afghanistan and Nicaragua. Mercenarism existed because States and organizations recruited, used, financed and trained mercenaries. That criminal practice was becoming increasingly widespread, creating a serious threat to international peace and security, and to the independent existence of States. It was a flagrant violation of the right of peoples to self-determination.

66. The proposal to elaborate the convention had received general support, but the results of the Ad Hoc Committee's work were meagre. No agreement had been achieved on a number of key provisions of the draft.

67. At its 1985 session, the Ad Hoc Committee had devoted considerable attention to the question whether crimes committed by mercenaries were offences against the peace and security of mankind. In his delegation's opinion, they should be so qualified. The recruitment, use, financing, training and support of mercenaries should be considered not as acts of complicity, but as principal offences. It would detract from the effectiveness of the convention if persons involved in mercenary operations were to bear responsibility only if they carried out specific illegal activities. All manifestations of mercenarism should be forbidden and punished, irrespective of whether the person concerned had actually committed a crime or had only been recruited.

68. The definition of mercenary was very important. It should apply not only to international armed conflicts, but to peacetime situations also. The convention should not be limited to mercenaries acting for personal gain, but should include mercenaries acting under orders, seeking to overthrow Governments and seize political power, or to take reprisals against national liberation movements.

69. There had been considerable debate as to whether a national of a State against which the mercenary operations were directed should be described as a mercenary. His delegation supported the view that the exclusion of nationals from the definition would encourage participation by nationals of a State in mercenary activities against it, and open a loophole for outside interference in the internal affairs of States. That would limit the scope of the convention, whose aim was to prohibit mercenarism per se.

70. His delegation supported the inclusion in the convention of a provision prohibiting mercenary propaganda, on the lines of article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination.

71. States should join forces to ensure the speedy elaboration of a convention which would unambiguously categorize mercenarism as a threat to international peace and security and as a crime against mankind.

72. The CHAIRMAN, referring to the concerns expressed by the United Kingdom, on behalf of the Twelve, about the draft resolution currently before the Third Committee on the use of mercenaries (A/C.3/41/L.14), said that the Economic and Social Council had adopted a resolution concerning the use of mercenaries as a

(The Chairman)

means to violate human rights and to impede the exercise of the right of peoples to self-determination (resolution 1986/43). That resolution had called upon the General Assembly to pay due attention to the matter at its forty-first session. Accordingly, the matter had been referred to the Third Committee, which was competent to consider social questions. Although draft resolution A/C.3/41/L.14 was based on the Economic and Social Council resolution, it did not embody a decision to appoint a special rapporteur on the subject, but merely took note of the Council resolution, in which the Council urged the Commission on Human Rights to appoint a special rapporteur.

73. As to the request made by the United Kingdom, on behalf of the Twelve, that he should meet with the Chairman of the Third Committee and the President of the General Assembly to discuss the question of the interrelationship of the Main Committees, he would do so if the intention of the Sixth Committee was that he should convey its concerns about the need to harmonize activities and avoid overlapping.

74. Mr. KATEKA (United Republic of Tanzania) said that there were some areas where the draft resolution before the Third Committee overlapped with the mandate of the Sixth Committee. He supported the view that there should be better co-ordination with the Third Committee in order to avoid duplication. He noted that if the Ad Hoc Committee had discharged its mandate and finalized the convention, the problem would perhaps not have arisen.

75. Mr. ABDEL-RAHMAN (Sudan), supported by Mr. EIRIKSSON (Iceland), Mr. BRENNAN (Australia) and Mr. GÜNEY (Turkey), said that in view of the fact that the overlapping on the question of the use of mercenaries tended to jeopardize the work of the Ad Hoc Committee, it was hoped that the Chairman would seek a postponement of action on the draft resolution before the Third Committee.

76. Mr. VREEDZAAM (Suriname) said that, as a member of the Ad Hoc Committee, his delegation had reservations about the reference to Additional Protocol I to the Geneva Conventions of 1949 in draft resolution A/C.3/41/L.14. Moreover, as could be seen from the most recent report of the Ad Hoc Committee (A/40/43), no agreement had been reached on the definition of a mercenary. If the draft resolution were put to a vote in the Third Committee, his delegation would abstain.

77. Mr. ORDZHONIKIDZE (Union of Soviet Socialist Republics) said while it was true that the same question should not be discussed in two different Main Committees, efforts to combat mercenarism had different facets, one of which concerned the drafting of a convention, while another concerned the violation of human rights. A similar situation existed with regard to, inter alia, the general topics of children, disarmament and crime which were dealt with from different points of view by different Main Committees. The problem of mercenaries was so vast and complex that it was difficult to discuss all its aspects in a single forum. His delegation therefore felt that the question of the convention should be pursued in the Sixth Committee, without prejudice to the Third Committee's consideration of the question of mercenaries from the perspective of the violation of human rights.

78. Mr. GARCIA BAUER (Guatemala) suggested that the Chairman should consult with the Chairman of the Third Committee with a view to having the members of that Committee limit their references to the subject until the Sixth Committee had taken a decision concerning the draft convention.

79. Mr. van WULFFTEN PALTHE (Netherlands) said, in response to the Soviet representative's comments concerning overlapping, that in all the cases which he had mentioned the General Committee had allocated the items to different Main Committees. However, the item on mercenaries had been allocated to the Sixth Committee. There was therefore a need for consultations with the Chairman of the Third Committee.

80. The CHAIRMAN said that the item allocated to the Sixth Committee was entitled "Report of the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries". The item was not simply entitled "Mercenaries". The Third Committee was dealing with the subject under item 88, entitled "Importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights".

81. If overlapping occurred, it might damage the ongoing negotiations on the drafting of a convention against the use of mercenaries. The aim should be to accommodate the interests of the Sixth Committee without prejudice to the work of the Third Committee. If the Sixth Committee agreed, he would approach the Chairman of the Third Committee and convey the concerns of the members of the Sixth Committee with regard to the overlapping of mandates.

82. It was so decided.

The meeting rose at 1.20 p.m.