



SUMMARY RECORD OF THE 22nd MEETING

Chairman: Mr. CALLE Y CALLE (Peru)

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The meeting was called to order at 10.45 a.m.

AGENDA ITEM 115: REPORT OF THE AD HOC COMMITTEE ON THE DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES (continued) (A/36/43, 116 and 438)

1. Mr. AL-MUBARAKI (Kuwait) said that the recrudescence in the activities of mercenaries had coincided with the independence process of third-world countries, especially in the African continent. Colonialist circles had recruited and used mercenaries in order to hinder that process and threaten the independence and territorial integrity of the recently independent States.
2. Mercenarism was not only a punishable crime but also constituted interference in the internal affairs of States, a violation of the right of peoples to self-determination and a threat to international peace and security. The need for an international convention to stop such activities was therefore obvious.
3. As was apparent from the report of the Ad Hoc Committee, during its first session the debate had been focused on two fundamental questions: that of defining the terms "mercenary" and "mercenarism" and that of determining the extent of State responsibility. With regard to the former, although the concept of mercenarism was not part of juridical doctrine, his delegation considered that it was possible to formulate an acceptable definition and that the problem should not be an obstacle to the drafting of the convention. Consideration of elements such as nationality and the purpose of mercenary activities could help in the formulation of the definition. It was necessary to find points of agreement on which to base the drafting of a convention that would be binding on all. In that connexion, the working paper submitted by Nigeria could serve as a basis.
4. With regard to the second question, State responsibility, a distinction should be made between the personal responsibility of a mercenary who committed unlawful acts and must be judged and punished for them under the law and the responsibility of a State which contributed in any way to the commission of those acts or permitted them in breach of international obligations assumed under the Charter and other international instruments. The necessary distinction between the criminal activities of mercenaries and the just struggle of national liberation movements should also not be forgotten.
5. Lastly, his delegation was in favour of extending the mandate of the Ad Hoc Committee to enable it to carry out properly the work assigned to it.
6. Mr. AMARE (Ethiopia) said that the activities of mercenaries had, for far too long, posed a threat to the independence, sovereignty and territorial integrity of the developing countries of Africa, Asia and Latin America. The continent of Africa, and in particular southern Africa, had been the prime target for mercenaries. The imperialist countries recruited, financed and trained mercenaries and used them to perpetuate colonialist exploitation and undermine national liberation movements. That was an obvious violation of the principle of non-interference in the internal affairs of States. Those same elements were today  
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(Mr. Amare, Ethiopia)

fighting on the side of the racist régime of South Africa against the liberation forces of Namibia and against the People's Republic of Angola and other front-line States.

7. The activities of mercenaries had been condemned by the international community in a number of instruments. The most important of them was the Convention for the Elimination of Mercenarism in Africa, adopted by the Organization of African Unity in 1977. In keeping with its position, Ethiopia supported the draft convention submitted by Nigeria as a good basis for codification. In that regard, there was a need for a precise and comprehensive definition of the terms "mercenary" and "mercenarism". Article 47, paragraph 2, of the First Additional Protocol to the 1949 Geneva Conventions and article 1 of the Nigerian draft could provide a basis for defining the first of those terms. In addition, a clear distinction should be made between the outlawed activities of mercenaries and the lawful right of national liberation movements to receive assistance in their struggle against colonialism, racism and apartheid.

8. His delegation supported the renewal of the Ad Hoc Committee's mandate so that a draft convention could be drawn up at an early date.

9. Mr. KAHALEH (Syrian Arab Republic) said that the oppressed peoples of the world had been suffering too long the consequences of mercenary activities which were used by the imperialist countries to undermine national liberation movements. To kill for money was clearly the worst crime known to mankind. The international community had managed to regulate international relations through a system of collective security in the United Nations and had rightly proposed the drafting of an international convention against the recruitment, use, financing and training of mercenaries.

10. The report submitted by the Ad Hoc Committee (A/36/43) contained two particularly important questions: that of defining of the terms "mercenary" and "mercenarism" and that of determining the extent of State responsibility. With regard to the first question, his delegation took the view that, in order to establish a complete, comprehensive and useful definition, not only the Nigerian draft - the only one so far submitted - but also article 47, paragraph 2, of the First Additional Protocol to the 1949 Geneva Conventions and any other relevant juridical text, including the Convention of the Organization of African Unity on the subject and the resolutions of the General Assembly and Security Council, and any new proposals that might be submitted by delegations should be taken into account. As for the second question, State responsibility in respect of mercenaries and mercenarism should not be limited to the commission of acts but should also include acts of omission which made their activities possible.

11. It was advisable to include the term "mercenarism" in the future convention. The fact that it was a neologism in some languages did not preclude its inclusion, because languages evolved and changed in the course of time, and a political phenomenon whose existence was undeniable necessitated corresponding linguistic adjustments. There was no reasons, however, for differentiating between good and bad mercenaries because such a distinction would negate the very definition of the term. On the other hand, mercenaries could not be confused with volunteers

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(Mr. Kahaleh, Syrian Arab Republic)

fighting for the liberation of peoples, nor mercenaries with military advisers who rendered services in that connexion. In addition, the convention should explicitly define both the personal responsibility of the mercenaries and the responsibility of States.

12. In conclusion, his delegation was in favour of extending the mandate of the Ad Hoc Committee and hoped that it would complete its work successfully.

13. Mr. NIZIGAMA (Burundi) said that the crime of mercenarism was not a product of the Ad Hoc Committee's imagination; it was well known in Africa owing to its aftermath of murder, ruin and destruction, destabilization of legitimate Governments, repression of national liberation movements and political and economic chaos.

14. The international community should now demonstrate the same firmness it had shown in dealing with other problems, such as highjacking and the taking of hostages, since encouraging the activities of mercenaries was tantamount not only to violating the norms governing normal relations but also to vindicating one of the worst forms of terrorism. At the national level, there was no lack of laws for preventing and punishing the crime of mercenarism. Many of them, however, were limited to the activities of nationals of a State in the territory under its jurisdiction and rejected all responsibility in respect of those nationals who enlisted as mercenaries for service abroad. Those lacunae or voluntary omissions enabled a mercenary to return peacefully to his country of origin after committing the crime. Sometimes he was even hailed as a hero and his exploits were publicized in the newspapers and other media.

15. In its future work, the Ad Hoc Committee should define the concept and juridical status of mercenaries. For that purpose it should not limit itself to the provisions of article 47 of the First Additional Protocol to the 1949 Geneva Conventions, because that would be tantamount to exonerating mercenaries who fought against national liberation movements or who proposed to destabilize legitimate Governments. Mention had also been made of humanitarian law which could be invoked by a mercenary on his capture. By the nature of his acts a mercenary had forfeited the benefit of that law; he was not a combatant. A mercenary should, however, be accorded the same judicial guarantees as were enjoyed by the alleged perpetrator of a similar crime.

16. The question of the personal responsibility of the mercenary did not, it seems, present any serious difficulties; but difficulties did arise in establishing the responsibility of those who acted on behalf of a group, body corporate or State. In that regard, some speakers in the discussion had recommended moderation. In their view, there was no need to establish an international criminal jurisdiction to which States would be subject; it was sufficient only to determine individual criminal liability. Any other procedure would merely paralyze the work of the Ad Hoc Committee, since it would be impossible to reach a consensus. That approach was partial and incorrect, since it would indirectly encourage those who were transforming their territories into breeding grounds for mercenaries. The purpose of the convention was to prevent mercenarism in all its forms. It was therefore essential to go to the very root of the evil, and to establish the liability both of the mercenary and of those who employed him.

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(Mr. Nizigama, Burundi)

17. The delegation of Burundi was well aware of the diversity of the legal systems represented in the Committee, and also of the complexity of the task confronting the Ad Hoc Committee; but it appealed for international solidarity with the victims of the sinister activities of mercenaries, and expressed the hope that the Ad Hoc Committee would complete its task as soon as possible and elaborate a viable international convention to put an end to those activities.

18. Miss MALIK (India) said that India, as one of the first countries to achieve independence from colonial rule during the present century, had both in the United Nations and in other fora condemned the phenomenon of mercenarism since it believed that the activities of mercenaries, which were directed against national liberation movements, seriously impeded the process of self-determination of peoples struggling against colonialism, racism, apartheid and alien domination. Mercenaries were also used as instruments of external interference in the internal affairs of States, to destabilize their Governments and violate their territorial integrity and political independence. All those activities by mercenaries constituted serious threats to international peace and security. Her delegation had therefore co-sponsored General Assembly resolution 34/140, whereby the item on the drafting of an international convention against mercenarism had been included in the Assembly's agenda, and it had also co-sponsored resolution 35/48 establishing the Ad Hoc Committee.

19. The activities of mercenaries had been repeatedly condemned by the United Nations and by other international organizations. The General Assembly and the Security Council had repeatedly declared that the practice of using mercenaries against movements for national liberation and against peoples struggling against colonial and alien rule was a criminal act; and they had called upon Governments to enact legislation declaring the recruitment, financing and training of mercenaries in their territories to be a punishable offence and prohibiting their nationals from serving as mercenaries. The sending of mercenaries to carry out acts of armed force against another State qualified as an act of aggression, according to the Definition of Aggression adopted by the General Assembly in 1974. At the regional level, mention might be made of the Convention for the Elimination of Mercenarism in Africa adopted by the Organization of African Unity in 1977, and the resolutions adopted by the Heads of States and Government at summit meetings of the Organization of African Unity in 1967, 1971 and 1976.

20. There was almost universal agreement that the time was now ripe to elaborate a convention to prohibit the recruitment, use, financing and training of mercenaries and to condemn their activities as criminal and as constituting an interference in the internal affairs of other States and a threat to international peace and security. The draft submitted by Nigeria constituted an acceptable basis for the elaboration of such a convention.

21. In particular, her delegation accepted the definition of "mercenary" contained in article 1 of that draft, which was the same as the definition given in article 47 of Additional Protocol I to the Geneva Conventions of 1949, which had been the result of intensive negotiations at the Diplomatic Conference on International

(Miss Malik, India)

Humanitarian Law Applicable in Armed Conflicts, held at Geneva in 1977. The essence of mercenarism was the material compensation paid to the mercenary, which was substantially in excess of that paid to combatants of similar rank in the regular armed forces of a party. Also, mercenaries were not members of the regular armed forces of a party, nor were they nationals or residents in its territory. The above-mentioned definition should be read in a cumulative way, and activities in support of national liberation movements whose legitimacy had been recognized by the United Nations should be excluded from its scope.

22. The Indian delegation could also accept articles 3 and 4 of the draft convention submitted by Nigeria, concerning penalties for the offences specified in article 2 and implementation of the provisions of the convention. It could also accept article 7, on the question of concurrent jurisdiction, and article 13, on extraditable offences. However, it was essential to remember that extradition must be in accordance with the law of the requested State.

23. India supported the renewal of the mandate of the Ad Hoc Committee and, as a member of the Committee, it would make every effort to ensure that the Committee successfully completed its work on the draft convention at its next session, so that the draft could be submitted to the General Assembly at its thirty-seventh session.

24. Mr. IANNI (Canada) said that, from the legal point of view, his delegation saw the question of mercenaries in the context of the law of armed conflict and humanitarian law, particularly the 1977 protocol to the Geneva Conventions of 1949. In article 47 of that Protocol, which had been the subject of considerable and difficult discussion at the Diplomatic Conference on the Development of Humanitarian International Law Applicable in Armed Conflicts, the concept of "mercenary" was defined by means of a list of cumulative criteria, and mercenaries were deprived of combatant and prisoner-of-war status. Admittedly, that definition was not satisfactory from all points of view, but it was questionable whether the United Nations would be able to go much beyond it. In any case, the Canadian delegation thought it would be counterproductive to attempt to broaden the definition by adding general or vague formulations.

25. Some of the provisions in the Nigerian draft should be the subject of further detailed and careful consideration. For example, the draft stated that a State could claim damages or reparation from another State when the hiring of mercenaries took place in its territory without its knowledge. The concept of State responsibility was the subject of some confusion, although various arbitral awards and the work of the International Court of Justice had helped to develop the theory of objective responsibility, arising from any breach of an engagement. Such responsibility was the indispensable complement of a failure to apply a convention and need not be stated in the convention itself. However, State responsibility for acts which took place without its knowledge raised the question of strict or absolute responsibility, which had been recognized in multilateral treaties on nuclear installations, the operation of nuclear-powered ships and damage caused by space objects. That complex issue would have to be specifically addressed in future discussions.

(Mr. Ianni, Canada)

26. Any convention on mercenaries should build upon approaches and mechanisms that had been shown to work in other areas. For example, most conventions on terrorist acts provided that States parties should establish as municipal offences the act of servicing as a mercenary or enlisting in a mercenary force. It would be also necessary to examine the possibility of applying the "extradite or prosecute" rule to mercenaries whenever they were found on the territory of a State party. Those were the issues on which the negotiations should focus if they were to lead to positive results.

27. The first session of the Ad Hoc Committee had provided a useful opportunity for a detailed exchange of views. At its next session, there should be serious negotiations focused on two or three questions with a view to making progress in the task of trying to deter the activities of mercenaries throughout the world.

28. Miss GROSS GALEANO (Nicaragua) reaffirmed that the revolutionary Government of Nicaragua considered it essential to elaborate an international convention to prevent the continuation of the criminal practice of mercenarism. It supported the initiative of Nigeria in submitting the draft international convention contained in document A/AC.207/L.3, and had some comments to make on the draft.

29. The concept of "mercenary" contained in the document was inadequate, since it should be formulated in terms which combine all the legal and political elements in the light of which a mercenary should be considered as an international criminal. State responsibility, which should be accompanied by sanctions by the international community, should be extended to Governments which permitted or were accessory to the criminal acts of mercenaries. Also, a clear differentiation should be made between mercenaries and the international volunteers who participated in the struggle of peoples for freedom and whose actions were motivated by a sense of solidarity with the just cause of those peoples. The people of Nicaragua, in its war of liberation, had been helped by internationalists who had not been motivated by any desire for material reward but wished solely to contribute to a just cause.

30. During the debate some delegations had expressed the view that the work of the Ad Hoc Committee had produced no practical results because the basic question was not juridical but political. Nicaragua, like most of the other non-aligned countries, could not forget the real meaning of the use of mercenaries by régimes that were determined to deny peoples their inalienable right to self-determination. The Conference of Ministers of Foreign Affairs of Non-Aligned Countries held in New Delhi in February had commended the Ad Hoc Committee for its work and called upon the non-aligned countries to draft an international convention prohibiting and repressing the activities of mercenaries and determining the responsibilities of individuals, groups, associations and States. Nicaragua fully supported that appeal, since its people had been, and still was, the victim of organized activities by mercenaries recruited in the United States. Recently, Nicaragua had suffered from the activities of former soldiers of Somoza, who were trained openly and with impunity in the United States, as had been revealed by

(Miss Gross Galeano, Nicaragua)

several organs of the United States Press, the New York Times of 17 March and 2 April for example. The protest about that situation made by the Foreign Minister of Nicaragua in a letter addressed to the Secretary of State of the United States on 20 March had been answered in a most unsatisfactory way by the Washington Government, which had alleged that that paramilitary training was being carried on on private property.

31. In the view of her delegation, the draft convention should clearly spell out the duty of all States not to allow the organization on their territory of activities to encourage acts of terrorism in other States. That obligation was already to be found 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 (General Assembly resolution 2625 (XXV)).

32. The delegation of Nicaragua was in favour of extending the mandate of the Ad Hoc Committee and called upon the United Nations to turn its resolutions into norms that could be applied in practice and to give the Ad Hoc Committee all the support it needed to complete the drafting of the convention.

33. Mr. MURARGY (Mozambique) said that the drafting of a convention against mercenarism was of great interest to his country, since the People's Republic of Mozambique had suffered the attacks of mercenaries ever since the proclamation of its independence. There was a close link between the upsurge in mercenarism and the collapse of colonialism, coupled with the growing crisis in the capitalist system. Mercenaries had emerged as a result of the contradictions in the capitalist system and the desire of the imperialists to maintain their economic, political and strategic interests in the developing countries. The use of mercenaries to prevent peoples from exercising their right of self-determination had been internationally condemned, particularly in Africa, where the Organization of African Unity had adopted a convention on the subject.

34. Mozambique had been the victim of incursions by mercenaries who had originally come from Southern Rhodesia and more recently from South Africa, in plain violation of its territorial integrity. Those events had forced the People's Assembly of the People's Republic of Mozambique to promulgate a law on 1 March 1979 providing that the activities of mercenaries were crimes against the security of the people and the State punishable by death.

35. His delegation, which considered the use of mercenaries against independent peoples and States was a violation of the principles of international law contained in the Charter of the United Nations and other instruments, and also an act of aggression as defined in General Assembly resolution 3314 (XXIX), thought that the recognition of mercenarism as a crime against humanity would be a step forward towards its complete eradication. It was concerned to note, however, that there were still obstacles impeding the conclusion of an international convention that would command universal acceptance. One of the main obstacles related to the definition of the words "mercenary" and "mercenarism". In trying to find a realistic definition of those words, the Ad Hoc Committee should give due weight to



(Mr. Murargy, Mozambique)

both personal motivations and political goals. That definition should make a proper distinction between the criminal activities of the mercenaries and the support given by the internationalist volunteers to peoples struggling against colonialism, racism, fascism and apartheid and to defend their sovereignty, threatened by external force.

36. In the view of his delegation, the draft resolution submitted by Nigeria was a sound basis for the Ad Hoc Committee's future work but the definition of mercenarism in the draft should be expanded to cover other situations mentioned by several delegations in the debate. In addition, the convention should not only provide for the liability of the mercenaries as individuals but should also clearly define the international obligations and responsibilities of States and other entities. A big step forward towards preventing the activities of mercenaries would be the adoption by States of national legislation for the prevention and punishment of such activities on their territories, irrespective of the drafting of an international convention.

37. Lastly, he said his delegation supported the renewal of the Ad Hoc Committee's mandate.

38. Mr. MAYCOCK (Barbados) said that the desirability of drafting an international convention against recruitment, use, financing and training of mercenaries had already been clearly demonstrated. The debate in the Ad Hoc Committee during the thirty-fifth session of the General Assembly had shown that although there were fundamental differences of view on certain points, there was agreement on many others; no effort should be spared to broaden the existing area of agreement and to narrow the differences. The mandate of the Ad Hoc Committee should therefore be renewed and the Nigerian draft should be used as the basic working paper, on the understanding that additional material would be used for supplementary and comparative purposes.

39. While recognizing the merits of the arguments of those delegations that would prefer to settle the conceptual disparities before engaging in the drafting of the convention, he said the Ad Hoc Committee must complete its work as soon as possible. Perhaps Mr. Bedjaoui, the Committee's Chairman, could use his good offices to bring together a contact group drawn from proponents of the different conceptual schools with a view to finding common ground for the successful completion of the Ad Hoc Committee's work.

40. At the Ad Hoc Committee's first session, a considerable amount of time had been spent on discussing whether or not a particular word existed in some languages; every member of the Committee was fully cognizant of the phenomenon invoked by that word; the activities and machinations of the mercenaries were very real threats to the small and newly independent countries of the developing world. It was the duty of all Members of the Organization to guarantee the principle of the sovereign equality of all Member States and to encourage friendly relations based on respect for the principle of equal rights and self-determination. In the view of Barbados, the drafting of the international convention would go a long way towards the attainment of those goals.

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41. Mr. GRÖNWALL (Sweden) said that a great deal of useful probing with regard to various aspects of the problems involved had been done since the Sixth Committee had considered the item the previous year and at its next session, the Ad Hoc Committee should have a clearer picture of the general lines of thought of the Sixth Committee. The condemnation of the use of mercenaries expressed in the report of the Ad Hoc Committee had been forcefully reaffirmed in the debates of the Sixth Committee. Sweden supported the efforts aimed at solving the problem of mercenaries on an international scale. Swedish law already prohibited the recruitment of persons in Sweden for enlistment in foreign forces or similar services outside Sweden.

42. A basic point of contention between delegations was the general approach which the Ad Hoc Committee should adopt in fulfilling its mandate. Thus far, two alternatives had been suggested. The first was to draft a convention, similar to the draft presented by Nigeria, which would create the crime of "mercenarism", which implied, inter alia, the possibility of holding individuals, and in some cases, States, responsible for that crime. The other alternative, which his delegation preferred, would be to determine what particular activities in relation to mercenaries should be prohibited; with that approach, a more limited goal might be achieved, such as the harmonization of the legislation of the States parties.

43. The Sixth Committee had before it the documents which had formed the point of departure for the Ad Hoc Committee's work: one of them, document A/AC.207/L.3, contained the full text of a model international convention, while the other, document A/AC.207/L.2 consisted only of a list of documents containing reports, inter alia, on national legislation regarding mercenaries. In the view of the Swedish delegation, it would be most helpful if the Secretary-General could be asked to prepare an analysis of the laws and practices that States had adopted with regard to mercenaries, which would show what legislation was adopted by States to prohibit the recruitment, use, financing and training of mercenaries and how problems of jurisdiction and extradition were being dealt with. That would facilitate the drafting of a convention based on a "functional approach" which would emphasize the responsibility of individuals. The relevant resolution might include a request for such an analysis based on the documents listed in document A/AC.207/L.2.

44. Making a clear distinction between the criminal liability of individuals and State responsibility was a major problem in connexion with the use, recruitment, financing and training of mercenaries. Speaking on behalf of all the Nordic countries in an explanation of vote on resolution 35/48, Sweden had voiced certain reservations with regard to the preambular paragraph which stated that the activities of mercenaries were contrary to fundamental principles of international law. In its view, principles of international law could apply only to States and not to individuals. For similar reasons, his delegation did not consider that the activities of mercenaries could ipso facto give rise to State responsibility. The International Law Commission had been studying the complicated question of State responsibility for many years, and the Ad Hoc Committee should not pursue an approach to the question which departed from that of the International Law Commission and from contemporary international law.

(Mr. Grönwall, Sweden)

45. With regard to the definition of the term "mercenary", his delegation supported the definition contained in article 47, paragraph 2, of Additional Protocol I to the 1949 Geneva Conventions, and also wished to stress the importance of the humanitarian values safeguarded by article 3 of the 1949 Red Cross Convention.

46. Mr. ROSENSTOCK (United States of America), speaking in exercise of the right of reply, said that, in the midst of a whole series of inaccuracies, the delegation of Nicaragua had made a reference to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. He hoped that the future behaviour of Nicaragua would be guided by the principles set forth in that Declaration. The report of the Special Committee on Enhancing the Effectiveness of the Principle of Non-use of Force in International Relations had referred to certain behaviour by Nicaragua, acting as an entrepot for weapons for transshipment to other countries, which was in flagrant contradiction with those principles.

47. With regard to the comments made on the practices followed by the Government of the United States, he said that his Government strictly applied its laws relating to neutrality and firearms. Earlier in the current year, a Nicaraguan emigre named Villalta had been detained for attempting to supply arms to a foreign country; and the United States delegation had referred on the previous day to another incident, in which an arrest had been made in connexion with a matter which was to be referred to the courts. Furthermore, in a free country, people had the right to meet together on private property and to practise target shooting, provided that they complied with the provisions of the laws concerning the use of firearms. In cases of unlawful activities, his country's authorities arrested those responsible and put an end to such activities.

48. Miss GROSS GALEANO (Nicaragua), speaking in exercise of the right of reply, said that the rhetoric of the delegation of the United States could in no way detract from the force of the evidence concerning the attempts at aggression, destabilization and interference in its internal affairs directed against Nicaragua and encouraged and financed by the Reagan Government. She would make that evidence available to any delegation who wished to see it.

AGENDA ITEM 124: CONSIDERATION OF EFFECTIVE MEASURES TO ENHANCE THE PROTECTION, SECURITY AND SAFETY OF DIPLOMATIC AND CONSULAR MISSIONS AND REPRESENTATIVES:  
REPORT OF THE SECRETARY-GENERAL (A/36/445 and Corr.1 and Add.1-3)

49. Mr. SUY (Under-Secretary-General, Legal Counsel), introducing the item, said that it had been included in the agenda of the thirty-fifth session of the General Assembly at the request of the five Nordic countries, against a background of information concerning violations of, or failures to observe, the relevant rules of international law providing for the protection of diplomatic and consular missions and representatives. The General Assembly, by unanimously adopting resolution 35/168 had confirmed the appropriateness of the initiative taken by the Nordic countries.

(Mr. Suy)

50. The report of the Secretary-General now before the Committee (A/36/445, Corr.1 and Add.1-3) had been submitted in accordance with paragraph 10 of the aforementioned resolution, and contained the reports and views received from States pursuant to paragraphs 7 and 9. In paragraph 10 of the resolution, the General Assembly had invited the Secretary-General to submit any views he might wish to express on those issues, and that was the purpose of the present statement.

51. The reports by Governments of "serious violations" regarding the protection, security and safety of diplomatic and consulate missions and representatives spoke for themselves; and thus it was not necessary for the Secretary-General to comment on the matters which were the subject of those reports. Although paragraph 6 of the resolution referred to the good offices of the Secretary-General, there had hitherto been no instances in which that procedure had been called upon, and the Secretary-General therefore preferred not to express any opinions on the issues involved. It might be added that, although some cases had been reported, they had not formed a sufficient basis on which the Secretary-General might feel compelled to express his views.

52. Respect for the rules of international law governing the exercise of diplomatic and consular relations, and in particular the inviolability of diplomatic and consular missions and representatives, was a basic prerequisite for the orderly conduct of relations between States and for the fulfilment of the purposes and principles of the Charter of the United Nations. At the time when the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations had been elaborated, it had been considered that those Conventions would provide sufficient protection to diplomatic and consular missions. However, in recent years there had been reports of violations of those Conventions.

53. The Committee had already been concerned with the implementation by States of the provisions of the Vienna Convention on Diplomatic Relations. In 1978, at its thirty-third session, the General Assembly had requested those States which had not yet become parties to that Convention to give urgent consideration to acceding to it, and had called upon all States to observe and strictly implement its provisions. As of 1 October 1981, 137 States had become parties to the Vienna Convention on Diplomatic Relations, and the Vienna Convention on Consular Relations had been ratified or acceded to by 100 States. The 1969 Convention on Special Missions and the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character were also relevant, although neither of those Conventions had yet come into force.

54. At its twenty-eighth session in 1973, the General Assembly had adopted the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, and in 1979 it adopted the International Convention against the Taking of Hostages. The former had so far been ratified or acceded to by 53 States, and the latter by 14 States. Strict and widespread observance of those Conventions would undoubtedly remedy some of the problems in the current situation with which the Sixth Committee had been concerned.

(Mr. Suy)

55. The Secretary-General wished to draw attention to the provisions of the 1973 Convention - and particularly article 6, paragraph 1, and article 11 - regarding the notifications which States parties were to send to other States concerned either directly or through the Secretary-General. Quite recently the Secretary-General had received a note verbale from a Permanent Mission to the United Nations by which the Government concerned had reported the outcome of the proceedings in connexion with an incident which had taken place at an Embassy in its capital. The Secretary-General took note with pleasure of that first instance of the reporting system incorporated in the Convention. The Secretary-General had also received from the same mission the note verbale reporting the same incident under paragraph 7 of resolution 35/168 which referred to the agenda item at present under consideration; that note had been reproduced in document A/36/445/Add.2. It might be appropriate, as General Assembly resolution 35/168 provided for in paragraph 5, once again to call upon all States which had not yet done so to consider becoming parties to the relevant Conventions concerning the inviolability of diplomatic and consular missions and representatives.

56. Mr. HAKAPÄÄ (Finland), speaking on behalf of the five Nordic countries, reminded the Committee that the initiative to include the item "Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives" in the agenda of the thirty-fifth session of the General Assembly had been taken because of the concern felt by those countries at the thought of the irreparable harm which violations of the provisions of international law on the subject might cause to the very fabric of international relations. As a result of the final proposal, the General Assembly had adopted by consensus resolution 35/168 in which inter alia all States were invited to report to the Secretary-General acts of violence committed against diplomatic and consular missions and representatives, and also to report on measures taken to bring to justice the offenders and to prevent repetition of such violations.

57. It might still be too early to evaluate the results of the application of that resolution. The communications presented in that connexion by a number of countries, and reproduced in the report of the Secretary-General (A/36/445), were discouraging. During the last year serious violations of the safety and security of diplomatic and consular personnel had continued.

58. Nevertheless, the delegations of the five Nordic countries were in favour of maintaining the system of notification to the Secretary-General established under resolution 35/168, since they considered that the publication of information on acts of violence provided an incentive for States to adopt effective measures for their prevention. It was important that the Secretary-General should continue to study the matter in detail.

59. The reports and views communicated by States contained proposals for additional measures for the protection and security of diplomatic and consular missions and representatives; and those proposals should be given due consideration. In particular, there was a special need for close co-operation between the host State and diplomatic and consular missions in its territory.

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(Mr. Hakapää, Finland)

60. Furthermore, the delegations of the five Nordic countries believed that the General Assembly should once again call upon all States which had not yet done so to consider becoming parties to the relevant Conventions. Only a small number of States had hitherto responded to the appeal contained in resolution 35/168. The Secretary-General might be requested to report on ratifications of the relevant Conventions, so that countries would have a better possibility to follow developments.

61. Finally, the delegations of the five Nordic countries looked forward with great interest to the discussions on the item in the Sixth Committee, in the hope that it might be possible to elaborate a draft resolution proposing additional measures of protection which would meet with the same degree of acceptance by the General Assembly as the text which had been submitted at the previous session.

62. Mr. FATHALLA (Egypt) said that the functions of diplomatic representatives had become much more complex and important during the last 40 years as a result of the practice of multilateral negotiations; and it was therefore essential to create a climate of security to enable them to work in the best possible conditions for co-operation and the maintenance of international peace and security.

63. Rules of international law relating to the protection and security of diplomatic and consular missions and representatives had existed for centuries; but it had been necessary to wait until 1961 and 1963 for them to be codified in the Vienna Conventions. Also, the International Convention against the Taking of Hostages approved by the General Assembly in its resolution 34/146 in 1979 represented a further important contribution in that connexion.

64. In that general process, the delegation of Egypt had participated in the Working Group created following the proposal by the five Nordic countries to include in the agenda of the thirty-fifth session of the General Assembly an item on consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives. His delegation had noted with satisfaction that paragraphs 7 and 9 of resolution 35/168, in which States were requested to submit opinions and reports to the Secretary-General, were now being implemented; and it welcomed the dissemination of such views and reports in document A/36/445.

65. The position of Egypt on the subject was quite clear. It had acceded to the Vienna Conventions of 1961 and 1963 and had submitted the instruments of ratification for the International Convention against the Taking of Hostages. His delegation regretted that the last-mentioned Convention had not entered into force, since it had not yet received the minimum number of ratifications; and he reiterated the appeal made by the General Assembly at its thirty-fifth session for all States to become parties to the relevant conventions.

66. Nevertheless, his delegation considered that existing law was not in itself sufficient to ensure effective protection of diplomatic personnel. The authorities of his country therefore remained in constant contact with diplomatic and consular missions and representatives in its territory with a view to the adoption of effective measures for their security.

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(Mr. Fathalla, Egypt)

67. In further work on the item, the international community should consider and adopt an international instrument on the responsibility of States which did not effectively ensure the protection and security of diplomats accredited to them.

68. Such questions called for further and more detailed study by the General Assembly; and the item should therefore be included in the agenda of the thirty-seventh session.

#### ORGANIZATION OF WORK

69. The CHAIRMAN reminded the members of the Committee of his intention to close the list of speakers on item 124 at 6 p.m. on 16 October. In the absence of objections, he would take it that the Committee wished to adopt that proposal.

70. It was so decided.

The meeting rose at 12.40 p.m.