



SUMMARY RECORD OF THE 51st MEETING

Chairman: Mr. HAYASHI (Japan)

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The meeting was called to order at 3.40 p.m.

TRIBUTE TO THE MEMORY OF MR. EVNER ERGUN, DEPUTY DIRECTOR OF THE UNITED NATIONS CENTRE FOR SOCIAL DEVELOPMENT AND HUMANITARIAN AFFAIRS

1. The CHAIRMAN said that he had been horrified to learn of the assassination in Vienna that morning of Mr. Evner Ergun, Deputy Director of the United Nations Centre for Social Development and Humanitarian Affairs and a loyal Secretariat official. He believed that he spoke for the members of the Committee in joining the Secretary-General in his condemnation of that despicable act of terrorism to which a United Nations official had fallen victim. On behalf of the Committee, one of whose specific tasks was to ensure the protection and safety of diplomats and international officials, he wished to offer his sincere condolences to the Government of Turkey and to Mr. Ergun's family.

2. On the proposal of the Chairman, the members of the Committee observed a minute of silence in tribute to the memory of Mr. Evner Ergun.

3. Mr. AKDAG (Turkey) said that he wished to express his gratitude for the condolences offered by the Chairman of the Committee, on behalf of all Committee members; he would transmit them to Mr. Ergun's family. The shocking crime that had cost the life of the Deputy Director of the Centre for Social Development and Humanitarian Affairs was yet a further indication of how necessary it was for the Committee and the United Nations General Assembly to pursue their endeavour to prepare more effective measures for the protection of diplomats and international officials.

4. Mr. TUERK (Austria) said that he wished to express the outrage of Austria, which had always strongly condemned terrorism, at the assassination in Vienna of Mr. Evner Ergun, whose loyalty to the cause of the United Nations and its lofty ideals had been exemplary. He wished to add that both the Chancellor and the Parliament of Austria had condemned the crime and voiced the Austrian authorities' determination to pursue and punish the offenders. On behalf of his delegation, he offered his condolences to the United Nations Secretariat, the Turkish delegation and Mr. Ergun's family.

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)

5. Mr. KOR (Democratic Kampuchea) said that, at the current stage of the debate, his delegation wished to make a number of comments on the consolidated negotiating basis of a convention against the recruitment, use, financing, and training of mercenaries (A/39/43, sect. IV). In so doing, it would take account of the principal provisions of General Assembly resolution 38/137, particularly the fifth and sixth preambular paragraphs of that resolution.

(Mr. Kor, Democratic Kampuchea)

6. His delegation wished to reaffirm its acceptance of the first definition of Protocol I (art. 47) additional to the Geneva Conventions of 12 August 1949. That instrument provided that a mercenary was not entitled to the status of a combatant or a prisoner of war. That concept should be broadened so as to cover situations where there was no armed conflict. His delegation therefore considered appropriate the proposed alternative to the definition of a mercenary on page 28 of the report (A/39/43), subject to the following comments.

7. According to subparagraph (a) of the alternative, a "mercenary" was any person who was specially recruited locally or abroad in order to fight in an armed conflict or, in the absence of armed conflict, in order to carry out a concerted action aimed at overthrowing a Government by armed force. That definition should be supplemented by means of a definition of an unjust or unlawful cause, such as an aggressive cause, that a mercenary was hired to serve. If such an addition were made, the provision in question would be in keeping with the principles laid down in the Charter of the United Nations and the norms of international law. The concept of "material compensation" was a basic component of the definition, but the Committee must bear in mind that the Socialist Republic of Viet Nam had "perfected" that concept through the use of individuals, in other words, young Vietnamese women, as "material compensation". The international community had witnessed the fact that in its war of aggression against Kampuchea Viet Nam had, with the aim of attracting and hiring Khmer mercenaries, resorted to using that machiavellian weapon, namely young Vietnamese women, as bait and "material compensation". They were forcing high-ranking officials of the Phnom Penh puppet régime to marry young Vietnamese women. In that connection, attention should be drawn to the fact that Mr. Sek Yen, former Deputy Director of the School for Politics and Propaganda of the régime in question and currently a refugee in Bangkok, Thailand, had revealed in a press conference that most high-ranking Khmer officials were married to Vietnamese women who met once a week and reported on their spouses' activities to the Vietnamese authorities at Phnom Penh. The new concept of "material compensation in human form" should therefore be integrated into the classic concept of "material compensation".

8. It should not come as a surprise to anyone that the Vietnamese were resorting to that weapon, because they lacked the economic resources to pay Khmer mercenaries and because, young Vietnamese women were the most widespread and effective currency used by the Hanoi authorities in Kampuchea and Laos for the purpose of attaining their expansionist goal, namely, a Vietnamese "Indo-Chinese Federation". Moreover, the situation to which he had just referred demonstrated that nationality was not an essential component of the definition of a mercenary because a mercenary could be a national of the victim State.

9. His delegation had no objection to the text of article 6. However, subparagraphs (d) and (e) were in need of improvement. Subparagraph (d) should contain a reference to movable and immovable property, which although it belonged to a given State also formed part of the cultural and artistic heritage of mankind. To quote a specific example in Democratic Kampuchea, the famous Angkor monuments, which were one of the wonders of the world, were often the target of acts of vandalism by Vietnamese soldiers and Hanoi mercenaries. Such a provision

(Mr. Kor, Democratic Kampuchea)

would be in keeping with The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, of 14 May 1954. In subparagraph (e), it should be made clear that mercenaries could "openly or clandestinely" cause revolt, succession or civil war in a State.

10. His delegation was prepared to accept article 10 of the consolidated negotiating basis concerning the qualification of offences as it stood. Offences committed by mercenaries were undoubtedly offences against the peace and security of the victim State and also against the peace and security of mankind.

11. His delegation supported the view regarding State responsibility reflected in paragraph 25 of the report of the Ad Hoc Committee. The convention should include an article providing for the international responsibility of States in case they failed to fulfil their obligations under the convention. It was necessary to specify in article 11 (b) that States Parties undertook, in particular, not to permit or tolerate, under any circumstances, the use of their territory or of any territory under their control for the commission of any offence referred to in the convention.

12. Finally, his delegation was pleased to see that the delegation of Mexico had proposed what seemed to be appropriate wording for the settlement of disputes (A/C.6/38/L.2, art. 17). According to that proposal, States Parties undertook to solve their disputes over such issues through negotiation or by submitting them to arbitration or to the International Court of Justice.

13. Mr. HOLMES (Ireland), speaking on behalf of the Ten States members of the European Community, said that as they had done on previous occasions they strongly condemned the use of mercenaries. The activities of mercenaries could pose a threat to the international community and constitute a grave danger for the smaller and weaker States.

14. They welcomed the initiative of Nigeria in proposing an international convention on the subject. The European Community was conscious of the seriousness with which the problem was viewed by many States and for its part was committed to pursuing without interruption the negotiations with a view to the early elaboration of a convention against the recruitment, use, financing and training of mercenaries. The painstaking efforts of the Ad Hoc Committee would prove worthwhile when a convention was concluded which commanded general acceptance and became effective throughout the world. In order to achieve that it was imperative that all members of the Ad Hoc Committee should approach their work in a spirit of compromise and willingness to reach agreement on a universally acceptable set of legal rules.

15. The major achievement of the Ad Hoc Committee's recent session had undoubtedly been the establishment of a consolidated negotiating basis (A/39/43, sect. IV), which would facilitate its future work. As had been made clear in paragraph 27 of the report, the new text did not overshadow the official proposals that had already been presented but consolidated them within a single framework in order to facilitate negotiations. The consolidated negotiating basis had the advantage of identifying the issues that still needed to be addressed and highlighting the possibilities for securing general agreement on solutions to outstanding problems.

(Mr. Holmes, Ireland)

16. One example of a generally acceptable solution to the central question of the definition of a mercenary was the suggestion by the delegation of France of a single, joint definition and it should be given careful consideration by the Committee. The single definition (A/39/43, pp. 28 and 29), which was applicable to all situations, was based on the definition given in article 47, paragraph 2 of Additional Protocol I to the Geneva Conventions of 1949, although its scope would be limited expressly to the purposes of the Convention and would, therefore, render unnecessary any further discussion of the Additional Protocol's scope. A single definition was, in principle, preferable although it would of course be most useful if it was also possible to agree on a single list of offences.

17. With respect to the component parts of the definition (A/39/43, paras. 40 to 42), they believed that it was essential that the nationality criterion should be included in the definition in order to avoid the danger that political opponents could be categorized as mercenaries. Furthermore actions of an isolated individual should not be brought within the definition of a mercenary. Finally, it was important to maintain the criterion of personal gain involving excessive material compensation which was central to the mercenary concept.

18. They took note with satisfaction of the compilation of offences in seven provisions (arts. 4 to 10 of the consolidated negotiating basis) and emphasized the importance that they attached to the definition in the most precise manner possible, of offences which were to be enforced in domestic criminal law. The future convention should not attempt to characterize the offences it defined. The exact meaning and legal consequences of the concepts of offences against the peace and security of a State or offences against the peace and security of mankind were a matter of some controversy and the Ad Hoc Committee should not depart from the general practice followed in conventions of the same kind where offences were not characterized.

19. Two other main issues were jurisdiction and extradition. It was essential to reach agreement on both those questions as well as on the content of the offences in the convention. Those questions were so interlinked that agreement could not be reached on any one of them without agreement on all of them.

20. The Ten welcomed the fact that there was at the present time general acceptance of the distinction between individual criminal responsibility and State responsibility which was governed by general international law. They noted with satisfaction that there had been some progress concerning the elaboration of general obligations of States. However, they did not agree that the future convention should include provisions on State responsibility because they did not believe that points of general international law should be repeated in a specific convention. For those reasons they considered it superfluous to repeat the obligation of States to give effect to their international obligations, as was the case with articles 11 (d) and 12 of the consolidated negotiating basis.

21. The proposal for a provision on the status of mercenaries (article 3 of the consolidated negotiating basis) was not relevant to the future convention, which should not deal with questions settled by the law relating to armed conflicts.

(Mr. Holmes, Ireland)

22. In that connection, the Ten wished to state again that the application of existing international rules relating to the law of armed conflict or to humanitarian law could not be affected by the future convention. It was worth drawing the Committee's attention to the proposal by the Italian delegation for the insertion in the future convention of a saving clause (paragraph 109 of the report and article 24 of the consolidated negotiating basis).

23. Finally, it had to be recognized that progress had been made at the most recent session, particularly with respect to procedural questions; however, difficult substantive questions remained to be addressed. It was essential, therefore, that all delegations should continue to negotiate in a positive spirit at the next session. The Ten remained optimistic about the possibility of satisfactorily resolving the outstanding questions and considered that the Ad Hoc Committee's mandate should be renewed.

24. Mr. ALHAJ (Libyan Arab Jamahiriya) said that he would refer to the problem of mercenarism from the legal point of view, without considering its practical implications. The phenomenon was very old, but also occurred with new characteristics in third-world countries, particularly in Africa, because of the activities of individuals or armed bands generally connected with countries which had abandoned their former colonies or with local organizations opposed to the régime governing the country, sometimes supported by former colonial Powers.

25. The mercenaries generally received substantial sums of money, defended no ideal and were motivated solely by the desire for gain, the love of adventure, and racial or religious hatred or fanaticism, which led them to attack peaceful countries, sowing ruin and destruction and to destabilize Governments, in the past 20 years particularly in Africa, where a strong feeling had developed against those paid murderers, associated with colonialist interests, as had been repeatedly reflected in the Organization of African Unity.

26. With respect to the Ad Hoc Committee's report (A/39/43), he said that work on the question of the definition of the term "mercenary" could be based on the criteria established in article 47, paragraph 2, of Additional Protocol I to the Geneva Conventions of 12 August 1949 or in similar instruments, with a view to reaching a global and exclusive definition which would facilitate the work of the legal authorities that would have to apply it. In any event, there were doubts concerning the content of the definition, which could not cover all possible cases.

27. There were real legal difficulties. It was not sufficient to adopt the criterion of material compensation, because all regular forces or soldiers received a salary. Nor was it sufficient to refer to a citizen of a country not directly involved in the conflict, because many national liberation movements required the assistance of experts or skilled persons. There was also the case of volunteers, such as the international brigades which had taken part in the Spanish Civil war and which, from the legal standpoint, had never been regarded as made up of mercenaries. Since the Sixth Committee was composed of experts, it should not be difficult to reach a single definition.

(Mr. Alhaj, Libyan Arab Jamahiriya)

28. As to the component parts of the definition, the pecuniary motive was important but presented complications because, for example, it was also found in other crimes; nor was it useful to speak of excessive compensation, because some mercenaries accepted a normal salary for racial reasons. Generally, the mercenary participated in the fighting and was not over-interested in the ideals of his group. A distinction should also be made between a recidivist and a "one-time" mercenary.

29. A tentative definition could be: any foreigner taking up arms against a State other than his own in exchange for pecuniary compensation. But that had to be abandoned because it would affect national liberation movements which needed the services of foreign experts. Accordingly, the mercenary could not be defined purely in terms of profession, nationality or compensation, and a more precise and complete definition was required.

30. An international convention should be worked out which would define "mercenary" and establish legal norms in treaty form, but for that it would be necessary to take account of the specific conditions of different countries: developing countries would have to define the mercenary as a person the purpose of whose activities was to submit peoples to economic exploitation or political aggression and who knowingly contributed towards achievement of those goals. That was not a legal definition stricto sensu, but was a general principle which each State would be able to elaborate in accordance with its specific conditions, until such time as there was an international convention embodying a single definition. In order to arrive at such a single definition, all definitions appearing in the consolidated negotiating basis would have to be taken into account.

31. On the question of the definition of offences, the Libyan Arab Jamahiriya agreed with the revised Nigerian draft. Therefore, without prejudice to the elaboration of particular norms within the framework of the future convention, and as previously explained in the Sixth Committee when the report of the International Law Commission (A/39/10) had been examined, the Libyan Arab Jamahiriya wished to reiterate that, because of their gravity and because they violated the basic norms of international law, those offences must be characterized as crimes against the peace and security of mankind.

32. With regard to the status of mercenaries, the Libyan Arab Jamahiriya thought that they could not be considered combatants or prisoners of war, since the Geneva Conventions omitted to mention them. The State which captured a mercenary could bring him to justice, in accordance with its domestic legislation, treating him humanely of course. Although most countries supported absolute sovereignty with respect to penal jurisdiction, an attempt should be made to establish an international court of justice to deal with such offenses, because they were of an international nature.

33. Three elements entered into the definition of offences to be covered by the convention. The first was the existence of an infringement of international law, in violation of customary and conventional law, in addition to an affront to the precepts of the international conscience. The second element was the international nature of the offences, because they were committed, at the request of a country or with its consent, against the international community. Thirdly, the perpetrator of

(Mr. Alhaj, Libyan Arab Jamahiriya)

the offence should possess free will; in other words, he should be an individual since only an individual could incur international criminal responsibility, according to the International Law Commission's report (A/39/10, para. 32).

34. With respect to jurisdiction, the Libyan Arab Jamahiriya reiterated that, without prejudice to the applicability of domestic law, an international jurisdiction should be established so as to prevent individual countries from judging mercenaries as they pleased. That was a necessary step towards declaring that offence to be of an international nature, which would also be a step forward in international law. That should be the ultimate objective, the attainment of which would entail time and effort.

35. With regard to damage reparation, his delegation considered that, if the mercenary was being paid by a country, that country should answer for his acts or omissions, which generally caused serious damage. That matter should be studied by the Commission, and the Libyan Arab Jamahiriya requested that an article should be drafted specifically defining State responsibility.

36. Mr. BERNAL (Mexico) referred to existing conflicts involving not only regular troops of the belligerents, but also irregular armed individuals or groups generally called "mercenaries", whose origins, objectives, organization and financing could not always be clearly identified. In 1983, his delegation had submitted a working paper (A/C.6/38/L.2), which the Ad Hoc Committee had later decided to incorporate in the text of the consolidated negotiating basis, under the conditions mentioned in paragraphs 65 and 120 of its report (A/39/43).

37. At its latest session, the Ad Hoc Committee had made a detailed study of the essential questions relating to the future convention, but no definite solutions had been reached. The future convention should cover the whole phenomenon of mercenarism. First of all, it was necessary to decide who were the possible principals in the offence of mercenarism; they would be the individuals or entities that recruited, used, financed or trained individuals; however, individuals or groups of individuals called "mercenaries" who, for payment, engaged in conduct usually prohibited by national legislation would also be principals.

38. The victims were the State and individuals or legal entities: the State, in so far as mercenary activities violated its political independence, territorial integrity, public security and right to self-determination; individuals, in so far as the illegal conduct of the mercenaries was an outrage upon values protected by the penal provisions of domestic legislation.

39. Secondly, it was necessary to analyse the conduct to be defined in the legal instrument being drafted and which were, principally, the recruitment, training, financing and use of individuals who violated the rights of States or their nationals.

40. The future convention should be based on international legal principles and rules such as the prohibition of the threat or use of force, the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands

(Mr. Bernal, Mexico)

to carry out raids into the territory of another State, the obligation for a State not to allow such activities to be organized in its territory, and the duty of every State not to interfere in the internal affairs of any other State.

41. The third point concerned sanctions. When the offender was a State, the sanction should be the obligation to make reparation for the damage caused, an obligation based on international responsibility. When the offenders were individuals, they should be subject to the relevant penal sanctions established, in accordance with the future convention, in the domestic legislation of the State of the forum.

42. Lastly, the convention should provide for the obligations of States to co-operate in order to prevent and suppress mercenary activities. Other points of a strictly technical and juridical nature (such as jurisdiction, extradition, attempted complicity and the peaceful settlement of disputes) could be rapidly resolved in a form acceptable to all States.

43. With regard to the definition, the convention should cover the presence of the phenomenon both in situations of non-international armed conflict and in times of peace. The Ad Hoc Committee could refer to similar existing conventions. Unlike situations of international armed conflict, it was in peacetime that the phenomenon of mercenarism mostly affected the rights of States and their nationals. The idea of a single definition was therefore inconceivable from the legal point of view. His delegation therefore fully supported the ideas contained in paragraph 36 of the report..

44. The draft articles of the consolidated negotiating basis contained too many criteria and limitations regarding the characterization of the conduct of States or of individual mercenaries. The proposed definitions contained criteria, such as that of the residency or nationality of an offender, that were rarely laid down by national legislations to determine an offence. Such criteria might be acceptable in some situations, but not in all.

45. Another deficiency of the proposed definitions was their lack of clarity with respect to the objectives of the principals. The convention should make it clear that whereas any person who recruited, financed or used mercenaries had the objective of overthrowing or destabilizing a Government, the individual mercenary's aim was to receive benefits which, in many cases, were not necessarily material compensation.

46. Article 11, in particular paragraphs (a) and (b), and articles 14, 19, 22 and 23 and others relating to the obligations of States were fundamental. In the final analysis, since a mercenary did not have the status of a combatant or prisoner of war, he should be treated as a common criminal. It was not necessary to include article 24 in the convention. A State participating in the commission of an offence would be penalized through its international responsibility and the obligation to make reparation for damage, and the conduct of individual mercenaries would be judged by a court in the State of the forum.

47. Mr. NGUYEN QUY BINH (Viet Nam) welcomed the progress made by the Ad Hoc Committee during its latest session, but regretted that certain delegations were trying to limit the scope of the proposed convention or to introduce loopholes into it. The use of mercenaries was a crime that endangered international peace and security. The practice of mercenarism posed a serious threat to the countries of the third world. With the collapse of the colonial system, the former metropolitan States were attempting to make use of mercenary activities to accomplish their own imperialist and expansionist designs against the peoples of Asia, Africa and Latin America. It was therefore not surprising that those States were attempting to confine the question of the use of mercenaries merely to individual criminal responsibility and to create loopholes that would permit certain persons participating in mercenary activities to escape punishment.

48. Viet Nam fully endorsed the approach whereby the codification exercise would focus on the prevention and punishment of mercenary activities, especially in peacetime, and at the same time also focus on the assignment of specific obligations to States parties, non-fulfilment of which would entail international responsibility.

49. His delegation welcomed the consolidated negotiating basis for a convention against the recruitment, use, financing and training of mercenaries, as contained in section IV of the report of the Ad Hoc Committee (A/39/43). His delegation's position with regard to those draft articles had already been expressed in previous debates in the Ad Hoc Committee and in the Sixth Committee, and was included in section II, paragraphs 21, 25, 32, 40 and 48, section III, paragraphs 69, 75, 79 and 106 of the report of the Ad Hoc Committee.

50. There was no disagreement on the validity of the definition of a mercenary contained in article 47, paragraph 2, of Additional Protocol I, but that definition did not cover all situations envisaged in the new convention, which was why many delegations had rejected the concept of a single definition. Articles 1 and 2 of the consolidated negotiating basis reflected a proper course of action. Some delegations wished the new convention to adhere strictly to the criteria of the definition in Additional Protocol I, which would limit the scope of and introduce legal gaps into the provisions defining a mercenary. Certain delegations were trying to equate the concept of armed conflict with that of "international armed conflict". If it was preferable for the definition to be contained in a single article, a possible solution might be to transform articles 1 and 2 of the consolidated negotiating basis into two separate paragraphs of a single article.

51. With respect to the definition criteria, it was difficult to accept the criterion of nationality that appeared in article 2 (d). The nationality criterion contained in article 47 of Additional Protocol I did not reflect the characteristics of a mercenary, but defined the scope of application of prisoner-of-war status in the context of an international armed conflict. The scope of application of the proposed convention was different, and the nationality criterion was not relevant to the phenomenon of peacetime mercenarism.

(Mr. Nguyen Quy Binh, Viet Nam)

52. There was no ground to suppose that a mercenary should always be a foreigner in the countries against which his activities were directed. Nothing would bar an individual from enrolling as a mercenary to fight against his country of nationality. In the case of the Congo, Seychelles and Suriname, indigenous elements had participated in mercenary activities against their own countries. The inclusion of the nationality criterion would be at variance with reality and would create dangerous loopholes in the convention.

53. Stressing that point, he said that in the event of their being caught inside the country against which they were fighting, such mercenaries would probably be treated as traitors by national courts. If they were caught in a foreign country, they could easily go unpunished because they possessed the nationality of the victim State. In addition, recruiters or employers of mercenaries would surely take advantage of the legal loophole to employ the greatest possible number of nationals of the victim State to carry out mercenary activities against it. The inclusion of a nationality criterion such as that contained in article 2 (d), would have the effect of encouraging rather than suppressing mercenary activities.

54. The deletion of the nationality criterion in article 2 (d) could in no circumstances lead to confusion between a person participating in mercenary activities and a person involved in opposition movements. Such a deletion would create no legal conflict that would prevent the national court of the victim State from exercising its jurisdiction over such persons or trying them according to its laws. On the contrary, it would have the positive effect of facilitating extradition.

55. The qualification of mercenarism as a crime against the peace and security of mankind was crucial to the purpose of the convention. It was to be hoped that the members of the Ad Hoc Committee, taking into account the conclusions of the International Law Commission on that question, would be able to come to an agreement. Lastly, his delegation doubted whether a convention whose scope and purpose were different from those of the Geneva Conventions of 1949 and their Additional Protocols should refer to the question of the status of mercenaries. Such a convention was not intended to protect mercenaries but to punish their crimes, although captured mercenaries ought, naturally, to enjoy humane treatment.

56. Miss RAWSON (Australia) deplored the assassination at Vienna of Mr. Evner Ergun, Deputy Director of the United Nations Centre for Social Development and Humanitarian Affairs, and offered her condolences to the delegation of Turkey and to Mr. Ergun's family.

57. Returning to the item under discussion, she said that Australia's concern in the matter was reflected in the enactment of legislation in 1978 which prohibited a range of activities coming under the broad definition of mercenary acts. Under that law, two people charged in connection with a plot to overthrow the Government of the Comoros had been given prison sentences in June 1984 by an Australian court.

58. However, the enactment of legislation in a few countries was not sufficient to counter the threat posed by mercenary activities to the stability and political independence of countries, particularly developing countries, and to harmonious

(Miss Rawson, Australia)

international relations. Australia therefore supported the formulation of an effective convention which, when adopted and implemented by a large number of States, would provide the basis for action against practices that encouraged mercenary activities and would facilitate international co-operation in the control of those activities.

59. Her delegation was pleased to note the constructive approach taken by the Ad Hoc Committee during its 1984 session. She also believed that the consolidated negotiating basis for a convention on that subject was a significant step forward, even though that text made it clear that the differences of approach on a number of important issues had not yet been resolved. She wished to make some observations on those issues; however, as the Ad Hoc Committee had met quite late in the year, thus leaving insufficient time for a thorough consideration of the report, those observations would be without prejudice to the final position which Australia might take on the substantive issues involved and on a draft convention.

60. With regard to one of the central issues, the definition of the term "mercenary", her delegation continued to believe that the definition contained in article 47, paragraph 2, of Additional Protocol I to the 1949 Geneva Conventions and relating to the protection of victims of armed conflicts, while it was appropriate for such conflicts and should be retained in relation to them, should not be applied to situations of non-international armed conflicts. Consequently, her delegation favoured with the two-definition approach reflected in articles 1 and 2 of the consolidated text, although it wished to examine the elements comprising the proposed definition in draft article 2 more closely. Her delegation acknowledged that there could be problems in establishing which definition was applicable in a particular situation. However, it believed that the application of article 47, paragraph 2, to all armed conflicts would be too rigid and would probably result in an ineffective convention.

61. The definition of "mercenary" should be applied only to situations of armed conflict, and not to peacetime situations, which were covered by the current drafting of article 2 in the consolidated negotiating basis. In peacetime, emphasis should be placed on the prohibition of certain activities - of direct involvement in or preparation for them and of the recruitment, use, financing and training of persons for the purpose of overthrowing a foreign Government, or other similar acts. That approach would make it possible to proscribe such activities without necessarily defining the term "mercenary".

62. Her delegation had emphasized in the past that persons could not be made liable to punishment simply because they corresponded to the definition of a mercenary, whatever final form that definition might take. Such persons should be punished only when they committed certain clearly and precisely defined criminal acts. In that regard, the articles in the consolidated text seemed to take an appropriate approach.

63. Another important issue was the right of captured mercenaries to certain fundamental guarantees - for example, that they should not be executed or otherwise punished without due process, however deplorable and criminal their activities

(Miss Rawson, Australia)

might be. Her delegation therefore favoured the insertion of a saving clause to make it clear that nothing in the provisions of the convention would affect a State's obligation to accord captured mercenaries the fundamental guarantees recognized in customary international law and existing international instruments.

64. Lastly, her delegation wished to comment on the issue of reparations. In that regard, it believed that emphasis should be placed on the obligation of States parties to take steps to prohibit mercenary activities and to prevent the recruitment, use, financing and training of mercenaries as well as the punishment of those who committed such acts. However, her delegation did not favour the provision proposed in article 23. The obligation to make reparation for damage caused as a result of an internationally wrongful act was already a part of international customary law; thus it was not desirable for the convention to reiterate an obligation that was well understood. Her delegation fully agreed with the views expressed in paragraph 101 of the report (A/39/43).

65. In conclusion, her delegation wished to reiterate its conviction that a widely accepted convention was necessary to deal with mercenary activities, and it hoped that progress would be made in that regard during the next session of the Ad Hoc Committee.

AGENDA ITEM 124: PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES (continued)
(A/C.6/39/L.7)

66. Mr. KALINKIN (Secretary of the Committee) announced that Guatemala had been added to the list of sponsors of draft resolution A/C.6/39/L.7.

AGENDA ITEM 128: CONSIDERATION OF EFFECTIVE MEASURES TO ENHANCE THE PROTECTION, SECURITY AND SAFETY OF DIPLOMATIC AND CONSULAR MISSIONS AND REPRESENTATIVES
(continued) (A/C.6/39/L.8)

67. Mr. KALINKIN (Secretary of the Committee) announced that Japan had been added to the list of sponsors of draft resolution A/C.6/39/L.8.

The meeting rose at 5.20 p.m.