

United Nations
GENERAL
ASSEMBLY

FORTIETH SESSION

Official Records*



SIXTH COMMITTEE
14th meeting
held on
Wednesday, 16 October 1985
at 3 p.m.
New York

SUMMARY RECORD OF THE 14th MEETING

Chairman: Mr. AL-QAYSI (Iraq)

CONTENTS

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

OTHER MATTERS

*This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate fascicle for each Committee.

Distr. GENERAL
A/C.6/40/SR.14
21 October 1985

ORIGINAL: ENGLISH

The meeting was called was called to order at 3.15 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 (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, A/40/287-S/17155, A/40/288-S/17158, A/40/294-S/17167, A/40/310-S/17186 and Corr.1, A/40/311-S/17187, A/40/352-S/17236, A/40/368-S/17250, 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. MUDHO (Kenya) said that the Government of Kenya remained convinced of the need for a convention against the recruitment, financing and training of mercenaries because, by its very nature, mercenarism represented a threat to international peace and security.

2. There existed a divergence of opinion as to the exact scope of the definition of mercenary for the purpose of the convention. His delegation was of the view that a flexible approach should be adopted that would cover the wide variety of situations and acts that might be described as forming the attributes of mercenarism within the meaning of the future convention. He therefore saw much merit in the dual-approach definition proposed by the Chairman of Working Group A in the report of the Ad Hoc Committee (A/40/43, para. 23). Article 1, paragraph 1, of that proposal, if combined with article 1, paragraph 2, would cover all situations and would close loopholes. However, with regard to article 1, paragraph 1 (c), of the proposal, it would be sufficient to mention motivation by private gain of the person or persons involved in the prohibited activity; reference to the quantum of such private gain would pose difficult problems of proof.

3. Reference in the proposed convention to the provisions of article 47, paragraph 2, of Additional Protocol I of the 1949 Geneva Conventions should be avoided. The Geneva Conventions were designed specifically for situations where armed conflicts existed, whereas mercenaries had been used in situations where armed conflicts had not existed.

4. With regard to sub-paragraph (d) of paragraph 2 of the Chairman's proposal, which introduced the nationality criterion, it was easier to determine the treatment to be given to a non-national mercenary in a victim State than that to be given to a national of that State in the same circumstances. There would seem to be an overlap, as the victim State would have the option of treating its national as an offender under municipal penal law or under the provisions of the convention if it were a party to it. Although fears had been expressed that a national of the victim State would escape justice if apprehended outside the State, in his delegation's view it would be unwise to discard the criterion. The usual

/...

(Mr. Mudho, Kenya)

extradition laws might be used to overcome that apparent loophole. It was an area which required further thought.

5. With regard to the proposed article 7 (para. 61 of the report), although there appeared to be disagreement on the wording of the article, there was wide acceptance of the underlying principle. That article should be further improved.

6. It was heartening to know that there had been broad agreement on the proposals put forward by the Chairman of Working Group B (para. 79) after consideration of articles 9, 11 and 13 of the Consolidated Negotiating Basis. His delegation supported the general approach adopted, but pointed out that those operative provisions should be compatible with other international instruments, particularly the International Convention against the Taking of Hostages.

7. Any conflict between the definition of a mercenary in the convention and in the work of the International Law Commission on the Draft Code of Offences against the Peace and Security of Mankind would create serious problems in determining the scope of the future convention and in its interpretation and application. At the current stage, the definition should reflect the concerns of the international community expressed in General Assembly resolution 39/84 without necessarily declaring that mercenarism was ipso facto a crime against the peace and security of mankind.

8. The Government of Kenya reiterated its condemnation of mercenarism and supported the extension of the mandate of the Ad Hoc Committee.

9. Mr. SWINNEN (Belgium), speaking on behalf of the 10 member countries of the European Community and the delegations of Spain and Portugal, said that the members of the European Community had always vigorously condemned mercenary activity and were prepared to co-operate constructively in the elaboration of an international convention. The Ten were optimistic in that regard, but the hopes expressed by them and other delegations at the previous session of the General Assembly had not yet been realized. The report of the Ad Hoc Committee revealed that it had still not followed the path which appeared most likely to lead to success.

10. Five sessions of the Ad Hoc Committee had produced modest results. Its work was difficult and delicate, but the Ten had always considered the effort to be very worthwhile. It should be accompanied by a real political will not to lose sight of the objective of concluding a convention which would be acceptable to all and would therefore be effectively implemented. To achieve that objective, the Ad Hoc Committee had striven to elaborate an international instrument under which States would undertake to adopt national rules relating to mercenary activities and to co-operate at the international level for the prevention and suppression of such activities. It should be principally concerned with the legal aspect of the problem and consequently define the punishable crimes and offences as precisely as possible. That definition and the closely related definition of a mercenary were crucial points to which the Ad Hoc Committee should give priority attention. An individual should not be liable to sanctions merely because he was covered by the definition of "mercenary". He should be punished only if he committed specific, precisely defined acts of an unlawful nature. Lastly, it was essential to include the nationality criterion in the definition so as not to equate political opponents with mercenaries.

/...

(Mr. Swinnen, Belgium)

11. On that basis, progress could be achieved at the Ad Hoc Committee's next session in which, the Ten hoped, more delegations would participate actively. It would also be appropriate if certain delegations that at the latest session had adopted rigid positions endangering progress made at the previous sessions could display a greater spirit of compromise.

12. Mr. HAMPE (German Democratic Republic) said that the causes and political conditions underlying mercenarism made it a danger to the entire international community, because the activities of mercenaries ran counter to fundamental principles of international law. The convention should therefore begin with an article that qualified the recruitment, use, financing and training of mercenaries as a crime against the peace and security of mankind.

13. The Ad Hoc Committee had prepared a first revision of the Consolidated Negotiating Basis. Progress had been made in drafting the articles, which had also been rearranged to achieve greater clarity. However, no agreement had been reached on a number of substantive provisions. On the whole, the current text clearly met the main requirements for an effective convention.

14. During the fifth session, some members of the Ad Hoc Committee had adopted very restrictive positions to the effect that, for instance, only those mercenaries should be punished who had committed severe crimes such as murder, rape and pillage, which were in any case acts prohibited by national law. Moreover, those members had also held the view that those who recruited, used, trained and financed mercenaries should be punished only as assistants of the mercenaries rather than as independent perpetrators. His delegation did not share those views. The convention must clearly commit its parties not to recruit, use, finance, train or equip mercenaries, and not to allow their territories to be used for activities prohibited by the convention. The convention should also oblige States to take effective countermeasures against all forms of mercenarism, including the obligation to hold mercenaries and all those who recruited, used, financed and trained them criminally responsible.

15. The convention should not be restricted to the type of mercenary who participated in international armed conflicts for private gain; it should, in particular, cover the prevalent type of mercenary who, in times of peace, on instructions from imperialist, colonialist and racist quarters, invaded countries to overthrow Governments, paralyse economic life, terrorize the population and suppress the peoples' right to self-determination.

16. His delegation opposed the adoption without modification of the criteria for the definition of "mercenary" contained in article 47, paragraph 2, of Additional Protocol I to the Geneva Conventions; the six criteria, all of which must be met to justify the use of the term "mercenary" under article 47, made it difficult to identify a person participating in a battle as a mercenary. If those criteria were applied to situations other than international armed conflicts, the scope of application and the effectiveness of the convention would be greatly restricted. The issue of combatants' pay, referred to in article 47, paragraph 2 (c), was irrelevant as a criterion for defining the striving for private gain on the part of mercenaries acting in situations other than international armed conflicts. His delegation had proposed that the Committee should follow the example of the

/...

(Mr. Hampe, German
Democratic Republic)

Convention on the Law of the Sea which, in defining piracy, had dispensed with a detailed description of the characteristics and scope of private gain. Nor did his delegation consider it appropriate to apply the criterion of nationality contained in article 47, paragraph 2 (d), to all types of mercenary without qualification. The increase in the recruitment of refugees for mercenary activities against their home country must be reflected in the convention. The criterion of direct participation in hostilities referred to in article 47, paragraph 2 (b), was too restrictive; a person should come under the definition of "mercenary" from the time of his recruitment, the start of his training and his being equipped for use. His delegation would like to retain the scope of application of article 47, paragraph 2: the paragraph should continue to be confined to international armed conflicts. That would also avoid encroachments on the Geneva Conventions, which made a careful distinction between international and non-international armed conflicts. One of the legal differences was that the rules of international law regarding warfare applied fully to international armed conflicts; as regards non-international armed conflicts, national law was applicable with account to be taken of Additional Protocol II to the Geneva Conventions.

17. In view of the steady growth of mercenarism, the early completion of the convention was more urgent than ever. His delegation therefore supported the proposal to extend the mandate of the Ad Hoc Committee and to instruct it to complete the text of the convention at its next session.

18. Mr. OKELLO (Uganda) said that care must be taken to distinguish between persons of foreign nationalities invited by a State to participate in its national defence, and foreigners or persons of the nationality of the victim State engaged clandestinely by a group of individuals or a foreign Government to carry out an armed attack against the victim State with the aim of destabilizing or overthrowing the legitimate government of that State, or to disrupt efforts of national liberation movements to realize their right to self-determination.

19. The use of mercenaries against independent sovereign States was a serious violation of the principles of non-use of force in international relations and non-interference in the internal affairs of States. The very serious nature of mercenary activity and the effect it had on the victim State also made it a crime against the peace and security of mankind.

20. The deliberate act of placing numerous lives in serious danger had always been condemned as a serious crime. The proposal to classify the offences to be covered by the future convention as crimes against the peace and security of mankind was therefore appropriate and the argument advanced in paragraphs 103 and 104 of the report was evasive. The basic principles of the non-use of force in international relations and that of non-interference in the internal affairs of States created an obligation on the part of States to ensure that no hostile activities aimed at infringing the sovereignty or disrupting the stability of other States were planned, financed or executed from territories under their jurisdiction.

21. Any definition of a mercenary, while taking into account the definition contained in article 47, paragraph 2, of Additional Protocol I to the Geneva Conventions, should also cover those other situations to which the definition

/...

(Mr. Okello, Uganda)

contained in Additional Protocol I did not apply. The definition must therefore be broad and should go beyond situations of international armed conflict to cover situations of non-international armed conflict and situations where there was an absence of any kind of armed conflict. The purpose of Additional Protocol I was not exactly similar to that of the proposed convention. Article 47, paragraph 2 did not, for example, refer to the responsibility of States which organized, equipped and trained mercenaries and provided them with transit facilities. It was none the less that aspect of the problem, perhaps more than just the individual criminal responsibility of the mercenaries themselves, which was of great importance.

22. His delegation preferred to leave the list of objectives for mercenary activity as contained in the Consolidated Negotiating Basis without brackets, since all the objectives enumerated were relevant for the purposes of the convention.

23. With respect to the nationality criterion, there was no justification to assume that a mercenary was always a non-national of the victim State. The argument that the nationality criterion was necessary in order to protect armed political opposition elements was not convincing. Its inclusion would serve to encourage mercenary activity under the pretext that it was a matter for domestic laws. The effect of its inclusion would open the door to foreign interference in the internal affairs of States by encouraging nationals of States to freely engage in mercenary activity and foreigners to freely recruit mercenaries. The elimination of the nationality criterion would broaden the scope of the convention and enhance its effectiveness.

24. The convention should specify that a criminal offence was committed once a person became associated with or enlisted in a group for the purpose of carrying out any of the acts referred to in the definition of a mercenary. The recruitment, use, financing and training of mercenaries must also be treated as constituting principal offences under the convention, since engaging in those activities would perpetuate the existence of mercenaries, and not merely as acts of complicity. His delegation, therefore, supported the view that the scope of the convention should be broadened even further to include the act of organizing, supplying, equipping or maintaining persons engaged in mercenary activities.

25. His delegation had no difficulty with point A as discussed in paragraph 81 of the report, or with point B, as discussed in paragraphs 82 and 84 of the report. The latter provision gave States the latitude to implement the convention within their own domestic legal systems and would not contradict the spirit of articles 26 and 27 of the Vienna Convention on the Law of Treaties.

26. States had the responsibility to prevent the use of their territories for the recruitment, use, financing and training of mercenaries and were therefore obliged to exercise absolute control over all activities undertaken in their territories which might undermine the future convention. The success of the proposed convention lay in the assumption by States of that responsibility.

27. Mr. ROBINSON (Jamaica) welcomed the structural change made by the Ad Hoc Committee involving the placing of the definition of a mercenary in a single

(Mr. Robinson, Jamaica)

article. Although the convention must obviously address the two different situations in which mercenaries operated, it was dealing with a single species of mercenary.

28. It still remained to be considered whether the new drafting technique involving the use of the phrase "For the purposes of the present Convention" represented an advantage over the previous approach of expressly referring to the definition in Additional Protocol I. The new technique was usually employed to indicate that the substantive provisions which followed thereafter had a confined and limited context. That technique could therefore be employed to good effect only where there existed significant differences in the purposes of the relevant conventions. In the current context, there were real differences between the purposes of the proposed convention and those of Additional Protocol I, which were substantially concerned with the question of the status of a mercenary as a prisoner of war and a combatant. The significant achievement of the convention would be the outlawing of mercenarism as a crime and the establishment of an international enforcement mechanism through extradition to deal with that crime. Those differences made the use of the phrase "For the purposes of the present Convention" intelligible and efficacious.

29. The new technique would not prevent questions being raised about the apparent conflict between the two conventional régimes; that was apparent from paragraphs 35 to 37 of the report, which referred to the wish of some Committee members for an additional paragraph in article 1 expressly relating the definition in paragraph 1 to situations covered by Additional Protocol I and that in paragraph 2 to other situations. Nevertheless, in terms of structure, the new technique represented a simpler and more concise approach than the previous formulation. In addition, in terms of substance, the definition would be seen as not derogating from the régime of Additional Protocol I and the Geneva Conventions. The new technique was therefore in effect a saving provision, a feature which the previous formulation did not have. The question then arose whether there was still a need for the saving provision contained in article 23 of the Consolidated Negotiating Basis; his delegation was flexible on that point. In view of its support of the new technique, his delegation could not agree with the views reflected in paragraphs 35 to 37 of the report.

30. A drafting technique which could be considered for further unifying and simplifying the definition would be to place both situations with which the definition was concerned in one single paragraph. One result of the disengagement of the definition from Additional Protocol I was that it would then become necessary to refer in article 2, paragraph 2, to the position of peoples struggling for the right to self-determination, freedom and independence. Strictly speaking, it had not been necessary to have such a reference under the previous approach, since the situations covered by the definition in Additional Protocol I were expressly stated to cover that position. In that regard, his delegation rejected the arguments advanced in paragraph 48 of the report for deletion of the reference to the impeding of a people's struggle for self-determination and independence as one of the objectives of mercenary activities. It also rejected the argument in paragraph 54 that the elimination of the nationality criterion would mean that nationals of national liberation movements would be considered mercenaries. His delegation had always assumed that the convention would contain a saving provision,

(Mr. Robinson, Jamaica)

similar to article 7 of the 1974 Definition of Aggression, to the effect that the convention would not prejudice the right of peoples to struggle for self-determination and independence.

31. It was regrettable that the Consolidated Negotiating Basis, in article 1, paragraph 2 (a), had repeated the previous year's formulation "a concerted action of violence". The requirement of collaboration or joint enterprise was disturbing in so far as, in many domestic criminal law systems, it would be interpreted as calling for proof of a conspiracy; evidence of a conspiracy was frequently very hard to procure. Moreover, the factual situations in which mercenaries could operate would not justify the inclusion of such a confining element in the definition; the reality was that the frailty of many countries made it possible for a single individual to carry out mercenary activities capable of doing serious damage to those countries.

32. His delegation supported the deletion of the phrase "against the Government of a foreign State" in the chapeau to article 1, paragraph 2, of the Consolidated Negotiating Basis: it might not be possible in all cases to say that activities were carried out against a Government or a State.

33. The problems raised by the provisions of article 1, paragraph 1 (b), and the corresponding provision in paragraph 2 (b) were difficult and required further consideration. At the current stage it would not be possible to do more than identify those problems and point to possible solutions, which could include a careful drafting of the provisions on complicity.

34. The issues raised by the nationality criterion in terms of situations other than those of armed conflict were essentially political and would have to be resolved on the basis of a political compromise. His delegation was flexible on the issue; it nevertheless sympathized with those delegations which argued for the elimination of the nationality criterion on the ground that many acts of mercenarism were committed by nationals at the instigation and with the support of foreigners.

35. His delegation supported the inclusion of a provision such as point B, formulated in paragraph 79 of the report, but advocated the deletion of the phrase "within their domestic legal systems". Point B was intended to direct the attention of States parties to the need to take all the measures, whether of a legislative, judicial or administrative nature, necessary for the implementation of the Convention. Such a provision was useful in a convention such as that proposed, which established special systems for extradition and co-operation among States parties.

36. His delegation regretted that the Chairman's formulation of point D had not been reflected in article 11 of the Consolidated Negotiating Basis. The Convention must impose on States an obligation not to allow their territory to be used for mercenary activities; that obligation was quite independent of any requirement for co-operation among States and must be imposed on an individual, rather than a co-operative, basis.

37. His delegation would support a draft resolution calling for the renewal of the Ad Hoc Committee's mandate.

38. Mr. CALERO RODRIGUES (Brazil) said that the structure of the proposed convention and the provisions relating to the ways in which it was to be applied were generally acceptable. The definition of the term "mercenary" was of paramount importance. The existence of a definition in Additional Protocol I to the Geneva Conventions of 1949 had created difficulties for the Ad Hoc Committee, which had sought to be faithful to that definition. His delegation was of the view that no harm would be done to the Protocol if the convention contained a definition suited to its own needs. The required harmony between the two instruments would be destroyed only if the new definition substantially departed from the concept embodied in the earlier one. That would not be necessary since the purposes of the convention were different from those of the Protocol and the meaning of the term "mercenary" did not have to be exactly the same. The convention was to be applied not only to the situation of armed conflict contemplated in the Protocol, but to any other situation in which mercenaries might be used in violent action aimed at disturbing the internal peace and stability of States.

39. In its latest version, the definition proposed by the Ad Hoc Committee tried to differentiate between the mercenary recruited to fight in an armed conflict and the mercenary to be used in acts of violence in the absence of armed conflict. Some of the elements of the definition appeared in both cases. One such element, the motivation of the mercenary by the desire for private gain, was also present in the definition contained in the Protocol, which referred to material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of a State party to the conflict or of the State of which the person was a national or a resident. It would be dangerous to maintain that provision. A mercenary, who accepted the job and was poorly paid was as much a mercenary as one who was highly paid. If that provision was maintained, States which engaged mercenaries would be careful to offer them a lower level of material compensation than their armed forces. The mercenary would not then be a mercenary for the purposes of the convention, and could not be punished under its provisions. Consequently, all those persons who had recruited, trained, financed and used him, would also be left outside the scope of the convention.

40. His delegation agreed that a member of the armed forces of any State, while keeping that status, could not be considered a mercenary. However, it questioned the contention that a national or resident of a State party to an armed conflict or of a State against which an action was directed should not be considered a mercenary. That would give States an easy way out of the constraints of the convention, by organizing groups of mercenaries who, on account of their nationality or residence, would not be considered mercenaries.

41. The Ad Hoc Committee had encountered great difficulty in spelling out, even in a non-exhaustive manner, the purposes for which mercenaries could be used. While his delegation had no strong objections to the continuation of those efforts, it was of the view that one of the elements listed provided the key to an easier solution to the problem. A reference to "violent acts of intervention in the internal affairs of a State" might be a sufficient indication of the scope of mercenary activity. The stability of a Government, the maintenance of the territorial integrity and independence of a State, the safety of its population and

(Mr. Calero Rodrigues, Brazil)

the protection of public and private property were all elements of the internal affairs of a State.

42. His delegation had reservations on the provision that in order to be recognized as a mercenary, an individual must have taken part in action. While a person engaged as a mercenary should be punished for the perpetration of certain acts, if that person was not considered a mercenary until he had gone into action, the effectiveness of the proposed convention would be weakened. The aim was to prohibit the recruitment, financing and training of mercenaries. If the individuals who were being recruited, financed and trained were not considered mercenaries until they went into action, the whole purpose of the prohibition would be defeated. For an individual to be considered a mercenary, it should be sufficient to have evidence that he had been recruited and was being prepared for mercenary action. The prohibition should apply to individuals enlisting as mercenaries and to any other person contributing to the existence of mercenaries, even if no action had taken place as yet.

43. On the question of obligations of States and punishable offences, the obligation not to recruit, use, finance or train mercenaries was obvious since States which decided to accede to a treaty against mercenaries clearly were not supposed themselves to engage in the very activities they had decided to prohibit. The other obligations were currently worded in rather loose language and the convention would gain in clarity and effectiveness if the several provisions were treated together and given a more precise formulation avoiding repetition and vagueness.

44. According to the current draft, the offences which might be committed by persons other than mercenaries were the recruitment, use, training, financing or promotion of mercenaries. His delegation would prefer terms that had already become generally accepted, namely, "recruitment, training, financing and use" of mercenaries, with the possible addition of "equipment".

45. Article 4 offered two alternative definitions of offences which might be committed by mercenaries: association with or enlistment in a group of mercenaries, and participation in action as a mercenary. He agreed with the first definition since if one attempted to enumerate the acts which might be committed by the mercenary, one was likely to end up defining offences which were already crimes in themselves, whether committed by mercenaries or by other persons. In addition, a provision requiring individuals not to enlist in groups designed to operate as mercenaries was very specific and should find its expression in the convention. Together with the prohibition against any person recruiting, training, equipping, financing or using mercenaries, that was the contribution which the convention could make as a legal instrument against mercenaries.

46. Articles 2 and 7 were unnecessary. Article 2 provided that mercenaries should be denied the status of lawful combatants or of prisoners of war. Such a provision had its place in the laws applicable to armed conflicts. Its inclusion in the convention would add nothing to existing law and would introduce an element alien to the purpose of the convention. Article 7 provided that the offences set forth in the convention should constitute crimes against the peace and security of

(Mr. Calero Rodrigues, Brazil)

mankind. It would be more appropriate for the code of offences against the peace and security of mankind currently being drafted by the International Law Commission to include the offences in question.

47. Mr. TARASYUK (Ukrainian Soviet Socialist Republic) said that the criminal practice of mercenarism was continuing to be used as an instrument of imperialist interference in the internal affairs of the countries of Asia, Africa and Latin America. The demand for mercenaries was growing in all the "hot spots" of the planet, matching the expansion of undeclared wars in the defence of "democracy".

48. Generously financed and armed by the champions of "human rights and freedoms", mercenary bands were continuing to spread death and destruction in Nicaragua. According to the press, more than 8,000 peaceful Nicaraguan citizens had been massacred by the bandits and the damage to the economy of the Republic amounted to more than \$1 billion.

49. The undeclared war of imperialism and reaction also continued against the Democratic Republic of Afghanistan. Its initiators had acknowledged that action against that country was the biggest CIA operation since Viet Nam. There was increasing international interference in the internal affairs of Kampuchea and those responsible were stating openly that they were allocating money for such purposes. And the frail obstacles to financing the support of the criminal activities of anti-Government bands in Angola had now been eliminated. Press reports spoke of foreign mercenaries serving in the South Lebanese Army. Although their theatres of operation were scattered, the mercenaries were dispatched by a single hand. All the above emphasized as never before, the importance of the collective efforts of the international community against mercenarism.

50. During the latest session of the Ad Hoc Committee, it had proved possible to consolidate the positive results of the previous session by improving the drafting of a number of fundamental articles of the draft convention. But, because of the lack of constructive effort on the part of those delegations whose Governments were using the services of hired killers and were unwilling to raise legal international barriers to State terrorism, the Committee had once again failed to fulfil its mandate.

51. With regard to the definition of a mercenary, the attempt to combine the definition of a mercenary in various situations in a new drafting of article 1 was acceptable. Paragraph 2 of article 1 had given rise to various problems. His delegation supported the inclusion therein of the enumeration of criminal purposes and favoured the elimination of the brackets in article 1, paragraph 2 (a). His delegation attached particular importance to the inclusion in any future convention of the enumeration of such criminal deeds as the creation of a threat to public security, damage to public or private property, interference in the internal affairs of States, undermining of the territorial integrity of States and impeding the self-determination of peoples fighting against all forms of foreign rule.

52. His delegation supported the second alternative in paragraph 2 (f) of article 1. It considered article 1, paragraph 3, which established a link between article 1, paragraph 1, of the draft and article 47 of Additional Protocol I to the

(Mr. Tarasyuk, Ukrainian SSR)

Geneva Conventions, to be very important. Positive results of the latest session included the spelling out of the crime of mercenaries as a crime against the peace and security of mankind (art. 7) and also the listing of specific obligations of States (arts. 9-11). The text submitted by Cuba and contained in the annex to the report had been a positive contribution to the implementation of the Committee's mandate at its recent session and could be used by the Committee in the concluding phase of its work. The results of the fifth session of the Ad Hoc Committee were a good basis for the conclusion of its work at the next session and his delegation supported the extension of its mandate for another year.

53. Mr. TREVES (Italy) said that his delegation's participation in the work of the Ad Hoc Committee was aimed at helping to reconcile the aspirations of the African countries which had been at the origin of the Committee's work with other countries' needs for legal guarantees. The most serious of the difficulties faced by the Ad Hoc Committee during its 1985 session had been the low level of participation in its work. Many members had been less active than some observers. While a number of delegations which had previously shown little interest had taken an active part, their activity unfortunately had been mostly aimed at raising the political temperature of the debates and at reopening discussion on questions on which agreement seemed to have been reached at previous sessions. Consequently, serious problems had not been solved and the Committee appeared further away than it had been in 1984 from reaching its objective of formulating a convention that would command general support. Those problems needed to be faced squarely by the Sixth Committee.

54. There were, however, some signs of hope, for the Consolidated Negotiating Basis contained the elements of a reasonable and generally acceptable convention. One hopeful sign was the definition of the term "mercenary". The proposal of the Chairman of Working Group A for a single definition in two paragraphs, the first of which would cover mercenaries recruited for a role in an armed conflict, and the second persons recruited for a series of specific acts, seemed very interesting and reasonable. Mention of Additional Protocol I to the Geneva Conventions of 1949 would not be necessary and all the implications which, for different reasons, worried different groups of delegations would be avoided. The proposals aimed at including direct or indirect references to the Protocol should be withdrawn and the proposal of the Chairman of Working Group A should be used as a basis for discussion. That discussion should concentrate on the controversial elements in the second part of the definition.

55. The second hopeful sign concerned article 11. The numerous square brackets contained in that article were the consequence of the streamlining of articles 8, 9 and 10, which replaced the cumbersome and confused provisions on the obligations of States. More importantly, the text of article 11 and the discussion thereon suggested the emergence of a trend to look on the corresponding article of the International Convention against the Taking of Hostages as a model.

56. The main difficulties had to do with the definition of offences and its co-ordination with the definition of a "mercenary". One element of the solution might consist in stressing the different degrees of gravity of the different offences and in establishing provisions for the rules of jurisdiction and extradition to take into account such differences.

(Mr. Treves, Italy)

57. Notwithstanding those difficulties, technical solutions were possible. What was needed on the part of all, not just a few delegations, was the political will to negotiate with a view to overcoming the difficulties and achieving the objective of drafting a generally acceptable legal instrument which could become an effective tool for eliminating the phenomenon of mercenarism.

58. Mr. NGUYEN QUY BINH (Viet Nam) said that the draft articles before the Ad Hoc Committee provided a good basis for analysing the issues involved and elaborating the future convention. Contemporary mercenarism was one of the most dangerous instruments of the policy of neo-colonialism, racism and expansionism practised by former metropolitan States in order to perpetuate colonial and racial domination, stifle the self-determination of peoples, prevent the progressive and independent development of new and small States, and violate the sovereignty and territorial integrity of other nations. The serious crime of mercenarism constituted a growing danger to international peace and security and infringed upon the basic norms and principles of international law.

59. His delegation was firmly committed to the proposed convention, which must anticipate all situations in which mercenary activities might take place and cover every aspect of the phenomenon. The codification process should focus not only on repressive and preventive measures, but also on the assignment to States parties of specific obligations the non-fulfilment of which would entail international responsibility. That was a view shared by an overwhelming majority of States.

60. At the latest session of the Ad Hoc Committee, some States, while proclaiming their desire for a convention against mercenaries, had in fact endeavoured to block the preparation of a meaningful draft by seeking either to limit the scope of the instrument or to create legal loopholes that would encourage rather than suppress mercenary activities.

61. Turning to the text of the Consolidated Negotiating Basis contained in document A/40/43, he reiterated that his delegation could accept the merger of the two definition articles contained in the 1984 version of the Consolidated Negotiating Basis, provided that the "chapeaux" of articles 1 and 2 were retained. His delegation continued to consider that the definition contained in article 47, paragraph 2, of Additional Protocol I to the Geneva Conventions of 1949 should not be applied to situations of non-international armed conflicts. The difference of views regarding the scope of that definition related to issues of substance. To include the very restrictive criteria set forth therein would create legal loopholes favourable to those wishing to perpetuate mercenary activities.

62. The extension of article 47 to all types of armed conflicts, in addition to limiting the scope and effectiveness of the proposed convention, would run counter to the Geneva Conventions, which had deliberately restricted the scope of the definition to international armed conflicts. Accordingly, it was absolutely essential to delete the square brackets around paragraph 3 of article 1 of the 1985 version of the Consolidated Negotiating Basis and to include the paragraph. His delegation deemed unacceptable the insertion of the words "in the absence of armed conflict" at the beginning of paragraph 2, since the definition was meant to apply to all situations outside international armed conflicts. In fact, the words "in the absence of international armed conflict" should be added.

(Mr. Nguyen Quy Binh, Viet Nam)

63. With regard to the criteria used in the definition, his delegation supported the inclusion of a list of objectives in article 1, paragraph 2 (a), but needed more time to reflect on those objectives. While it supported the text of paragraph 2 (c) suggested by the Chairman of Working Group A, it was opposed to the criterion of the amount of material compensation: that would introduce loopholes detrimental to the interests of the developing countries, since the criterion became invalid in non-international armed conflicts.

64. On the question of article 1, paragraph 2 (d), his delegation rejected the inclusion of nationality as a criterion for defining a mercenary in non-international armed conflicts, for three reasons in particular. First, the nationality criterion in article 47 of Additional Protocol I did not reflect the characteristics of a mercenary, but had been intended to differentiate between mercenaries and combatants. The criterion was irrelevant beyond the context of an international armed conflict. Secondly, the inclusion of the criterion totally failed to take account of mercenary activities as they currently existed. Thirdly, the inclusion of the criterion would create an escape clause permitting mercenaries who were nationals of the victim State to go unpunished, and encourage those who recruited, used, financed and trained mercenaries, thus facilitating foreign intervention. His delegation rejected the argument that the inclusion of the nationality criterion would provide protection for "bona fide" political opponents when they misguidedly engaged in mercenary activities. For those reasons, paragraph 2 (d) should be deleted.

65. His delegation did not agree that only recruitment should be treated as a principal offence. The use, training and financing of mercenary activities had a much more dangerous impact and should also be viewed as principal offences. Moreover, the fact that an individual enlisted as a mercenary was sufficient proof of criminal intent.

66. The convention should contain a carefully compiled list of specific obligations under which States would be required to prohibit the use of their territories as bases for mercenary activities; to prohibit nationals, groups of persons or organizations from carrying out mercenary activities; to refrain from recruiting, using, training and financing mercenaries; to ensure full implementation of the convention by, inter alia, enacting appropriate legislation and punishing offenders; and to apply preventive measures. The convention should also include provisions on damage reparation, as that would be fully in accordance with international law.

67. His delegation looked forward to the adoption of the final text of the draft convention at the Ad Hoc Committee's next session.

68. Mr. MIKULKA (Czechoslovakia) said that mercenaries were still used by forces endeavouring to place independent States under the yoke of neo-colonialism and were also engaged in international armed conflicts with a view to destabilizing progressive Governments, particularly where those promoting the actions wished to remain hidden, as was the case with the subversive activities being perpetrated against Nicaragua.

(Mr. Mikulka, Czechoslovakia)

69. There apparently was general agreement that mercenaries and those who recruited, used, trained, financed or encouraged them should be viewed as criminals under national legislation. It was equally important to establish the international obligation of States not to use mercenarism as an instrument of their policies. However, a key problem that posed serious obstacles to the conclusion of a convention was the fact that mercenarism was tolerated, encouraged and supported by certain Governments. Accordingly, his delegation had from the outset emphasized that the convention must contain an unambiguous legal prohibition of such actions and an unequivocal stipulation that violation of that prohibition would entail the international responsibility of States. Some members of the Ad Hoc Committee persistently underestimated the importance of those obligations. However, only by incorporating them in the convention could all the forms of mercenarism be eliminated. The Cuban proposal at the latest session of the Ad Hoc Committee contained relevant provisions in that regard.

70. His delegation did not agree that it was necessary at all costs to keep the definition of the term "mercenary" in the new convention parallel with the definition contained in Additional Protocol I to the Geneva Conventions, particularly with respect to actual participation in the acts in question and the nationality criterion. To insist on such a parallel would be to restrict the practical scope of the definition substantially. The list of the objectives of mercenary acts should constitute an integral part of the definition, and his delegation favoured the inclusion in article 1, paragraph 2 (a), of the points enclosed in square brackets. Their deletion would excessively restrict the scope of the definition.

71. With respect to article 3, the words "uses, trains, finances or promotes" now in square brackets should become an integral part of the text. Because the purpose of the article was to establish the obligations of States, those acts which States must prohibit and penalize under their domestic legislation must be spelt out clearly and fully. As to the remarks in the report concerning the characterization of certain activities as acts of complicity or as attempts, that task should be left to national legislators. The convention, however, must contain as detailed a list of prohibited activities as possible.

72. With regard to article 7, the Ad Hoc Committee should carefully consider the possibility of describing certain mercenary activities as crimes against the peace and security of mankind. That concept should be interpreted in the same manner as it was by the International Law Commission. It would apply to activities of government officials who carried out a State policy involving the recruitment, use, financing and training of mercenaries.

73. With respect to article 9, his delegation preferred the formulation that was based on the provisions of article 80 of Additional Protocol I to the Geneva Conventions of 1949, which was more suited to the obligations of States under the convention. The fulfilment of those obligations could not be limited to the adoption of appropriate legislative measures.

74. His delegation approved the inclusion of articles 11 and 12. It was also in favour of renewing the mandate of the Ad Hoc Committee, in the hope that it could complete its work on the convention as soon as possible.

75. Mrs. SILVERA NUÑEZ (Cuba) said that while some progress had been made at the Ad Hoc Committee's latest session, a more constructive approach was needed if there were to be concrete results on those issues where controversy remained. The difficulties forced by the Ad Hoc Committee could be ascribed, inter alia, to the intransigence of some States, which had attempted to distract the Committee from its work.

76. Her delegation supported the format of article 1 containing the definition of the term "mercenary". The list of activities of mercenaries contained in paragraph 2 (a), now in square brackets, should be incorporated in the text. On the other hand, her delegation favoured the deletion of paragraph 2 (d), which contained the nationality criterion, for it believed that its deletion would broaden the scope of the future convention and render it more effective. Some developing countries, including Nicaragua, currently were the victims of attacks by mercenary forces which included their own nationals. Her delegation was in favour of the formula in paragraph 2 (f) contained in square brackets, which excluded from the definition any person acting on official duty or as a member of the armed forces of a State which was not a party to the conflict.

77. Her delegation endorsed the inclusion of the ideas contained in point D concerning prevention, as proposed by the Chairman of Working Group B. It also felt that no square brackets should be placed around the words "or of territories under their control".

78. Referring to the draft convention on the subject submitted by her delegation and contained in the annex to document A/40/43, she drew particular attention to articles II (a), IV, V, VI, IX and X. She also stressed that her delegation would continue resisting any pressure to limit the scope and nature of the convention.

79. In the light of the mercenary activities being carried out in Nicaragua, and in Angola and other front-line African States, the elaboration of a convention was most urgent, for the States perpetrating those acts terrorized defenceless people in order to obtain political advantage and subvert internal order. Her own country had been the victim of aggression by mercenary forces financed and supported by the United States.

80. Lastly, her delegation supported the renewal of the Ad Hoc Committee's mandate and would continue to make a contribution to its work.

81. Ms. WILLSON (United States of America) speaking in exercise of the right of reply, expressed regret that the representative of Cuba had departed from her otherwise constructive statement to take a swipe at the United States. The outbursts by the representative of the Ukrainian SSR, who had departed from the topic under consideration, were not surprising. The question was whether he had anything constructive to say on that topic. The Sixth Committee was not considering mercenaries, but rather the work of the Ad Hoc Committee on the convention.

82. The allegations that atrocities had been committed by the United States were gross distortions of the facts. Her delegation was not surprised that certain delegations confused the legitimate use of force and exercise of the right of

(Ms. Willson, United States)

self-defence with mercenary activity or that they attacked the concepts of freedom of expression and of the press. The verbal attacks on the United States were truly regrettable in a body such as the Sixth Committee, and did nothing to enhance its understanding of the item. Such vicious diatribes only abused the Committee's patience, distracted it from its work and lowered the level of the debate. They insulted not only her delegation, but also all other serious-minded delegations. She urged the Committee to concentrate more on legal analysis and less on castigating the United States.

83. Mr. TARASYUK (Ukrainian Soviet Socialist Republic), speaking in exercise of the right of reply, confirmed that he had indeed addressed the item under consideration.

84. Although he had not actually named the United States in his statement, the United States representative had in effect acknowledged the truth of his remarks.

85. Mrs. SILVERA NUÑEZ (Cuba), speaking in exercise of the right of reply, said that she was surprised that such a slight reference to the United States had provoked such a response. Her reference had been to an irrefutable fact. There had been a mercenary invasion of Cuba organized and financed by the United States. Cuba had been making a constructive contribution to the work of the Ad Hoc Committee, while the United States had been placing obstacles in its way. The United States representative clearly had no idea what addressing the item meant.

86. The CHAIRMAN said he was pleased to note that all the speakers had agreed on the importance of the Ad Hoc Committee's work and on the need for it to be continued. A number of delegations, particularly those of Brazil, Italy and Jamaica, had stressed that technical solutions to the problems encountered were possible. What was required was the political will to make solutions work. The Sixth Committee therefore needed to apply its collective will to the search for technical solutions. He therefore suggested that the Committee should hold informal consultations on the possibilities for devising those technical solutions, which would enhance the work of the Ad Hoc Committee.

OTHER MATTERS

87. The CHAIRMAN said that he had received a report earlier in the day from the Chairman of the Working Group on detention requesting that the work of the Group should continue throughout the current session in view of the progress already achieved. He recommended that that request should be approved.

88. It was so decided.

The meeting rose at 6.15 p.m.