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Chairman: Mr. AL-QAYSI (Iraq)

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AGENDA ITEM 137: REPORT OF THE AD HOC COMMITTEE ON THE DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES
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The meeting was called to order at 3.20 p.m.

AGENDA ITEM 137: REPORT OF THE AD HOC COMMITTEE ON THE DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES (continued) (A/40/43, A/40/60-S/16873, A/40/62-S/16876, A/40/63-S/16879, A/40/67-S/16882, A/40/69-S/16883, A/40/79-S/16890, A/40/80-S/16891, A/40/81-S/16892, A/40/83-S/16894, A/40/94-S/16902, A/40/111-S/16916, A/40/120-S/16944, A/40/126-S/16952, A/40/129-S/16955, A/40/134-S/16964, A/40/138-S/16968, A/40/155-S/16988, A/40/181-S/17041, A/40/182-S/17042, A/40/208-S/17060, A/40/212-S/17066, A/40/234-S/17102, A/40/240-S/17109, A/40/255-S/17112, A/40/257-S/17116, A/40/264-S/17126, A/40/268-S/17131, A/40/269, A/40/273-S/17135 and Corr.1, A/40/287-S/17155, A/40/288-S/17158 and Corr.1, A/40/294-S/17167 and Corr.1, A/40/310-S/17186 and Corr.1, A/40/311-S/17187, A/40/352-S/17236, A/40/368-S/17250 and Corr.1, A/40/371-S/17256, A/40/403-S/17303, A/40/424-S/17318, A/40/479-S/17339, A/40/500-S/17352, A/40/526-S/17377, A/40/538-S/17390, A/40/556-S/17403, A/40/573-S/17417, A/40/630-S/17458, A/40/664-S/17479, A/40/674-S/17489, A/40/675-S/17490, A/40/690-S/17504, A/40/732-S/17545)

1. Mr. LOULICHKI (Morocco) said that the drafting of a convention on the question of mercenaries marked an important stage in the work of codification and progressive development of international law undertaken by the United Nations. The conclusion of a convention would further enhance the effectiveness of the principle of non-use of force in international relations.
2. The early fulfilment of the mandate of the Ad Hoc Committee was all the more urgent as mercenarism was being increasingly favoured as a means of supporting secessionist activities in independent States, violating their territorial integrity, overthrowing Governments and opposing the free exercise by peoples of their right to self-determination.
3. The report of the Ad Hoc Committee (A/40/43) showed that despite its decision to focus its efforts on those articles on which a measure of agreement existed, little progress had been made since its 1984 session.
4. With regard to the definition of the term "mercenary", his delegation believed that maintaining the list of criteria contained in article 47, paragraph 2, of Additional Protocol I to the Geneva Conventions of 1949 might limit the impact of the proposed convention. The criterion contained in article 1, paragraph 1 (c), of the Consolidated Negotiating Basis did not take into account the new and varied dimensions of the activities of mercenaries, whose remuneration was not always expressed in monetary terms and who sometimes were recruited from among the nationals of impoverished countries and paid very low salaries, much lower than those paid to combatants of comparable rank. To define a mercenary using exclusively the criterion of remuneration would be to try to pin-point juridically an arbitrary and subjective element and would provide a loophole for mercenaries and their promoters and accomplices. While the motivation of gain was an undeniable element, it was insufficient in itself. The search for adventure and the desire to dominate were also motives which led persons to become mercenaries.

(Mr. Loulichki, Morocco)

5. With respect to the nationality criterion, his delegation was of the view that the recruitment, use, financing and training of persons who were nationals or residents of a given State, for the purpose of committing acts of violence directed against the internal or external security of that State, should all be covered by the provisions of the future convention. The current wording of article 1, paragraph (d) of the Consolidated Negotiating Basis, provided a compromise solution acceptable to his delegation. The effectiveness of such a definition remained, however, closely linked to the determination of the offences referred to in article 3, which should include two major elements: the supply of weapons and the granting of the right of passage. The draft article would therefore read as follows: "An offence is committed by any person who recruits, uses, trains, arms or finances a person or a group of persons, or grants them right of passage for the purpose of committing the acts of violence referred to in the following articles." Those observations were also applicable to point C, proposed by the Chairman of Working Group B.

6. As to points B and D, his delegation was of the view that the obligation of States parties to ensure full implementation of the provisions of the future convention within their domestic legal systems, should not be interpreted as the subjection of the norms of the convention to limitations which would impair their effectiveness.

7. The drafting of a convention on mercenaries was, in the current state of international relations, less an option than an obligation imposed by the common interests of all States. There should therefore be no relaxation of efforts to overcome the technical difficulties which stood in the way of the successful conclusion of the work of the Ad Hoc Committee. His delegation supported the proposal that there should be informal consultations on that question during the current session.

8. Mrs. MACHAVELE (Mozambique) said that in addition to the direct use of force in international relations, mercenarism and terrorism were being increasingly used to further policies of hegemonism, without regard for the sovereignty of States, their territorial integrity and the right of peoples freely to choose their political systems. The so-called third-world countries of Africa, Asia and Latin America provided an agonizing spectacle of the death and destruction brought about by mercenaries.

9. The international community's awareness of the harmful effects of mercenary activities on international peace and security had led the United Nations to call for the drafting of an international convention against the recruitment, use, financing and training of mercenaries. Her country fully supported that effort.

10. Working Group A of the Ad Hoc Committee had addressed itself to the question of the definition of "mercenary". Paragraph 1 of article 1 of the Consolidated Negotiating Basis sought to define a "mercenary" within the context of international armed conflicts, while paragraph 2 covered situations other than those of international armed conflicts. Her delegation was in favour of the approach contained in article 1, paragraph 2, of the revised version of the Consolidated Negotiating Basis.

(Mrs. Machavele, Mozambique)

11. Many of the mercenary activities over the past decade were related more to the situations referred to in article 1, paragraph 2 (a), than to conventional international armed conflicts. Coup d'état, economic sabotage and assassinations were currently the principal forms of intervention. Her delegation would therefore prefer an exhaustive definition of the acts involved.

12. With regard to the nationality criterion, the experience of her own country was highly instructive. Since its independence, it had been the constant victim of mercenary activities of the traditional kind. Many of the acts of destabilization, however, had been carried out by armed bandits recruited, armed, trained and financed by the South African régime. While those acts were de facto acts of mercenarism on the basis of the nationality criterion those persons would not be defined as mercenaries. At the national level, the perpetrators of such acts could be tried for high treason, but article 2 of the Consolidated Negotiating Basis failed to provide for the punishment of those who recruited, financed and trained them.

13. Like the use of mercenaries, the use of armed bandits was a form of war by proxy. It made little sense to draft a convention against mercenarism if a door was left open for the growth of another form of war by proxy. A solution was possible if all concerned demonstrated the necessary political will. It was important not to lose sight of the objective of creating mechanisms for the suppression of all unlawful acts which threatened the security of peoples and States.

14. Mrs. CARVALHO (Angola) said her delegation was dissatisfied that since the establishment of the Ad Hoc Committee, no significant progress had been achieved to permit a decision to be taken on the conclusion of the mandate of the Committee. The Consolidated Negotiating Basis contained all the possible alternatives for a compromise which would lead to the adoption of a definitive text acceptable to all parties. Her country was among those which hoped to benefit from the conclusion of the Convention and believed in the need for a text which took into account the ideas expressed throughout the debates with a view to reaching general agreement. Her delegation hoped that the Ad Hoc Committee would be allowed to continue its work.

15. Acts of mercenarism were clearly repugnant to the international community. The legislation of a number of States either directly or indirectly reflected the concern to prevent and punish activities that were contrary to the fundamental principles of international law, namely, non-interference in the internal affairs of States, respect for the sovereignty, territorial integrity and independence of States, the right of each State to choose its own socio-political system, and peaceful coexistence. The effectiveness of the mechanisms to be established would depend on a clear and precise definition of the international legal obligation of States to refrain from recruiting, using, financing or training mercenaries and not to tolerate such activities in their territory.

16. Angola, which had been the victim of repeated acts of aggression perpetrated by mercenaries in the pay of the racist régime of South Africa, could not remain

(Mrs. Carvalho, Angola)

passive in the face of the resurgence of activities of that nature, which were particularly widespread in southern Africa. Her delegation was of the view that the structural and even substantive modification of certain provisions of the text of the draft convention should in no way constitute an insurmountable obstacle, since the aim was to develop international law so as to make it reflect the spirit of the times. Her delegation appealed for more flexibility on the part of States, for it was imperative to eradicate the pernicious phenomenon of mercenarism, which affected, in particular, the young and weak nations of the world.

17. Mr. DASTMALCHI (Islamic Republic of Iran) said that, despite the wishes of the peoples of the world, the use of mercenaries against sovereign States, particularly in the third world, and against liberation movements defending the inalienable rights of peoples to political independence, territorial integrity and self-determination, was still a common practice. There had been a recent increase in acts of armed aggression by mercenaries who were financed and trained by imperialist forces and their lackeys and were seeking to overthrow the Governments of those third-world countries which were willing to exercise their right to self-determination and freedom.

18. With regard to the definition of "mercenary", the definition borrowed from Additional Protocol I to the Geneva Conventions of 1949 should remain as it was in article 1, paragraph 1, of the Consolidated Negotiating Basis. A distinction was necessary between situations of international armed conflict and other contexts.

19. The nationality criterion in article 1 was an important element that should be retained in the definition, although the arguments of those who had referred to numerous examples of the large-scale use of nationals by foreigners for mercenary activities directed from abroad against their country of origin, were important and valuable. His delegation therefore proposed that the Ad Hoc Committee should continue its efforts to find a definition that would broaden the scope of the proposed convention and enhance its effectiveness.

20. The second version of article 2 was logical. His delegation supported the deletion of the word "knowingly" in article 3 and believed that "organizing" and "equipping" should be among the prohibited activities. Acts of mercenaries against independent, sovereign States were serious violations of the basic principles of international law. Such offences should therefore be qualified as crimes against the peace and security of mankind, particularly if they were perpetrated by a State involved in acts of armed aggression such as invasion, bombardment, and occupation, in various kinds of war crimes, or in inhuman behaviour.

21. The definition of the obligations to be imposed on States needed more elaboration in order to cover specifically all aspects of such obligations. The convention must clearly and unambiguously commit parties not to have any involvement in mercenarism and to exercise absolute control over all activities undertaken in their territory which could undermine the future of the convention.

(Mr. Dastmalchi, Islamic Republic of Iran)

22. His delegation supported the concept of international responsibility and the idea that a State which failed to fulfil its duties under the convention had an obligation to provide reparation for damages. One of the most important aspects of mercenarism was the responsibility of the States which organized, equipped and trained mercenaries and provided them with facilities for the purpose of perpetrating criminal acts of aggression against liberation movements and independent States. It was therefore necessary to classify such offences as punishable and to establish the right of victim States to compensation and reparation. The proposed convention had to provide effective punitive measures for those who used mercenaries.

23. The Muslim people of Iran had suffered and were still suffering from mercenarism. In the case of the imposed war, all forms of mercenarism had been practised by the Iraqi aggressor. The Iraqi régime had not hesitated to recruit, use, finance, train, and organize the mercenaries who, as part of its armed forces, had invaded the Islamic Republic of Iran in an attempt to overthrow its Government and violate its territorial integrity and sovereignty through the occupation of its territory by force. So far, numerous mercenaries of foreign nationalities had been captured by Iranian Muslim combatants. His delegation was therefore in favour of clearly defining and elaborating the concept of the criminal responsibility of States involved in mercenary activities.

24. The mandate of the Ad Hoc Committee should be renewed so that it could continue its work.

25. Mr. ARCE-ROJAS (Colombia) said that the items before the Sixth Committee represented a praiseworthy step in the effort to codify international law and achieve harmony among States, and indirectly to enhance the effectiveness of the United Nations. The report of the Ad Hoc Committee (A/40/43) contained a positive examination of the question of mercenarism and constituted a basis for the drafting of a future convention. Such a text, universally accepted and implemented, would be the most effective means of putting an end to mercenary activities. The positive attitude and the progress achieved in the Ad Hoc Committee demonstrated that it was not impossible to reconcile differences of opinion, even on certain key questions.

26. The Ad Hoc Committee must continue to give priority to the preparation of an international convention against the recruitment, use, financing and training of mercenaries so that, when ratified by States and incorporated in their domestic legislation, it might serve as a basis for the development of their national legislation.

27. To find immediate solutions that were both practical and just was a delicate task which required political will, as well as mechanisms and procedures which reflected the conclusions reached by the Ad Hoc Committee.

28. Mrs. MEDINA KRAUDIE (Nicaragua) said that the proposed convention should contain a clear definition of the term "mercenary", as well as of the types of offence to be covered, the sanctions to be applied and the obligation and responsibility of States to co-operate with a view to preventing and punishing mercenary activities.
29. The definition of a mercenary should exclude the nationality criterion as such a criterion would greatly weaken the future efficacy of the convention. It would also serve to create loopholes; modern history offered many examples of the mass utilization of nationals of a country recruited by foreigners to carry out mercenary activities against that country from abroad. The criterion of material compensation should be clearer and more comprehensive, bearing in mind that pecuniary gain was a complex concept. There should therefore be no reference to excessive compensation.
30. Her delegation objected to the adjective "practicable" in paragraph (a) of article 11 of the Consolidated Negotiating Basis and supported the phrase "acts prohibited by the present Convention" in the same paragraph.
31. The types of conduct to be covered by the convention should be primarily the organization, promotion, recruitment, training, use and financing of mercenary forces for acts in violation of the rights of States and their nationals. The convention should include broad-based provisions for the punishment of all activities relating to the phenomenon of mercenarism. A mercenary did not have the status of combatant or prisoner of war and should therefore be treated as a common criminal.
32. The crimes committed by mercenaries should be regarded as crimes against the peace and security of mankind, for mercenary activities violated fundamental principles of international law such as non-interference in the internal affairs of States, territorial integrity, independence and the self-determination of peoples struggling against colonialism, racism, apartheid and other forms of domination; furthermore, such activities violated the rules relating to peace and security.
33. The obligations of States should include specific undertakings, not only to refrain from organizing, promoting, recruiting, using or financing mercenaries, but also to prohibit persons, groups or organizations from carrying out such activities in their territory.
34. On the issue of responsibility, Nicaragua considered that over and above the criminal responsibility of the mercenary, provision should be made for the international responsibility of States violating their obligations under the convention. Very often, mercenaries could not act without the co-operation of States. For example, the current criminal activities against her country were the work of mercenary forces organized, promoted and financed by the United States Government for the purpose of destroying the legitimately constituted Government of Nicaragua.

(Mrs. Medina Kraudie, Nicaragua)

35. For the past five years, her own country had been the victim of innumerable criminal acts perpetrated by such forces. Those had been denounced by her Government in various United Nations bodies and had been fully reported in the press. She wished, however, to refer to important developments which threatened the peace and security of Nicaragua and of the other countries of the region.

36. Ms. WILLSON (United States of America), speaking on a point of order, said that the representative of Nicaragua should be asked to confine her remarks to the issue under consideration, namely the report of the Ad Hoc Committee on the Drafting on an International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

37. Mrs. MEDINA KRAUDIE (Nicaragua) said that, on 10 October 1983, mercenaries directed by the United States Central Intelligence Agency had attacked petroleum deposits on the Atlantic coast of Nicaragua, causing heavy damage to her country's scanty fuel reserves.

38. Ms. WILLSON (United States of America), speaking on a point of order, said that she failed to see how the remarks of the representative of Nicaragua related to the report of the Ad Hoc Committee; she reiterated that that representative should be asked to confine her remarks to the agenda item.

39. The CHAIRMAN appealed to delegations to keep order in the Committee and expressed the hope that he would not be forced to make a ruling. He appealed to the representatives of Nicaragua and the United States to co-operate with the Committee.

40. Mrs. MEDINA KRAUDIE (Nicaragua), replying to the representative of the United States, said she believed that it was the intention of the convention that mercenary activities should be banned and that appropriate preventive measures should be taken. She considered that she had been speaking within the purview of the item under discussion, as she had done no more than refer to facts relating to the item.

41. She was convinced that it was essential to conclude the convention. In that connection, she supported the renewal of the mandate of the Ad Hoc Committee and hoped that the relevant resolution would include a paragraph authorizing observers to attend meetings of the Ad Hoc Committee and its Working Groups.

42. Mr. ROMPANI (Uruguay) said that the Ad Hoc Committee should be permitted to continue its work, which, he hoped, would be successful. It was to be congratulated on accomplishing the Herculean task of producing a synthesis of all points of view. His delegation wished to reiterate the statements it had made at the thirty-sixth and thirty-eighth sessions of the General Assembly, and its endorsement of the views expressed by the Brazilian delegation on those occasions.

43. Mr. DJOKIC (Yugoslavia) said that a comprehensive prohibition of the activities of mercenaries was clearly in the interest of the international community. The phenomenon of mercenarism threatened the sovereignty, independence and territorial integrity of small and medium-sized States, particularly non-aligned States; equally dangerous to the maintenance of international peace and security were specific forms of intervention aimed at impeding the legitimate struggle for liberation on the part of peoples under colonial and other forms of foreign domination.

44. The 1984 session of the Ad Hoc Committee had given proof of the desire of Member States that an international convention on mercenaries should be adopted as soon as possible. The results achieved during the 1985 session had, however, been unsatisfactory. Only a few outstanding questions had been resolved, and almost all the major articles contained portions in square brackets.

45. Certain issues, particularly the definition of a mercenary and the acts committed by a mercenary, were primarily of a political character, and there had been a relapse into the initial positions taken before the elaboration of the Consolidated Negotiating Basis. It was important that the convention should be comprehensive, and equally important that it should be adopted as soon as possible so that the international community would be provided with an effective legal instrument for the struggle against mercenaries.

46. An opportunity had been missed to achieve agreement on the definition of a mercenary, particularly in article 1, paragraph 2 (a), relating to objectives. It was the view of his delegation that it was not possible to produce an exhaustive definition of a mercenary, while the introduction of new elements could only prolong the work on the question. The failure to reach agreement had been reflected in the discussions on the remaining articles of the Consolidated Negotiating Basis, articles 3, 7, 9 and 11 had been left in brackets. In the case of article 11, although the basis for consensus had been a provision from the International Convention against the Taking of Hostages and some new elements had been introduced, it had not been possible to reach agreement.

47. The 1985 session had nevertheless had some positive aspects, such as the comprehensive and constructive exchange of views on almost all major questions to be encompassed by the future convention. The temporary halt would not necessarily have a negative effect on further work on the convention. It was the hope of his delegation that the discussion in the Sixth Committee would show the way which should be followed in order to achieve the adoption, at the next session of the Ad Hoc Committee, of a comprehensive convention on the question of mercenaries.

48. Mr. KAHALEH (Syrian Arab Republic) said that the legislation in force in his country prohibited enlisting as a mercenary or rendering assistance to mercenaries in any form whatever. Syrian law considered such acts as crimes punishable by law.

49. His delegation welcomed the progress made by combining into a single article the two provisions of the Consolidated Negotiating Basis concerning the definition of a mercenary and the deletion of the chapeaux of articles 1 and 2, referring to

(Mr. Kahaleh, Syrian Arab Republic)

Additional Protocol I to the Geneva Conventions of 1949. It considered that amendment an important achievement in the development of the Consolidated Negotiating Basis.

50. His delegation endorsed the general feeling of Working Group A that it would unduly restrict the scope of the convention to consider as mercenaries only those persons who were knowingly involved in a large-scale network.

51. The objectives set out in article 1, paragraph 2 (a), of the revised version of the Consolidated Negotiating Basis should be amalgamated with the additional objectives proposed by the Chairman of Working Group A, as contained in paragraph 23 of the Ad Hoc Committee's report (A/40/43).

52. His delegation did not think that it would serve any useful purpose to insert a paragraph 3 in article 1 containing a reference to Additional Protocol I to the Geneva Conventions of 1949. That would be a step backwards, since it would reintroduce the problem of the scope of the two definitions, and would run counter to the simplification that had been the goal of Working Group A in deleting such a reference.

53. The word "specially" in article 1, paragraph 2 (a), was entirely unnecessary and created undue confusion in the text. His delegation would welcome the deletion of the material contained between square brackets in article 1, paragraph 2 (c), which contained unnecessary details on the amount of remuneration that might be obtained by mercenaries.

54. Elimination of the nationality criterion mentioned in article 1, paragraph 2 (d), would broaden the scope of the instrument and enhance its effectiveness. Many countries suffered from the use by foreign agencies of their own nationals for mercenary activities directed against their Governments, and that constituted interference in the internal affairs of those States. The word "necessarily", contained within square brackets in the text, should be deleted since it made the text ambiguous and might lead to the interpretation that States were free to decide whether or not the nationality criterion applied.

55. With regard to article 9 of the revised version, his delegation preferred the second of the two formulations contained within square brackets, as being more forceful than the first. In article 10, the word "equip" should be inserted and the words between square brackets retained.

56. The word "effective" should be retained alongside the word "practicable" in paragraph (a) of article 11, since it added greater force to the text. Likewise, mention of both national and international law would make the text more comprehensive. His delegation preferred the expression "acts prohibited by the present Convention" to the expression "such offences" at the end of the paragraph.

57. With regard to the other articles, the many alternatives given within square brackets made it difficult, for the moment, to offer informed comments. His delegation nevertheless endorsed the general observations made thereon by the Chairman of the Arab Group.

(Mr. Kahaleh, Syrian Arab Republic)

58. The task before the Ad Hoc Committee remained long and arduous. It was to be hoped that Member States would find the political will necessary to overcome their differences, since all were agreed in principle on the illegality of mercenary activities. Informal consultations should help to solve some of the problems surrounding the drafting of a convention.

59. Mr. AENA (Iraq), speaking in exercise of the right of reply, said that the Iranian representative had accused Iraq of using mercenaries in the war between the two countries. In that connection, he wished to state that the exportation of the Islamic war and the sabotage camps set up to prepare attacks on the sovereignty of Iraq had jeopardized the sovereignty not only of Iraq but also of other countries of the region, and had consequently prevented Iraq from contributing further to the negotiations to put an end to the conflict. Moreover, he could only express surprise at the statement made by the Iranian President in a press release issued on 10 October 1985 to the effect that the war meant the unity of the two nations.

60. It was also curious logic which had led the Iranian régime to describe all members of the Iraqi armed forces as mercenaries; they could hardly be mercenaries or they would have overthrown the Iranian Government. The Iranian régime had also described as mercenaries the nationals of Arab nations fighting alongside their Iraqi brothers in order to defend the Arab land of Iraq. He defied the Iranian delegation to produce evidence that those Arab volunteers were fighting for gain; they were fighting under an agreement among the members of the Arab League, in accordance with the principles of the United Nations Charter.

61. Mr. DASTMALCHI (Islamic Republic of Iran), speaking in exercise of the right of reply, asked whether the Sixth Committee was aware of any international law which had not been violated by Iraq for the consolidation of its aggression. Iraq's behaviour should be sufficient proof for the members of the Committee that the Islamic Republic of Iran had been left alone and defenceless to face external aggression.

The meeting rose at 4.50 p.m.