United Nations
GENERAL ASSEMBLY
THIRTY-FIFTH SESSION
Official Records*

SIXTH COMMITTEE
21st meeting
held on
Wednesday 15 October 1980
at 3 p.m.
New York

SUMMARY RECORD OF THE 21st MEETING

Chairman: Mr. KOROMA (Sierra Leone)
later: Mr. KIRSCH (Canada)

CONTENTS

Distr. GENERAL
A/C.6/35/SR.21
20 October 1980
ORIGINAL: ENGLISH

The meeting was called to order at 3.20 p.m.

AGENDA ITEM 29: DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES: REPORT OF THE SECRETARY-GENERAL (continued) (A/35/366 and Add.1 and 2)

1. Mr. SALLAM (Yemen) said that his delegation regarded the item under consideration as one of great importance to the development of international relations. His country had itself experienced mercenary aggression, and was therefore fully aware of the urgent need to find a solution to the problem. Mercenaries, protecting the interests of imperialist countries, had often endeavoured in the past to destroy the régimes of newly independent countries and to impede their development. Their activities, supported by foreign countries, were aimed at colonial domination and at undermining the sovereignty of the developing countries.

2. It was important to realize that the problem of mercenarism was by no means confined to the past, and that the continent of Africa was still a prey to mercenary activities and racist crimes against the legitimate national aspirations of African peoples. In particular, the Pretoria régime was still supported by mercenaries in its continuing attempt to retain its hold over Namibia. Failure to take action against the financing and training of mercenaries would mean standing aloof from the struggle against terrorism. His delegation would therefore support any measure which the international community might adopt in the effort to win that struggle.

3. Mr. VIÑAL (Spain) said that the renewed prominence in Africa of mercenaries, coinciding with the struggle to attain self-determination and independence, had helped to heighten public awareness of the need to define the international legal status of mercenaries. The activities of mercenaries had been repeatedly condemned in resolutions of the General Assembly, the Security Council and the Organization of African Unity. Among the international instruments which reflected the international concern with the problem were Additional Protocol I to the Geneva Conventions of 12 August 1949, relating to the protection of victims of international armed conflicts (A/32/144, annex I) and the OAU Convention for the Elimination of Mercenaries in Africa. Even more recently, the Government of Nigeria had submitted to the General Assembly for its consideration a draft International Convention against the Activities of Mercenaries (A/35/366/Add.1, pp. 10-16).

4. Article 1 of the draft Convention, containing the definition of a mercenary, was taken from article 47, paragraph 2, of Additional Protocol I to the Geneva Conventions. Although one of the criteria laid down in the definition in the Protocol was that the person should be motivated essentially by the desire for private gain, the line between the mercenary proper and the international volunteer was not clearly drawn. The international volunteer was a foreigner who was motivated by political ideology to enlist voluntarily with a belligerent to take a direct part in the hostilities. The mercenary, on the other hand, was

(Mr. Viñal, Spain)

motivated solely by the desire for private gain and enlisted on the basis of a promise of material compensation. Some writers failed to make a distinction between the two. Others further confused the issue by describing those who would properly be termed "mercenaries" as "irregular bands", "hostile expeditions", "pseudo-volunteers" and "disguised volunteers". Some representatives at the fourth session of the Diplomatic Conference on Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts had argued that the activities of mercenaries, in the current context of international politics, were becoming increasingly political and subversive. Others again had referred to a new breed of "ideologically-motivated mercenary", without making the theoretically precise distinction between "volunteers" and "mercenaries" any clearer. When the criterion of motivation by private gain was replaced by that of motivation by political ideology, the problem of differentiating between the "political mercenary" and the "volunteer" still remained. What was needed was a unified terminology and a greater correlation between the terminology used and the concepts involved, on the basis of etymological premises. A determination of the difference, if any, between "international volunteer" and "mercenary" would help to clarify some of the ambiguities contained in article 47 of the Protocol.

5. With reference to article 2 of the draft International Convention, he noted that the word "mercenarismo" did not exist in Spanish. That article was taken partly from the OAU Convention for the Elimination of Mercenaries in Africa and partly from the International Convention against the Taking of Hostages. There might be problems of co-ordination between article 2, as currently worded, and article 1 of the draft. Article 1 defined as a mercenary "any person" who met certain criteria. Article 2, paragraph 1, referred to an "individual, group or association, or body corporate". While the activities referred to in the respective articles were different, it was still unclear whether two complementary or mutually exclusive fields of application were contemplated. A further clarification would afford a clearer understanding of the role of articles 1 and 2 in the draft International Convention as a whole.

6. His delegation had no difficulty in principle with article 5 of the draft. It might be useful, however, to include a reference to articles 43, 44 and 45 of Additional Protocol I, concerning the combatant and prisoner-of-war status. Although his delegation agreed that mercenaries should not be accorded prisoner-of-war status, it felt that, on humanitarian grounds, they should be given the minimum fundamental guarantees referred to in article 75 of the Protocol.

7. His delegation was grateful to the Nigerian Government for the draft International Convention; it would be extremely useful to the Sixth Committee and would eventually, together with the other relevant international instruments, help to put an end to the activities of mercenaries, which Spain vigorously condemned. His delegation would be willing to participate in any working group established under item 29.

8. Mr. CORREIA (Angola) said that the views expressed by a number of Governments, and the statements already made in the discussion on item 29, showed clearly the international community's determination to spare no effort to tackle the problem of the use of mercenaries in international relations.

9. The General Assembly had explicitly condemned the use of mercenaries and had adopted a number of resolutions requesting all States without exception to adopt laws to make the recruitment, financing and training of mercenaries a punishable offence. The problem of mercenarism had also been addressed by the Organization of African Unity at the summit conferences of Heads of State and Government held at Kinshasa in 1967 and Addis Ababa in 1971, and by other international organizations. However, his country had been the first to take action in the matter by establishing a Tribunal, which in 1976 had tried a group of mercenaries in the service of imperialism who had attempted to thwart the Angolan revolution and overthrow the MPLA. The Luanda trial was of particular importance in that it had been the first time that a group of mercenaries, and mercenarism itself as a criminal practice, had been put on trial.

10. In taking the initiative of setting up the International Commission on Mercenaries, his country had recognized the need to formulate an international instrument against the crimes of mercenaries. In so doing, it was acting not only on its own behalf but also on behalf of the peoples of other parts of the world who had been victims of the scourge of mercenarism.

11. Throughout the trial his country's People's Revolutionary Tribunal had scrupulously observed the principle of nullum crimen sine lege, a principle which was embodied in his country's Constitution and had been reaffirmed in the decree establishing the Tribunal. At the conclusion of the trial, the International Commission had stated that the proceedings had been conducted in conformity with due process of law and with total respect for the rights of the defence.

12. His country's Government had also made a crucial contribution to the drafting and adoption of the OAU Convention for the Elimination of Mercenaries in Africa, a Convention to which it was already a party.

13. His delegation was convinced that the drafting of an international instrument to outlaw the use of mercenaries was timely, and he endorsed the view expressed by a number of delegations that the General Assembly should establish an ad hoc committee to draft the relevant international convention. The draft Convention submitted by the delegation of Nigeria reflected the position taken by OAU and would provide a satisfactory basis for the ad hoc committee's work.

14. His delegation believed it was essential for the convention to contain provisions on the liability of States which failed to prevent the recruitment, financing and training of their nationals as mercenaries. Although there were

(Mr. Correia, Angola)

inherent difficulties in such provisions, by virtue particularly of the lack of international penal legislation which would render States accountable, the international community should endeavour to establish an appropriate framework.

15. His delegation believed that the Sixth Committee was the most suitable forum in which to tackle the difficult task of elaborating an international convention against the activities of mercenaries, and hoped to assist the Committee in its deliberations by circulating, at the appropriate time, the documents concerning the work of the International Commission on Mercenaries convened at Luanda in June 1976. The documents outlined his Government's basic position on the item under discussion and contained the draft Convention prepared by the International Commission.

16. Mr. Kirsch (Canada) took the Chair.

17. Mr. ADJOYI (Togo) said that his country had experienced directly the phenomenon of mercenarism, for an attempt had been made by dissident elements to overthrow the Government of President Eyadéma with the aid of mercenaries. The fact that the attempt had been thwarted through the co-operation of friendly countries showed that solidarity between States could play a constructive role in discouraging recourse to mercenaries.

18. His country fully supported the idea of drafting an international convention against the recruitment, use, financing and training of mercenaries, as defined in General Assembly resolution 34/140. His delegation considered that the criminal activities of mercenaries constituted a permanent threat to world peace and security, and had therefore suggested, during the discussion on the organization of work, that the Committee should consider item 29 in conjunction with item 102, concerning the draft Code of Offences against the Peace and Security of Mankind.

19. There were innumerable examples in African history of the destructive activities of mercenaries and the desolation and misery they caused. The countries affected had not only forfeited the peace and security they had gained at so great a cost, but had been deprived of the benefits of their struggle for development. Not until the threat of such invasions was removed would African countries be able to mobilize all the resources needed for tackling the real problems confronting them, particularly in the fields of food, education, health, housing and industrialization. At the same time, foreign capital would not be invested in those countries while the climate of insecurity created by the threat of mercenarism remained. The irony of the situation was that the investors and the mercenaries often belonged to the same country.

20. In the struggle against mercenarism, the OAU Convention for the Elimination of Mercenaries in Africa should be considered as an important step forward. However, often the mercenaries themselves were not nationals of African countries,

(Mr. Adjoyi, Togo)

and their activities were not confined to Africa alone. It was therefore necessary to elaborate a broader convention which would link all States in an effective struggle against mercenarism.

21. His delegation believed that the draft convention should contain a broad definition of the concept of a mercenary. The mercenary should not be considered solely as "a soldier who is paid to serve a foreign Government", or a person who is "specially recruited locally or abroad in order to fight in an armed conflict". The definition should not necessarily imply, or derive from, the concept of armed conflict. Any person recruited for pay to take part in armed action in a country for the purpose of disturbing peace and security should be considered as a mercenary.

22. His delegation believed that mercenaries should be punished as criminals and should be tried in accordance with national laws relating to breaches of State security. Every State should be able to take legal action to prevent the recruitment, training and financing of mercenaries in its territory. In general, every State must prohibit its nationals from offering their services as mercenaries, under penalty of criminal prosecution.

23. His delegation also believed that the convention should contain provisions enabling a State which had been the victim of mercenary activity to demand compensation from the countries of origin of those mercenaries. There should also be a provision for assistance from the international community to a country which had been the victim of mercenary aggression.

24. In order to ensure that the convention took shape as soon as possible, his delegation believed that the task of formulating it should be entrusted to the International Law Commission, with a precise time-table, or to an ad hoc working group. The OAU Convention on Mercenaries or the draft Convention submitted by Nigeria and contained in document A/35/C.6/366/Add.1 could provide a basis for the work of the body entrusted with drafting the convention.

25. Mr. CLARK (Canada) said that, although the subject of mercenaries was not new to the United Nations, the current debate marked the first time that its legal aspects had been considered by the Sixth Committee. He was grateful to the delegation of Nigeria for the effort it had expended in preparing the initial draft of a possible international convention, the text of which was contained in document A/35/366/Add.1.

26. The use of mercenaries was a practice which had a potentially destabilizing and destructive effect on the integrity of national political structures and could, on occasion, constitute interference in the internal affairs of States. Since the phenomenon was one which occurred primarily in the developing countries, he could sympathize with the delegations of those countries on their concern to eliminate the problem.

(Mr. Clark, Canada)

27. Since armed conflict took place for the most part in violation of the Charter of the United Nations, it was a legitimate and desirable objective to attempt to limit or eliminate the use of mercenaries as one of the factors contributing to its destructiveness. To that end, the international community and individual States must take steps to discourage and deter the recruitment of mercenaries. In terms of national legislation, many countries, including his own, had already done so.

28. 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, and particularly of Additional Protocol I to the Geneva Conventions of 1949, an instrument which contained, in article 47, a specific provision regarding mercenaries. It would be useful to solicit the comments and observations of the International Committee of the Red Cross in considering any development of the law relating to mercenaries.

29. Article 47 of Protocol I had given rise to extensive discussion at the 1977 session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts. Its effects were twofold: it defined mercenaries by means of a list of cumulative criteria, and deprived them of combatant and prisoner-of-war status. Although the definition was not satisfactory from all points of view, it was questionable whether the United Nations would be able to go much beyond it. In any case, his delegation believed that it would be counter-productive to attempt to broaden the definition by adding general or vague formulations.

30. The punitive effect of the Protocol provision lay in the denial of combatant or prisoner-of-war status. The mercenary would on capture have the status of an underprivileged belligerent and would as such be liable to be treated as a person who had illegally participated in hostilities. He could be charged with war crimes and be subject to the full rigours of national prosecution with the attendant criminal penalties. Such a development in some ways represented a departure from the general thrust of humanitarian law in that it reduced the protection accorded to participants in or victims of armed conflict. It appeared to reflect the view that, through the hire of his services as a belligerent in situations which might themselves represent violations of the Charter of the United Nations and the norms and principles of international law, the mercenary had put himself outside the protection of humanitarian law. Traditionally, humanitarian law did not look to the motivation of the parties or the causes of the conflict, but article 47 had changed that situation by specifically taking into account motivation, which was often a difficult matter in domestic legal proceedings and was likely to be even more complex in the context of an international crime.

31. Although certain representatives had claimed that much of the legislation enacted by countries to prohibit the recruitment of mercenaries was inadequate or incomplete, he believed that such statutory provisions were clearly desirable and that all States should be encouraged to adopt them. If an eventual United Nations convention on mercenaries was to provide for the establishment of mercenarism as

(Mr. Clark, Canada)

an international offence, as had been done with aircraft hijacking in the Hague Convention of 1970, great care would have to be taken in setting out the precise definition of the offence. While article 47 of Additional Protocol I was the most universally accepted definition, account should also be taken of the definitions arrived at in Rabat and Luanda. It should also be recalled that the jurisdiction machinery of the Geneva Conventions allowed for the extradition of mercenaries for violations of the law of armed conflict: they were thus liable for punishment in respect of specific acts they might have committed in the course of a given armed conflict.

32. Referring to the draft Convention submitted by the delegation of Nigeria, he said that the definition it contained was perhaps both too broad and too narrow. Although it went far beyond the definition contained in article 47 of Additional Protocol I by including ancillary activities related to the recruitment of mercenaries, it was very narrow in scope in that it appeared to restrict the proposed offence to activities in opposition to national liberation movements or to those directed against the struggle for self-determination. Since the use of mercenaries was by no means confined to such situations, he queried whether the concept of mercenarism should be restricted in such a way.

33. A further aspect of the initial draft which was of some concern to his delegation was the fact that it contemplated criminal responsibility on the part of States. While States might, to a certain extent, be involved in the use of mercenaries, it should be noted that in many cases they were severely limited in the control that they could exert over the recruitment and employment of mercenaries. The Committee should therefore proceed very carefully in considering any provision dealing with the possibility of criminal liability on the part of States.

34. In conclusion, he emphasized his country's firm opposition to the use of mercenaries, fully recognizing the threat that such outside intervention posed to the stability and political integrity of States. However, outside intervention often took the form of sending armed units of foreign armies, usually on flimsy pretexts, into situations of armed conflict in which they had no legitimate concern. That practice was in some ways a more serious threat to international peace and security than the use of limited numbers of privately recruited mercenaries. The draft Convention submitted by the Nigerian delegation did not take account of that problem, which likewise merited careful consideration from a legal point of view.

35. His delegation would be prepared to submit comments on other specific points in the light of the discussion on the item in the Committee. At the same time, he hoped that the Committee would bear in mind the need to reduce as much as possible the costs associated with further consideration of the subject.

36. Mr. CALERO RODRIGUES (Brazil) said he did not like the use of the term "mercenarism" in article 2 of the draft International Convention submitted by the Government of Nigeria. The term "activities of mercenaries" was preferable.

(Mr. Calero Rodrigues, Brazil)

37. It was clear from the response to the Secretary-General's note dated 29 February 1980 that the international community favoured the drafting of an international convention against the activities of mercenaries. Brazil too condemned such activities. It felt, however, that among the questions requiring close consideration was that of the definition of a mercenary. While his delegation did not agree with all the remarks made by the representative of Mexico, it was grateful for the analysis by that representative of the weaknesses of the definition contained in article 47 of Additional Protocol I to the Geneva Conventions of 12 August 1949. Article 47, paragraph 2 (c), stated that a mercenary was any person who was motivated to take part in the hostilities essentially by the desire for private gain and, in fact, was promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that party. That provision might be interpreted as meaning that a person who did not receive material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions could not be considered a mercenary. Article 47, paragraph 2 (b), stated that a mercenary was any person who did, in fact, take a direct part in the hostilities. Those who played an indirect part by promoting the activities of mercenaries had to be condemned as well. The definition in the convention contemplated should be much broader in scope and much clearer than the one in Additional Protocol I. The convention should prohibit a whole range of activities, including the recruitment, use, financing, supplying and training of mercenaries. It would be the international obligation of States to prevent and punish such activities, to refrain from any action likely to promote them and to co-operate actively in eliminating them. The question of individual or group responsibility would be covered by national legislation, while the question of State responsibility would be covered by international legislation.

38. Article 15, paragraph 3, of the draft International Convention submitted by the Government of Nigeria (A/35/366/Add.1, pp. 10-16) provided that a claim for damages or reparation could only be considered when attempts to secure criminal prosecution had failed. His delegation doubted whether it was necessary to limit the claim for damages or reparation to such cases. There were other weaknesses in the draft. Article 2 did not make a clear enough distinction between State responsibility and individual responsibility and was not fully compatible with accepted principles. Some provisions of the draft that were taken from the International Convention against the Taking of Hostages did not really apply to the question of mercenaries. On the whole, however, the draft was satisfactory and afforded a good basis for future work on the question.

39. The Sixth Committee had to decide what the next step should be. Ideally, the item should be referred to the International Law Commission. However, in view of its heavy programme of work, the Commission would be unlikely to complete work on a convention with the necessary dispatch. It would not be impossible for the Sixth Committee to continue working on the question of a convention, especially if it established a working group. The proposal by some States to establish an ad hoc committee was also worthy of consideration. Whatever the procedure adopted, the

(Mr. Calero Rodrigues, Brazil)

Secretary-General should prepare a compendium of the major documents on the subject, including resolutions of the General Assembly, the Security Council and OAU, and the relevant international agreements and declarations.

40. Mr. ANDERSON (United Kingdom) suggested that the term "mercenarism", which was not to be found in the Oxford dictionary, should be avoided. It would be better to refer to the "activities of mercenaries".

41. The question of mercenaries should be placed in the context of the law on neutrality. The rules of international law on the rights and duties of neutral States had developed in the nineteenth century. In 1870 the United Kingdom had enacted the Foreign Enlistment Act, which prohibited British subjects from engaging in certain activities in foreign States, in order to fulfil the obligations of the United Kingdom as a neutral State in respect of foreign conflicts. In 1907, article 4 of the Fifth Hague Convention respecting the Rights and Duties of Neutral Powers and Persons in War on Land had forbidden the formation of corps of combatants and the opening of recruiting offices on behalf of belligerents on the territory of a neutral Power. However, article 6 of the same Convention qualified the interdiction by stating that a neutral Power did not incur responsibility by the fact that persons crossed the frontier singly in order to place themselves at the service of one of the belligerents. In 1928, the sixth international conference of American States had adopted the Convention on the Duties and Rights of States in the Event of Civil Strife, under article 1 of which the parties bound themselves to use all means at their disposal to prevent the inhabitants of their territory, whether nationals or aliens, from crossing the boundary or sailing from their territory for the purpose of starting or promoting civil strife.

42. In more modern times, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations upheld the non-use of force and specified that it was the duty of States to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State. Article 3 (g) of the Definition of Aggression gave, as an example of an act of aggression, the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries which carried out acts of armed force against another State. As previous speakers had noted, article 47 of Additional Protocol I to the 1949 Geneva Conventions contained a definition of the term "mercenary", as well as substantive provisions concerning the status of mercenaries who took part in armed conflicts. The Security Council had also, on various occasions, called for measures to prevent the departure of military personnel, including mercenaries, for the purpose of becoming involved in specific conflicts. Thus, the rules of international law concerning the non-use of force in international relations, and concerning neutrality, already imposed obligations on States with regard to the dispatch of mercenaries to the territory of another State.

43. The proponents of the item under consideration proposed that the General Assembly should consider the conclusion of a convention which would presumably codify the existing rules of international law on the topic, and possibly develop the law in the light of contemporary conditions. His own country condemned the use of mercenaries in disputes between States or in an attempt to frustrate legitimate

(Mr. Anderson, United Kingdom)

moves towards self-determination. It was undeniably in the interests of the international community that such activity should be controlled, as the involvement of mercenaries could prolong hostilities, increase the suffering of innocent people and make the settlement of disputes more difficult. The United Kingdom, in its written comments contained in document A/35/366, agreed that consideration should be given to the need for an international convention on the subject, and was prepared to discuss the issues involved in a non-polemical way. However, some of the written observations had indulged in propaganda, which was hardly appropriate to the Sixth Committee. He hoped that the issue could be discussed in a calm and constructive manner.

44. Several Governments, in submitting their comments, had included the texts of relevant national legislation. Before contemplating any new international instrument, it was always appropriate to study the existing legislation of States and practice at the national level, and his delegation would like the Secretariat to prepare a compendium of national legislation on the subject as contained in document A/35/366, together with any other legislation available from other sources. It would be instructive to know what acts had already been prohibited by States under their criminal laws, what arrangements they had made for the prosecution of suspected offenders, and under what circumstances the persons concerned were considered to have a sufficient connexion with the State as to warrant the exercise of jurisdiction. The primary mechanism for regulating the activities of mercenaries must be the criminal law, and not the law on passports; in many countries it was impossible, in the light of the International Covenant on Civil and Political Rights, for the Government to prevent either nationals or aliens from leaving its territory. Moreover, in the criminal law of most States it was essential to define with the greatest exactitude those acts which were to carry criminal penalties, in order to safeguard basic human rights. The same precision would be required in any international instrument; it would not suffice to state that being a mercenary was ipso facto a crime. Only specific acts or omissions on the part of individuals could give rise to criminal responsibility.

45. It was also essential that clarity should prevail when seeking a definition of mercenaries. The definition contained in article 47 of Additional Protocol I to the Geneva Conventions had been adopted by consensus in 1977, and was probably the best definition which the international community could agree on. His own delegation continued to attach the utmost importance to the point that a person who was a member of the armed forces of a party to a conflict was not to be regarded as a mercenary, irrespective of his nationality (article 47, 1 (e)).

46. In discussing the controversial subject of mercenaries, it was also important to keep a sense of proportion, and to distinguish the impact of mercenaries from that of other uses of force. The existing rules of international law should be taken as the starting-point, and the requirements of the International Covenants on Human Rights and the principles of criminal law at the national level must not be overlooked.

47. Mr. YEPEZ (Venezuela) said that the question of drafting an international convention against the recruitment and use of mercenaries was one of the more valuable items with which the Sixth Committee had to deal, and could produce fruitful results for the development of international law. His delegation was glad to note that 25 Governments representing different legal systems and regions had so far submitted their comments, reproduced in document A/35/366 and Add.1 and 2, and that most of the opinions so far expressed were in favour of a binding instrument for the suppression of mercenary and related activities. The international community had come to realize that such activities were contrary to international legality and should be repudiated by all States. One of the fundamental purposes of the United Nations was the maintenance of international peace and security, and effective collective measures should therefore be taken to eliminate threats to peace and acts of aggression. Mercenary activities threatened the Charter principle of equal rights and self-determination of peoples, as well as the sovereignty, territorial integrity and independence of States. Such activities should therefore be proscribed by the international community in the form of an international convention obliging States to enact domestic legislation to prevent and punish such activities and associated acts.

48. His delegation welcomed the attempts already made by the international community to condemn mercenary activities, in the form of General Assembly and Security Council resolutions and in the framework of some regional organizations. In 1977, the condemnation of mercenary activities had been given concrete form in international law in article 47 of Additional Protocol I to the 1949 Geneva Conventions, which provided that mercenaries did not have the right to be combatants or prisoners of war. The Protocol also defined the term "mercenary". The work done in 1977 by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts represented a considerable step forward and should be taken into account in future work on the subject.

49. In the view of his delegation, the proposed convention should include a number of basic features. First of all, there should be as comprehensive a definition as possible of the term "mercenary", not open to the criticisms that had rightly been expressed regarding the conditions set out in article 47 of Additional Protocol I to the Geneva Conventions. The definition should draw a clear distinction between mercenaries and volunteers; there were volunteers who took part in conflicts for some noble cause, such as the liberation of a people, whereas mercenaries today were fighting against various liberation movements and against patriotic causes. As his Government had stated in its comments reproduced in document A/35/366/Add.1, a mercenary had always been viewed with disdain because his services were not always used in just causes and because he was frequently pitted against nationalist groups which were motivated by the mystique of patriotism and morality. Secondly, the future convention should clearly define all the acts which were to constitute the crime, including the recruitment, financing, encouragement, use and training of mercenaries, propaganda and support for them, and complicity in those acts. Thirdly, the comments and suggestions of Governments should be taken into account, and his delegation supported the Nigerian proposal in document A/35/366/Add.1 as a useful basis for consideration of the question.

(Mr. Yepez, Venezuela)

50. In view of his Government's feelings of solidarity with the African States, which had been most affected by the activities of mercenaries dispatched to subvert public order, overthrow Governments and oppose movements struggling against colonial domination, thus undermining the independence and territorial integrity of those States, his delegation would collaborate to the fullest extent possible with a view to the early adoption of an international convention which would make an effective contribution to combating mercenarism.

51. Mr. POP (Romania) said that mercenarism was a particularly serious feature of contemporary international life, impinging the freedom of peoples and their right to self-determination and constituting a flagrant violation of all principles of international law and of the United Nations Charter. The implementation of those principles was a prerequisite for the maintenance of international peace and security. The problem of mercenarism went beyond the specific context of local situations and had long since become international in scope. It was particularly serious because mercenary activities involved the use of force in relations between States. Romania had always strongly held the position that the "law of force" should be replaced, in international relations, by the "force of law" and had always stressed the need for every State, regardless of its economic or military power, to undertake solemnly to renounce the use or threat of force. No consideration, whether political, military, economic, strategic or ideological, could justify the use of force or other forms of coercion, interference in the internal affairs of other States or support by means of force, particularly military force, for actions undertaken by various groups in revolt against the legally established Governments of sovereign States. The Romanian Government had stated its position to that effect in its reply to the Secretary-General, which appeared in document A/35/366. That position was a logical corollary of Romania's policy of active solidarity with peoples struggling for their right to freedom and independence and for the elimination of all forms of colonial and neo-colonial domination. It was consistent with his country's support for national liberation movements and its view that international efforts must be intensified to put an end to all forms of oppression of one people by another, to eliminate policies of exploitation and racial discrimination and to establish democratic relations between peoples, without distinction as to race, colour, socio-economic system or any other consideration.

52. It was therefore time to elaborate a convention that would, in clear and well-defined legal terms, prohibit the recruitment, use, financing and training of mercenaries. Such a convention would extend the range of peaceful means available to peoples and to the United Nations for promoting peace and co-operation and creating a more just world where every nation was assured the right to self-determination without foreign interference, one of the most dangerous forms of which was mercenarism. General Assembly resolution 34/140, which expressly recognized that mercenarism was a threat to international peace and security, clearly indicated the directions in which States should proceed in their efforts to eliminate the phenomenon of mercenarism.

53. Mr. ECONOMIDES (Greece) said that his Government condemned the use of force in violation of the principles of the United Nations Charter and international law,

(Mr. Economides, Greece)

particularly for purposes of foreign domination and occupation. It condemned the practice of mercenarism as a threat to international peace and security. Article 47 of Additional Protocol I to the 1949 Geneva Conventions provided that mercenaries did not have the right to be combatants or prisoners of war and thus had no rights under those Conventions. The Greek Penal Code provided that the recruitment of Greek nationals for the armed forces of a foreign country was a crime.

54. In the view of his delegation, the definition of a mercenary should comprise three elements; (1) the mercenary, by reason of nationality or residence, must be an alien to the country in which the conflict occurred; (2) he must be a professional participating in the conflict in his personal capacity and for purely materialistic reasons, rather than as an idealistic volunteer fighting for a cause in which he believed; (3) the armed activity in which he participated must be illegal in itself, i.e. in contravention of the United Nations Charter and international law. The latter element was not included in the definition of a mercenary contained in Additional Protocol I, and it was important if mercenarism was to be classified as an international crime against humanity in a formal international convention.

55. His delegation endorsed the idea of drafting an international convention prohibiting the recruitment, training, assembly, transit and use of mercenaries. The draft submitted by Nigeria was a positive contribution to that end. On the matter of procedure, he agreed with a number of other speakers that an ad hoc working group should be established to prepare a draft convention. To facilitate its work, the Secretariat should make available as soon as possible a background paper on the subject.

56. Mr. HAUNA (Indonesia) said that the question of mercenarism had already come before various world bodies and regional organizations, including the General Assembly and Security Council of the United Nations, the Organization of African Unity, the Geneva Diplomatic Conference on Humanitarian law and the conferences of the non-aligned movement, of which his country was a founder. His delegation was concerned at the fact that mercenary forces continued to be used against the peoples of the third world. During the early years of its existence, Indonesia had also been a target of the criminal activities of mercenaries. The use of mercenaries against peoples who were struggling for their independence or had just achieved national sovereignty was not only a violation of the fundamental principles of the Charter but also a threat to international peace and security.

57. His delegation therefore welcomed the inclusion of the item in the agenda of the General Assembly. It agreed that a speedy solution should be sought to the problem and that it should be referred to an ad hoc committee for the drafting of an international convention against the recruitment, use, financing and training of mercenaries. The ad hoc committee should take into account the draft convention submitted by Nigeria, the written comments received from Governments in reply to the Secretary-General's inquiry and the remarks made by delegations during the debate. Concerted action by the international community to eliminate mercenarism would

(Mr. Mauna, Indonesia)

enable the people of the third world to direct their efforts and energies towards the peaceful development of their countries.

58. Mr. ORDZHONIKIDZE (Union of Soviet Socialist Republics) said that the Soviet Union, which had a tradition of supporting the just struggle of peoples for national liberation and social progress and against attempts by the imperialist Powers to preserve the system of colonial oppression, racism and apartheid, supported the proposal by Nigeria and other non-aligned countries for the drafting of an international convention outlawing mercenary activities. As the Soviet Head of State and General Secretary of the Central Committee of the Communist Party, L. I. Brezhnev, had said in congratulating the States and peoples of Africa on 25 May 1980, African Liberation Day, the Soviet Union would continue to support the liberation struggle of the peoples of Africa. In his statement at the 6th plenary meeting of the General Assembly, the Minister for Foreign Affairs of the Soviet Union had said that every effort must be made to hasten the day when the General Assembly would be able to celebrate final victory over colonialism, which had engulfed millions of human lives and exploited many peoples over the centuries.

59. In recent years the national liberation movements had achieved significant successes, and the last bastions of colonialism, racism and apartheid were toppling. However, the positive advances made in international relations were encountering stubborn opposition from the forces of reaction; the imperialist Powers, supported by the Maoist hegemonists, were seeking to halt the progress of national liberation and to nullify the progressive social conquests of the peoples. Efforts to sustain the last outposts of colonialism and racism served to perpetuate the domination of imperialist Powers in regions of strategic, economic and political importance. That was why the imperialist Powers were supporting and arming the racists of South Africa, who were seeking to drown in blood the liberation struggle of the peoples of Namibia and southern Africa; that was why they connived at aggressive acts against independent countries, stirred up armed conflicts among newly independent States, and used puppets and reactionary elements to overthrow the legal Governments of independent States and install régimes obedient to them. The use of mercenaries was a frequent weapon of imperialist policy and was widely employed against the independent countries of Africa. Mercenaries had taken part in colonialist campaigns in the Congo, Zimbabwe, Guinea and Benin, and were used as an instrument of foreign aggression against Angola, Mozambique, Afghanistan and the Arab States.

60. The use of mercenaries was illegal under contemporary international law. The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations specified that every State had the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State. General Assembly resolution 3103 (XVIII) stated that the use of mercenaries by colonial and racist régimes against the national liberation movements was a criminal act, and that mercenaries themselves should be punished as criminals. Under article 47 of Additional

(Mr. Ordzhonikidze, USSR)

Protocol I to the 1949 Geneva Conventions, mercenaries were denied the right to combatant or prisoner-of-war status, and the use of mercenaries to attack sovereign States was regarded as an act of aggression in accordance with the Definition of Aggression approved by the General Assembly in 1974.

61. The Soviet Government, in its reply to the Secretary-General contained in document A/35/366/Add.1, stated that mercenaries must be regarded as criminals and brought to justice, and that the use of mercenaries must be defined as a grave international crime and their large-scale use by any State as an act of aggression by that State. The future convention must establish the liability of States which permitted mercenaries to be recruited, trained or transported within their territory. In the view of the Soviet Union, the drafting of such a convention would serve the purpose of finally eliminating one of the manifestations of colonialism, and would afford great practical assistance to the national liberation movement. Because of its political importance, the drafting of the convention should take place in the Sixth Committee itself.

62. It was now 20 years since the General Assembly, at the initiative of the Soviet Union, had adopted the historic Declaration on the Granting of Independence to Colonial Countries and Peoples. His delegation was of the opinion that the Sixth Committee, in keeping with its traditions regarding the progressive development of international law, should commemorate that historic date by deciding to draft a convention declaring the use of mercenaries illegal.

63. The CHAIRMAN suggested that the list of speakers on item 29 should be closed on Thursday, 16 October, at 4.30 p.m.

64. It was so decided.

The meeting rose at 5.40 p.m.