
SUMMARY RECORD OF THE 23rd MEETING

Chairman: Mr. KOROMA (Sierra Leone)

later: Miss OLIVEROS (Argentina)

CONTENTS

AGENDA ITEM 29: DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT,
USE, FINANCING AND TRAINING OF MERCENARIES: REPORT OF THE SECRETARY-GENERAL
(continued)

* 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.

80-56787

Distr. GENERAL
A/C.6/35/SR.23
22 October 1980

ORIGINAL: ENGLISH

/...

The meeting was called to order at 3.15 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.1-3)

1. Mr. KRISHNAMURTY (India) said that India, as one of the first countries to free itself from the colonial yoke, had consistently supported national liberation movements struggling against colonial and alien rule. The reprehensible practice of some colonial and racist régimes of using mercenaries to fight against national liberation movements could not be condoned under any circumstances, and his Government had expressed its support over the years for the principle of prohibiting the use of mercenaries. The General Assembly had repeatedly condemned the activities of mercenaries. In resolution 2465 (XXIII) it had declared that the practice of using mercenaries against national liberation movements was punishable as a criminal act, and called upon all Governments to enact legislation declaring the recruitment, financing and training of mercenaries in their territory to be a punishable offence and prohibiting their nationals from serving as mercenaries. Similar declarations were contained in resolutions 2548 (XXIV), 2708 (XXV), 3103 (XXVIII) and 32/14. According to the Definition of Aggression adopted by the General Assembly in 1974, the sending of mercenaries who carried out acts of armed force against another State was an act of aggression. The member States of the Organization of African Unity, recognizing the grave threat posed by the activities of mercenaries to the independence, sovereignty, security and territorial integrity of States, had adopted a convention for the elimination of mercenaries in Africa in 1977.
2. India had been one of the sponsors of General Assembly resolution 34/140 on the subject of mercenaries. It was clear from the observations of States submitted pursuant to that resolution and contained in documents A/35/366 and Add.1-3 that there was widespread support for the proposal to draft an international convention prohibiting the use of mercenaries.
3. His delegation was satisfied with the definition of a mercenary contained in article 1 of the draft Convention submitted by Nigeria (A/35/366/Add.1, pp. 8-16) which was based on article 47 of Additional Protocol I to the Geneva Conventions of 1949. It would submit its comments on the other articles of the Nigerian draft at the appropriate time.
4. With regard to the procedure to be adopted in drafting the convention, his delegation supported the idea of establishing an intergovernmental working group or an ad hoc committee, whichever the Sixth Committee considered appropriate, and would co-operate fully in the efforts of that body to finalize a text as quickly as possible.
5. Mr. OKWONGA (Uganda) said that the use of mercenaries had become an epidemic which should be eradicated as quickly as possible. Soldiers of fortune continued to be a threat to stability in third world countries, especially in Africa, and

(Mr. Okwonga, Uganda)

had been undermining national liberation movements in their struggle for self-determination. In the course of their illegal activities, mercenaries had been directly responsible for substantial loss of life and destruction of property. His Government, which had worked closely with the Nigerian delegation on the subject of mercenaries at the Diplomatic Conference on Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, fully supported the initiative of Nigeria in calling for the drafting of an international convention against the use of mercenaries. There was a need for further consolidation and development of existing international law on the subject, on the basis, inter alia, of the OAU Convention, the Luanda proceedings and the various relevant United Nations resolutions. The draft submitted by the Nigerian delegation should serve as a point of departure in that work.

6. The definition of mercenaries should be expanded to take into account the concerns expressed during the debate in the Sixth Committee. The need for separate treatment of international volunteers had been mentioned. International volunteers were not a new phenomenon, as a number of them had participated in the Spanish Civil War, solely because of their hatred for fascism and not for any monetary gain. On that basis alone, international volunteers must be considered separately from mercenaries. However, the greatest caution must be exercised in seeking to draw a distinction between a mercenary and an international volunteer. The difference between them had become very tenuous in the modern world; from the point of view of motivation, the two might be one and the same.

7. His delegation supported the establishment of an ad hoc intergovernmental working group or committee to begin the work of drafting an international convention against the activities of mercenaries.

8. Mr. GAYAMA (Congo) said that his country was committed to the struggle to eliminate the scourge of mercenaries, and welcomed the initiative of the delegation of Nigeria in introducing resolution 34/140 the previous year. In the light of the contemporary history of Africa, all comparisons between modern mercenaries and those recorded in the ancient or mediaeval history of Europe should be avoided. The phenomenon of mercenaries, whose main motive was to seek a real or imaginary casus belli in order to make money, had become rare in developed countries; but it was still, like war, famine, disease and under-development, a curse of developing countries. Like under-development itself, it was largely sustained by certain developed countries, which were responsible for the recruitment, training and financing of mercenaries.

9. Therefore, far from being a phenomenon sui generis, mercenaries were an essential component of a certain political and economic system, for which they provided a police force. In that respect, they were like the private police organizations and neo-Fascist groups which tended to flourish in the very countries which boasted of their dedication to human rights.

10. Many countries possessed legislation to suppress the bearing of arms by individuals, which was liable to cause disorder in times of either war or peace.

/...

(Mr. Gayama, Congo)

Such legislation was the least that could be expected of Governments, and that was the interpretation his delegation gave to paragraph 7 of the draft resolution introduced in the Third Committee by the African Group, which called upon Governments to adopt laws declaring it a punishable crime to recruit, finance or train mercenaries. There was no contradiction between the proposal submitted in the Third Committee and the need, in the Sixth Committee, to consider the adoption of a more binding instrument which would place States under a semi-permanent obligation. Indeed, the Sixth Conference of Heads of State or Government of Non-Aligned Countries, held in Havana the previous year, had denounced the phenomenon of mercenaries and called upon States to adopt legislative measures against them. Where criminal activities were concerned, his country could not take a negative view of the contribution of internal law to international law. On the contrary, any improvement or progress in internal law could only lend additional weight to the implementation of international law.

11. It was natural that the idea of elaborating an international convention against mercenaries should have come from the African continent, which was severely affected by the problem. The International Commission of Enquiry on Mercenaries, which had met in Angola in June 1976, had been a first step in that direction, and the draft Convention submitted by Nigeria, already adopted in Africa, had been based on the Luanda proceedings. The task before the United Nations was facilitated both by the existence of the OAU convention and by the nature of the crime involved, mercenary activities should not be treated more leniently than the taking of hostages, against which a United Nations convention had been adopted the previous year. It would be somewhat hypocritical if those countries which had pressed for the adoption of a convention against the taking of hostages were suddenly seized with scruples in the context of human rights when it came to the problem of mercenaries.

12. The only real problem was the method to be followed in drafting a convention, as some delegations might feel that the existing draft was excessively concerned with the African aspect of the question. Any contribution they could make towards a definition of the term "mercenaries", or to any other part of the text, would be welcome. As for the machinery to be set up, his delegation would favour the establishment of a committee or working group under the auspices of the Sixth Committee.

13. His own country had ample reason to emphasize the importance of adopting a convention on the subject; like other African countries, it had been attacked by mercenaries in 1976 and, as well as substantial loss of life, had suffered economic damage which had seriously delayed work on the railway line to the sea. The Congo had also played an important role in the trial of mercenaries held in Luanda in June 1976, where the presiding judge had been a Congolese. His country was indeed persuaded that mercenary activities were intrinsically criminal, and were comparable to piracy. The definition of a mercenary contained in Additional Protocol I to the 1949 Geneva Conventions should be taken as a basic principle, as it denied the mercenary prisoner-of-war status.

(Mr. Gayama, Congo)

14. At a time when the crimes of apartheid and colonialism were still being perpetrated, largely because of the active complicity of agencies which recruited mercenaries, it was desirable that international law should be provided with an effective weapon against the phenomenon. It could hardly be argued that a mercenary was capable of fighting for a good cause. The international brigades of volunteers which had been formed on various occasions, such as the war in Spain, had been publicly recruited by legally constituted social forces, and without any financial motivation. It was a question of international solidarity, and that was the very issue currently involved in the search to extend human dignity and freedom by eliminating the exploitation of man by man, of which mercenary activities were but one aspect.

15. Mr. QUATEEN (Libyan Arab Jamahiriya) said that the African continent, in particular, had suffered from the activities of mercenaries, which posed a threat to the security and independence of States and to the struggle for national liberation and against racism, colonialism and foreign domination. Mercenary activities were a tool to plunder and enslave third world countries, and were contrary to international law and the principles of the United Nations. The African continent as a whole, aware of the danger of mercenary activities, had already adopted a convention against them. The Asian and Latin American continents took the same approach to the activities of mercenaries, which were an attempt to reverse the course of history and to impose economic and political hegemony.

16. However, the phenomenon could not be eradicated without co-operation among nations, especially on the part of those countries in which mercenaries were recruited. Certain countries had stated that they could not interfere with individual actions, and therefore with mercenary activities, without infringing human rights and democratic freedoms. That was a mere excuse, and was worse than the acts themselves. No such excuse had been heard when concerted action was initiated against the taking of hostages or to protect diplomatic agents. Now that a similar instrument was being contemplated against mercenaries, a certain complacency was evident on the part of the very countries which were responsible for the damage committed by mercenaries. Military intervention in Africa could easily be repeated, and that was why an international convention must be adopted against the recruitment, use, financing and training of mercenaries. States could incorporate its provisions into national law as they had done in the case of other international penal instruments. The draft text submitted by the Nigerian delegation was a valuable basis for future work. If the Sixth Committee established an ad hoc committee, as it had done in drafting the International Convention against the Taking of Hostages, a satisfactory solution could be achieved for all the problems involved. The future convention must cover all activities related to the use of mercenaries, including their prosecution and punishment. His own delegation was willing to participate in the drafting work, either in the Sixth Committee or in an ad hoc committee set up for the purpose.

17. Mr. BUBEN (Byelorussian Soviet Socialist Republic) said that all progressive people were currently commemorating the twentieth anniversary of the adoption by the General Assembly of the historic Declaration on the Granting of Independence to Colonial Countries and Peoples. In the short period since the adoption of that

(Mr. Buben, Byelorussian SSR)

Declaration, significant progress had been made in eliminating the system of colonialist and racist oppression, and in establishing new independent States. However, the progress of national liberation was bitterly opposed by the forces of imperialism and reaction, which were seeking to impede the national liberation movement and to preserve the last bastions of colonialism and racism. The imperialist forces were devoting special attention to areas and countries of major strategic, economic and political significance, and were making use of a wide arsenal of the most diverse means, including mercenaries, who were an active instrument of neo-colonialist policy and interference in the internal affairs of emergent States.

18. In introducing its draft text, the delegation of Nigeria had rightly drawn the attention of the international community to the widespread use of mercenaries to combat national liberation movements, and especially against small States on the path of independent development. General Assembly resolution 34/140 acknowledged that the use of mercenaries posed a threat to international peace and security and was a crime against humanity. Aggressive reactionary circles in many imperialist States made wide use of soldiers of fortune in their struggle against the sovereignty and territorial integrity of States, and against national liberation movements, seeking to free themselves from colonial or racist régimes and establish their right to self-determination in accordance with United Nations decisions.

19. The question of mercenaries had already been considered in United Nations forums, and both the General Assembly and the Security Council had adopted resolutions on the subject. General Assembly resolution 2548 (XXIV) stated that the practice of using mercenaries against movements for national liberation was punishable as a criminal act, and called upon all Governments to enact legislation declaring the recruitment, financing and training of mercenaries in their territory to be a punishable offence. Security Council resolution 405 (1977) reaffirmed the condemnation of any State which persisted in permitting the recruitment of mercenaries to overthrow the Governments of Member States.

20. The infamous practice of using mercenaries to bolster colonialism, strengthen foreign economic interests and overthrow Governments was a continuing manifestation of neo-colonialism. There were many recent examples of the use of mercenaries in Angola, Afghanistan, Benin, Zaire, Zimbabwe, Mozambique, Seychelles and the Comoros. To seek to belittle the importance of the problem, as had been done in certain written observations and statements on the question, was untenable. Mercenaries killed without compunction, sparing neither old people nor children. They were armed with modern weapons manufactured in Western countries. Recent events also indicated that they had been using chemical weapons, which was forbidden under various international conventions to which the majority of States were parties. The proposal of the Nigerian delegation for the elaboration of an international convention against mercenaries was therefore timely, and constituted a new step in the struggle against crimes of an international nature such as genocide, racism, apartheid, and the taking of hostages.

(Mr. Buben, Byelorussian SSR)

21. The Byelorussian Soviet Socialist Republic, which pursued a Leninist foreign policy, called for the strengthening of the security of peoples and for broad international co-operation. It therefore rejected, as a matter of principle, the use of mercenaries to combat national liberation movements. It actively supported all the anti-colonialist resolutions of the General Assembly, including those which condemned the use of mercenaries in Africa and other parts of the world as acts endangering international security. His country therefore supported the proposal to draft an international convention on the subject in the Sixth Committee. It should be taken as a basic principle that mercenary activities were a threat to international peace and security, and an international crime for which the guilty persons must be subject to severe punishment. The large-scale use of mercenaries by States was an act of aggression on their part. Both those principles must be reflected in the future convention. In addition to effective measures to forbid the recruitment, training, transport and use of mercenaries, the convention should provide for the prevention and punishment of propaganda for mercenary activities. That was an important aspect of the problem, as mercenaries were largely recruited through advertisements and information in the press, including specialist publications.

22. States must co-operate in the struggle against mercenaries, especially by introducing national legislation to forbid mercenary activities and prosecute mercenaries and those guilty of advertising for, recruiting, transporting and using mercenaries on their territory. Provision must also be made for the extradition of mercenaries for trial to the States or national liberation movements concerned. His own delegation hoped that the elaboration and implementation of a convention would constitute an effective barrier against the hiring of mercenaries to combat national liberation movements in African and other independent countries.

23. Mr. LAMAMRA (Algeria) said that, in its contemporary manifestations, mercenarism was essentially a colonial phenomenon. It was a particularly perverse form of international terrorism used by imperialists against third world liberation movements. The African continent, which over the past two decades had been the target of attacks against its unity and its struggle for emancipation, had reacted strongly against that underhand method of using force against States and national liberation movements. Thus, in 1976, the Organization of African Unity had adopted the Convention for the Elimination of Mercenaries in Africa. Nevertheless, that regional instrument, which was aimed at strengthening the criminal legislation of the African States on the subject, had not had the desired effect because of the attitude of the authorities of certain States in whose territories mercenaries were recruited and trained.

24. Only a few months after the adoption of the Convention for the Elimination of Mercenaries in Africa, Benin had been the victim of an act of aggression carried out by mercenaries. As a result, the Security Council had adopted resolution 405 (1977), in which it had reaffirmed its condemnation of any State which persisted in permitting or tolerating the recruitment of mercenaries and the provision of facilities to them, with the objective of overthrowing the Governments of Member States. It had also called upon all States to exercise the utmost vigilance against the danger posed by international mercenaries. In resolution 419 (1977), the Security Council had taken note of the desire of the Government of Benin to have

(Mr. Lamamra, Algeria)

the mercenaries who had participated in the attacking forces against Benin subjected to due process of law. Unfortunately, the mercenaries who had survived that attack had neither been prosecuted nor extradited, nor had reparation been made for the damage caused to Benin.

25. Angola had also been a target of aggression by mercenaries, a fact which had been duly confirmed by an international commission of enquiry. The vigilance of the peoples and authorities of Benin and Angola and the solidarity of many States had made it possible to counter the acts of aggression against them, but the international community as a whole must not resign itself to being a passive witness of such totally unjustified acts. His delegation was therefore happy that a proposal had been made regarding the elaboration of an international convention aimed at eliminating mercenarism in all its forms.

26. The convention should include an exhaustive definition of the term "mercenary" which should cover the three main uses of mercenaries, namely, the use of mercenaries in an armed conflict between two belligerent States according to the somewhat incomplete definition contained in article 47 of Additional Protocol I to the 1949 Geneva Conventions, the use of mercenaries against national liberation movements struggling for the right of peoples to self-determination and independence, and the use of mercenaries in the absence of hostilities, for the purpose of overthrowing the Government of another State.

27. The United Nations, which had adopted many resolutions reaffirming the legitimacy of the struggle of peoples for independence and liberation from colonial and foreign domination, had declared that the use of mercenaries against such liberation movements was a criminal act. Mercenaries, who were motivated by their desire for private gain and their murderous instincts, did not have the right to be combatants or prisoners of war; on the other hand, the volunteer, who disinterestedly gave his life for the noble cause of national liberation, deserved all the rights due to freedom fighters.

28. In order for the proposed convention to be effective, it must cover the entire range of mercenary activities, from the encouragement of individuals to become mercenaries to their actual use. It should provide for the widest possible legal assistance between parties to the convention, based on the principle "prosecute or extradite", in order to prevent mercenaries from escaping prosecution. It should also establish clearly that any party that had suffered moral or material damage as a result of mercenary action might obtain reparation. Considering that mercenarism was an offence against the peace and security of mankind, the convention should establish individual and State responsibility. Lastly, since the General Assembly had recognized the criminal nature of the use of mercenaries against peoples struggling for their right to self-determination and independence and since the development of contemporary law tended to confer upon the national liberation movements the status of quasi-subjects of international law, the convention should establish the competence of such movements to act for the purpose of suppressing mercenarism.

(Mr. Lamamra, Algeria)

29. Algeria, which was a party to the OAU Convention for the Elimination of Mercenaries in Africa, had included in its Penal Code severe punitive measures against the recruitment, financing, training and transit of mercenaries. His country, which was resolutely working for the completion of the decolonization process in Africa and for the promotion of friendly relations and co-operation between States, was prepared to contribute to the elaboration of an international convention against mercenarism. The proposal to establish an ad hoc committee to elaborate a draft convention to be submitted to the Sixth Committee seemed to be the most appropriate one.

30. Mr. LUSAKA (Zambia) said his delegation fully associated itself with the remarks made by the representative of Nigeria. Over the years, the Security Council and the General Assembly had expressed grave concern about the activities of mercenaries, which constituted a menace to international peace and security.

31. At the outset, there was the problem of finding a suitable definition of the term "mercenary". A precise definition was of vital importance if the mercenary was to be deprived of certain legal rights and guarantees. In general terms, a mercenary was a person who served voluntarily for pay in armed forces other than the regular forces of his own country. He was specially recruited and was motivated to fight for monetary reward. His delegation felt that the definition of the term "mercenary" contained in article 47 of Additional Protocol I to the Geneva Conventions was adequate.

32. The international community was agreed on the need to put an end to the recruitment, enlistment and use of mercenaries. Mercenaries were common criminals whose activities had left an indelible mark on the continent of Africa, causing great human suffering. In resolution 34/140, the General Assembly had recognized that mercenarism was a threat to international peace and security and, like murder, piracy and genocide, was a universal crime against humanity. It had deplored the increased training, assembly, transit and use of mercenaries for the purpose of overthrowing Governments of Member States and of fighting against the national liberation movements, and had called upon all States to exercise the utmost vigilance against the menace posed by the activities of mercenaries.

33. The racist minority régime of South Africa had used and continued to use mercenaries to strengthen its illegal occupation of Namibia and muffle the legitimate right of the South African majority to self-determination and majority rule. The illegal régime of what had then been Rhodesia had used mercenaries to fight against national liberation movements and carry out acts of aggression against the front-line States. The entire world community had condemned those activities in General Assembly resolution 3103 (XXVIII). Furthermore, article 47 of Additional Protocol I to the 1949 Geneva Conventions established that mercenaries did not have the right to be combatants or prisoners of war. The Organization of African Unity had adopted the Convention for the Elimination of Mercenaries in Africa. The International Commission of Enquiry on Mercenaries in Angola had found, in 1976, that mercenaries who had fought in Angola had been recruited from Europe and America.

(Mr. Lusaka, Zambia)

34. A mercenary was a criminal and did not enjoy any legal status in his own right. At the same time, the liability of States permitting the recruitment, training, assembly and equipping of mercenaries must be determined. Despite the overwhelming condemnation of the use and activities of mercenaries, some States were conniving in their recruitment. The international community must find an urgent solution to the problem. Some States had enacted legislation aimed at punishing nationals who served in foreign armies. An effective approach to the problem would be to start by making it a crime for any national to serve as a mercenary.

35. He wished once more to commend Nigeria for taking a positive step in placing its draft Convention before the Committee. His delegation agreed that an ad hoc intergovernmental committee with equitable geographical representation should be established to draft the convention.

36. Mr. GÜNEY (Turkey) said that the proposal to elaborate an international convention against mercenaries was a very timely one. As early as 1968, in General Assembly resolution 2465 (XXIII), the United Nations had condemned the use of mercenaries against national liberation movements. Certain States had enacted legislation providing for the punishment of those who recruited mercenaries and prohibiting their nationals from serving as mercenaries. Article 47 of Additional Protocol I to the 1949 Geneva Conventions also dealt with the question. It was therefore time to go beyond mere condemnation and establish concrete, effective measures to eliminate mercenarism. His delegation felt that work on the Nigerian proposal should be undertaken either by a working group reporting to the Sixth Committee or by an ad hoc committee.

37. Miss Oliveros (Argentina) took the Chair.

38. Mr. LAWANI (Benin) said that his delegation had good reason to be happy at the inclusion in the agenda of the item on mercenaries. Mercenarism had become a scourge of modern times which threatened international peace and security. It was part of the new global strategy for the destabilization and colonial reconquest of the progressive countries of the third world in general and of the African continent in particular.

39. Mercenaries had invaded Guinea on 22 November 1970 and mercenaries had also participated actively side by side with the racist forces of South Africa in the war of aggression against Angola in 1975. On 16 January 1977, his country had become the victim of the ignoble aggression of mercenaries led by the French "colonel" Bob Denard and had suffered heavy losses in terms of both human lives and material damage. He wished to express the sincere gratitude of his people and Government to all the countries which, in the name of the just and noble ideals of the United Nations Charter, had effectively shown their solidarity with his country following the tragic events of 16 January 1977.

40. In further pursuance of the strategy of destabilization of the progressive régimes of Africa, other mercenaries, led again by the Frenchman Bob Denard, had intervened in 1978 in the Comoros Islands and had assassinated the late

(Mr. Lawani, Benin)

President Ali Soahili. Recent armed aggression by mercenaries against Sao Tome, Seychelles, Madagascar, Grenada and other countries demonstrated the extent and the seriousness of international mercenarism. There was no justification for those repeated assaults of the imperialist forces against the peaceful populations of Africa. The international community must take urgent and effective measures to eliminate mercenarism in all its forms. Both the United Nations and OAU had, of course, tried to find solutions. Thus, Security Council resolutions 239 (1967), 405 (1977) and 419 (1977) condemned the use of international mercenaries to destabilize States. The OAU had already adopted the Convention for the Elimination of Mercenaries in Africa, which had also been the object of the Luanda Declaration on Mercenarism of 1976.

41. His country, desiring to make its modest contribution to the elimination of international mercenarism, had observed the International Week of Solidarity with the Peoples and Countries Struggling for their National Liberation, and had hosted the International Conference on Mercenarism, held at Cotonou from 9 to 16 January 1978. The conclusions of that Conference had been set forth in the Cotonou Declaration, which condemned the armed aggression by mercenaries against Benin of 16 January 1977 and urged the countries participating in the Conference to work for the establishment of a political-legal institution to study and explain the phenomenon of mercenarism with a view to its complete eradication. The resolution adopted by the Cotonou Conference had been included in the documentation on the case of the aggression of which his country had been a victim, which was still before the Security Council. His country was prepared to provide any other relevant documents on the attack of 16 January 1977. In that regard he drew the attention of members to Security Council document S/14211 of 8 October 1980.

42. His delegation strongly supported the Nigerian proposal and agreed that the draft convention should be prepared by an intergovernmental ad hoc committee of 35 members.

43. Mr. BROOK (Australia) said that the Governments of all States had been concerned in recent years by the extent of mercenary incursions, and his Government had joined in the general condemnation of those activities. Mercenaries helped to create instability, and might be guilty of initiating, or taking part in, atrocities of various kinds, partly because they lacked the discipline of regular soldiers and sometimes because they were concerned with personal gain. His Government was ready to endorse any reasonable effort to put an end to mercenary activities.

44. Previous speakers had pointed out that it was difficult to define the scope of the practice which it was hoped to extirpate, and experience had already shown that international consensus on mercenary activities was not easy to achieve. The deficiencies of the definition of a mercenary to be found in article 47 of Additional Protocol I to the 1949 Geneva Conventions had been recognized during drafting discussions in Geneva, but the definition adopted was the best that could be achieved by consensus. One problem arising from the definition was the participation by foreigners in the armed forces of established States. It was not uncommon for foreigners to be members of the armed forces in some countries, and

/...

(Mr. Brook, Australia)

it had already been pointed out that people in that category were excluded from the definition of a mercenary contained in Additional Protocol I. Many of his country's citizens were immigrants, and his Government therefore had a particular interest in the problem of dual nationality, i.e., the status of persons considered nationals by the State in whose armed forces they served but who were also considered as the nationals of another State by the latter State. The problem was a very difficult one which had often defied solution.

45. The second aspect of particular concern to his Government was the status of the volunteer who participated in a foreign conflict on the basis of personal conviction. Such volunteers might be paid, not necessarily at the same rates as local recruits. Problems of proof in such instances would always be complex, and delegations from Africa and the Americas could point to famous cases of soldiers of fortune who were honoured in countries whose independence they had helped to establish.

46. Despite those difficulties, the Committee should not be deterred from attempting to achieve international agreement on outlawing the practice of using mercenaries to support unlawful activities in any State. With that aim in view, it might perhaps be best to focus attention on the actions of the individuals concerned and on their status. It was important to arrive at an objective definition of the actions which it was hoped to prevent.

47. His Government had already taken action to curb the recruitment of mercenaries for unlawful purposes. In 1978 an Act of Parliament had established penalties for anyone associated with his country who took part in any incursion into a foreign country for the purpose of engaging in activities hostile to the Government of that country. There were also provisions for incidental offences, and a fairly careful definition of the crimes proscribed by the Act. The Act did not, however, make it a crime for anyone with Australian nationality to be a member of the armed forces of a recognized foreign country, and it would not be in accord with his Government's concept of individual liberty or human rights to create such an offence.

48. He expressed his delegation's gratitude to the representative of Nigeria for providing a draft International Convention, to which his delegation had already given some preliminary consideration. Some of the provisions in the draft Convention would, however, create difficulties for a number of States. In particular, his delegation noted that while the definition contained in article 1 of the Convention derived from the 1977 Geneva Protocol, article 2 embodied a different concept which would be difficult to reconcile with that contained in article 1. His delegation would reserve its comments on the details of the draft Convention until a later stage in the Committee's deliberations.

49. Mr. KOSTOV (Bulgaria) said there was no doubt that the activities of mercenaries constituted a grave international crime which prevented peoples from enjoying their legal right to self-determination and the achievement of freedom and independence from the yoke of colonialism and foreign domination.

(Mr. Kostov, Bulgaria)

50. The use of mercenaries, persons who were prepared to commit any crime for the purpose of individual gain, not only contravene the generally accepted norms and principles of international law but destroyed the legal and moral foundation on which civilized society as a whole was based.

51. The question of condemning and prohibiting the use of mercenaries had long been a preoccupation of the world community. The activities of mercenaries had been condemned as an international crime in a series of General Assembly and Security Council resolutions, as many previous speakers had pointed out. OAU had also stated its views on the matter on a number of occasions. Article 47 of Additional Protocol I to the Geneva Conventions had gone so far as to stipulate that mercenaries could not have the status of combatants or prisoners of war.

52. The task before the Committee was, however, extremely complex, involving as it did not only the question of the criminal responsibility of physical persons committing the crime of mercenarism, but also certain exceptionally serious problems relating to the responsibility of juridical persons and States for the recruitment, use, financing and training of mercenaries.

53. His delegation took the view that the definition of the term "mercenary" contained in article 47 of Additional Protocol I, together with the principles and norms affirmed in the OAU declarations on the question of mercenarism, the OAU Convention for the Elimination of Mercenaries in Africa and the decisions reached at the trial of foreign mercenaries at Luanda provided a suitable basis for a definition of the mercenary in a future convention, and would establish a sufficiently clear distinction between the mercenary and the international volunteer.

54. His delegation agreed with a number of previous speakers that the question of the use of the term "mercenarism" and its possible replacement by the term "activities of mercenaries" was not merely a matter of linguistics. It would be proper to postpone a decision on that matter until there had been exhaustive discussion of all the criteria underlying the definition of a mercenary, and in particular, the criterion of direct participation in military activities and the possible implications of a given definition in the context of the responsibility of States under the proposed convention.

55. His delegation believed that the Sixth Committee, or a working group set up by that Committee, would be able to proceed directly to a consideration of the articles of such a convention at the next session. His delegation was prepared to consider other procedures, provided they were conducive to the prompt and successful conclusion of work on the convention.

56. Mr. GUILLAUME (France) recalled that the representative of the United Kingdom had remarked that the word "mercenarism" was not to be found in the Oxford English Dictionary. The analagous term "mercenariat" was similarly absent from French dictionaries, and he hoped that in future discussion of the question the terms "mercenaries" and "their activities" would be used instead of the offending neologism.

57. Turning to those activities themselves, he said that aggression by armed adventurers against independent States must be unequivocally condemned. He reaffirmed his country's respect for the independence of States and for the principle of non-interference in their domestic affairs, a principle to which there must be no exceptions.

58. For that reason, his country had supported the adoption by the General Assembly of resolution 34/140, which had invited Member States to communicate to the Secretary-General their views and comments on the need to elaborate an international convention to prohibit the recruitment, use, financing and training of mercenaries. However, during the discussion on the resolution, his delegation had expressed reservations from a legal point of view with regard to the inclusion in the preamble, and particularly in the second paragraph, of statements which it considered too categorical. As other delegations had argued, the activities of mercenaries could not be considered in all circumstances as "crimes against humanity" in the legal sense of that term. Nor could such activities be said to constitute in all cases and a priori a threat to international peace and security.

59. None the less, his delegation believed that Member States should "consider effective measures" to prohibit the activities of mercenaries, as requested in paragraph 2 of resolution 34/140.

60. It was with the aim of discouraging such activities that his country had evolved a substantial body of legislation with regard to mercenaries. In particular, article 85 of the Penal Code provided for a prison sentence of one to five years, together with a fine, for anyone recruiting soldiers on behalf of a foreign Power in his country's territory in peacetime. The article had been invoked in a trial involving mercenaries in 1967. Articles 80 and 89 of the Penal Code also related to mercenaries, as did article 97 of the Nationality Code as amended by an Act of 9 January 1973. Other legislative provisions made it possible to disband private militias and combat units.

61. His delegation, like that of Sweden, was not convinced that there was any pressing need for an international convention against mercenaries. It would be preferable for the Secretariat to prepare a comparative study of existing national legislation, on the basis of replies already received from States, information emerging during the course of the debate and other material which might be submitted by Governments which had not so far communicated details of their

(Mr. Guillaume, France)

national legislation. Such a study would enable each country to review its own legislation and possibly improve it.

62. An international convention was not the only possible approach to the problem and was perhaps not the most effective one. If, however, it was the general view of the majority that such a convention should be elaborated, it should be drafted seriously and with objectivity after careful consideration of the legal problems which might arise. Probably the most intractable of those problems was the definition of the term "mercenary". That term should not be defined vaguely by referring, for example, to the more or less legitimate aims pursued by those concerned. Nor would it be helpful to use the definition contained in article 47 of Additional Protocol I to the Geneva Conventions, which, as the Government of Mexico had noted in its reply (A/35/366/Add.1) was not altogether successful. A generally acceptable formula would have to be precise and based on objective criteria, and should exclude, for example, military personnel stationed in a foreign country by virtue of agreements concluded between lawful Governments, or personnel recruited abroad by those Governments or with their consent.

63. Such problems would have to be studied carefully before the actual drafting of a convention could be envisaged. Such a study could be carried out by the Secretariat which, on the basis of information provided by countries, could submit to the Committee at the thirty-sixth session a synthesis of current international law and national legislation with regard to mercenaries. The General Assembly could then proceed, in 1981, to a final decision on the appropriate procedure to follow.

64. Mr. Koroma (Sierra Leone) resumed the Chair.

65. Mr. KOTEVSKI (Yugoslavia) said that the question under consideration was assuming ever greater importance in the current phase of international relations. Intervention in the internal affairs of States was becoming increasingly frequent and was assuming the most diverse forms. One of those forms was the recruitment, training, assembly, transit and use of mercenaries for the purpose of overthrowing Governments and suppressing national liberation movements. The victims of that policy were primarily the small and underdeveloped countries and liberation movements fighting for emancipation from colonial and other forms of foreign domination.

66. It was against that background that the Sixth Conference of Heads of State or Government of Non-Aligned Countries had once again denounced the practice of hiring mercenaries to undermine the independence of sovereign States. The Conference had urged all States to enact effective legislation making the recruitment, financing and training of mercenaries in their territory punishable by law, prohibiting mercenaries from travelling through their territory and prohibiting their own citizens from serving as mercenaries or collaborating in such activities in any way.

67. His delegation attached great importance to the question of elaborating an international convention prohibiting the activities of mercenaries. For that

(Mr. Kotevski, Yugoslavia)

reason it had welcomed and actively supported the proposal to include an item on that question in the agenda of the General Assembly.

68. The problem of mercenaries had been considered repeatedly and had been the subject of legal regulation at the national and regional levels and also in the United Nations. Despite the existence of such provisions, it was important to take the further step of drafting a definitive, comprehensive and legally binding instrument in the form of an international convention outlawing the activities of mercenaries as a crime against humanity.

69. In its reply of 15 November 1978 (A/33/199/Add.3) his Government had emphasized that the practice of using mercenaries against national liberation movements and sovereign States constituted a criminal act and that mercenaries themselves were criminals. It had also stressed that all States should enact legislation declaring the recruitment and training of mercenaries in their territory, and the transit of mercenaries through their territory, to be punishable offences.

70. His delegation agreed with the definition of a mercenary contained in article 47 of Additional Protocol I to the Geneva Conventions, which his country had signed and ratified. That article stipulated that mercenaries were not entitled to the status of combatants or prisoners of war. Mercenaries were therefore professional assassins who could not enjoy international legal protection.

71. It was not sufficient for the international convention to provide only for the obligation of States to refrain from involving themselves in the recruiting, training or use of mercenaries. They should also be required to punish all their nationals and other persons under their jurisdiction who participated in any way in mercenary activities. The draft Convention submitted by the delegation of Nigeria provided a sound basis for further work on the elaboration of a final text. His delegation felt it would be appropriate to entrust the drafting of the convention to an ad hoc committee, but was prepared to consider the other options mentioned in the course of the debate.

72. Mr. HATTINGA van 't SANT (Netherlands) said that there was clearly a serious concern, particularly among the African countries, about the activities of mercenaries. His Government shared the opinion that the recruitment and use of mercenaries were unacceptable and should be terminated. It was prepared to look for and discuss ways in which the various aspects of the problem of mercenaries could be tackled, such as the possibility of an international convention.

73. Some delegations had stated that the definition of the term "mercenary" contained in article 47 of Additional Protocol I to the Geneva Conventions was not altogether satisfactory and that a different definition should be incorporated in a future convention. The question was whether an attempt should be made to improve

(Mr. Hattinga van 't Sant,
Netherlands)

the definition in article 47, with the inevitable drawback that there would eventually be two definitions in international law, or whether a generally accepted, but perhaps imperfect, definition should be retained. Even more problems arose when an attempt was made to describe comprehensively what was meant by "mercenarism". The comprehensive description contained in article 2 of the draft International Convention submitted by Nigeria could not, as it stood, be incorporated in the laws of the Netherlands. A distinction should be made between the following: (a) activities of individuals which should be prohibited. A future convention should define those activities in such a way that they could be easily incorporated in the domestic law of all countries; (b) activities of States which were or should be prohibited under international law; (c) actions which States were required to take in their domestic jurisdiction in order to combat the activities of mercenaries. That would include the adaptation or incorporation of penal and administrative laws and regulations and the measures necessary for their implementation.

74. His delegation had particular difficulty with the introduction in article 2 of the Nigerian draft of the concept of mercenarism engaged in by States. The consequences of that new concept were far from clear. The acts described in article 2 seemed to be already covered by the Charter of the United Nations. Furthermore, it was not clear which competent international organizations or tribunals were envisaged in article 7.

75. The title of the Nigerian draft, "Convention against the Activities of Mercenaries", was narrower than the content. The title should reflect the fact that a possible future convention aimed at dealing with the various aspects of the problem of mercenaries.

76. The position of mercenaries under article 47 of Additional Protocol I to the Geneva Conventions, which denied the mercenary the status of combatant or prisoner of war, was already weaker than the Netherlands deemed desirable. The status of mercenaries in armed conflicts should not be reduced even further in a future convention. No matter how serious his activities, a mercenary was still a human being entitled to the human rights to which all people were entitled.

77. Not all States which had submitted written comments seemed to be convinced that the immediate drafting of a convention was the best solution. The draft proposed by Nigeria had been published only recently, and States had therefore been unable to describe their reactions to its provisions in their replies to the Secretary-General. During the current debate, the few speakers who had commented on the draft had made it clear that such comments were only preliminary. His delegation therefore considered that there was not enough support for the Nigerian proposal to establish an ad hoc committee to begin work on a draft convention. It was essential first to ascertain that there was a solid political basis for such a procedure and to obtain more detailed views of Governments on the content of a convention. The Secretary-General should be asked to circulate the Nigerian draft to all States Members of the United Nations, with a request for their comments thereon. At the thirty-sixth session, the Sixth Committee should consider how best to proceed. The establishment of an ad hoc committee could certainly be considered

(Mr. Hattinga van 't Sant,
Netherlands)

then. The Netherlands would co-operate actively in finding solutions to the many difficulties which that undertaking entailed.

78. Mr. SCOTLAND (Guyana) said that the proposal for the drafting of an international convention against the activities of mercenaries was most timely and obliged the international community to focus directly on the frequent reappearance of mercenarism in the past two decades. His delegation welcomed both the Nigerian initiative in proposing the inclusion of the item and the expression of concern on the part of the international community. The latter had reacted to threats to orderly international intercourse by adopting, inter alia, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, and the International Convention against the Taking of Hostages. In the process, it had addressed itself to complex questions and found satisfactory solutions. With regard to the proposal for a convention against the activities of mercenaries, the international community would have to address itself to equally complex questions, such as the distinction between the mercenary and the volunteer or idealist. If the political will existed, satisfactory solutions would not elude the Committee.

79. By far the most important ingredient in the preparation of the convention was the attitude of the international community towards the activities of mercenaries and their sponsors. A truly effective convention would be one that would influence the current practices associated with the use of mercenaries and make those supporting or encouraging such nefarious activities feel answerable to any member of the international community. The convention should provide for punishment along the lines of the penalties imposed on pirates and slavers, as a deterrent to mercenaries. The mercenary might become less disposed to offer himself for hire if he knew that there was no haven for him, not even in his country of origin.

80. As to the method of proceeding, his delegation felt that a working group of the Sixth Committee, which would provide a first opportunity for the consideration of a convention, might be a useful starting-point. It was ready, however, to support any other procedure which might commend itself to the Committee and which would lead to the speedy preparation of an effective international convention against the recruitment, use, financing and training of mercenaries.

81. Mr. SUN Lin (China) said that from the historical standpoint, mercenarism was the product of imperialist and colonialist systems. Imperialism, colonialism, racism and hegemonism had long been using mercenaries to subject small and weak countries to aggression and oppression and to suppress national liberation movements. Usually motivated by the desire for private gain, mercenaries sold themselves, becoming professional killers for their masters and brutally murdering innocent people of other countries. It was precisely for that reason that mercenarism was spurned by all, especially its innocent victims.

82. In recent years, the General Assembly, the Security Council, the Conference of Heads of State or Government of Non-Aligned Countries and the Organization of African Unity had all adopted resolutions and other instruments strongly condemning mercenaries and their crimes. In July 1979, OAU had adopted the

(Mr. Sun Lin, China)

Convention for the Elimination of Mercenaries in Africa. Nevertheless, the organizing and dispatching of mercenaries had continued unabated, posing a serious threat, especially to the African countries and the national liberation movements. His delegation supported the proposal to draft an international convention in order to suppress and combat mercenarism effectively at the international level.

83. The question of mercenarism was complicated, for it involved not only individuals and groups of individuals, but also States. Moreover, the forms of organizing and dispatching mercenaries had developed and changed. The drafting of an effective and realistic international convention was a fairly difficult task. The first problem was the definition of the term "mercenary". His delegation believed that mercenaries were motivated by the desire for private gain and were not nationals of a party to the conflict. As far as mercenarism was concerned, the more important point was the purpose behind the dispatching of mercenaries. The essence of mercenarism was that the purpose was to launch aggression against other countries, subvert their Governments and suppress the just struggles of the national liberation movements.

84. At the international level, the practice of recruiting, financing and training mercenaries still existed. Certain countries, however, were resorting to a new method, supplying money and arms to countries under their control and directing them to send people to commit acts of aggression against other States, interfere in their internal affairs and brutally massacre the local people. Such a practice was, in essence, a new form of mercenarism under new circumstances. The international community should therefore bear current realities in mind and give full consideration to all forms of mercenarism.

85. In view of the serious harm caused by mercenarism to its victims, it was imperative to deprive mercenaries of their status of prisoners of war, in accordance with Additional Protocol I to the Geneva Conventions, and to punish them duly according to the seriousness of their crimes. It was also important to note that the underlying reason for the continued existence of mercenarism was that certain countries condoned mercenaries and even instructed others to dispatch mercenaries to invade other countries. The convention should have a clear provision about the international responsibilities of those countries.

86. His Government had always resolutely opposed imperialism, colonialism, racism, hegemonism and all forms of mercenarism. The Chinese people would continue to do their utmost to support the just struggles of those countries and peoples that were victims of aggression and oppression. The draft submitted by Nigeria would, after serious discussion and modifications, become a fairly good and realistic convention, playing a positive role in combating aggression and oppression and in safeguarding world peace and security.

The meeting rose at 5.50 p.m.