



SUMMARY RECORD OF THE 21st MEETING

Chairman: Mr. CALLE y CALLE (Peru)

later: Mr. ENKHTSAIKHAN (Mongolia)

CONTENTS

ORGANIZATION OF WORK

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)

AGENDA ITEM 116: REPORT OF THE SPECIAL COMMITTEE ON ENHANCING THE EFFECTIVENESS OF THE PRINCIPLE OF THE NON-USE OF FORCE IN INTERNATIONAL RELATIONS (continued)

UN LIBRARY

NOV 12 1981

UN/SA COLLECTION

\* This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, room A-3550, 866 United Nations Plaza (Alcoa Building), and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate fascicle for each Committee.

Distr. GENERAL  
A/C.6/36/SR.21  
27 October 1981  
ENGLISH  
ORIGINAL: SPANISH

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

#### ORGANIZATION OF WORK

1. The CHAIRMAN proposed that the list of speakers for agenda item 104 should be closed the following day, Friday, 16 October, at 6 p.m., and announced that on that same day Mr. Erik Suy, Under-Secretary-General and Legal Counsel, would introduce the report on that item, entitled "Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives".

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)

2. Mrs. SILVERA (Cuba) said that her country attached special importance to the item under consideration since it believed that the adoption of international measures for the elimination of mercenary activities would undoubtedly assist countries in their efforts to suppress that crime.

3. Cuba, for its part, had adopted in February 1979 a new Penal Code, article 127 of which clearly defined the offence of mercenarism and specified the penalties applicable, which included the death penalty. Cuba hoped in that way to help to suppress and punish that odious practice, which still plagued countries in Africa, Asia, Latin America and the Caribbean, and to assist the long, determined struggle of national liberation movements against the colonial and neo-colonial system. As such movements gained ground they were met by the use of mercenaries to oppose by force the liberation processes of peoples, the stability of officially constituted Governments and anything that might stand in the way of the lust of imperialist countries for wealth and political domination. A number of delegations, while endorsing the drafting of a convention along the lines proposed, were putting up obstacles, reservations and exceptions which cast doubt on the political will which motivated them. In fact, it was undoubtedly to the advantage of some countries to cover up the role they had played with regard to the activities of mercenaries and in consequence to oppose the constraints which might be imposed by a universal convention.

4. Cuba, for its part, considered that article 47 of Additional Protocol I to the 1947 Geneva Conventions could not be incorporated into the proposed convention because its legal nature and scope were not the same as those of the convention. The Protocol dealt only with armed conflicts of an international nature, whereas the convention was intended to establish a universally applicable and binding rule for all States which acceded to it. What was intended therefore was a fundamental rule, not a secondary or supplementary one. Moreover, article 47 of Additional Protocol I was limited in that it did not contain a specific definition of mercenaries or their activities, which were to oppose by armed violence national liberation processes and perpetuate oppression, and colonial, neo-colonial and racist exploitation. In addition, the text of the Protocol did not define the responsibility of associations or organizations which operated freely with the consent of States, or the responsibility of States which allowed such activities to be carried out in their territories or which organized, supplied, equipped,

(Mrs. Silvera, Cuba)

trained, promoted and provided transit, transport and other facilities to mercenaries with the sole aim of obtaining political advantage by means of such criminal methods. Although Cuba had joined in the consensus that had led to the adoption of article 47, her delegation felt constrained to express its disagreement with those who maintained that the definition it contained could be included in the future convention. It considered, moreover, that the convention should establish a clear distinction between the activities of volunteers and national liberation movements, on the one hand, and the criminal activities carried out by mercenaries, on the other, and it was relevant to recall in that connexion General Assembly resolution 2395 (XXIII), 2465 (XXIII), 2548 (XXIV) and 3103 (XXVIII), which declared the use of mercenaries against national liberation movements to be a criminal act and mercenaries themselves to be criminals.

5. The use of mercenaries was a matter of critical importance at the current time since terrorist groups existed in various places, including Florida in the United States, where groups of Cuban terrorists were receiving training of every kind for an invasion of Cuba. Mercenaries had also been sent to Angola, Guinea-Bissau, Congo, Nigeria, Benin, Mozambique, Nicaragua and Grenada, among others, with the co-operation and consent of the Governments of countries which pursued a policy of recruiting mercenaries and financing their activities.

6. For all those reasons, Cuba believed that the convention should contain provisions prescribing the measures which States should adopt to combat mercenarism. For its part, Cuba would support and co-operate with the Ad Hoc Committee and, towards that end, would submit in due course proposed amendments to the articles under consideration.

7. Mr. LUU DINH VE (Viet Nam) said that national liberation movements and the struggle of peoples for freedom, independence and fundamental social changes had made great strides in recent years. However, the warmongering forces of imperialism, colonialism and international reaction had not resigned themselves to the overthrow of their empires and were attempting by every means to regain their lost positions. To achieve their aims, they had found it necessary to resort to mercenaries, and the world had thus witnessed with indignation recent cases in which mercenaries had been used against the peoples of Africa and Asia, and in South Africa to drown in blood the legitimate struggles of the peoples of Namibia and South Africa, as well as operations carried out by mercenaries against Angola, Mozambique and other front-line countries, the attack by mercenaries on Benin and, especially, the undeclared war against the Democratic Republic of Afghanistan.

8. The Vietnamese people steadfastly condemned the use of mercenaries against the independence and freedom of peoples and the sovereignty and territorial integrity of States, and regarded mercenarism as a threat to the integrity of many recently independent States and to international peace and security, and as a blatant violation of the fundamental principles of the Charter. It therefore believed that the use of mercenaries should be universally declared illegal in an international legal instrument to suppress and punish the use of mercenaries. An international convention was therefore necessary for that purpose and would undoubtedly make a positive contribution to the codification and progressive development of international law.

(Mr. Luu Dinh Ve, Viet Nam)

9. Various instruments adopted at the regional and global levels already existed establishing the illegality of the use of mercenaries, among which mention should be made of the 1977 Convention for the Elimination of Mercenarism in Africa, the declarations and recommendations of the International Commission of Enquiries on Mercenaries, which had met in Luanda in 1976, the declarations issued by the non-aligned countries at their summit meetings at Cairo (1965), Colombo (1976) and Havana (1979), and the various resolutions of the United Nations General Assembly condemning the use of mercenaries by racist colonial régimes against national liberation movements struggling for freedom and independence. Moreover, with the adoption in 1977 of article 47 of the Additional Protocol I to the Geneva Convention, the use of mercenaries had once again been declared illegal.

10. In his delegation's view, in order to be effective, the future convention would have to be based on the principles set forth in the Charter and the legal instruments to which he had referred, and should be drawn up in such a way as to apply to both mercenaries and States which recruited, financed and used them. The convention should impose on States parties specific obligations, including the obligation to put an end to the activities of mercenaries, should expressly define the use of mercenaries as an international offence and prescribe severe punishment for mercenaries and those who used them.

11. It was essential for the convention to make a distinction between mercenaries and international volunteers who assisted peoples struggling for their freedom and independence. The activities of the latter should be declared legal, since their support was in keeping with the principle of self-determination and individual or collective self-defence within the meaning of Article 51 of the Charter.

12. The definition contained in paragraph 2 of article 47 of Additional Protocol I to the 1949 Geneva Conventions, which had been used in article 1 of the working paper submitted by Nigeria (A/AC.207/L.3), did not fully serve the objectives of the future convention or reflect current realities, since it specified that mercenaries could not be citizens or residents of the country in whose territory they were fighting. However, there was an ever-growing number of cases in which mercenaries were citizens or inhabitants of the countries in which they were operating. In recent years in Indo-China a new kind of mercenary had emerged, recruited by imperialists and hegemonist reactionaries among Indo-Chinese themselves, particularly among refugees who had left their country as a result of the war, economic difficulties or imperialist manoeuvres aimed at promoting illegal factions. That kind of mercenary was particularly dangerous to the countries that were victims of their activities. In The New York Times of 20 May 1981, there had been criticism of the existence of a camp for the training of Lao mercenaries. The Vietnamese people, like other peoples, had suffered a great deal as a result of the activities of that new kind of mercenaries and, accordingly, in order to put an end to such suffering and make a positive contribution to the drafting of the convention, his delegation believed that the definition of the term "mercenary" should be expanded to encompass all types of mercenaries so as to take current realities into account.

13. Mr. KUMI (Ghana) said that, although the Ad Hoc Committee had not been able to cover much ground during its first session, issues had been identified clearly and its members had made some effort to discharge the task entrusted to them by the Assembly in resolution 35/48 of 1980.

14. His delegation considered that the working paper submitted to the Ad Hoc Committee by the delegation of Nigeria (A/AC.207/L.3) could serve as a basis for the future work of that Committee, and it was therefore surprised that the paper had not been included in the report before the Sixth Committee. His delegation agreed in principle with the Nigerian draft, which contained the basic elements that, in its opinion, should be covered in the convention, namely, the definition of mercenarism, establishment of liability in all cases, the drawing of a distinction between responsibility of individuals and responsibility of States, a decision that mercenaries should not be treated as prisoners of war and that the convention should not be construed as impeding self-determination of peoples under colonial rule, and a provision stating that States were obligated to combat mercenary activities.

15. Article 47, paragraph 2, of Additional Protocol I to the 1949 Geneva Conventions had characterized mercenaries by their desire for private gain and by the fact that they were not nationals or residents of the territory in which they fought. Article 1 of the Nigerian draft also contained the two basic elements found in article 47 and, in general, endeavoured to improve on the definition contained in the Protocol. However, he wondered whether the inclusion of the words "fight in an armed conflict" in the Nigerian draft might not unduly restrict the nature and scope of the proposed convention.

16. He rejected the argument that criminal law could not admit of the word "mercenarism", because law was not static and legal norms must be receptive to new ideas if legislation was to develop in any meaningful way. His delegation accordingly supported the basic approach of article 11 of the Nigerian draft.

17. Article 5 was very controversial because, although mercenaries were undoubtedly not lawful combatants and could not be treated as prisoners of war, the future convention should provide for their humane treatment; accordingly, article 11 should be so construed as to cover that humanitarian concern.

18. His delegation, like that of Jamaica, could not subscribe to the notion that there were good and bad mercenaries, and it believed that the provisions of the proposed convention should not in any way be construed as preventing States from offering assistance to national liberation movements.

19. Finally, his delegation supported the renewal of the Ad Hoc Committee's mandate.

20. Mr. BUBEN (Byelorussian Soviet Socialist Republic) expressed the view that mercenary activities were a manifestation of imperialist policy and posed a threat to international peace and security. His delegation had accordingly been among the sponsors of various United Nations resolutions on the subject and had supported all anti-colonialist General Assembly resolutions which had denounced the use of mercenaries. Likewise, on various occasions, his delegation had expressed its satisfaction at General Assembly resolution 35/48, which reflected the proposal of the African countries to draft a convention which would impose specific obligations with respect to combating mercenary activities.

(Mr. Buben, Byelorussian SSR)

21. Two contradictory approaches had been adopted in the work of the Ad Hoc Committee appointed by the General Assembly to draft the convention. The socialist and non-aligned countries were supporting the urgent drafting of a convention to put an end to mercenary activities. However, a minority, consisting of the Western countries, wished to restrict the work to a series of comparative law studies, the outcome of which would be the mere harmonization of legislation, thereby reducing the issue solely to a question of terminology.

22. In his delegation's view, the international community required not only studies, but a legal instrument that would be truly effective in combating mercenary activities. Imperialist and hegemonistic forces were taking advantage of the existing situation to annihilate the national liberation movements, to interfere in the internal affairs of other countries, and to destabilize independent States, as witnessed by the use of mercenaries in acts of aggression against the Namibian people and in support of the separatist movements in Angola.

23. The future convention should clearly define mercenary activities as illegal because they violated the fundamental principles of the United Nations Charter and undermined the Declaration on the Granting of Independence to Colonial Countries and Peoples and the Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States.

24. General Assembly resolution 34/140 described mercenarism as a threat to international peace and security which, like murder, piracy and genocide, was a universal crime against humanity. Likewise, the use of mercenaries against another country had been included in the Definition of Aggression adopted by the General Assembly at its twenty-ninth session.

25. Lastly, the future convention should draw a clear distinction between the responsibilities vis-à-vis the international community of States which permitted mercenary activities and the responsibility of individuals who participated in such activities.

26. Under its terms of reference as set forth by the General Assembly in resolution 35/48 the Ad Hoc Committee was to draft the convention at the earliest possible date. In order to achieve that objective, his delegation supported the renewal of the Ad Hoc Committee's mandate in the hope that it would be able to make substantial progress at its next session.

27. Mr. SHAH (Pakistan) urged that efforts to deal with international terrorism should not overlook the activities of soldiers of fortune, and should recognize the threat they posed to the peoples of the third world struggling to free themselves from colonial domination. That threat was no longer a regional issue, but had assumed international proportions.

28. The gravity of the situation in Africa had highlighted the need for the international community to take urgent measures in that connexion. As early as 1967, the conference of Heads of State and Government of OAU had demanded the immediate withdrawal of all mercenaries from the Congo. Nine years later, the

(Mr. Shah, Pakistan)

OAU Council of Ministers had adopted the draft convention for the elimination of mercenaries on the basis of a 1972 draft. The proposals made by Nigeria and other African countries, with the support of his delegation, to the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, and the definition of mercenaries in article 47 of Additional Protocol I to the Geneva Conventions had marked further important stages in the process which had culminated in the establishment of the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries, pursuant to General Assembly resolution 35/148.

29. He congratulated the Nigerian delegation on the draft it had submitted to the Ad Hoc Committee (A/AC.207/L.3). He hoped that it would be possible to find a compromise solution by which to reconcile the divergent views. Article 47, paragraph 2, of Additional Protocol I to the 1949 Geneva Conventions, in his opinion, provided a good basis for defining the term "mercenary", but the positions of all delegations with respect to the general approach of the convention needed further examination if the Ad Hoc Committee was to arrive at an instrument which would be acceptable to the whole international community.

30. His delegation would contribute in every possible way to the achievement of that objective and, in that connexion, it believed that the mandate of the Ad Hoc Committee, which would have the task of codifying international law into a set of definite and easily ascertainable legal principles to put an end to mercenary activities, should be renewed.

31. Mr. KOSTOV (Bulgaria) said that his delegation had welcomed the initiative by Nigeria and other non-aligned countries to draft an international convention against the recruitment, use, financing and training of mercenaries and had participated actively in the work of the Ad Hoc Committee in the belief that mercenary activities were a serious impediment to peoples fighting for their national liberation and against all forms of colonialism, racism and foreign domination.

32. It was logical that the Ad Hoc Committee should have encountered difficulties in its work, given the complexity of the issue. With regard to the scope of the future convention, his delegation was convinced that it would not be possible to put a stop to the activities of mercenaries simply by harmonizing States' national legislation. Moreover, the international instrument that was finally adopted would have to make a clear distinction between the responsibility of States that participated in mercenary activities or tolerated such activities in their territories, the responsibility of individuals who were accomplices to the recruitment, use, financing and training of mercenaries, and the responsibility of mercenaries themselves. In that connexion, he hoped that at its next session the Ad Hoc Committee would discuss in depth article 7 of the draft submitted by Nigeria and analyse carefully the situation of the State as a sovereign subject of international law in order to determine the limits of its liability in the matter. The amendments mentioned by the representative of Nigeria might prove useful in shedding light on that question.

33. Another particularly complex issue was the definition of the term "mercenary" as distinct from that of national freedom fighter. Article 1 of Nigeria's draft

/...

(Mr. Kostov, Bulgaria)

reproduced, with some changes, the wording of article 47, paragraph 2, of Additional Protocol I to the Geneva Conventions. In order to harmonize terminology, account must be taken of the fact that mercenaries could be used even in peacetime, a possibility not provided for in article 1 (a) of Nigeria's working paper which referred only to situations of "armed conflict". Further consideration would also have to be given to subparagraph (b) which dealt with mercenary participation in "hostilities".

34. No other serious objections should be made to article 1. Rather, emphasis should be placed on subparagraph (c) of that article, which referred to mercenaries' selfish motivations and excluded political motivations. That provision not only helped to define what mercenaries were like but was also useful when it came to dealing with the subject of extradition.

35. His delegation hoped that the Ad Hoc Committee would make significant progress at its next session and was prepared to co-operate with it in order to ensure that the convention was soon drafted.

36. Mr. Enkhsaikhan (Mongolia) took the Chair.

37. Mr. LAMAMRA (Algeria) said that mercenarism was a direct cause of serious attempts against international peace and security and it was natural therefore that there should have been international reaction against it. In that spirit, his delegation had participated in the first session of the Ad Hoc Committee in the desire to make its contribution to enhancing the effectiveness of international law. The African continent, for its part, as the preferred victim of mercenaries' aggressive manoeuvres had already reacted against that course with the adoption by the Organization of African Unity of the Convention for the Elimination of Mercenarism in Africa.

38. His delegation believed that the concept of mercenarism should be included in the future convention and be one of its corner-stones, for mercenarism was a social-political reality of international life and the progressive development and codification of international law could not be allowed to suffer from a failure to recognize in time that such an activity existed. Mercenarism was a lifestyle that called for the condemnation of not only the mercenary himself but also the individuals or bodies corporates that resorted to it, and the convention must be conceived and drafted to account for both those aspects. The concept of mercenarism covered at least the four activities of recruitment, use, financing and training of mercenaries and would also cover the offence which the individual himself committed in enlisting as a mercenary and participating in hostilities or acts of subversion in the circumstances described in numerous international instruments.

39. The definition of "mercenary" already appeared in article 47 of Additional Protocol I to the 1949 Geneva Conventions, but that definition was based on an approach that was appropriate for humanitarian law but was clearly inappropriate if transposed and incorporated into a general instrument. Although that definition referred to the private nature of the individual's enlistment, the fact that he was a foreigner and his motivation, no connexion was made between



(Mr. Lamamra, Algeria)

recruitment and the cause which the mercenary was to defend, which was the best criterion for distinguishing the mercenary from the international volunteer. It was the legitimacy and international legality of the cause to be defended that in international law absolved the volunteer and condemned the mercenary.

40. The rights and obligations of States with regard to mercenarism derived from the Charter of the United Nations, from the principles of the sovereignty of States, the non-use of force and the right of peoples to self-determination. The latter principle, which was the very foundation of decolonization, was actively protected by international law; within the United Nations, that protection took the form of functions and institutions designed to guarantee that all peoples affected by the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples were able to exercise their right to self-determination. In that connexion, he wished to refer to the fifth paragraph of the fifth principle of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, which was contained in the Annex to General Assembly resolution 2625 (XXV). It could be deduced from the above that a volunteer who fought in the ranks of a national liberation movement was pursuing a lawful activity while an individual who participated in a war against a people which was struggling to exercise its right to self-determination was acting illegally. Third States had an obligation to prevent their nationals from enlisting in the military and paramilitary forces of colonial Powers and, at the same time, an obligation not to discourage those of their nationals who wished to participate in a legitimate national liberation struggle.

41. The Security Council had, particularly by its resolution 405 (1977) adopted after the aggression against the People's Republic of Benin, confirmed the characterization of act of aggression which other General Assembly instruments, in particular the Declaration on Principles of International Law concerning Friendly Relations and Co-operation Among States and the Definition of Aggression, had permitted to be applied to the use of mercenaries in circumstances such as those of the subversive operation against Cotonou in January 1977. He wished to point out that, by its resolution 419 (1977), the Security Council had taken note of Benin's desire to seek compensation for the damages suffered as a result of that aggression. Contemporary international law thus provided that national State courts should subject to due process of law individuals who were guilty of the crime of mercenarism and recognize the legitimacy of claims for compensation presented by the victims. In that connexion, the Draft Code of Offences against the Peace and Security of Mankind adopted by the International Law Commission in 1954 characterized as an offence the fact that the authorities of a State organized or permitted the organization in their territory of "armed bands" for incursions into the territory of another State, and the expression "armed bands" was clearly synonymous with the term "mercenaries".

42. States thus had an obligation under the Charter of the United Nations itself not to recruit, use, finance or train mercenaries. They also had an obligation to prevent the recruitment of mercenaries and the departure of mercenaries from their territory or a territory under their jurisdiction. The Security Council had already referred to that obligation in its resolution 161 (1961) and had extended

(Mr. Lamamra, Algeria)

it to the transit of mercenaries through States' territory. According to the arbitral award in the Alabama case, due diligence required that States prevent their territories from serving as a point of departure for a mercenary expedition with the same vigilance and the same means that they would use to prevent an operation of the same nature directed against them. States must therefore adopt all the necessary legislative measures and mobilize all the necessary human and material resources to that end and must also make provision in their criminal legislation for mercenaries to be brought to trial or extradited.

43. The convention must finally resolve the question of the status of mercenaries. Article 47, paragraph 1, of Additional Protocol I to the Geneva Conventions stated that mercenaries were not entitled to combatant or prisoner of war status. In the interests of justice, however, any accused must be guaranteed a fair trial which established the facts and determined the truth.

44. Some delegations believed that the sole purpose of the convention was to harmonize States' criminal law with regard to the recruitment, financing, training and use of mercenaries. It must be recognized, however, that that would only provide a basis for parties to afford one another judicial assistance and would belittle the purpose for which the Ad Hoc Committee had been established. A method must be adopted which took into account the seriousness of mercenarism and enabled the convention to serve as a means of eradicating it. His delegation supported the renewal of the Ad Hoc Committee's mandate.

45. Mr. KRIZ (Czechoslovakia) said that the discussions held in the Ad Hoc Committee and the Sixth Committee had demonstrated the need to draft an international convention against the recruitment, use, financing and training of mercenaries. The initiative undertaken by the delegation of Nigeria in that regard had received widespread support in the Ad Hoc Committee.

46. Mercenarism was a despicable means used by the forces of international reaction to oppose the course of history and the success of the national liberation movements. It was also a threat to the stability and independence of those States which had recently been liberated from colonial subjugation.

47. With regard to the opinions expressed in the Ad Hoc Committee, his delegation supported the idea of abandoning the general discussion and proceeding to the drafting of specific provisions. In formulating those provisions, it was necessary to take as a starting point the purpose of the convention, which was to eliminate mercenarism, and to bear in mind that in order to be effective, the convention would have to state that use of mercenaries was an act contrary to international law and that mercenaries were criminals and characterized as such in several legal texts which already existed.

48. The definition of a mercenary could be based on article 47 of Additional Protocol I to the 1949 Geneva Conventions, but that definition should not be construed in such a way that it could be used against national liberation movements. Furthermore, in order to be effective, the convention should not only provide for the prosecution of individuals responsible for acts of

(Mr. Kriz, Czechoslovakia)

mercenarism, but should also establish the obligation of States to take all necessary measures to put an end to the recruitment, use, financing and training of mercenaries. States had the obligation to prevent such activities from taking place in their territory and would incur responsibility if they failed to comply with those obligations. The convention should also state that mercenarism was a crime against humanity and a threat to international peace and security. That was borne out by the experience of various countries in Africa, Asia and Latin America, which had been the victims of the activities of mercenaries. Lastly, his delegation supported the renewal of the Ad Hoc Committee's mandate.

49. Mr. TRAORE (Togo) reiterated his delegation's total support for the drafting of a convention which would save present and future generations from the scourge of the activities of mercenaries, as defined in General Assembly resolution 35/48. His country's interest in that subject was due, on the one hand, to its love for peace, which was the basis of its domestic and foreign policy, and, on the other hand, to the fact that it had almost been the victim of the criminal activities of the bands of hired murderers which spread destruction throughout the newly independent African countries.

50. His country had participated in the work of the Ad Hoc Committee as an observer and hoped to become a member of the Ad Hoc Committee the following year in accordance with rules of procedure of the African Group. Although it had not been possible to achieve a consensus within the Ad Hoc Committee, which would probably have to face numerous obstacles in the future, it was certainly necessary to deal with the problem of mercenarism resolutely and to find appropriate solutions as quickly as possible.

51. Aside from being a legal and political problem, mercenarism was basically a very profitable commercial activity, a business which was discussed and on which agreement was reached between its principal beneficiaries, the arms dealers.

52. The future convention should be unambiguous and contain a precise and complete definition of the term "mercenary" which would not necessarily imply the existence of an armed conflict or be based on that concept. The convention should consider as a mercenary any person recruited for remuneration in order to carry out in a country armed action designed to disturb peace and security.

53. Mercenaries should be punished as criminals and judged in accordance with the national laws concerning the security of the State. States should have the necessary judicial means to oppose the recruiting, training and financing of mercenaries in their territory and should also include in their criminal legislation the necessary measures for preventing their nationals from enlisting as mercenaries.

54. The future convention should also contain the necessary provisions which would allow a State which had been the victim of action by mercenaries to demand reparation from the countries which had incurred responsibility for crimes committed by the mercenaries and should provide for the possibility that the international community, on the basis of international solidarity, might provide assistance to countries which were victims of acts of aggression committed by mercenaries. His delegation hoped that the convention would be completed as soon as possible.

55. Mrs. HAMMOND (Liberia) said that the daily threat to international peace and security posed by the activities of mercenaries required the elaboration of an international convention against the recruitment, use, financing and training of mercenaries in accordance with General Assembly resolution 35/48.

56. The past 30 years had witnessed the resurgence of mercenarism, which violated the fundamental principles of the United Nations Charter, including the principle of non-interference in the internal affairs of States. Africa, like other parts of the world, had suffered from the aggressive acts and crimes of mercenaries financed by certain States which wished to perpetuate their imperialist domination of weaker and smaller States.

57. Her delegation was convinced that the elaboration of an international convention which prohibited such activities would be the best means of eliminating them. Steps had already been taken in that regard, at the regional level, as was demonstrated by the Convention for the Elimination of Mercenarism in Africa, adopted in 1977 by the Organization of African Unity, and the declarations of the non-aligned countries formulated in Cairo (1965), Colombo (1976) and Havana (1979). In drafting of the future convention account should be taken of those legal instruments as well as national legislation and resolutions and declarations adopted at the international level and in the United Nations.

58. A clear distinction should be made between the activities of mercenaries and those of the international volunteers or fighters of national liberation movements, who gave support to the people in their struggle for national independence. The latter would come under the provisions of Article 51 of the United Nations Charter, which established the concept of individual or collective self-defence.

59. As an additional clarification of the definition of the term "mercenary", her delegation recommended that it should include the category of mercenaries who were not recruited in exchange for pecuniary benefits, but who, because of selfish aims, intended to destabilize a political entity. The convention should declare that mercenaries were criminals. That would discourage and prevent the recruitment, use, financing and training of mercenaries by persons, groups or States which sought to interfere in the internal affairs of other sovereign States. The States themselves would be committed to honouring their international obligation by preventing or punishing the activities of mercenaries in accordance with the convention. Although her delegation supported the principle that mercenaries should not be given the status of prisoners of war, it felt that they should be treated in a just and humane manner.

60. Liberia fully supported the draft convention submitted by Nigeria, and in the belief that it would provide a good basis for the future work of the Ad Hoc Committee was in favour of renewing the Committee's mandate so that it could continue its work and produce a draft which would be acceptable to all.

61. Mr. RAHMAN (Bangladesh) said that because the activities of mercenaries were contrary to fundamental principles of international law, such as those relating to non-interference in the internal affairs of States, and territorial integrity and independence, and also impeded the process of self-determination of peoples

(Mr. Rahman, Bangladesh)

struggling against colonialism, racism and apartheid, the General Assembly in resolution 35/48 had set up the Ad Hoc Committee and had assigned it the task of drafting a convention on that topic at the earliest possible date.

62. There was almost unanimous agreement that the drafting of an instrument which would significantly contribute to the strengthening of the United Nations Charter and international peace and security was relevant and timely.

63. From its very inception, the Non-Aligned Movement had sought to counter all forms of overt or covert interference in the internal affairs of States, and the recent Conference of Ministers for Foreign Affairs of Non-Aligned Countries had declared its support for the Ad Hoc Committee.

64. Although it was true that the first session of the Ad Hoc Committee had not produced the expected results, it had contributed to a better comprehension of important aspects of the question under consideration. His delegation hoped that the current debate in the Sixth Committee would help to overcome the basic problems, such as those relating to the definition of the terms "mercenary" and "mercenarism". His delegation favoured the concept embodied in article 47 of Additional Protocol I to the Geneva Conventions, although it felt that it might need further elaboration, and considered that the future convention should include an appropriate reference to the responsibility of States. His delegation sincerely believed that the Ad Hoc Committee could finish its work successfully on the basis of a more flexible and realistic approach, and therefore supported the renewal of its mandate.

AGENDA ITEM 116: REPORT OF THE SPECIAL COMMITTEE ON ENHANCING THE EFFECTIVENESS OF THE PRINCIPLE OF NON-USE OF FORCE IN INTERNATIONAL RELATIONS (continued)  
(A/36/41, 116, 388, 415, 446, 526 and 556; A/C.6/36/L.3 and Corr.1)

65. The CHAIRMAN announced that the Libyan Arab Jamahiriya had joined the sponsors of draft resolution A/C.6/36/L.3 and Corr.1.

The meeting rose at 1.05 p.m.