



SUMMARY RECORD OF THE 15th MEETING

Chairman: Mr. AZZAROUK (Libyan Arab Jamahiriya)

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**AGENDA ITEM 134: REPORT OF THE AD HOC COMMITTEE ON THE DRAFTING OF AN
INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF
MERCENARIES (continued)**

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The meeting was called to order at 3.10 p.m.

AGENDA ITEM 134: REPORT OF THE AD HOC COMMITTEE ON THE DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES (continued) (A/42/43)

1. Mr. VENKATARAMIAH (India) said that the era of decolonization, which had started in 1960 with the adoption of resolution 1514 (XV) by the General Assembly, had witnessed the birth of mercenaries in modern times. In 1968, the General Assembly had adopted resolution 2465 (XXIII), declaring the use of mercenaries against national liberation movements punishable as a criminal act and the mercenaries themselves outlaws. However, mercenaries had continued their inhuman activities for want of legislative action by States in accordance with that resolution; they had been employed to suppress recognized national liberation movements and movements fighting against racial discrimination, to promote civil strife, to destroy public and private property and to commit other crimes.
2. A convention on mercenaries to which a large number of States would adhere was still needed. It should define a mercenary and distinguish him or her from other recognized categories of persons who enjoyed the protection of the laws of war and other well-established principles of international law. It should deal not only with those persons and entities that intended to commit or had actually committed mercenary offences, but also with those who were their accomplices. It should also define State responsibility, paying due regard to the practices and principles of international law. The criminal responsibility of individuals on the one hand, and State responsibility on the other, needed separate treatment. The convention should likewise provide for mutual judicial assistance among States, including extradition and communication of the facts concerning the offences. There was also a need to provide for the humane treatment of offenders in accordance with commonly accepted standards of administration of criminal justice.
3. He hoped that the Ad Hoc Committee, which had made noteworthy progress at its most recent session, would be able to fulfil its mandate during the next session.
4. Mr. THEUAMBOUNMY (Lao People's Democratic Republic) said that since the question of mercenarism had been put on the General Assembly's agenda eight years previously, a growing number of countries, especially developing ones, had come to take an active part in discussions on the subject and had insisted on the urgent need to adopt an international convention to eliminate the scourge. Mercenarism was constantly expanding and had become a new weapon of subversion and destabilization wielded by colonialist, racist and imperialist forces against national liberation movements and small or medium-sized countries whose policy did not accord with their interests.
5. The Lao People's Democratic Republic had itself been a victim of mercenary activities, such as subversive plots and acts of sabotage against its economic and social infrastructure, and joined wholeheartedly with the international community in condemning such activities and the countries that allowed the recruitment and training of such criminals in their territory.

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

6. His delegation welcomed the progress made by the Ad Hoc Committee in drawing up the Second Revised Consolidated Negotiating Basis and considered that the definition of "mercenaries" should apply to cases of international armed conflict and other situations alike, which would allow the future convention to cover the problem of mercenarism in all its forms. It supported the view that not making the definition applicable to nationals would encourage them to take part in mercenary activities against the State of which they were nationals. In practice, nationals - notably those who had become refugees - were being increasingly used as mercenaries. The efforts being made not to have such people included in the definition of the term "mercenary" were obviously aimed at restricting the convention's scope and contriving a loophole.
7. His delegation supported the proposals to renew the Ad Hoc Committee's mandate and hoped that it would be able to overcome the remaining differences of view and complete its work.
8. Mr. MAKTARI (Yemen) said that the aim of mercenaries was the subversion, destabilization and suppression of national liberation movements; mercenarism was even more dangerous therefore than terrorism. The Ad Hoc Committee's aim was to draw up an international instrument prohibiting mercenary activities in all their forms. Unfortunately there were differences of view on the definition of the term "mercenary" and of the acts committed by mercenaries in international armed conflicts, non-international armed conflicts and situations outside armed conflict. With regard to the types of crime covered, his delegation considered that the future convention should not only deal with the crimes committed by mercenaries themselves, but should also encompass the acts of those who recruited, financed and trained them. The question of nationality had to be considered carefully so that the convention should be unambiguous about it.
9. His delegation condemned all mercenary activities both as a phenomenon that endangered the lives of those fighting for independence and as a crime against the peace and security of mankind that violated the United Nations Charter and the principles of international law. It believed that a clear distinction must be made between the activities of mercenaries and the struggle of liberation movements for national independence. Lastly, his delegation eagerly awaited the results of the Ad Hoc Committee's work at its next session.
10. Mr. AL-ADHAMI (Iraq) said that article 1 of the Second Revised Consolidated Negotiating Basis drawn up by the Ad Hoc Committee was really the heart of the draft convention and the foundation of the provision that followed. He considered that the distribution of the different types of conflict between paragraphs 1 and 2 should be simpler and should take account of the decisions adopted by legal experts with respect to Additional Protocol I to the Geneva Conventions. His delegation therefore suggested that article 1 should be restructured so that paragraph 1 dealt with international armed conflicts and paragraph 2 with non-international armed conflicts and other conflicts not covered by paragraph 1. However, the delegation would be flexible and would not oppose the adoption of article 1 in its current form if it gained majority approval.

(Mr. Al-Adhami, Iraq)

11. In addition, certain details concerning participation in hostilities should be improved, because the terms of article 1, paragraph 1 (b), would weaken the convention by making mercenaries not responsible so long as they did not actually take part in the activities concerned. In his delegation's view, an individual was a mercenary from the moment of recruitment.

12. With regard to the compensation referred to in article 1, paragraph 1 (c), the existing wording enunciated a subjective criterion for evaluating personal gain. It was difficult to agree on a criterion in that regard. One could assume, for example, that a group of persons which had received compensation as defined in subparagraph (c) was therefore considered a group of mercenaries, while another group which received the same remuneration or less was not considered a group of mercenaries. That was both illogical and unjust. In order to leave no loopholes in that article, it would suffice to keep only the beginning of subparagraph (c) without referring to material compensation.

13. His delegation agreed that, as was stated in article 2, a mercenary should not be considered a combatant or a prisoner of war. He felt that the word "knowingly" in article 3 should be retained and he supported the first version of article 4. The text of article 7, which defined the recruitment, use, financing or training of mercenaries as a crime against the peace and security of mankind should certainly be included in the future convention. With regard to article 9, the non-fulfilment of the obligations provided for in the convention should engender the international responsibility of the defaulting State party, which should be made to compensate for damage caused by its failure to carry out its commitments.

14. Lastly, his delegation hoped that the Ad Hoc Committee would be able to find acceptable solutions to the outstanding questions and complete its work in the near future.

15. Mr. ZURITA (Venezuela) said that his delegation had followed the work of the Ad Hoc Committee with great interest. Although progress had been made, there were still differences of view, particularly with regard to the definition of the term "mercenary", the relationship between the draft convention and Additional Protocol I to the Geneva Conventions of 1949, the objectives of mercenaries and their nationality.

16. Draft article 1 was of vital importance because the possibility of reaching agreement on the remaining provisions depended on its wording. The elements set forth in paragraph 1 for identifying a mercenary indicated the way to find an acceptable definition. Nevertheless, the requirement that the person in question should be neither a national nor a resident of a party to the conflict unduly limited the scope of the future instrument.

17. With regard to the various elements included in the definition of a mercenary in the absence of international armed conflict, his delegation felt that the various proposals contained in article 1, paragraph 2 (a), should be retained and made broad enough in scope to cover the different situations in which mercenaries were involved in practice.

(Mr. Zurita, Venezuela)

18. Another matter which had given rise to difficulty was the question dealt with in article 4, of which there were two variants. According to the first, an offence was committed by any person who was recruited, trained or acted as a mercenary; according to the second, the commission of an offence depended on direct participation in a conflict or hostilities. He preferred the first variant because it provided a better definition of the general offence as it applied to the recruitment, training and activities of mercenaries and made them punishable by all States parties to the future convention.

19. Article 5 listed a number of activities or acts which themselves constituted offences, regardless of whether they had been committed by mercenaries or not, and were therefore punished under the domestic legislation of all States. Furthermore, any list of reprehensible or punishable acts had the disadvantage of excluding the acts which it did not contain, and that was an additional reason why his delegation favoured the deletion of article 5.

20. The notion of an offence or crime against the peace and security of mankind had been the subject of long theoretical discussions in various international forums. States had wisely limited the use of that expression to a small number of cases and had agreed to entrust the International Law Commission with the delicate and complex task of drawing up a draft code of offences against the peace and security of mankind. For that reason, his delegation felt it was inappropriate to include in the draft convention a provision such as that in article 7 which was more of a political statement than the definition of a legal norm.

21. Any international instrument designed to punish crimes committed beyond national frontiers must include provisions for extraditing the perpetrators of those crimes. In that regard, his delegation noted that the wording of article 19 responded to a need and reflected the principles generally accepted by States in that field. Furthermore, paragraph 5, which provided that the offences covered by the convention should not be regarded as political offences, must be retained. Otherwise, a person involved in the recruitment, use, financing or training of mercenaries or even a mercenary might escape prosecution by putting forward political reasons in order to justify the commission of those offences. Lastly, his delegation reaffirmed its support for the work of the Ad Hoc Committee and favoured renewing its mandate.

22. Mr. BOUABID (Tunisia) said that it was gratifying to see the renewed interest in the work of the Ad Hoc Committee. With regard to the draft convention itself, he noted with satisfaction that agreement had apparently been reached on the situations which might be covered by the future convention and that the Ad Hoc Committee was broadening the scope of the future convention to include all situations which might involve the use of mercenaries. The Ad Hoc Committee's mandate has to draft an international convention which would make it possible not only to punish mercenaries themselves, but also to attack the root of the phenomenon of mercenarism by preventing and punishing the recruitment, use, financing and training of mercenaries. In addition to mercenaries themselves, the future convention should cover those who contracted their services (institutions,

(Mr. Bouabid, Tunisia)

groups or other entities) and financed their operations. The problem of the definition of the term "mercenary", regardless of its importance, should therefore not prevent the Ad Hoc Committee from making progress in its work.

23. He welcomed the agreement reached on articles 9 to 11 of the Second Revised Consolidated Negotiating Basis because co-operation between States in preventing acts of mercenarism was an essential element in combating that phenomenon. With regard to articles 13 to 20, his delegation shared the view of the Chairman of the Ad Hoc Committee that compromise solutions could be found without great difficulty.

24. Nevertheless, the outstanding questions could obviously not be resolved by jurists alone and required real political will on the part of the various delegations because experience in other Sixth Committee bodies showed that political will had been the determining factor in bringing about a speedy solution to the most difficult problems.

25. Mr. KULOV (Bulgaria) said that since the adoption of General Assembly resolution 35/48 on the drafting of an international convention against the recruitment, use, financing and training of mercenaries, the phenomenon of mercenarism had continued to grow, particularly in certain regions of the world such as Nicaragua, southern Africa, Afghanistan and Kampuchea. It was undeniable that the use of mercenaries constituted a violation of the principles and norms of international law and a threat to international peace and security and human rights. Hence there was a more urgent need than ever to adopt an international convention against the recruitment, use, financing and training of mercenaries, as was demonstrated, moreover, by the attention which the United Nations bodies dealing with human rights questions had given to the matter and, in particular, by the appointment of a special rapporteur on that subject by the Commission on Human Rights.

26. His delegation was pleased with the progress made by the Ad Hoc Committee at its sixth session and fully supported its proposal that the Consolidated Negotiating Basis should be retitled "Draft preliminary text of a convention against the recruitment, use, financing and training of mercenaries".

27. With regard to the draft text itself, he considered that articles 1, 2, 3, 4 and 5 should clearly define the concept of "mercenary" and the crimes arising from the activities of mercenaries, in order to ensure prevention of such activities; in particular, the scope of article 1 should be broad in view of the diversity of the cases of use of mercenaries apart from armed conflicts. Persons carrying out the acts referred to in article 1, 1 (a) and (b) should therefore be defined as mercenaries.

28. His delegation also considered that the provision regarding the international responsibility of States failing to fulfil their obligations under the convention should be retained and that mercenarism should be defined as a crime against the peace and security of mankind.

(Mr. Koulov, Bulgaria)

29. He considered that the Ad Hoc Committee would be able to prepare a draft convention during its next session, even though differences with regard to the wording of some articles remained; he proposed that delegations should hold consultations during the preparation of the draft resolution on the item and hoped that the Ad Hoc Committee's mandate would be renewed. He fully supported the recommendation that a session of the Ad Hoc Committee should be held in 1988.
30. Ms. KRAUDIE (Nicaragua) said her country attached great importance to the preparation of an international convention against the recruitment, use, financing and training of mercenaries because of the policy of interference in the internal affairs of other States adopted by certain parties.
31. Nicaragua, which had been a victim of the acts committed by bands of mercenaries financed by the greatest Power in the world in flagrant violation of the Charter and the historic decision of the International Court of Justice, considered that the definition of "mercenary" should include both mercenaries recruited to take part in an international armed conflict and those whose mission was to commit acts of violence in non-international armed conflicts or in situations not falling under the category of armed conflicts.
32. With regard to the purposes for which the recruitment of mercenaries was carried out, her delegation considered it unacceptable that the Second Revised Consolidated Negotiating Basis did not refer to the principle of non-interference in the domestic affairs of States, which had appeared in article 1, 2 (a) of the preceding Negotiating Text. That principle was crucial for defining the scope of the phenomenon of mercenarism and for putting an end to it; it should be restored, as it was the only real means for safeguarding the stability of Governments, public and private property and the constitutional order which were constituents of the domestic affairs of States.
33. With regard to the elements entering into the definition of "mercenary", she proposed that the word "specially" in article 1.1 (a) and the word "direct" in article 1.1 (b) should be deleted, as they created loopholes and problems of interpretation.
34. With regard to the amount of compensation referred to in paragraph 1.1 (c) and paragraph 2 (c), it was unnecessary to specify an amount, as it should be possible to identify the offence committed by a mercenary regardless of the compensation received.
35. With regard to article 1.2 (b), she considered unacceptable the provision that only a person who had participated in a concerted act of violence could be defined as a mercenary, since its effect would be to undermine the effectiveness of the convention and detract from its purpose, which was to prohibit the recruitment, use, financing and training of mercenaries. It was enough to prove that a person had been recruited to carry out mercenary acts or had encouraged mercenarism to define that person as a mercenary. Her delegation also considered that the nationality criterion should be excluded from the definition of a mercenary, as it destroyed the effectiveness of the future convention. The contemporary world

(Ms. Kraudie, Nicaragua)

offered many examples of the massive use by foreigners of nationals of a country to carry out mercenary activities against their country of origin from abroad.

36. In article 4, her delegation rejected both the proposed alternatives, as it considered that the offences to be envisaged were those of recruiting or association, or of the recruitment, training, equipment and financing of mercenaries.

37. With regard to article 7, her delegation agreed in principle with the enumeration of the offences and considered it legitimate that the offences committed by mercenaries should be defined as crimes against the peace and security of mankind, since the activities of mercenaries violated the basic principles of international law. It therefore favoured in principle the deletion of the square brackets, with the reservation that it would only accept improvements in the text of the article which were in accordance with the provisions of the Code of Crimes against the Peace and Security of Mankind, now being prepared by the International Law Commission.

38. Her delegation considered that it would help ensure the effectiveness of the future convention if the obligations of States were specified. Those obligations should include not only the obligation to refrain from organizing, recruiting, using or financing mercenaries but also that of not allowing persons, groups or organizations to carry out mercenary activities or propaganda campaigns in favour of mercenaries on their territory.

39. With regard to the responsibility of States, her delegation considered that, in addition to the criminal responsibility of the mercenary, the international responsibility of States not fulfilling their obligations under the Convention should be retained.

40. On 7 August 1987, in Guatemala City, the Presidents of the Central American States had signed an agreement providing for a procedure to establish a firm and lasting peace in Central America. That historic agreement, which was due to the initiative of the President of Costa Rica, took into account the negotiations conducted by the Contadora Group and the Support Group and the declarations adopted by the United Nations and the Organization of American States and by other international organizations. It was intended to restore peace in Central America and particularly in Nicaragua, which since 1980 had endured a mercenary war imposed on it by a Power foreign to the region.

41. The international community had seen that each of the five countries of the region, including Nicaragua, had taken specific steps to achieve the goals of the agreement, establish peace and eliminate war and violence.

42. Nicaragua had used every means of peaceful settlement provided for by the Charter to induce the aggressor Power to put an end to the aggression by mercenaries it had imposed on the country. At present, the only obstacle to peace in Central America was the continuation of the aggression against Nicaragua. It

(Ms. Kraudie, Nicaragua)

was to be hoped that reason would prevail and the aggressor State would cease its illegal behaviour and respect the decision of the International Court of Justice of 27 June 1986.

43. His delegation favoured renewing the Ad Hoc Committee's mandate with a view to the early adoption of an international penal law convention designed to bring an end to the recruitment, use, financing and training of mercenaries. There was no duplication of effort between the Ad Hoc Committee and the Third Committee which also examined the question of mercenarism. It was the task of the Sixth Committee to establish a legal definition of the criminal aspect of mercenarism and to work out rules of conduct for States with regard to the prevention, and, if necessary, the suppression of that offence, whereas the Third Committee was concerned with the social and humanitarian aspects of the phenomenon.

44. Mrs. SILVERA NUÑEZ (Cuba) said that the results achieved by the Ad Hoc Committee were modest; the essential points had still to be resolved with regard to the scope and field of application of the convention. Nevertheless, it would represent a fairly significant contribution to international law. A lack of political will and, therefore, a lack of willingness to negotiate, had emerged at meetings of the Ad Hoc Committee since its inception. Increasingly, efforts had been made to confine the issue of mercenarism to aspects that had little to do with the existing situation. As far as the Cuban delegation was concerned, it would be unrealistic to seek to exclude from the field of application those situations in which States were to some extent responsible for the perpetration of mercenary activities at whatever stage, be it planning, preparation or execution. Moreover, nationals who engaged in mercenary activities against their countries of origin should rightly be considered mercenaries.

45. Her delegation set great store, legally and politically, by the definition of the term "mercenary". It would determine the field of application which would have to be broad enough to cover all the situations in which mercenaries were most commonly used.

46. All the supposedly legal arguments that had been advanced were indefensible and intended not only to hamper the adoption of stringent international-level measures designed to put an end to the phenomenon, but also to conceal the policy adopted by certain Governments which shamelessly supported all kinds of activity aimed at the overthrow of another Government, as in the case of Nicaragua.

47. Several African, Asian and Latin American countries represented on the Committee had been plagued by mercenarism. Cuba could not fail to recall the attack made on it by groups of mercenaries in the Bay of Pigs, an incident publicly acknowledged in the Congressional record of the United States of America.

48. The United Nations had expressed grave concern at the renewed outbreak of mercenary activities and had adopted several resolutions in that connection. Accordingly, some of its organs had adopted decisions and a special rapporteur had been appointed to deal with the matter. Cuba hoped that the Third Committee would continue to study the humanitarian implications of the phenomenon.

(Mrs. Silvera Nuñez, Cuba)

49. The new convention must not take over provisions from legal instruments conceived with other aims. Additional Protocol I to the Geneva Conventions of 1949 applied to cases of armed conflict at international level. While that instrument represented a contribution to the development and codification of international humanitarian law, it could not serve as a model for a convention with more comprehensive objectives.

50. Her delegation would continue its active support of the Ad Hoc Committee in the execution of the mandate assigned to it by the General Assembly, and hoped that the Committee would meet again in 1988 to finish drafting the convention.

51. Mr. MUDHO (Kenya) said that the question of definition had proved to be a perennial sticking point over the six years that the Ad Hoc Committee had been dealing with the matter. Perhaps it had been overly optimistic to think that a concrete definition of the term "mercenary" could be achieved, given the unanimous view of the General Assembly, expressed, inter alia, in resolution 40/74.

52. The second major issue was the nationality criterion which, although linked with the "mercenary" definition, presented its own set of problems. The principal arguments for and against that criterion were set out in the latest and in previous reports of the Ad Hoc Committee. His delegation was convinced that the solution to those major problems was crucial to the further advancement of the work of the Ad Hoc Committee.

53. In the past his delegation had expressed the view that questions of definition could be deferred and taken up once a body of the draft convention had been worked out. However, as had already been pointed out, it had become obvious that that question was central to the task at hand. Efforts should be made to resolve it first. When the Committee next met, it should hold consultations on that subject as a matter of priority. It should also consider requesting views and comments from the individual States.

54. The Ad Hoc Committee's mandate covered the recruitment, use, financing and training of mercenaries. Its broad scope could have contributed to the debate on concepts. It was important to realize that it was the problem of the activities of mercenaries that needed to be defined and outlawed. Accordingly, the definition of "mercenary" and "mercenarism" was even more crucial.

55. The problem of mercenaries and their activities was of particular concern not only to Kenya, but to Africa as a whole, which explained the existence of the Organization of African Unity (OAU) Convention on the Elimination of Mercenarism in Africa. Although Kenya was not a member of the Ad Hoc Committee, Kenyan representatives attended its meetings regularly and attached great importance to its work. Though some scepticism had been voiced in the past about the slow progress of that work, international opinion was firmly against the recruitment, use, financing and training of mercenaries. His delegation was convinced that the Ad Hoc Committee would manage to draft a convention outlawing such activities. It

(Mr. Mudho, Kenya)

was encouraging that there was already a regional convention on the same subject. His delegation hoped that the mandate of the Ad Hoc Committee would be renewed so that it could solve existing problems and submit a draft convention to the General Assembly as soon as possible.

56. Mr. ALI (Pakistan) said that his delegation had noted with interest the report of the Ad Hoc Committee. It appreciated the perseverance with which the Committee endeavoured to complete its task and hoped that it would continue its activities in 1988.

57. Agenda item 134 was particularly important to the international community, especially the third world countries which had suffered and continued to suffer from the activities of mercenaries. Such activities in various parts of the world constituted a grave threat to international peace and security. Mercenarism must be condemned unequivocally. The concerted efforts of the international community were required to produce an international draft prohibiting the recruitment, use, financing and training of mercenaries. Such a convention would complement the various conventions on international terrorism and contribute to the co-ordination and progressive development of the rules of international law already enshrined in several such instruments.

58. In order to discourage mercenarism, Nigeria, supported by several other States, had introduced a proposal during the Diplomatic Conference on Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflict which drafted the two Additional Protocols to the 1949 Geneva Convention. Although it was not exhaustive, the definition of the term "mercenary" included in the first of those Protocols served as a good guide for the identification of mercenaries.

59. The adoption of an international convention was urgent because certain States were continuing to use mercenaries to destabilize the Governments of other countries. Pakistan was committed to the principles and purposes enshrined in the Charter of the United Nations, the principles of peaceful coexistence, non-intervention and non-interference and respect for the sovereignty, territorial integrity and political independence of all States, as well as to the policy of non-alignment. It had always supported the efforts of the international community to outlaw mercenarism throughout the world. His delegation therefore wholeheartedly supported the proposal for the immediate consideration and adoption of an international convention on the recruitment, training, financing and use of mercenaries.

60. His delegation made a clear distinction between mercenaries recruited by a State or a group to destabilize or overthrow Governments established by law, and the various liberation movements struggling against colonial domination and racist régimes for their independence or to free their territories from foreign occupation.

61. Since its birth, Pakistan had consistently supported liberation movements. It also supported the freedom struggle of peoples against the occupation of their homelands by foreign forces and the imposition of puppet régimes. The problem of

(Mr. Ali, Pakistan)

identifying and defining mercenaries and their activities should not be complicated by politically motivated attempts to malign freedom fighters engaged in a struggle against the occupation of foreign forces. It was necessary to support their struggle, because they were shedding their blood in heroic defence of the principles cherished and espoused by the entire international community. Keeping in mind the need to maintain that distinction, his delegation considered that the definition of the term "mercenary" in Additional Protocol I of 1977 was balanced and should be kept in view while examining the question. It supported the extension of the mandate of the Ad Hoc Committee to enable it to pursue the task of drafting the convention as soon as possible.

62. Mr. VASCONCELLOS (Uruguay) said that the report of the Ad Hoc Committee (A/42/43) was evidence of encouraging progress in the Committee's work, but also showed that there were a number of important issues remaining to be settled. The statements made by the various delegations also revealed marked differences of opinion. It was therefore desirable for the General Assembly to renew the mandate of the Ad Hoc Committee to enable it to complete the draft international convention.

63. His delegation noted that the first major difficulty concerned the formulation of an acceptable definition of the term "mercenary" in accordance with the objectives of the draft convention, which should seek both to punish and prevent. Uruguay hoped that the convention would apply to both international and non-international conflicts, taking into account the objectives pursued by the offenders: undermining the territorial integrity, the sovereignty and independence of a State, impeding the right to self-determination of peoples, etc.

64. His delegation emphasized that it was not sufficient to punish individual acts, but that it was also necessary to prosecute for collective acts, whether or not they had actually been committed. To that end it was necessary to define as principal offences the recruitment, use, financing and training of mercenaries, as well as the acts of mercenaries themselves. With respect to compensation, his delegation thought it desirable to eliminate the quantity criterion, because it was the compensation or the intention of receiving compensation that should be taken into consideration. He supported the statements of other delegations in that regard. His delegation also favoured recourse to the International Court of Justice or to one of the measures provided for in Article 33 of the Charter in the event of disputes. Regarding the nationality criterion, it hoped that consultations and negotiations would take place within the Ad Hoc Committee with a view to resolving differences of opinion. Uruguay hoped that the Ad Hoc Committee would be able to adopt a draft convention by consensus at its next session.

65. Mr. SENE (Senegal) recalled that at the preceding session his delegation had stated the general principles underlying his country's policies on the fight against mercenarism.

66. He noted that draft article 1 of the Consolidated Negotiating Basis was the primary obstacle to progress in the work of the Ad Hoc Committee. Nevertheless, it was generally acknowledged that the draft convention had a broader scope of

(Mr. Sene, Senegal)

application than Additional Protocol I of the Geneva Convention of 1949, and covered situations outside armed conflict. Some attempt had been made to reach a compromise regarding the question of private gain covered in subparagraph (c) of paragraph 2. The list of criteria used to identify mercenaries had been considerably narrowed and rendered more concise. In paragraph 2 of the text there were still a number of words between square brackets, which indicated the areas of disagreement, including the central question of whether a national of a victim State could be classified as a mercenary.

67. Senegal considered that the positions held by the various States on that point were all based on legitimate concerns largely generated by historical events. His country had therefore adopted a flexible position on the issue and thought that there was nothing to be gained by undoing all of the efforts of the past over the issue of a definition. His delegation was convinced that with firmer political will, a compromise on the nationality criterion could be reached, and, furthermore, that national laws and other provisions of international law could satisfactorily resolve the various concerns.

68. With respect to the issue of private gain, Senegal considered that it was the responsibility of the judicial body having competence to try the case to evaluate all the elements constituting the criminal offence, taking into account the facts and circumstances. The Ad Hoc Committee could not assume the role both of lawmaker and judge. It should suffice that the desire for material gain, regardless of the amount, had been the motivating force behind the activities of the mercenary.

69. The criterion of draft participation might limit the preventive function of the convention, even if its effect could be attenuated by draft article 6 regarding attempts to commit an offence.

70. The use in article 3 of the word "knowingly", which some delegations had wished to include, had given rise to a long debate about the question of intention. Nevertheless, the quarrel should not prevent the adoption of the draft articles at the next session of the Ad Hoc Committee, because it was the true overseer, the sponsor of mercenary activities, who must be punished. It was inconceivable that, in the case of an organization or a pressure group, he and his main collaborators could be unaware of the purpose of their activities. Once again, however, the judge must be allowed to play his allotted role. The crime of mercenarism presupposed the existence of firm determination and it was for the judge to reach his own conclusions about the existence of that intention. The inclusion of the word "knowingly" in article 3 therefore seemed superfluous, and at the same time it did not give the accused an effective means of defence.

71. His delegation believed that there were grounds for optimism despite the obvious difficulties. It supported the proposal to renew the mandate of the Ad Hoc Committee and hoped that, as in the case of the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations, flexibility and political will would make it possible to adopt a draft convention at the next session.

72. Mr. VALDERRAMA (Philippines) said that the modern world needed an international convention which would provide effective measures for reducing, if not eradicating, the threats to international peace and security that arose from the recruitment, use, financing and training of mercenaries. The main victims of mercenarism were the vulnerable developing countries in Asia, Africa and Latin America whose sovereignty was being violated with impunity.

73. His delegation believed that mercenarism was a crime attributable not only to individual mercenaries, but also to the States, entities or organizations which supported them. Liability in that respect must attach not only to those who directly perpetrated the activities but also those who directly abetted them. His delegation hoped that the draft convention would contain clear provisions on the international obligations and responsibilities of States in accordance with the fundamental principles of modern international law.

74. With regard to the report of the Ad Hoc Committee (A/42/43), his delegation was pleased to note that there was general agreement that the draft convention should cover activities that were actually carried out, regardless of the existence or non-existence of an armed conflict, international or other. It believed that the definition should also cover operations outside armed conflict for, as a number of delegations had pointed out, it was in that type of situation that, in modern times, mercenary activities had proved to be most pernicious.

75. Article 1 of the Second Revised Consolidated Negotiating Basis contained certain elements which his delegation believed might limit the scope of the definition of the term "mercenary". Thus, it would be advisable to delete the words "substantially in excess", which could be used to defeat the very purpose of that key provision. The essence of the definition was the act of hostility or violence motivated by a desire for private gain, and the amount of material compensation was irrelevant.

76. Similarly, his delegation associated itself with those who opposed the nationality criterion as contained in article 1, paragraph 2 (d). Indeed, the exclusion of nationals from the definition of "mercenary" would have the effect of widening the path for interference in the internal affairs of States. Foreigners frequently used nationals for mercenary activities against their own country. In many legal systems, it was the overt act which determined the crime. If the act constituted mercenarism, it was logical that its perpetrator should be categorized as a mercenary.

77. Lastly, while all three alternatives for draft article 15 were intended to protect the rights of the offender, the alternative which referred to the right to humane treatment was the most useful and relevant. However, the specific reference to article 75 of Additional Protocol I to the 1949 Geneva Conventions was not necessarily satisfactory, as indicated in paragraph 62 of the report (A/42/43). If the draft provision was altered, his delegation hoped that it would contain at least the basic elements that would effectively guarantee the rights of the offender from the time of arrest until the end of the proceedings, which could be expressed in a formula such as: "is entitled to fair trial and humane treatment in

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accordance with the generally recognized principles of international law". As indicated in the report, the last element would be in accord with the principles embodied in the Universal Declaration of Human Rights, the International Covenants on Human Rights and the Geneva Protocols.

78. His delegation was in favour of continuing the Ad Hoc Committee's mandate and hoped that a legal instrument acceptable to all Member States which would contribute effectively to the preservation of international peace and security would be adopted in the near future.

79. Mr. ROSENSTOCK (United States of America), speaking in exercise of the right of reply, noted the restraint, real or feigned, of a delegation of a Central American country which presumably preferred not to run the risk of spoiling the initiation of a process for defusing the situation in the region. Any demonstration of restraint such as the lifting of press censorship must be welcomed.

80. The Cuban delegation, however, had not wished to exercise restraint and had chosen to refer to events dating from the 1960s whose relevance was not apparent. Without even going into the substance of the matter, it was enough to note that in the case in question no mercenary activities had been involved.

81. Mrs. SILVERA NUÑEZ (Cuba) said that the United States delegation was unaware or chose to be unaware of the true nature of the facts mentioned. On a number of occasions, her delegation had recalled that the mercenary act known as the Bay of Pigs expedition had been organized by the United States Government and the CIA. Those were historical facts, and the United States delegation should not take exception to them. They should be recalled whenever the opportunity arose, because the Cuban people had suffered in their own land and in their flesh from that mercenary activity organized in the territory of the United States. The records of the United States Congress itself described the preparation and conduct of the operation.

82. It sufficed therefore to recall that it was the United States Government which had perpetrated those acts of recruitment, use, financing and training of mercenaries in its territory.

The meeting rose at 5.15 p.m.