

United Nations
**GENERAL
ASSEMBLY**



SIXTH COMMITTEE
57th meeting
held on
Thursday, 27 November 1984
at 3 p.m.
New York

THIRTY-NINTH SESSION

*Official Records**

SUMMARY RECORD OF THE 57th MEETING

Chairman: Mr. GOERNER (German Democratic Republic)

later: Mr. AZZAROUK (Libyan Arab Jamahiriya)

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Distr. GENERAL
A/C.6/39/SR.57
5 December 1984
ENGLISH
ORIGINAL: SPANISH

The meeting was called to order at 3.25 p.m.

AGENDA ITEM 129: REPORT OF THE AD HOC COMMITTEE ON THE DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES (continued) (A/39/43, 59, 60 and Corr.1, 158, 163, 203, 318, 396, 413, 473, 552, 561, 596, 611, 616 and 632)

1. Mr. TARASYUK (Ukrainian Soviet Socialist Republic) said that the practice of mercenarism constituted a grave threat to the world, which the General Assembly itself had described as a crime against the peace and security of mankind. Nevertheless, for the past year the imperialist and reactionary circles had in many instances resorted to the use of mercenaries. For the past four years, Nicaragua had been the victim of an undeclared war carried out by means of mercenaries and, in 1984, the Security Council had met to discuss the large-scale acts of aggression directed against Nicaragua through the use of paid murderers. The forces opposed to the Nicaraguan revolution had organized an army of mercenaries and had provided it with training bases, financing, equipment and supplies to invade Nicaragua and to sow death and destruction there.
2. In an attempt to justify those activities, the mercenaries were called freedom fighters, and the Governments that were the mercenaries' victims were called Marxist régimes. That was the simplified picture used in order to thwart the social and economic transformation of the countries of Africa, Asia and Latin America. In some countries, recruitment centres were organized overtly, and there were publications inviting mercenaries to lend their assistance to Fascist and semi-Fascist Governments and to groups of traitors and oppressors of the people.
3. His country supported the efforts made by the United Nations to put an end to mercenarism. It had supported the establishment of the Ad Hoc Committee and, as a member since its foundation, was in favour of the speedy fulfilment of its mandate, which consisted in the drafting of an international convention against the recruitment, use, financing and training of mercenaries. Despite the fact that the overwhelming majority of members of the Ad Hoc Committee had the same desire, it had not been possible thus far for it to fulfil its mandate because of the opposition of certain States. Those States used delaying tactics and raised objections to the articles of the draft convention, because they wanted to use mercenaries against legitimate Governments which displeased them and against national liberation movements.
4. The report of the Ad Hoc Committee (A/39/43) showed that some progress had been made. Although it had not been possible to reach agreement on many points, the consolidated negotiating basis represented a positive result and, for the first time, a single collective basis which would surely facilitate the Ad Hoc Committee's future work.

(Mr. Tarasyuk, Ukrainian SSR)

5. The definition of a mercenary in situations of armed conflict did not pose any special problems, since article 47, paragraph 2, of Additional Protocol I to the Geneva Conventions of 1949 constituted a good basis for that purpose. He supported the inclusion of footnote 21, contained on page 27 of the Ad Hoc Committee's report, which related to article 1 of the draft concerning the definition of a mercenary and which indicated the situations in which article 47 of Additional Protocol I applied. Those situations included armed conflicts in which peoples were fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination.
6. His delegation believed that the provisions of the future convention should contain a reference to the activities of mercenaries in peacetime, which represented the most serious threat to newly independent States, and he did not think that the criteria behind article 47 of Additional Protocol I should be transposed to situations other than armed conflict. The criterion that should be used to define a mercenary was participating in the crime of mercenarism.
7. In his opinion, it was not very realistic to try to elaborate a single definition of a mercenary. The future convention should contain a provision describing the content of mercenarism, together with a list of the acts committed by mercenaries, particularly in peacetime. Because of the danger it represented, the crime of mercenarism should be described as a crime against the peace and security of mankind.
8. Some delegations seemed to resist recognition of the responsibility of States. Mercenaries were an instrument of the foreign policy of the Governments they represented. Article 11 of the draft constituted an acceptable basis for future work, and articles 13, 22 and 23 were extremely important. Since the work of the Ad Hoc Committee was still in a preliminary phase, his delegation would not yet analyse the consolidated negotiating basis in detail.
9. He expressed the hope that the Ad Hoc Committee would soon fulfil its mandate. To that end, the co-operation of delegations was needed, not only in word but also in deed, and his delegation therefore appealed to all delegations to abandon delaying tactics and to forsake the use of mercenaries against other States and against liberation movements. The crime of mercenarism was an abominable offence similar to apartheid and genocide, and his delegation supported an extension of the Ad Hoc Committee's mandate.
10. Mrs. SILVERA NUÑEZ (Cuba) said that the international community was called upon to repress and punish mercenaries in view of certain events which had occurred in different parts of Africa, Asia, Central America and the Caribbean. The rapid development and the different forms of the phenomenon of mercanrism and accompanied decolonization and independence with the sole aim of strangling national liberation movements and destabilizing properly formed Governments.

(Mrs. Silvera Nuñez, Cuba)

11. In the declarations adopted at its sixth and seventh summit conferences, the Movement of Non-Aligned Countries had called upon the United Nations to elaborate a convention to curb the criminal activities of mercenaries, which threatened the principles of sovereignty and non-interference in the internal affairs of other States as well as the right of peoples to self-determination.

12. The future convention should contain a clear and precise definition of a mercenary, which reflected the real dimensions the phenomenon had acquired and the legal régime it was intended to protect. Mercenarism was sui generis and had its own characteristics. For that reason, the provisions of other international legal instruments, which were different both in content and in scope, should not be transposed to the future convention, which should have its own provisions as well as machinery to ensure its effective implementation.

13. It was especially important for the Ad Hoc Committee to dwell on the profitable nature of the activities of mercenaries. An exception should be made for the members of regular armies and groups of volunteers who co-operated in the liberation of peoples from colonialism, neo-colonialism and any other form of domination.

14. Her delegation supported the establishment of a system of penalties applicable to either individuals or groups and to those States which in one way or another collaborated in mercenary attacks in the territory of other States. Her delegation believed that the convention should contain provisions concerning the duty incumbent on States to fulfil the obligations deriving from it and, at the same time, to prohibit propaganda aimed at encouraging mercenarism. In that connection, she drew attention to document A/39/596, which contained part of the treacherous literature of the Central Intelligence Agency (CIA), entitled "Psychological operations in guerrilla warfare". The document described 1,001 ways of assassinating any international figure who stood in the way of Washington's policy.

15. Her Government had adopted the necessary legislative measures, and the Cuban Penal Code established the relevant penalties for those who infringed the provisions prohibiting any form of participation in mercenary activities.

16. With regard to the report of the Ad Hoc Committee, her delegation said that the "Draft structure" was a good initiative as it provided a document which consolidated the different tendencies and approaches, thus facilitating the Committee's negotiations. As to paragraph 30 of the report, it would not be advisable to reproduce, in the context of a convention, Article 47, paragraph 2 of Additional Protocol I to the Geneva Conventions of 1949, since its scope of application was restricted and did not cover situations other than armed conflict.

17. Her delegation had some difficulty with the conceptual approach of paragraph 31 because it was not a solution which could achieve a consensus and, in particular, because the future instrument was not intended to be an annex to the additional Geneva Protocols and did not fall within the scope of humanitarian law.

(Mrs. Silvera Nufiez, Cuba)

18. With regard to paragraph 40, it would be for the victim State to decide, in accordance with its domestic regulations, on the treatment to be given to its nationals. In order to obtain more information on that question, the Committee could compile national legislations and ask Member States for their opinions, which help to facilitate negotiations.

19. Additional Protocol I to the Geneva Conventions applied prisoner-of-war status to national liberation movements participating in international armed conflicts. Consequently, some of the comments contained in paragraph 94 of the report were not accurate, since, in applying that status, a parallel should not be drawn between national liberation movements and mercenaries. The Convention might also contain a clause on damage reparation to States victims of mercenary action.

20. Her delegation drew attention to the fact that bands of mercenaries were operating from some territories in Central America, primarily to destabilize the legitimate Government of Nicaragua, with the support and backing of the United States Government, which invested considerable sums to that end and lent its support to Somozan counter-revolutionary elements. The United States had played the same role in drilling, training and financing bands of mercenaries for the Bay of Pigs invasion of Cuba.

21. Mr. TELLEZ ARGUELLO (Nicaragua) said that for many years countries in all regions of the world had suffered from the activities of mercenaries, financed by major companies and States wishing to dominate other States, especially those which were poor and militarily weak. It was therefore increasingly urgent for the Ad Hoc Committee to complete its work and arrive at a legal instrument which would put an end to the activities of those international delinquents.

22. His country had been suffering from mercenary activities for four years, to such an extent that it had been obliged to resort to the Security Council, which had met on 7 September 1984 (S/PV.2557). At that meeting, the Nicaraguan delegation had informed the Council that two United States citizens had been killed when a helicopter which had entered Nicaraguan territory was downed. The United States Government had tried in vain to extricate itself from the death of those two persons, but it had not been able to provide a satisfactory explanation of a number of questions raised.

23. However, the United States mass media had been able to answer almost all the questions. It had been possible to demonstrate that United States mercenaries, along with Nicaraguans, had participated in combat, with the full support of the CIA, and that the United States Government, finding it difficult in Congress to obtain funds to finance the counter-revolution, had concentrated its efforts on encouraging the private sector to collect funds to invigorate the mercenaries' activities. The United States Government had apparently also encouraged allied Governments to assume the costs of the counter-revolution. The amount collected could be as high as \$17 million. Among the active participants in that fund-raising effort was the magazine Soldiers of Fortune, which had also provided supplies and advisers.

(Mr. Tellez Arguello, Nicaragua)

24. Those facts were all the more serious as they were carried out by a Government which claimed that it respected its own laws and the norms of international law. The adoption of a convention would not solve that problem, but it was always preferable to have a legally binding instrument making it possible to undertake a more effective struggle against neo-mercenary action. That Convention should cover all situations in which mercenary activity might arise and should also clearly express the seriousness of the offences, so that the punishment handed down was not illusory. It should also provide for the obligations and responsibility of States as well as preventive measures.

25. Two definitions of "mercenary" were necessary to cover all situations in which mercenary activities might arise. In the case of international armed conflict, it was appropriate to use article 47, paragraph 2 of Additional Protocol I to the Geneva Conventions of 1949 and, in the absence of armed conflict, the first definition should be used, and the necessary changes introduced, in accordance with the chapeau proposed by the Chairman of Working Group A. In the second definition, the components of nationality and residence should be presented in a flexible manner so that, in certain cases, the definition did not exclude those nationals wishing to conceal themselves in the so-called category of political opponents, in which they did not belong.

26. As to the question of direct participation, his delegation considered it essential to retain article 2, subparagraph (b) of the consolidated basis. With regard to the definition of offences to be covered by the Convention, he preferred the first criterion adopted in article 4 of the consolidated basis, because it was difficult to accept, under a so-called expansion of the definition, the fact that an individual who enlisted as a mercenary would not be punished, whereas a person recruiting mercenaries would be punished simply for having recruited them.

27. Concerning article 10 of the consolidated basis, the offences committed by mercenaries were crimes against the peace and security of mankind, since the principles violated by the mercenaries constituted clear ideals of peace of mankind itself which, in the final analysis, was affected by the activities of those delinquents.

28. His delegation supported the idea suggested in the course of the deliberations of the Ad Hoc Committee that the Convention should provide for mechanisms to enhance its effectiveness. It would also be useful if the draft resolution on the renewal of the Ad Hoc Committee's mandate included an operative paragraph allowing for the active participation of observers in the work of the Committee and its working groups.

29. Mr. MBA-ALLO (Gabon) said that his country fully supported the efforts of the United Nations to draft, on the basis of the African initiative, a Convention against the Recruitment, Use, Financing and Training of Mercenaries. Although the African countries had, in 1977 in Libreville (Gabon), adopted the Organization of African Unity Convention for the Elimination of Mercenarism in Africa, it was only

(Mr. Mba-Allo, Gabon)

through international co-operation that Africa and the rest of the third world would be rid of the threat represented by mercenarism.

30. With regard to the definition of "mercenary" in the future Convention, his delegation considered that article 47, paragraph 2 of Additional Protocol I to the Geneva Conventions of 1949 constituted a very sound working base. It would be useful for the definition to take into account the criterion of the "cause defended by the mercenary". If it did, it would not matter whether the mercenary activity occurred during peacetime or in a situation of international or non-international armed conflict. The only criterion would be whether the cause embraced by the mercenary was in accordance with international law or not.

31. With regard to the work of Working Group B, the progress made with regard to preventive measures, damage reparation and the settlement of disputes was encouraging.

32. His delegation was in favour of renewing the mandate of the Ad Hoc Committee.

33. Mr. ENGO (Cameroon) said that, given the expanding activities of the new international professional criminals, both individuals and sponsoring States or institutions, it was essential to create a universal legal framework for responding to the threat to peace and security which they represented. Such an undertaking would not involve the assumption of new responsibilities under international law since the activities of mercenaries were usually motivated by infringement of the existing principles which emanated from the Charter of the United Nations. For example, they flouted the prohibitions against the threat or use of force and the principle of non-interference in the internal affairs of States, and undermined the right of peoples to exercise sovereignty in the manner of their choice. Activities launched from other countries, near or far, were highly provocative breaches of international peace and security.

34. States Members of the United Nations were fundamentally bound by their obligations under international law. The work of the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries must not be frustrated by ideas removed from that fact. The Government of Cameroon, which under no circumstances, would allow its territory to be used to prepare the overthrow of legitimate Governments, firmly deplored the fact that the use of that criminal system had become part of the national policy of countries which, unable to maintain their empires physically, had created neo-colonialism. In southern Africa, the racist régime of South Africa supplemented its naked aggression by the activities of mercenaries or hired killers in the hope of destabilizing the front-line States and making satellites of them.

35. The definition of a mercenary must be the subject of very careful consideration because, if there was not a clear knowledge of the nature of the offences to be prohibited and of the methods employed in the current technological age, loopholes could be created which would be used as havens by those professional

(Mr. Enqo, Cameroon)

criminals. The proposals contained in article 47 of paragraph 2, the Protocol I Additional to the Geneva Convention of 1949 referred to the conditions existing at that time and did not take into account the sophisticated technology of the present.

36. The definition should cover not only accomplices but also individuals and institutions masquerading as non-profit organizations, that systematically organized campaigns of destabilization against young countries by spreading false rumors to discredit legally constituted authorities, or brought about conditions of fear and uncertainty which distracted those authorities from fulltime preoccupation with problems of economic development.

37. In recent years, it had become clear that the pen was, in many circumstances, more effective than the sword. Foreign journalists and journals had been known to have received large sums of money to wage devastating campaigns against constituted authorities, and those were therefore mercenaries just as much as individuals who employed force. It was not the intention of Cameroon to include genuine critics among the press, who analysed facts and gave opinions in accordance with their own perspectives, but a dividing line must be drawn between genuine criticism and mercenarism. The consequences of the practice of mercenarism were too serious and its punishment must be proportional to the crime, as well as to the need to deter it. A captured mercenary must not be confused with a prisoner of war, but should join those who committed murder, arson and other kindred felonies. The magnitude of his punishment should, however, be commensurate with the nature of his crime.

38. His delegation supported the renewal of the Ad Hoc Committee's mandate, especially having regard to the good work it had done so far.

39. Mr. ROSENSTOCK (United States of America), speaking in exercise of the right of reply, said that Cuba, which since the advent of the régime of President Castro had tried to export its totalitarian system and had failed in its mission, which had sent troops to Africa and which had joined other States in delivering an unprecedented quantity of arms to Nicaragua and in destabilizing the Governments of Central America, was not in a position to blame other countries for the tensions which existed in the region. When Cuba ceased to support subversion, its statements would receive some credibility, such as when it described "freedom fighters" as mercenaries, although the former did not fit into any known definition of that term.

40. If Nicaragua ceased to export its revolution to neighbouring countries and concentrated on fulfilling the promises which it had made to its own people, its accusations might then be considered as honest mistakes, rather than attempts to cloud the issues which had now transformed into mercenaries those who had helped to overthrow the Somoza régime. Neither the press censorship which existed in Nicaragua nor the lies which were uttered in the Sixth Committee would make such accusations true.

41. Mrs. SILVERA NUÑEZ (Cuba), speaking in exercise of the right of reply, said that the arguments of the United States of America clearly could not stand up to those of Cuba because the Government of her country enjoyed credibility and its principles were respected and not based on stereotyped profiles intended for the mass media. The representative of the United States of America had mistaken both his role and his audience, because the members of the Sixth Committee were well informed jurists who would not have been deceived by his false and hypocritical diatribe which sought to divert attention from the question of the complicity of the United States of America in the criminal activities of the CIA in Cuba, Nicaragua, Viet Nam, Ethiopia, Angola, Mozambique, Suriname, Benin, Afghanistan and Seychelles, to cite only the best known examples.

42. It was not true that Cuba exported revolutions; it was the peoples who were reacting to aggression, hunger, poverty and social injustice. It was not true that Cuba supplied arms to Nicaragua. She wished the representative of the United States of America to present concrete proof of that allegation to the Sixth Committee or to the plenary of the General Assembly.

43. In a certain sense, the reaction of the United States was understandable, since it was consistent with the reactionary methods of blackmail and economic coercion which that country used to obtain the support of third world countries threatened by difficult economic circumstances. Before speaking of what Cuba was doing, the United States of America should analyse the policy it applied to developing countries, which it was suffocating.

44. Mr. TELLEZ ARGUELLO (Nicaragua), speaking in exercise of the right of reply, said that the reply of the delegation of the United States of America was disappointing, just as it had been in other forums, since no satisfactory reply existed for what had become a habitual practice of the United States: the violation of the norms of international law.

45. The argument that Nicaragua was exporting revolution was totally unfounded. It was not easy to export a revolution: revolutions were undertaken by peoples that suffered from oppression and repression. That argument had nothing to do with the item under consideration and did not answer to the questions that had been asked. Was the United States of America financing the counter-revolution and the American mercenaries who were committing acts of aggression against the legitimate Government of Nicaragua? Was it permitting the activities of private groups which were financing and training mercenaries? The response to those questions would once again centre the discussion on the item under consideration.

46. The CHAIRMAN said that consideration of agenda item 129 had thus been concluded.

AGENDA ITEM 120: PROGRESSIVE DEVELOPMENT OF THE PRINCIPLES AND NORMS OF INTERNATIONAL LAW RELATING TO THE NEW INTERNATIONAL ECONOMIC ORDER: REPORT OF THE SECRETARY-GENERAL (continued) (A/39/504 and Add.1 and 2; A/39/581-S/16782 and Corr.1)

47. Mr. DJORDJEVIC (Yugoslavia) noted with satisfaction that, after several years of work, the United Nations Institute for Training and Research had succeeded in completing the complex and significant task entrusted to it by the General Assembly: to prepare an analytical study on the progressive development of the principles and norms of international law relating to the new international economic order (NIEO). From the beginning, his delegation had supported the initiative for the consideration of the legal aspects of the NIEO in the Sixth Committee, since the efforts for the establishment of the NIEO were an important element in the democratization of international relations.

48. As the new international economic order was in the interest not only of developing, but also of developed countries, it was regrettable that generally speaking there had been no progress achieved towards its establishment, including the progressive development of relevant principles and norms of international law. It could not, of course, be expected that those principles and norms would be generally accepted at once; the process was a long and complex one. Since a new corpus of law was involved, those principles and norms should be evaluated in a new manner and in a new context, and not only from the standpoint of traditional international law.

49. The principles set forth in the UNITAR study could, when further elaborated, serve as a solid basis for finding solutions in the field of the new international economic order. Of special importance to the developing countries was the principle of the participatory equality of developing countries in international economic relations. The extent of the world economic and financial crisis made it evident that the position of the developing countries could only be improved by their increased participation in international economic relations on a basis of equality.

50. Although the content of the principles and norms of international law relating to the new international economic order had yet to be worked out and their precise definition formulated, they could only be applied if all States were prepared to participate actively in the search for a solution to international economic problems in the interests of all countries. In order for such a solution to be found, all States would need to analyse carefully the study prepared by UNITAR. His delegation therefore supported the idea that all States should again be called upon to submit their suggestions in that regard, so that at the next session of the General Assembly the debate could be conducted in greater depth and concrete decisions could be adopted on the item.

51. Miss PARIS PARPA (Venezuela) said that her delegation reserved the right to comment on the UNITAR analytical study in the course of 1985. Nevertheless, it wished to reiterate its conviction that the progressive development of the principles and norms of international economic law was a basis for the advancement of the developing countries.

(Miss Paris Parra, Venezuela)

52. The premises of the new international economic order derived from the two fundamental principles of sovereign equality and the duty of States to co-operate. The economic activities of States and co-operation among them should be based on justice and equity. It was therefore essential to establish the appropriate framework to enable developing countries to receive the development assistance they needed. The establishment of an international economic environment favourable to development and what was known as the "right to development" were therefore a sine qua non for the full realization of the economic, social and cultural rights of mankind as a whole.

53. In her delegation's opinion, the resolution to be adopted at the current stage should give Governments the opportunity of examining the UNITAR analytical study so that, on the basis of comments on it, an appropriate decision could be taken concerning future work on the item in the Sixth Committee.

54. Mr. VERENIKIN (Union of Soviet Socialist Republics) said that the Soviet Union had always supported efforts to achieve the sovereignty of peoples over their natural resources and to eliminate colonial exploitation and any type of artificial trade barrier, since it considered that the international economic order should be built on a just and democratic foundation, meet the interests of States with different social systems, and serve to promote relations of good-neighbourliness and trust among peoples.

55. The effort to restructure international economic relations had led in the past to the adoption of progressive new principles to regulate relations among States that were contained in various international instruments and other General Assembly decisions. Nevertheless, the process of restructuring international relations had currently become paralysed, and attempts must therefore be made to overcome the resistance of western circles which were opposing the efforts to implement the new international economic order and persisting in discriminatory practices.

56. The member countries of the Commission for Mutual Economic Assistance (CMEA) had indicated in a statement in June 1984 that the escalation of the arms race by imperialist circles was one of the main reasons for the worsening of the world political situation and its instability, and had stressed the danger of a nuclear war which posed a threat to the very existence of mankind and which, in addition, placed a heavy burden on the peoples of the world because it swallowed up financial and material resources and slowed down socio-economic progress.

57. The forces of imperialism misused international economic links for their own political ends and in violation of norms generally accepted by States. Not even international trade in foodstuffs had escaped such activity, and blockades, embargoes, restrictions on the transfer of technology and other types of sanctions had been resorted to against countries that rejected their dictates. The situation of the developing countries was particularly difficult since imperialist circles had made the peoples of those countries bear the brunt of the economic crisis, thus continuing colonialist exploitation and facilitating the infiltration into their economies of foreign capital, particularly transnational companies' capital.

(Mr. Verenikin, USSR)

58. In view of the widening gap between the developing and the industrialized countries, and the resultant poverty for hundreds of millions of people, his delegation supported the efforts of the developing countries to achieve the progressive development of the norms of international law relating to the new international economic order. However, it considered that the subject should be dealt with by the United Nations Commission on International Trade Law, which possessed the proper qualifications and legal competence, and also had a working group that was studying the new international economic order. The analytical study should, of course, have been prepared by the Commission and not by UNITAR, which was not a body made up of State representatives and which had no authority to express opinions that affected the positions of various groups of States. The Soviet position was very poorly reflected in that study, the overall approach of which was one-sided and imbalanced. Regarding that study, he added that his delegation opposed unjustified expenditure being borne by the regular budget of the United Nations.

59. Mr. TEPAVICHAROV (Bulgaria) said that the organization of world economic relations on a just and democratic basis was without doubt one of the major tasks of the international community, particularly in the light of recent events such as economic boycotts of and sanctions against certain States, in clear contravention of established practice.

60. His delegation firmly supported all initiatives aimed at the implementation of the principles of economic co-operation on a basis of equality and mutual advantage and considered that instruments such as the Charter of Economic Rights and Duties of States and the Declaration and Programme of Action on the Establishment of a New International Economic Order provided a sound basis for the elaboration of appropriate legal principles and norms. However, the organic interrelationship between the problem under discussion and the more important concern now facing the international community, that of maintaining international peace and security and preventing a nuclear catastrophe, should also be taken into account.

61. The crisis in international economic relations was harmful to all aspects of inter-State relations, and constituted a potential threat to peace and security. Moreover, the world economic situation was affected by the destructive impact of the escalation of the arms race, which placed an ever-increasing burden on the peoples of the world by squandering vast material and financial resources and slowing down economic and social progress. That made it imperative to elaborate legal norms related to the new international economic order, bearing in mind both the interrelationship he had indicated and the basic principles of equality, non-discrimination, mutual advantage, permanent sovereignty over natural resources and access to the benefits of science and technology.

62. Addressing the analytical study submitted by UNITAR, his delegation considered that it did not satisfactorily reflect the basic principles and norms of international law relating to the new international economic order. Nevertheless, the work done was certainly useful and contained interesting ideas and conclusions which required careful examination by Governments. Governments should be given the

(Mr. Tepavicharov, Bulgaria)

opportunity to express their views on the analytical study and to take part directly, through their official representatives, in future work on the subject. The decision on the appropriate framework for the further consideration of the problem should be taken in the light of the comments and recommendations made by Governments.

63. Mr. MOTSIK (Ukrainian Soviet Socialist Republic) said that his delegation had always supported United Nations efforts to restructure international economic relations and establish a new international economic order. As the declaration adopted by member States of CMEA on 14 June 1984 pointed out, international economic relations must be restructured so that all countries of the world might fully achieve economic potential and develop in a climate of peace, justice and mutual co-operation.

64. The work of restructuring international economic relations was becoming increasingly important in view of the efforts of some States to hinder normal economic and technological co-operation by means of a policy of blockade and pressure against countries which opposed their dictates. Such activities contravened the purposes and principles of the United Nations Charter and other instruments of international law, and made the developing countries' demand for the establishment of permanent sovereignty over natural resources, the prevention of trade discrimination and the adoption of measures to prevent the environmental damage caused by the illegal activities of transnational corporations even more just and correct.

65. The United Nations should play a fundamental part in achieving those aims by seeking means of speeding up the process of establishing the new international economic order and strengthening the relevant norms and principles of international law. In his delegation's view, the most suitable forum for considering the topic was the United Nations Commission on International Trade Law, which had a working group specifically devoted to considering the new international economic order. There was accordingly no justification for having entrusted the study to UNITAR, which was not competent to draw conclusions on matters which required States to harmonize their opinions. It was not surprising, therefore, that the study before the Committee did not duly reflect the positions of some delegations. His own delegation was concerned at the financial implications of UNITAR taking part, which would doubtless entail the changing of additional expenditures to the budget of the United Nations. However, his delegation was prepared to continue co-operating in consideration of the topic and trusted that its position would be suitably reflected in future reports.

66. Mr. Azzarouk (Libyan Arab Jamahiriya) took the Chair.

67. Mr. KAHALEH (Syrian Arab Republic) said that the current international economic crisis showed itself in reduced industrial production, unemployment, inflation, high interest rates and a build-up in the foreign debts of developing countries which resulted from the measures adopted by developed countries to solve their own economic problems. The latter had resorted to tariff barriers and other

(Mr. Kahaleh, Syrian Arab Republic)

restrictive measures in their international trade exchanges and were making external financing conditional on political factors. Hence the importance of the new international economic order as the only means capable of finding solutions to those problems, which were affecting both developed and developing countries, given the interrelationship of their economic interests.

68. The validity of the analytical study carried out by UNITAR was undeniable. In addition to the theoretical consideration and exposition of general concepts, it assumed prescriptions for their practical application which would make it possible to place those theories and concepts in a suitable setting for the progressive development of the principles and norms of international law relating to the new international economic order. The combination constituted a broad plan aimed at the international community. The new international economic order could not be put into practice overnight. An isolated juridical instrument would not suffice to effect so radical a change, which required a complex and gradual process, divided into stages, in the development of which the practices of different countries and of international organizations had to be borne in mind.

69. The historical analysis of international economic relations was no less important than that of the principles and norms which governed those relations. The analytical study showed clearly the way in which the international community had moved from the state of coexistence prevailing after the wars of religion of the seventeenth century in Europe to a system of co-operation whose beginnings coincided with the industrial revolution. That evolution of international relations, which ceased to be passive, based on abstention and non-intervention, and became active, based on negotiation, exchange and co-operation, had allowed the development of the principles and norms of customary international law. The process thus gave rise to the conclusion of bilateral and multilateral treaties, to the compilation of such instruments, among which mention must be made of the Charter and resolutions of the United Nations and, finally, to what had come to be called the international law of co-operation.

70. In its analytical study, UNITAR considered two principles to be basic: sovereign equality and the duty to co-operate. The other principles described derived from those two. It would perhaps be premature to comment on all the principles at the present stage. The analytical study was very technical and merited consideration in greater depth, for which purpose the observations transmitted by Governments on the basis of the opinion of their experts on the topic would be useful.

71. With regard to the right of States to choose their economic system, the opinion that it was a non-controversial emanation of the principle of sovereign equality in the economic field (A/39/504/Add.1, annex III, para. 43) was correct. In principle comprised the right of each State to choose its model of development and the forms of organization of its foreign economic relations, as well as its right to participate in subregional, regional and interregional co-operation. Indirectly, it imposed on all other States the obligation to respect that right, i.e., to refrain from any interference with its exercise. That provision was

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figured explicitly in a series of international treaties, in particular the Charter of Economic Rights and Duties of States.

72. In his delegation's opinion, the principle of permanent sovereignty over natural resources was the complement, in the economic field, of the right to self-determination. The study was correct in its assessment (para. 62) that there could hardly be any disagreement with the general enunciation of the principle, which was a restatement of the general principles of international law and, in particular, of those of sovereignty and territorial jurisdiction, in their application to natural wealth and resources. Acceptance of the principle implied rejection of the pressures of foreign interests on national jurisdiction, which was a subject of controversy between countries which were exporters and those which were importers of capital. By virtue of the principle, a State had the right to control and regulate foreign investment and the activities of transnational corporations operating within its jurisdiction. The principle also covered the question of nationalization based on the public interest, subject to appropriate compensation.

73. With regard to participatory equality of developing countries in international economic relations, his delegation also agreed with the criteria set forth in the analytical study, since the final aim of the new international economic order was to achieve a greater degree of equality within the international community, not only with regard to the sharing of the outputs of the economic system, but also with regard to its structures. The developing countries must participate fully and effectively in the international economic decision-making process. The application of that principle was important, especially in the case of organizations such as the International Monetary Fund (IMF), which applied a system of weighted voting whereby in practice the decision-making process passed into the hands of the Group of Ten. In that connection, his delegation supported the suggestion in paragraph 20 of the report aimed at achieving a more balanced "power-sharing" formula which did not reflect exclusively economic power or the weight of numbers, but would take into account all the interests present. The use of that type of formula had already been attempted in economic and technical organizations such as the Common Fund for Commodities and the International Sea-Bed Authority.

74. With regard to the duty to co-operate, he recalled that, since the time of the industrial revolution, the need for co-operation and for countries to participate in a concerted effort to achieve common objectives had been growing more pressing. The transition to the new situation had been consolidated with the establishment of positive obligations to act, which had made it possible to go beyond the mere coexistence of States. Those new principles had first been acknowledged in international customary law and in such international instruments as the Charter of the United Nations, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States and, more recently, the Declaration on the Establishment of a New International Economic Order and the Charter of Economic Rights and Duties of States. Even so, the practical implementation of those principles continued to be the subject of controversies within the international community, and it seemed unlikely that a consensus could be reached on the subject.

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75. The five principles deriving from the obligation to co-operate constituted the institutional framework of the new international economic order. It was from those principles that the relevant international norms would be developed. The UNITAR study offered some hope, given the judicious selection, compilation and detailed analysis that had gone into it. It was to be hoped that further work would lead to an incorporation of the peremptory factor, which would make provisions which, thus far, had been only normative, enforceable.

76. The principle of preferential treatment for developing countries was one of the most important principles of the new international economic order. The goal was to achieve more balanced international economic relations by means of corrective measures based on positive discrimination or preferential treatment, bearing in mind the claims of the developing countries. The principle must first be applied in the form of preferential treatment for the developing countries. The stabilization of the export earnings of developing countries was but one example of differential treatment to solve the problem of the instability of international commodity markets. Strictly speaking, all the principles deriving from the duty to co-operate could be reduced to the principle of preferential treatment for developing countries. However, the process of progressive development must continue and comprise adequate and effective regulations to reconcile and harmonize points of view and interests which still diverged.

77. The principle of the common heritage of mankind had been considered in connection with the adoption of the United Nations Convention on the Law of the Sea. It was a difficult principle to apply in practice, because the shared resources existing in the sea-bed or in outer space depended on whoever had the means to exploit it.

78. The study indicated the course to be followed and the appropriate legal framework for bringing about the new international economic order. States must now be given the opportunity to make comments, to ensure that the developing countries gave the subject the attention it deserved. His delegation supported UNITAR's recommendation that a special commission with appropriate machinery and expert resources should be created, instead of a working group, to continue consideration of the item.

79. Mr. VAN LANSCHOT (Netherlands) said that his delegation had been gratified by the submission of the analytical study, together with the summary and outline which the General Assembly had requested in its resolution 38/128. The calibre of the ongoing debate on the concept of the new international economic order would be improved if the current status of the law in that respect was clearly understood. It was the task of the Sixth Committee, in accordance with the provisions of annex II of the rules of procedure of the General Assembly, to discuss, clarify and evaluate the legal dimensions of important political, social and economic developments discussed by other Committees of the General Assembly.

80. His delegation had previously expressed its disappointment with certain aspects of the reports submitted by UNITAR. For example, it had drawn attention to

(Mr. Van Lanschot, Netherlands)

the contradictory nature of paragraph 11 of the introduction by UNITAR to report UNITAR/DS/5, which other delegations had taken as an announcement that the UNITAR study would produce a justification of predetermined conclusions.

81. A fundamental problem related to the sources of the principles and norms enumerated in the study, many of which were incompatible, or even in contradiction, with existing international agreements. The study failed to discriminate adequately between the various categories of legal instruments and accorded a higher legal status to some principles than they warranted. His delegation had made some critical remarks concerning the treatment given to some issues, particularly the question of the common heritage of mankind.

82. The final analytical study certainly merited a careful examination. Paragraph 212 stated that the principles described in the UNITAR study could be viewed as collectively constituting for the less developed countries a "right to development," parallel, on the economic level, to self-determination on the political plane". His delegation reserved its position with respect to that conclusion.

83. The Committee now had to decide on how the question of the progressive development of the principles and norms of international law relating to the new international economic order should be dealt with at the next stage. Governments must now give their views, and therefore the resolution to be adopted by the General Assembly at the current session might limit itself to recommending the study to Governments for their examination and comments. Since Governments might not be able to submit their comments before the next session of the General Assembly, it would be appropriate to include the item on the provisional agenda of the forty-first, rather than the fortieth, session of the General Assembly. His delegation thought it would be premature to include in the current year's resolution a provision spelling out the framework for consideration of the item in the future.

The meeting rose at 6.05 p.m.