

United Nations
GENERAL
ASSEMBLY

FORTY-SECOND SESSION

Official Records*



SIXTH COMMITTEE
13th meeting
held on
Monday, 5 October 1987
at 3 p.m.
New York

SUMMARY RECORD OF THE 13th 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 3.05 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; see also A/C.6/42/L.1)

1. Mr. KHAN (Bangladesh) said that the task of the Ad Hoc Committee was very important inasmuch as it involved drawing up an international normative instrument to punish and prevent despicable acts designed to undermine the constitutional order, territorial integrity or independence of a sovereign State, subvert national development activities and thwart the legitimate goals of national liberation movements. Mercenarism was worse than terrorism, which had more limited effects, or international drug traffic, since it violated the fundamental principles of international relations as enshrined in the United Nations Charter. Bangladesh therefore subscribed to the project of drawing up an all-encompassing international normative instrument designed to proscribe and eradicate mercenarism in all its forms. It was in favour of broadening the definition of mercenary beyond that provided in Additional Protocol I to the Geneva Convention, as incorporated in paragraph 1 of article 1 of the Second Revised Consolidated Negotiating Basis. It was necessary to cover all types of hostile acts, whether they were committed in international armed conflicts, non-international armed conflicts or in situations outside of armed conflicts. For that purpose, deletion of the brackets from paragraph 2 (a) would be a positive beginning. Since the scope of the Convention recommended by the United Nations was broad and aimed at the source of the act, paragraph 2 (b), which sought to link the definition of mercenary with the actual commission of the act, should be deleted. The notion of "substantial" gain in paragraph 2 (c) might serve as a loophole. The use of the adverb "necessarily" might be a compromise between the two conflicting opinions on the question of "nationality".
2. Assuming that a minimum civilized standard of treatment would be accorded to captured mercenaries, his delegation proposed that the brackets should be deleted from article 2. In article 3, which was one of the most important articles as it tried to set the scope of the Convention in line with its stated intent, the word "knowingly" should be removed.
3. His delegation proposed retention of the first alternative in article 4 and deletion of article 5, which would thus become unnecessary. Since article 6 was based on the model provided by the International Convention against the Taking of Hostages and the Montreal Convention, the use of the word "criminal" qualifying offence might unnecessarily complicate development of a uniform jurisprudence on that subject.
4. Draft article 7 reflected the sentiment of a great number of nations and therefore deserved careful consideration by the Committee.
5. Draft articles 8 to 12 relating to State responsibilities were modelled on the provisions of existing Conventions on similar subjects. Accordingly, they should be included without any deletion of content.

(Mr. Khan, Bangladesh)

6. Concerning draft articles 13 to 19, on which there was general agreement among the participants, he said that his country would welcome adoption of a provision similar to the International Convention against the Taking of Hostages of 1979, suitably updated and modified. The logical order of the articles in that group had been improved at the sixth session.

7. Draft articles 22 to 24, appearing within brackets, required further reflection among the participants. In that respect, he agreed with the Chairman of the Ad Hoc Committee that the divergent views were not irreconcilable.

8. Finally, his delegation recommended that the mandate of the Ad Hoc Committee should be renewed in 1988 so as to consolidate the gains and narrow the remaining differences.

9. Mr. ABADA (Algeria) said that mercenarism was posing ever graver dangers to international peace and security and made imperative the rapid adoption of an effective legal instrument that could fill a legal void detrimental to the entire international community. It must be admitted, however, that the results obtained in the attempt to draw up a convention on the question were not yet commensurate with the efforts put forth or the urgency of the task. The fact that the Committee had returned to a single framework for negotiations was nonetheless to be welcomed. That framework had made for more coherent and more expeditious deliberations by providing delegations with an opportunity to state their views simultaneously on a given fundamental problem and on the implication of each delegation's position in so far as the technical provisions of the future convention were concerned. He also welcomed the formation of a drafting group which had facilitated the search for solutions acceptable to all.

10. Speaking of the key criterion of wrongful activity, he said that the reference to the armed overthrow of a Government did not have the effect of excluding the criminal activities in which mercenaries traditionally engaged and that the undermining of a State's territorial integrity or independence, or its constitutional order, and the repression of the struggle of peoples against colonial domination, alien occupation, racist régimes and other forms of foreign domination did not exhaust the list of hostile acts committed by mercenaries. It was therefore necessary either to retain the term "inter alia" or to introduce a conceptual framework encompassing several characteristic mercenary activities which technically could be viewed in terms of criminal offences.

11. Concerning the scope of the Convention, his delegation believed that its intent was to characterize mercenarism in all its forms as an international crime. To wait until mercenaries actually engaged in acts of mercenarism and committed common crimes before they could be taken into custody, extradited and tried was tantamount to permitting the recruitment, financing and training of mercenaries. Recruitment, use, financing and training were in themselves criminal offences which were too serious to come under the heading of complicity.

(Mr. Abada, Algeria)

12. Considering that the mercenary was an individual who was often motivated solely by profit, it was pointless to try to quantify how much he should be paid and to introduce a parameter of comparison with the pay received by a soldier in the armed forces of the country of which he was a national. That would be tantamount to granting excessive guarantees to those guilty of criminal acts of mercenarism, and would considerably increase the burden of proof weighing upon the victim. Furthermore, it would suffice for the mercenary to receive lower pay than that given to combatants in the regular army of similar rank and duties for him not to be classified as a mercenary, and thus to evade punishment.

13. His delegation saw in the criterion of alien status a decisive factor embodied in Additional Protocol I and in the Convention for the Elimination of Mercenarism in Africa, and hoped that the Committee would speedily reach a generally acceptable solution of the issue.

14. The Ad Hoc Committee had adopted the draft articles concerning preventive measures and mutual assistance, which laid down, as a basic rule, the good faith of States parties to the Convention in respect of their obligations under the Convention and general international law.

15. The fact that the concept of crime against the peace and security of mankind was bound to evolve as a result of the work in progress of the International Law Commission (ILC) could not justify the doubts expressed by some Committee members regarding its inclusion in the Convention. The contribution of the Sixth Committee to the process of the progressive development and codification of international law complemented that of the ILC.

16. Lastly, his delegation welcomed the recent appointment of Mr. Ballesteros (Peru) as Special Rapporteur of the Commission on Human Rights on the question of the use of mercenaries. Far from being detrimental to the work of the Ad Hoc Committee, that decision was justified by a commendable desire to promote human rights.

17. Mr. SKIBSTED (Denmark), speaking on behalf of the twelve member States of the European Economic Community, reiterated their strong condemnation of the activities of mercenaries, which posed clear dangers, particularly for small and weak States. The international community had dealt with similar problems in the past and had adopted conventions to combat the hijacking of aircraft, attacks on diplomats and the taking of hostages. Far from defining crimes to be judged by an international criminal court or from laying down rules on State responsibility, those conventions aimed to strengthen international co-operation with a view to ensuring that individuals who committed specific offences would be brought to justice by a competent court of national jurisdiction and, if need be, would suffer penalties commensurate with the seriousness of the offence committed. That was why the Twelve had urged the Ad Hoc Committee to pay particular attention to efforts to harmonize the internal criminal law of States and to intensify internal co-operation aimed at the suppression of mercenarism. The Twelve were pleased to note the considerable progress achieved in that regard at the previous session of

(Mr. Skibsted, Denmark)

the Committee, regarding, inter alia, the draft article on inter-State co-operation in the taking of measures to prevent the activities of mercenaries, which now appeared without square brackets.

18. However, he pointed out the need for all delegations to show real political will to conclude a generally acceptable convention which could be effectively implemented by States. Such an instrument should deal mainly with the penal aspect of the problem and, consequently, should define the punishable acts as precisely as possible. The definition of offences and the closely related definition of a mercenary continued to be essential questions which the Ad Hoc Committee must try to solve as a matter of priority. In that connection, an individual should be liable to sanctions only if he committed specific, precisely defined acts.

19. The nationality criterion as defined in article 47 of Additional Protocol I to the Geneva Conventions of 1949 should be included in the definition of a mercenary in order to avoid having political opponents categorized as mercenaries. Moreover, it was important to maintain the criterion of private gain involving excessive material compensation, which was essential to the concept of mercenarism. In addition, any person who was the subject of proceedings in connection with mercenarism should be guaranteed humane treatment as provided for in article 75 of Additional Protocol I and other international instruments. Progress in the negotiations at the next session of the Ad Hoc Committee hinged on that criterion.

20. Moreover, the Twelve were disappointed that in May the Economic and Social Council had adopted a resolution approving the decision by the Commission on Human Rights to appoint a special rapporteur, and that the Third Committee had also placed the item on its agenda. There was clearly a danger of duplication and conflict between the Economic and Social Council and the Third Committee, on the one hand, and the Sixth Committee, on the other. As agreement had yet to be reached on the definition of a mercenary, the Twelve considered the appointment of a special rapporteur inappropriate, and were surprised that the Third Committee was addressing the question of mercenaries, which raised political and legal problems that could only be dealt with properly by the Sixth Committee. The position of the Twelve on that point would be influenced by the outcome of the Third Committee's consideration of the question. They hoped that they would be able to continue to participate constructively in the drafting of the convention on mercenaries.

21. Mr. BAGE (Nigeria) reaffirmed the views already expressed by his delegation with regard to the definition of a mercenary. Although some members of the Ad Hoc Committee were of a view that, in the proposed convention, the definition of a mercenary should cover all situations, i.e. international armed conflicts, non-international armed conflicts and situations outside armed conflict, other delegations rejected the principle of that definition, pointing out that article 47, paragraph 2, of Additional Protocol I to the Geneva Conventions of 1949 referred exclusively to situations within the scope of the Conventions.

(Mr. Bage, Nigeria)

22. It should be borne in mind that the Additional Protocols to the Geneva Conventions related only to the protection of the victims of international armed conflicts. The situations referred to in article 1, paragraphs 3 and 4 of the Additional Protocols included armed conflicts in which peoples were fighting against colonial domination and foreign occupation and against racist régimes, and it was specifically provided that the Protocols would apply in the situations referred to in article 2, which was common to the Geneva Conventions. Article 2 contained the definition, and the criteria it laid down did not entirely cover those which the Ad Hoc Committee should consider in preparing the draft convention. His delegation was of the opinion that a single definition should be elaborated, enumerating all or some of the consequences of the activities of mercenaries and not restricted to the provisions of article 47, paragraph 2 of the Protocol to the Geneva Conventions. The main purpose of the proposed convention was to combat the criminal activities of mercenaries and to put an end to them wherever and whenever they occurred. The definition of a mercenary, in accordance with the mandate of the Ad Hoc Committee, should cover all situations relating to mercenaries and, in any event, should not serve as a pretext for some delegations to impede or delay the drafting of the convention.

23. With regard to the nationality criterion, Nigeria shared the views of delegations which considered that nothing prevented a national of the State concerned from becoming a mercenary, but that a distinction should be made between a national who might have motives similar to those of a foreign mercenary, and a national who might have political reasons, and not only financial ones, for participating in mercenary activities. The cases which might fall outside the scope of the convention could then be covered by national legislation on treason or on extradition if the national left his country to seek refuge in a foreign State.

24. His delegation strongly supported the recommendation to the General Assembly to invite the Ad Hoc Committee to continue its work in 1988, and approved of the Ad Hoc Committee's inclusion of the report of the Working Group and the Second Revised Consolidated Negotiating Basis in its report.

25. Mrs. KUMI (Ghana) said that her delegation noted with satisfaction the work accomplished at the sixth session of the Ad Hoc Committee. The evil deeds of mercenaries seriously threatened the political independence and territorial integrity of developing countries and undermined the process of self-determination in dependent territories. An international instrument against mercenary activities would help to reduce considerably and eventually eliminate that scourge. It was therefore absolutely essential to renew the mandate of the Ad Hoc Committee.

26. Mr. BYKOV (Union of Soviet Socialist Republics) said that despite the numerous condemnations of mercenarism and the constant appeals made to secure an end to that practice, certain forces were continuing to make extensive use of mercenaries to destabilize and overthrow the Government of foreign States and oppose national liberation movements. Centres for the recruitment and training of mercenaries were operating in broad daylight and exorbitant sums were being spent overtly and covertly to finance bands of mercenaries. It was therefore essential to complete as soon as possible the formulation of a convention to eliminate that scourge.

(Mr. Bykov, USSR)

27. Progress in that direction had already been made at the sixth session of the Ad Hoc Committee, when agreement had been reached on several provisions and differences had been narrowed on others. The participants in the negotiations must nevertheless redouble their efforts to eliminate the remaining points of disagreement and accelerate the work, which should be made possible by the Second Revised Consolidated Negotiating Basis. The future Convention must define without any ambiguity the obligations of States in respect of the prevention and prohibition of the recruitment, use, financing and training of mercenaries. The attempts which had been made in the past to confine the struggle against mercenarism to measures of investigation and punishment of common law offences would in practice result in according the protection of the law to those who trained and recruited mercenaries and would undermine the very foundations of the draft convention. As to the question of the nationality of mercenaries, it should be noted that they were often recruited among nationals of the country against which hostile acts were directed, particularly among former soldiers of the armies of dictatorial régimes which had been overthrown by the people. The crime of mercenarism must be punished whatever the nationality of the mercenary.

28. His delegation hoped that it would be possible to adopt the draft convention at the forty-third session of the General Assembly and was in favour of including in it clauses providing for machinery for the application of the convention.

29. Mr. LOULICHKI (Morocco) said that he welcomed the Ad Hoc Committee's decision to establish a single working group and to hold consultations in a drafting group.

30. As to the definition of the term "mercenary", the field of application of the future convention must be extended to situations other than armed conflicts. In the absence of consensus on a single definition which would cover the relevant elements of Additional Protocol I to the Geneva Conventions, the Ad Hoc Committee had the choice between adopting a concise definition or juxtaposing two definitions referring respectively to conflict and non-conflict situations. It would be almost impossible for a State which had been the victim of an act by mercenaries to provide all the evidence required by the definition given in the existing text of article 1. It would be very easy, however, to circumvent a convention based on that definition. For example, if the recruiting State paid the mercenary a salary which was equal to, lower or slightly higher than the pay of a regular soldier, it would be able to bypass the régime of the future convention. As to the criterion of nationality, the convention should cover situations in which nationals of a State were recruited, financed and used for mercenary activities against their own country.

31. With regard to article 3, the financing and training of mercenaries were major offences on a par with their recruitment and use and could not be regarded as mere complicity. No other course was possible if an international instrument was to be produced which would be effective in both preventing and suppressing the activities of mercenaries.

32. His delegation was in favour of renewing the Ad Hoc Committee's mandate.

33. Mr. DJIENA (Cameroon) said that, although slight progress had been achieved at the 1987 session of the Ad Hoc Committee, it was regrettable that no real progress had been made on the substantive issues since the establishment of that Committee. Moreover, it was regrettable that it had not been possible to hold the 1988 session because of the financial crisis of the Organization; he hoped that that situation would not constitute a precedent. His delegation firmly supported the Ad Hoc Committee's recommendation that the General Assembly should invite it to continue its work in 1988 with the goal of drafting a convention at the earliest possible date.

34. The absence of progress already noted resulted from a lack of political will on the part of States. There seemed to be a tendency to pile up problems and to seek, under the pretext of wishing to achieve consensus and compromise, formulae which would result in depriving the text of the future convention of all practical content since the objective of the eventual eradication of mercenarism would no longer be achieved. That was the only possible explanation for the interminable discussions about the Ad Hoc Committee's mandate, the goal of the convention, the definition of the term "mercenary", the components of the crime of mercenarism, whether or not the nationality of mercenaries should be taken into account, and even whether the future convention should cover all situations which might involve the use of mercenaries, including situations other than armed conflicts, when in modern times it was precisely that type of situation which arose most frequently.

35. It was to be hoped that, at its seventh session, the Ad Hoc Committee would reach agreement on pending issues so as to be able to pinpoint more precisely the nature of mercenarism, clarify its links with State terrorism and open the way to the future clarification of the elements of international terrorism - all concepts which should be made parallel. His delegation, for its part, would make every effort to ensure that the Committee was able to draw up a compromise text which also had real practical scope, i.e. a convention which not only provided for prevention through the prohibition of the recruitment and direct and indirect use of mercenaries but also the punishment of acts of mercenarism by national criminal courts.

36. Mr. ALI (Democratic Yemen) said that, despite the clear mandate entrusted to the Ad Hoc Committee by the General Assembly in resolution 35/48, no tangible progress had been achieved since the Committee's establishment and some countries - the same countries which used mercenaries against developing countries that had chosen the course of freedom and democracy and against national liberation movements - were doing everything possible to obstruct its work.

37. On the subject of the text of the convention, his delegation wished to reiterate its position on three key points: firstly, the definition of mercenaries should be cohesive and precise and derive from General Assembly resolution 35/48 and in particular the fourth preambular paragraph; secondly, condemning mercenaries was not sufficient: those who recruited, used, financed and trained them should be condemned also. Furthermore, all situations must be covered and not only armed conflicts; thirdly, Democratic Yemen rejected the arguments of those who would like

(Mr. Ali, Democratic Yemen)

to exclude from the scope of the convention nationals of the State against which hostilities were directed. Indeed, experience proved that imperialists and colonialists made extensive use of that kind of mercenary.

38. His delegation suggested that on the basis of the debate on the subject, the Secretariat should draft a comprehensive text which could be discussed by the Ad Hoc Committee. Reason would surely prevail in the end and the Ad Hoc Committee, whose mandate should be renewed, would be able to complete its work successfully.

39. Mr. HANAFI (Egypt) said that codifying the legal rules relating to mercenary activities was no easy task, owing to the overlaps between the draft convention under consideration and the internal law of States. Nevertheless, experience had shown that such difficulties could be overcome when the parties concerned adopted a constructive attitude.

40. It was an encouraging sign that the Ad Hoc Committee had, at its most recent session, reached agreement on about a dozen articles. While welcoming the progress made, his delegation was well aware that the remaining articles, which constituted the corner-stone of the draft, would require even more lengthy and sustained negotiations.

41. As to article 1, he noted that apart from the remaining divergences there was agreement that the convention should cover all mercenary activities, whether they were undertaken in the context of international armed conflicts, non-international conflicts or other situations. There was therefore nothing to prevent the Ad Hoc Committee from adopting provisions on the subject, especially as the criteria were always the same, regardless of the situation, and all that was needed was to agree on objectives. As precedents already existed, that task should not pose any insurmountable problems.

42. One of the criteria used in article 1 for defining the term "mercenary", i.e., "actual participation", could well impede, by its very nature, implementation of the convention, and could even run counter to its spirit. The convention has aimed at prohibiting not only the use but also the recruitment, training and financing of mercenaries. In other words, the offence was not confined to "actual participation".

43. The provisions relating to material compensation (art. 1, para. 1 (c)), likewise went against common sense. The amount of the compensation should under no circumstances justify the exclusion of certain mercenary activities from the convention's scope.

44. The nationality criterion should be approached with the greatest prudence so as not to confuse the situation by mixing together various kinds of offence and the legal treatment to be applied to them.

45. The purpose of instruments of private criminal law was to determine which criminal acts were punishable, but it was for the competent courts to determine

(Mr. Hanafi, Egypt)

whether or not there was criminal intent. Those were the premises to be used as a starting-point for ironing out the divergences on the wording of article 2 of the Consolidated Negotiating Basis.

46. In accordance with his previous remarks regarding criteria for the definition in article 1, he favoured the first variant of article 4; if adopted, it would make article 5 redundant.

47. As to the provisions relating to the obligations of States to extradite the alleged offender, his delegation supported the general principles enunciated in the draft convention, which derived from conventions constituting precedents on the subject.

48. With regard to the wording of article 7, which tended to equate the recruitment, use, financing and training of mercenaries with crimes against the security of mankind, he observed that while it was true that the International Law Commission was considering the question and was planning to adopt a similar provision, there was no reason why such a provision could not also appear in the text of the convention; but as no precise obligation flowed from it, it did not have to occupy a central place.

49. Mr. ELTCHENKO (Ukrainian Soviet Socialist Republic) said that his country had always supported the drafting of a convention to prohibit mercenary activities, which had been condemned repeatedly by the General Assembly and the Security Council owing to the threat that they posed to international peace and security. An international legal document on that subject would also serve as a basis for co-operation between States in preventing and eliminating mercenarism.

50. The Ad Hoc Committee had already held six sessions. During that time, the question had lost none of its urgency: on the contrary, mercenary activities continued to threaten young developing States and national liberation movements, with the aim being to undermine their political integrity and economies and, at the most recent session of the General Assembly, various aspects of the problem had once again been the subject of a lengthy and lively debate in the Sixth Committee. It had been emphasized during that debate that mercenary activities constituted a gross and dangerous violation of human rights.

51. At its sixth session, the Ad Hoc Committee had made progress in the task entrusted to it and, despite the lack of agreement on the most important issues, the divergence between the various positions had been reduced: the Ad Hoc Committee had been able to submit the Second Revised Consolidated Negotiating Basis, which provided a starting-point which augured well for the completion of the Ad Hoc Committee's work in 1988.

52. Mr. BROWN (Australia) explained that despite its strong opposition to mercenary activities, Australia had not supported the appointment by the Commission on Human Rights of a Special Rapporteur on the Question of Mercenaries because that decision might result in duplication of effort and a waste of already scarce United

(Mr. Brown, Australia)

Nations resources, which would be better concentrated on the Ad Hoc Committee drawing up the convention. Since there was still disagreement on the precise nature of the activities to be prohibited, the work of the Special Rapporteur of the Commission on Human Rights would probably generate controversy, to the detriment of co-operative efforts to eliminate the activities of mercenaries.

53. In 1978, the Australian Parliament had enacted the Crime (Foreign Incursions and Recruitment) Act (a law prohibiting incursions into foreign countries and the recruitment, in Australia, of persons for service in the armed forces of a foreign country). That law had been effective and had been enforced on a number of occasions. Australia, if so required by circumstances, would amend and tighten its national legislation with a view to outlawing activities associated with mercenaries.

54. With respect to the draft convention, his delegation supported the two-pronged definition proposed in article 1, which attempted to harmonize definitions set forth in other international instruments. Paragraph 1 of that article was identical to article 47 of Additional Protocol I to the Geneva Conventions of 1949, which had been signed by Australia. The only difference was the omission of the word "and" after subparagraph (e), an omission which could easily be corrected in future documentation. Paragraph 2 of article 1 contained a number of elements in square brackets which, in the opinion of his delegation, were too broad or ill-defined. For example, it would not be satisfactory to leave it to a particular individual or a court to decide whether or not a particular activity undermined "the territorial integrity or independence of a State". Such acts needed to be defined in the convention in order to avoid the adoption by national legislatures of differing interpretations regarding the nature of the activities to be outlawed, thereby undermining the principle of concerted international action which should be the object of the proposed convention.

55. According to his delegation, a convention prohibiting the activities of mercenaries should not unduly restrict the right of individuals to serve in the armed forces of States of which they were not nationals. Consequently, it supported the inclusion in article 1, paragraph 2, of subparagraph (e), currently in square brackets.

56. His delegation noted with regret that the report of the Ad Hoc Committee did not comment on several articles whose texts had been revised during the sixth session. With respect to article 2, his delegation expressed its concern that the minimal humanitarian protection guaranteed by the Geneva Conventions should not be denied to mercenaries. As to article 7, referring to a crime against the peace and security of mankind, and articles 20 and 21, dealing with State responsibility and reparations, his delegation considered that those questions should be studied by the International Law Commission and that it would be premature to include them in the convention currently being drawn up by the Ad Hoc Committee.

57. Lastly, his delegation hoped that the Ad Hoc Committee would adopt a strictly legal approach in its work, that the convention would not be too broad in scope and

(Mr. Brown, Australia)

that the Ad Hoc Committee would be able to reach a successful and speedy end to its work. It should be remembered that financial considerations had led to the deferral of the 1986 session of the Ad Hoc Committee and that that could happen again. His delegation sincerely hoped that the Ad Hoc Committee, at its next session, would be able to make final recommendations to the Sixth Committee.

58. Mr. HABIMANA (Rwanda) said that his country, faithful to the ideals of peace and justice which inspired the United Nations, condemned the use of force in relations between States, particularly in its most contemptible form - mercenarism. It had signed and ratified the OAU Convention for the Elimination of Mercenarism. Its commitment in that connection had also been made clear in 1979, when the competent Rwandese authorities had arrested and tried a group of mercenaries recruited to infiltrate a neighbouring country.

59. At its most recent session, the Ad Hoc Committee had made considerable progress in its work. It had been unanimously recognized for the first time that, in the current era, the activities of mercenaries were most pernicious in situations not involving armed conflicts. That unanimous view had led to the inclusion in the definition of a mercenary of individual who were clandestinely recruited by foreign groups to intervene in the internal affairs of a country through various illegal means. His delegation hoped that the enthusiasm and mutual understanding that had been demonstrated would lead to the rapid adoption of a complete text acceptable to everyone.

60. With respect to the preparation of the text of the Second Revised Consolidated Negotiating Basis, it considered that it would be preferable to follow the usages of national penal legislation in order to avoid formulas such as those used in articles 3 and 6, which stated "an offence is committed" without further defining the offence. In fact, most penal legislation defined not the persons liable to be punished, but the offences which rendered their perpetrator liable to punishment.

61. During the work of the Ad Hoc Committee, some delegations had considered that the concept to be adopted as the objective of mercenaries was the overthrow of a Government, while the three other concepts, found in the text within square brackets, were viewed as superfluous. His delegation did not share that point of view, because there were cases in modern history where mercenaries had been used not to overthrow a Government but to support the secession of a territory and separate it from the rest of a country. It was clear that individuals employed for goals other than the overthrow of a Government were nevertheless mercenaries and should be considered as such in the future convention. That was one example among others where the concept of the overthrow of a Government was inadequate.

62. With regard to pecuniary gain, which constituted the basis of mercenarism, his delegation supported the deletion of the part of subparagraph (c) placed between square brackets. The magnitude of remuneration was actually a subjective matter. In addition, it was not legitimate to compare the remuneration of a mercenary with the pay of soldiers in a regular army.

(Mr. Habimana, Rwanda)

63. With respect to the nationality criterion, his delegation noted that all national legislations contained quite severe provisions establishing penalties for nationals who took up arms against their own countries. The Ad Hoc Committee had not been established to combat internal opposition and traitors since States had, in general, sufficient means to prohibit effectively that type of illegal activity. The goal of the future convention should rather be to protect States against the actions of foreigners who infiltrated clandestinely into the country in order to destabilize it or who financed and trained persons to operate on their behalf.

64. His delegation was aware of the enormous difficulty of harmonizing the positions of various parties in view of the diversity of legal systems existing in the world. However, it noted that, under the pretext of legal rigour, certain delegations, for unavoidable reasons, were trying to paralyse the work of the Ad Hoc Committee, while other delegations were seeking to use the elaboration of the draft convention to obtain an international platform that would enable them to condemn internal opposition which had nothing to do with mercenary activities. It deplored that situation but felt that the constructive nature of the discussion at the first meetings of the most recent session of the Ad Hoc Committee gave reason to hope that all participants would return to rationality and that an acceptable compromise would soon be reached. In that spirit, it would support any proposal aimed at renewing the mandate of the Ad Hoc Committee in order to enable it to complete its work as soon as possible.

65. Mr. MBURI (United Republic of Tanzania) said that the hopes expressed by his delegation at the preceding session had not been fulfilled, because the Ad Hoc Committee had not been able to agree on a draft convention, having failed to concur regarding the definition of the term "mercenary". His delegation believed that if the Ad Hoc Committee could first agree on basic principles to be incorporated into the convention, the question of defining the term "mercenary" would resolve itself.

66. Events in Africa and Latin America illustrated the urgent need for nations to co-operate in enacting legislation to declare the recruitment, use, financing and training of mercenaries to be punishable offences. Mercenarism was an act of aggression comparable to other international crimes. In resolution 3314 (XXIX), the General Assembly defined aggression and mentioned mercenarism as an act of aggression. In resolutions 2465 (XXIII), 2395 (XXIII), and 2548 (XXIV), it called upon States to enact legislation to prohibit and make punishable the recruitment, financing and training of mercenaries in their territories. Failure to do so was, in fact, a threat to peace.

67. The problem of mercenarism could only be resolved through action directed against the institutions that allowed or acted as accomplices in the recruitment of those modern day pirates. There was therefore no contradiction between defining who was a mercenary and pointing an accusing finger at States or State organs or groups that tolerated the recruitment, training and financing of mercenaries. It was easy to create loopholes when it came to enforcing action against

(Mr. Mburi, United Republic of Tanzania)

institutions. A mercenary could be more easily prosecuted than an institution. The Ad Hoc Committee should therefore direct its efforts against institutions which were using mercenaries for their own purposes.

68. His delegation was concerned by the slow progress of the Ad Hoc Committee. The commentary included in the report (A/42/43) on the various articles of the draft convention did not show any consensus; rather, it highlighted the differences which existed among the members of the Ad Hoc Committee. His delegation did not share the view that tangible progress had been achieved. The Second Revised Consolidated Negotiating Basis merely reflected a change of title; the text had not been changed. His delegation hoped that real progress would be made at the next session, especially with regard to agreement on the basic principles. It urged the Committee to take into account the nationality criterion when defining mercenary activity. It considered that the issue of direct and indirect participation, accomplices and principals in mercenary activities needed further discussion. With regard to article 7, the concept of crime against the peace and security of mankind did not in any way pre-empt the work of the International Law Commission and did not comprise any political element.

69. Mr. KEMISHANGA (Zaire) took note of the encouraging progress in the work of the Ad Hoc Committee, particularly on the matter of the obligations of States. His delegation believed that the mandate given to the Ad Hoc Committee by the General Assembly was to strike mercenarism at the root, not at the tip, and therefore to draft a convention which not only provided for the punishment of individual mercenaries but also sought to prevent and eliminate mercenarism as a scourge of humanity. The preventive role of the future convention made it necessary to define not only the term "mercenary", but also the acts that constituted mercenarism in order to then determine the consequences for individuals and States.

70. His delegation found both parts of the revised version of draft article 1 acceptable, provided that a single criterion of identification of the mercenary was sufficient to initiate legal proceedings against that mercenary. Regarding the scope of the future convention, his delegation reaffirmed its position that the intent of General Assembly resolution 35/48 was the establishment of a convention which would cover both armed conflicts and situations occurring outside armed conflicts. To do otherwise would definitely be contrary to the will of the international community.

71. Draft articles 7 and 13 seemed contradictory in the sense that either the competence of the States in matters of violation of the future convention must be recognized, or, in view of the seriousness of the offence, which article 7 classified as a crime against mankind, the competent jurisdiction would no longer be that of the place or of any other concerned State, but would be an international jurisdiction of the Nürnberg type. The Sixth Committee had a fundamental choice to make in that regard. His delegation supported the revised version of draft article 7, on the understanding that it would be the responsibility of the State concerned to consider only provisional measures with respect to other States, in order to preserve a certain structural logic.

(Mr. Kemishanga, Zaire)

72. The preventive role of the future convention comprised another consequence in connection with the international responsibility of States as a result of acts of which they might be deemed guilty, namely, the failure to meet the obligation to take action or to refrain from taking action which was incumbent on all States by virtue of general international law. However, because the theory of the penal responsibility of States was still being developed, the only penalty that an accused State could incur was the payment of damages; it could not be subject to a penalty of imprisonment.

73. His delegation was convinced that the success of the Ad Hoc Committee's work depended on the political will of its members. He welcomed the removal of the square brackets from paragraph 1 of draft article 1 of the convention and hoped that the same procedure would be followed in paragraph 2 of that article, except with regard to subparagraph (c) where it considered that the words "in fact", "substantial" and "substantially in excess" were unnecessary. His delegation emphasized that all conventions must be both comprehensive and flexible to enable a judge to draw his own conclusions in the light of the facts brought before him. It also thought that the definition of the term "mercenary" should cover all of the situations encompassed in the Committee's mandate.

74. His delegation was pleased with the progress made by the Ad Hoc Committee, of which Zaire was a member, hoped that such progress would continue and joined other delegations in proposing that the Committee's mandate should be renewed in the interest of future generations.

The meeting rose at 5.30 p.m.