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New York

SUMMARY RECORD OF THE 20th MEETING

Chairman: Mr. CALLE y CALLE (Peru)

later: Mr. EL BANHAWY (Egypt)

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INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND  
TRAINING OF MERCENARIES (continued)

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The meeting was called to order at 3.15 p.m.

REPORT OF THE AD HOC COMMITTEE ON THE DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES (continued)  
(A/C.6/43, 116 and 438)

1. Mr. MAWODZA (Zimbabwe) said that the scourge of mercenarism was by far most rampant in Africa. Memories of the cruel massacres perpetrated during the war of liberation were particularly vivid for his country because mercenaries were still being employed by the fascist, oppressive apartheid régime of South Africa, with the connivance of certain Member States which professed to be democratic, on barbarous forays against the neighbouring front-line States, notably Angola and Mozambique, in complete disregard of all codes of international law and peace and security. His delegation viewed such activities with grave concern and urged all Member States to assist the Ad Hoc Committee in speedily drafting an international convention which would eradicate them.
2. Despite the criticisms levelled at certain elements of the Nigerian working paper (A/AC.207/L.3) it was a useful guideline document. Since little progress was likely to be achieved by discussing matters of substance in the Sixth Committee, he recommended that the Ad Hoc Committee's mandate be renewed.
3. Mr. MATHANJUKI (Kenya) said that the drafting of an international convention was a crucial responsibility and would mark significant progress in the efforts to safeguard the territorial integrity and political independence of many new and vulnerable States. The nature of the abominable crime of mercenarism and the damage which mercenaries had done to Africa, Latin America and Asia were well known to all, and it was essential to live up to the expectations of the peoples of the world and not to remain silent while innocent people were butchered.
4. His delegation concurred with the comments in paragraph 34 of the report of the Ad Hoc Committee (A/36/43); it was important to place the question of the struggle for self-determination on a special footing as far as the envisaged convention was concerned.
5. The aim of the convention should be not only to ensure that mercenaries and those abetting them were punished but also to discourage their activities internationally within an effective legal framework. Hence, the use of mercenaries to attack a sovereign State should be regarded as an act of aggression and an international crime against humanity, involving criminal responsibility for individuals and for States. In that connexion, he welcomed the appeal made in paragraph 46 of the report.
6. The definition of a mercenary in article 1 of the Nigerian draft (A/AC.207/L.3) was rather restrictive; it should be amplified to cover situations not involving armed conflict. The term "mercenarism" should be retained, as it effectively described the activities of mercenaries.

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(Mr. Mathanjuki, Kenya)

7. Although mercenaries disregarded the most rudimentary norms of civilized conduct, his delegation would welcome the granting, as a minimum, of the usual judicial guarantees to such criminals. However, if a State could not prosecute a mercenary under its own legal system, there should be mandatory extradition arrangements which would allow the country where the offence was committed to take action.

8. His delegation supported the renewal of the Ad Hoc Committee's mandate and also believed that delegations which wished to do so should be able to attend that Committee's meetings as observers.

9. Mr. MAHBOULI (Tunisia) said that the use of mercenaries was nothing new; common in ancient times, it had recently once again assumed international dimensions. In modern times, however, condemnation on straightforward moral grounds was reinforced by vigorous and unanimous condemnation of the practice as a blatant violation of the principles which constituted the very foundation of the United Nations. The drafting of a convention designed to eliminate that practice would benefit not only States which might become victims of mercenaries but also those which served as a base for mercenary activities, bearing in mind the danger inherent for any State in the presence of a private army which could be used against the legitimate authorities. The convention should cover both individual mercenaries and States which directly or indirectly encouraged their activities.

10. The draft convention submitted by Nigeria (A/AC.207/L.3) was a good basis for discussion. His delegation approved of the definition of the term "mercenary" in article 1, which was based on that contained in article 47 of Additional Protocol I to the 1949 Geneva Conventions. However, while it might be convenient to use that definition so as to avoid re-opening a lengthy debate, it should be remembered that Additional Protocol I related only to international armed conflicts, whereas the convention under consideration was also intended to apply to operations carried out in times of peace.

11. With regard to the question of State responsibility, a State could not fulfil all its obligations by simply refraining from organizing, financing or otherwise involving itself in mercenary activities. It was the duty of every State to take action to prevent mercenary activities based in its territory; that duty entailed a general obligation to exercise vigilance inherent in the principle of territorial sovereignty. Moreover, it was unlikely that an operation mounted by a band of mercenaries, requiring sizeable human and financial resources, could remain unknown to the authorities; it should thus be made the responsibility of every State to be aware of activities directed against another State but organized in its territory.

12. It was also essential to make mercenarism a crime under international law, on the same basis as genocide, war crimes and sea or air piracy. It would then be the duty of States to take all appropriate domestic measures, both legislative and administrative, to eradicate the phenomenon. Such an obligation was already reflected in general terms in a number of resolutions, but only a binding commitment in the form of a convention would provide any effective guarantees.

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(Mr. Mahbouli, Tunisia)

13. In that connexion, it should be noted that document A/AC.207/L.2 and Add.1, which listed all the laws relating to mercenarism in force in Member States, did not reflect the substance of any of those texts; furthermore, many of them were very broad in scope and related above all to the case of nationals of the States concerned serving in foreign armed forces, an act not in itself sufficient to qualify them as mercenaries.

14. On the question of legal status, his delegation welcomed the proposal in article 5 which would deny mercenaries the status of prisoners of war; that provision endorsed the decision taken at the 1977 Geneva Diplomatic Conference. However, his delegation also approved of article 11, which preserved legal guarantees for mercenaries.

15. While individual mercenaries were in themselves a threat, those groups or States which recruited and controlled them were far more dangerous; those above all should be the target of the future convention. To that end, his delegation supported the renewal of the Ad Hoc Committee's mandate.

16. Mr. KATCHOURENKO (Ukrainian Soviet Socialist Republic) said that the establishment of the Ad Hoc Committee was convincing testimony of the determination of the overwhelming majority of Member States to intensify the struggle to suppress mercenarism. His delegation had participated in the work of the Ad Hoc Committee, and he was pleased to note that, despite the attempts of certain Western States to impede the drafting of an international convention, most members of that Committee had taken a constructive approach to that task. As could be seen from the report (A/36/43), many useful suggestions regarding the future convention had been made, and a Working Group of the Whole had embarked on a careful study of a number of specific concepts and terms, taking into account the draft convention submitted by Nigeria (A/AC.207/L.3) and other relevant international legal instruments.

17. Mercenarism posed a serious threat to the just struggle of peoples for national liberation and social progress, and it was therefore essential to define the term "mercenary" in such a way as to affirm the criminal responsibility of any persons involved in mercenary activities. The term must not be extended to cover the activities of international volunteers rendering assistance to peoples in their struggle for freedom and independence, or to military advisers and specialists stationed in the territory of any State under the provisions of international agreements.

18. The term "mercenarism" made it possible to provide a fuller and more precise categorization of the activities of mercenaries as an international criminal offence. Some members of the Ad Hoc Committee had objected to the term on linguistic grounds. In that connexion, it should be borne in mind that the term had already been used in a number of international documents and that it corresponded to the actuality of contemporary international relations.

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(Mr. Katchourenko, Ukrainian SSR)

19. In ensuring the effectiveness of the convention the most important provisions were undoubtedly those concerning the obligations of States. States must undertake to adopt all the legislative, legal, administrative and other measures required to end the recruitment, training, financing, equipping and transport of mercenaries. Any State failing to fulfil those obligations must bear international responsibility for its actions.

20. It should also be borne in mind that the Definition of Aggression adopted by the General Assembly in 1974 affirmed that the use of mercenaries to invade a sovereign State must be considered as an act of aggression.

21. In 1981 the Ad Hoc Committee had undoubtedly made progress towards the drafting of an international convention against mercenarism, and he concurred with the many previous speakers who had proposed that the Committee's mandate should be renewed.

22. Mr. QUENTIN-BAXTER (New Zealand) said that no one questioned the desirability of eliminating the activities of mercenaries and that it was important to place greater emphasis on that central point of agreement. Otherwise, as had been shown by the report of the Ad Hoc Committee (A/36/43) and the debate so far, there was some danger of becoming trapped in the semantic subtleties surrounding the terms "mercenary" and "mercenarism". While he accepted that for some delegations "mercenarism" was a wider term, relating to the whole institution, together with all support activities and the responsibility of both individuals and States, it was essential, in making the distinction, to avoid obscurity.

23. A more effective approach would be to seek fuller agreement as to what specific activities constituted, in international law, operations relating to mercenaries under the terms of General Assembly resolution 35/48. It would be relatively easy to prove the existence of such activities, to attribute responsibility for them and to incorporate them into the criminal law systems of States. That, in turn, would generate an international obligation and impart greater force and precision to existing international law. Once that had been achieved, it might then be possible to reach agreement, in a form that was generally acceptable and applicable, on the broader concepts.

24. Mr. KAMANDA wa KAMANDA (Zaire) said that the activities of mercenaries undermined the very foundations of civilization, destroyed any relationship of trust among nations and peoples and attacked fundamental principles of humanity and should for those reasons be classified as a crime against the peace and security of mankind. The adoption of an international convention would be a major contribution to the progressive development of international law and would be fully in the spirit of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States. The use of mercenaries for the purposes of achieving political, economic or cultural domination was a direct assault on the principles of national independence and sovereignty, non-interference and non-use of force in international relations,

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(Mr. Kamanda wa Kamanda, Zaire)

which were prerequisites for international peace and security. Since a threat to peace in one region could endanger the security of the whole world, it was essential for the international community to assume the collective responsibility of eradicating such activities.

25. The draft convention submitted by Nigeria (A/AC.207/L.3) was a satisfactory working basis. It was to be hoped that Member States would not use delaying tactics and thus defer indefinitely the conclusion of the convention, using as a pretext the need to harmonize domestic criminal legislation but prove the value that they placed on the principles of the United Nations Charter by demonstrating sufficient political will to subscribe to the complete and rapid eradication of mercenarism.

26. His country categorically rejected the sterile debate concerning "good" or "bad" mercenaries; the distinction was impossible to establish since, as his own experience in the arrest and interrogation of mercenaries in eastern Zaire and in the inquiry which had given rise to the OAU Convention for the Elimination of Mercenarism had indicated, considerations other than material advantage or personal greed lay behind the activities of mercenaries. The fact that other motives were involved, such as a supposed "civilizing" mission, an anti-Communist struggle or the defence of the interests of foreign Powers, had been proved many times by the failure of their countries of origin to take action against mercenaries who had been deported instead of being tried at the scene of their activities. The responsibility of States, as well as that of individuals, in the organization or encouragement of activities designed to overthrow a government or a political system should therefore be condemned explicitly by the future convention; it was thus necessary to draw a distinction between individual and State responsibility so as to cover the whole range of activities involved, from complicity to active engagement.

27. His delegation shared the opinion that a State from whose territory bands of mercenaries carried out incursions into the territory of another State was in violation of international law as much as a State which used mercenaries in armed attacks on another State. The States in which mercenaries originated had shown a total lack of vigilance and the future convention should therefore affirm the collective duty of States to combat mercenarism and their obligation to co-operate in realizing the objectives of the convention by taking all the judicial, legislative and administrative measures necessary.

28. Mr. MUSSA (Somalia) said that the pernicious activities of mercenaries had been condemned in many instruments adopted by the international community, including the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, Security Council resolution 405 (1977) and the Convention for the Elimination of Mercenarism in Africa adopted by OAU in 1977. Such instruments, together with the various declarations adopted by the non-aligned countries and Additional Protocol I to the 1949 Geneva Conventions, should be used as the basis for a comprehensive international covenant aimed at eradicating a phenomenon which constituted a threat to the security of all peoples and was particularly damaging to smaller and weaker countries.

(Mr. Mussa, Somalia)

29. In the effort to draft such an international instrument, the working paper submitted by Nigeria (A/AC.207/L.3) was especially valuable. The approach outlined in the working paper was reaffirmed in paragraph 24 of the Ad Hoc Committee's report (A/36/43), which stressed that the international convention would be universally applied against both mercenaries and the States which recruited, used, financed and trained them.

30. It was important to emphasize that any future convention should be applicable in situations other than that of armed conflict. His delegation endorsed the view expressed by the representative of Jamaica that article 47 of Additional Protocol I to the 1949 Geneva Conventions in no way constituted an obstacle to any effort the Ad Hoc Committee might make to eliminate the activities of mercenaries. In that connexion, his delegation believed that the restrictive nature of article 1 of the Nigerian working paper should be reviewed in the light of the Ad Hoc Committee's report. In general, restrictive conditions regarding the definition of the term "mercenary" should be avoided.

31. His delegation endorsed the view expressed during the deliberations of the Ad Hoc Committee that, in order to be effective, the future convention should impose specific obligations on States, including the obligation to eradicate the activities of mercenaries and to take steps contributing to the efforts of the international community to eliminate mercenarism. States should be required to promulgate legislation making mercenarism a serious, and punishable, crime. States should also have the duty not to tolerate or organize, directly or indirectly, mercenary activities directed against the territory of another State or aimed at the suppression of the inalienable right of peoples and countries to self-determination.

32. In conclusion, his delegation expressed its support for the renewal of the Ad Hoc Committee's mandate.

33. Ms. BERBERI (Sudan) said that many African countries had suffered, both economically and in other ways, from the activities of mercenaries, and it had therefore been no surprise when, at the thirty-fourth session of the General Assembly, the delegation of Nigeria had called for the drafting of an international convention to outlaw mercenarism as a crime against peoples and a conspiracy to deprive them of their legitimate right to self-determination and territorial integrity.

34. The proper basis for such a convention was to be found in such important international instruments as the United Nations Charter, the Declaration on the Granting of Independence to Colonial Countries and Peoples, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the Definition of Aggression, the relevant Security Council resolutions on mercenaries, Additional Protocol I to the 1949 Geneva Conventions, and the decisions taken at various conferences of the non-aligned countries.

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(Ms. Berberi, Sudan)

35. Her delegation agreed with others that the Ad Hoc Committee had spent too much time on a general discussion. It hoped that in future the Ad Hoc Committee would pay closer attention to paragraph 3 of General Assembly resolution 35/48, which called for swift action on the proposed convention.

36. It was important to emphasize that the application of the convention would not be confined to Africa, although that continent had suffered more than others from the activities of mercenaries. The Convention for the Elimination of Mercenarism in Africa adopted by OAU at Kinshasa in 1977 been intended to provide a basis for a more comprehensive international agreement.

37. The first priority was to harmonize the penal codes of different countries in respect of mercenarism. It was also essential to ensure that institutions, States and organizations of States which directly or indirectly assisted the activities of mercenaries did not go unpunished. It was a regrettable fact that some countries profited from those activities, choosing to disregard the international covenants governing relations between States. The issue of the responsibility of States was a complex one which merited close scrutiny by the Ad Hoc Committee.

38. In connexion with the definition of the term "mercenary", her delegation believed that article 47, paragraph 2, of Additional Protocol I to the 1949 Geneva Conventions was totally adequate, and needed no further amplification.

39. The Ad Hoc Committee's mandate should be renewed, and she hoped that that Committee would discuss the question of the responsibility of States under the proposed convention.

40. Mr. GONZALEZ GALVEZ (Mexico) said that even before the seventeenth century writers had begun to express concern at participation in conflicts by persons not nationals of the countries involved. In 1621, Francisco Suárez had concluded that there was nothing wrong with using mercenaries in a just war. By the beginning of the twentieth century, the tide of international legal opinion had begun to turn against the unrestricted practice of recruiting and using mercenaries in armed conflicts. That shift in attitude had resulted primarily from the development of norms relating to neutrality, which prohibited the sending of mercenaries by a third State to the territory of a State party to a conflict. Recent examples of such norms were to be found in Security Council resolution 161 (1961), the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations and the Definition of Aggression, even though the latter failed to qualify the organization of mercenaries as an act of aggression.

41. Mexico was among the States that believed the Ad Hoc Committee should work towards a convention that would lay down universally binding norms. He therefore disagreed with those who, on the grounds that such a convention would only provoke endless political and legal controversy, argued that the instrument elaborated should simply provide guidelines for the harmonization of domestic criminal legislation.

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(Mr. Gonzalez Galvez, Mexico)

42. The fact that the draft convention submitted by Nigeria (A/AC.207/L.3) had not been annexed to the report of the Ad Hoc Committee (A/36/43) had caused delegations unnecessary problems. His delegation saw a distinct contradiction between articles 3 and 4 of that draft and article 7. Whereas articles 3 and 4 gave the impression that the primary purpose of the convention was to harmonize the legislation adopted and the penalties imposed by States in combating the activities of mercenaries, article 7 envisaged the existence of competent international organizations or tribunals before which the provisions of the convention could be invoked.

43. The definition of the term "mercenary" was a complex issue. In his book on mercenaries and international volunteers, Eric David had highlighted that complexity by asking whether such individuals as the Swiss guards at the Vatican, volunteers and those who fought against a colonial régime that had been condemned in United Nations resolutions were to be considered mercenaries. Virtually all the States parties to Additional Protocol I to the 1949 Geneva Conventions believed that although every country had the right to provide military assistance to another, the provision of such assistance during an internal conflict could turn such a conflict into one that was subject to international law. The definition of the term "mercenary" should take that factor into consideration.

44. The Ad Hoc Committee would have to determine what to include in the convention, whether the text should refer to the problem currently posed by the use of volunteers and whether it would have any effect on treaties or agreements governing the use of military advisers. Another question was whether the definition of the term "mercenary" contained in article 1 of the Nigerian draft was satisfactory or whether it should cover persons or States whose motives were not primarily monetary or military; mercenaries were often used in situations that were not, strictly speaking, armed conflicts. In any event, it would be difficult, if not impossible, to prove that the essential motivation was the desire for private gain or that excessive material compensation was promised. Subparagraph (a) of the definition stated that a mercenary was any person who was specifically recruited locally or abroad in order to fight "in an armed conflict". The final words should be replaced by "in a belligerent activity". Subparagraph (b) stressed that a mercenary was a person who did in fact take a direct part in the hostilities. That would exclude advisers, trainers, experts and others who took an indirect part in the hostilities.

45. According to international norms governing armed conflicts, mercenaries were not entitled to recognition as combatants or to prisoner-of-war status. An individual captured and tried as a mercenary could, under national legislation, be sentenced to death. The international community, in seeking to establish a legal framework for the elimination of mercenarism, should also provide safeguards against the sentencing to death of innocent individuals.

46. There had been some discussion in the Ad Hoc Committee regarding the advantages and disadvantages of defining mercenarism as an international crime. That was not necessary. Even if it failed to define mercenarism as an international crime, the convention could still include a provision on mandatory extradition or punishment of offenders. The question of establishing an

(Mr. Gonzalez Galvez, Mexico)

international tribunal to try such offenders was not unrelated to a proposal being considered in the Third Committee to establish an international tribunal to try those guilty of practising apartheid. The question of establishing an international tribunal for the whole range of acts already defined as international crimes could usefully be examined by the Sixth Committee. He believed that the Ad Hoc Committee's mandate should be renewed.

47. Mr. GHARBI (Morocco) said it might seem surprising that the question of the prevention and punishment of mercenarism, which was so important to international peace and security and the preservation of a minimum level of international morality, had not been placed on the General Assembly's agenda until 1980, especially since OAU had been considering the problem since the 1960s and had adopted a Convention on the subject in 1977, which his country had been among the first to sign. That Convention reflected the consensus of the African community as to what was possible and necessary in regard to the prevention and punishment of a practice which was becoming intolerable and caused most OAU members to feel concern about the present and future of the continent. In adopting it, Africa had proved its maturity and shown that although ideological abstractions and the political passions they inspired were divisive, sincere devotion to the genuine progress of law was bound to lead to unity. It was for that reason that his delegation welcomed the initiative of the Nigerian delegation.

48. The establishment of the Ad Hoc Committee had certainly been a step forward in the 20-year process aimed at strengthening international criminal law which had already found expression in the conventions on hijacking, on the protection of diplomatic agents and against the taking of hostages. The most controversial elements of the Ad Hoc Committee's initial efforts had been the definition of the term "mercenary", the content of the notion of "mercenarism", the status of mercenaries in view of the illegality of their activities and the scope of the obligations that would derive from an international convention on the subject.

49. With respect to the definition of the term "mercenary", his delegation hoped that the Ad Hoc Committee would not simply reproduce the too conveniently restrictive definition in article 47, paragraph 2, of Additional Protocol I to the 1949 Geneva Conventions, but would conscientiously try to supplement the pecuniary criterion by reference to other motives which were just as blameworthy and which reflected the growing complexity of the phenomenon of mercenarism.

50. The Ad Hoc Committee's mandate shed some light on the meaning of the term "mercenarism", showing that it encompassed a number of equally reprehensible acts which should be covered by international criminal law. It was not a purely semantic problem for the fact that the term lacked an equivalent in some languages could not hide the facts of international relations. Rather, the problem was to find a suitably strict legal definition of a notion which encompassed various activities, including those so far covered by the traditional sovereign immunity of States.

51. His delegation endorsed the definition of the term "mercenary" proposed in the Nigerian draft (A/AC.207/L.3) and fully supported the idea that the definitions of that term and the term "mercenarism" should be linked and treated in a single article, as in the OAU Convention, since mercenaries could not be disassociated from their acts. Throughout history, the pursuit of profit had been considered a sufficient incentive for the recruitment of mercenaries and had been consistently condemned for centuries. But the pecuniary motive no longer simply involved "material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions" in the armed forces of the country concerned. Inflation had had an effect, no doubt, since some contemporary condottieri lived a life of luxury and aimed at nothing less than robbing whole countries. Furthermore, the pecuniary motive was not the only motive for mercenarism: the romantic search for adventure and escape, the virile illusion of leading the full life of a man of action, in short, the eternally perverse cult of force and the dcmination of others also prompted individuals to become mercenaries.

52. By manipulating those elemental impulses, some circles believed they had found an effectively clandestine means of intervention which was both militarily and politically viable and which had so far profited from the lack of international fact-finding procedures and of an international system of prevention and punishment, the creation of which they openly discouraged. The traditional pecuniary motive was therefore being relegated to the background and replaced by the increasingly real but more covert motive of subversion, i.e., efforts to destabilize or gain control of entire countries or regions. Such perversion and degradation flouted the honourable values underlying international voluntary military service, discredited it and made it suspect since they were a constant offence to the dignity of the citizen soldier and an insult to the sacred nature of national service, particularly in domestic conflicts.

53. The draft convention's reference to subversion directed against the national unity and territorial integrity of sovereign States and its condemnation of any enterprise which would jeopardize authentic national liberation struggles should prevent useless controversy. There could be no dichotomy between "good" and "bad" hostage taking, or between "good" and "bad" mercenaries. The definition proposed in the Nigerian draft also had the advantage of approaching the question from a new angle, by attributing responsibility for international offences not exclusively to individuals, but also to groups, armed bands and even to States. There was no doubt that the crux of the offence was the act of financing, supplying, equipping, training, promoting, supporting or employing in any way individuals, bands or military forces consisting of or including persons who were not nationals of a party to the conflict or residents of a territory controlled by a contracting party, who acted for personal gain through the payment of salary or other kinds of material recompense. It would nevertheless be difficult to characterize as similar crimes of mercenarism the effective organization of armed bands of mercenaries and the publication or toleration of the publication of information on that subject, since the draft articles on State responsibility prepared by the International Law Commission provided for both quantitative and qualitative gradations.

(Mr. Gharbi, Morocco)

54. If, however, a convention against mercenarism came into effect, the whole gamut of actions preparing for and accompanying the perpetration of the offence would naturally be covered by the punitive régime established by the Convention. States would therefore be obliged to police their territories in order to end all activities connected with the principal offence. In the current state of international criminal law, the publication and free circulation of specialized journals containing advertisements giving precise information about narcotics dealers or counterfeiters were prohibited; a similar prohibition should apply to the publications and facilities which currently supported a veritable international mercenary market and should not be tolerated out of respect for individual freedom.

55. In denying the mercenary the status of prisoner of war or combatant, article 5 of the Nigerian draft placed the offense in its true context, that of international criminal law and not that of humanitarian law. Nevertheless, that exclusion should not be combined with a denial of the judicial guarantees inherent in all legal punitive systems, although humanitarian considerations were not relevant in the case of professionals in intrigue and carnage.

56. Another controversy had arisen over the régime of responsibility to be established for perpetrators of and accomplices in the offence of mercenarism. Many arguments could be adduced in support of both the idea that the State of which persons guilty of that serious offence were nationals incurred objective and absolute responsibility and the concept of individual responsibility, which, moreover, did not exclude the responsibility of a State for the acts of its organs.

57. The Committee's task was to facilitate the drafting of a practical and operational legal instrument. However, unlike other conventions forming part of international criminal law under which individual acts in themselves constituted international offences, the draft convention currently under consideration involved a challenge to a fundamental principle of the Charter - a particularly hateful use of force. There was a choice between the minimalist and most realistic approach, which stressed the harmonization of domestic criminal legislation but had the disadvantage of ignoring a fundamental aspect of the question by leaving the subversive enterprises of States unpunished, and the maximalist approach, under which the convention would establish an automatic and absolute régime of responsibility which all Contracting Parties would have to implement.

58. His delegation believed that the most prudent course would be to intensify the efforts to establish an appropriate system of mutual judicial assistance and exchange of information aimed at combating mercenarism effectively but that the convention should also oblige States parties to prevent the activities of mercenaries, which was the most crucial stage in the struggle against mercenarism. Furthermore, in accordance with current general international law, a State which has a victim of mercenarism was undoubtedly entitled to exercise the right of self-defence provided for in Article 51 of the Charter. Similarly, on the basis of its territorial and personal competence, every State must assume a double obligation: the positive one of preventing all hostile

(Mr. Gharbi, Morocco)

enterprises involving even the partial use of mercenaries, including related or preparatory actions directed against another State, and the negative one of doing nothing to promote such actions. Those complementary obligations should be codified in a separate article, as in the OAU Convention, and not diluted by a formulation that was suggestive rather than imperative.

59. He hoped that nothing would discourage or divert the efforts to eliminate a practice which threatened to make international relations revert to the most primitive and disorganized stage. The mercenary was in every respect an element of savagery in international life but his natural environment was no longer the jungle, for he took the jungle with him wherever he went.

60. The CHAIRMAN said he had received a letter from the Under-Secretary-General for Public Information referring to the comments made by the Moroccan delegation concerning press releases. The letter indicated that press releases were not substitutes for summary records; the latter were the official records of statements by delegations and there was a procedure for their correction. He recommended that delegations should submit copies of their statements to press officers in order to ensure that their views were accurately reflected in the press releases.

The meeting rose at 5.45 p.m.