



SUMMARY RECORD OF THE 23rd MEETING

Chairman: Mr. DENG (Sudan)

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AGENDA ITEM 133: REPORT OF THE AD HOC COMMITTEE ON THE DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES (continued)

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The meeting was called to order at 3.05 p.m.

AGENDA ITEM 133: REPORT OF THE AD_HOC COMMITTEE ON THE DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES (continued) (A/43/43, A/43/641-S/20201, A/43/649-S/20204 (see also document A/C.6/43/L.1, p. 5); A/C.6/43/5)

1. Mr. HANAËI (Egypt) said that although the drafting of an international convention against the recruitment, use, financing and training of mercenaries gave rise to many difficulties, past experience had shown that sincerity and determination produced results. A good example could be seen in the decision of the Drafting Group to entrust a small informal group with the task of preparing new texts for articles 1 to 6 of the Second Revised Consolidated Negotiating Basis. Although the informal group had not solved all the problems addressed, it had provided an effective example of how the Ad_Hoc Committee's work might be advanced in the future.
2. The results achieved by the Ad_Hoc Committee at the 1988 session had been modest in comparison with those of the 1987 session. The articles which had won provisional approval did not address contentious issues. His delegation had hoped that the Ad_Hoc Committee might be able to overcome major disagreements with respect to State responsibility and the settlement of disputes regarding interpretation and application of the draft convention.
3. There were various reasons why an unhealthy atmosphere of confrontation had tended to prevail during the 1988 session of the Ad_Hoc Committee. On the one hand, certain delegations had opposed compromise solutions designed to make contentious articles more broadly acceptable and, on the other, some delegations had suddenly changed their position with respect to the need for prompt conclusion of the draft convention. That atmosphere had not, however, detracted from the positive discussions in the small informal group on subjects such as direct participation and the stage at which the offence commenced. The various constructive proposals which had been put forward could serve as a basis for the Ad_Hoc Committee's deliberations at its next session. His delegation had also presented a proposal which might help to solve some of the problems impeding the work of the Ad_Hoc Committee, and hoped that the Committee would complete its work at its next session.
4. Mr. HAMID (Pakistan) said that the item under consideration had recently acquired a degree of urgency because of the increased use of mercenaries by some States to destabilize or overthrow the Governments of others. Mercenaries had also been used to thwart the march of liberation movements to victory and independence. Their use by one State against another not only amounted to aggression, but also violated the principles of the Charter of the United Nations. Unless measures were rapidly adopted to outlaw such activities, no country would be safe from them. It was for that reason that Pakistan had supported the Nigerian proposal for a provision to be included in Additional Protocol I to the Geneva Conventions of 1949, removing mercenaries from the ambit of the protection extended to prisoners

(Mr. Hanid, Pakistan)

of war. For the same reason, it had supported inclusion of the item in the General Assembly's agenda, and the establishment of the Ad Hoc Committee.

5. His delegation was disappointed at the recent pace of work in the Ad Hoc Committee. After seven years, controversy still existed regarding, *inter alia*, the definition of a mercenary. Pakistan supported the balanced definition contained in article 47, paragraph 2, of Additional Protocol I, which had been the result of protracted negotiations, and which, although not exhaustive, included all the basic characteristics of a mercenary. His delegation was not opposed to further improvement of the definition, provided the basic elements contained in article 47 were not in any way diluted or altered.

6. His delegation made a clear distinction between mercenaries used by one State or group with a view to destabilising or overthrowing another State's legitimate Government, and the liberation movements in various parts of the world struggling for independence or fighting against foreign occupation. Pakistan urged members of the Ad Hoc Committee to expedite the drafting of the convention, as a means of securing the total elimination of mercenarism. It hoped that during its eighth session, the Ad Hoc Committee would be able to finalize the draft, which could then be presented to the General Assembly for adoption at its forty-fourth session. The developing countries had suffered enough at the hands of mercenaries, and early adoption of the convention might save them from further agony. His delegation thus supported the extension of the Ad Hoc Committee's mandate.

7. Mr. ABADA (Algeria) thanked the Chairmen of the African and Arab Groups for their statements, which his delegation fully supported. The fact that those delegations had been able to express their views on such an important subject through their respective Chairmen showed that they shared a common concern, and served as a further reminder that the draft convention must not be merely a pale reflection of existing national legislation, which was often inadequate or permissive.

8. Since the preparation of a Consolidated Negotiating Basis by the Ad Hoc Committee in 1984, substantial progress had been made. The 1987 session had been characterized by the quality and number of the contributions, the in-depth treatment of the issues, and the excellent atmosphere of co-operation. No concrete results had emerged, but at least the major difficulties had been itemized and the prospects for completion of a draft convention in the near future had seemed better than ever. Unfortunately, the 1988 session of the Ad Hoc Committee had not lived up to the expectations of those delegations that wished to see the elimination of a legal void harmful to the international community as a whole.

9. Participants in that session had to acknowledge that there had been little progress in reconciling conflicting attitudes on key issues, such as the definition of a mercenary, the scope of the convention, and the question of offences arising from mercenary activities, despite the lengthy consideration given to them. Thus, in addition to the political and substantive difficulties, difficulties continued to arise regarding the very nature and scope of the proposed convention. At the

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(Mr. Abada, Algeria)

previous session, his delegation had spoken on many aspects of those questions. Its comments were still valid, all the more so since, despite constant revision, the Consolidated Negotiating Basis remained virtually unchanged.

10. He reaffirmed his delegation's support for a convention that would resolutely attack the scourge of mercenarism and eradicate it once and for all. Such a convention would cover the activities of mercenaries both in wartime and in peacetime, in international and non-international armed conflicts, and in other situations. It would set forth precisely the reprehensible acts usually committed by mercenaries, would criminalise all activities of mercenaries, and would treat the recruitment, use, financing and training of mercenaries as grave crimes against the peace and security of mankind. The convention would also deny mercenaries the status of prisoners of war.

11. Turning to the actual work of the Ad Hoc Committee, he pointed out that, unlike the Working Group, in which member and observer delegations had sought to expound well-known positions, the Drafting Group, which was no less a negotiating group, had tried to stray from the well-trodden paths and to adopt a different approach to solving the delicate problems facing the Ad Hoc Committee. Regarding the work on new texts for article 1 and the articles on offences referred to in paragraph 81 of the report (A/43/43), he said that the results had not been conclusive, the partial failure being attributable to members' inability to transcend their differences of opinion in an informal negotiating context and arrive at a balanced compromise text. None the less, the experiment was to be welcomed, and might perhaps be renewed if circumstances became more propitious. Meanwhile, now that the other non-permanent organs of the Sixth Committee had managed to break their deadlock, the Ad Hoc Committee must redouble its efforts to fulfil its mandate as rapidly as possible. His delegation would continue to contribute to the Committee's work, in the hope that significant progress would be made at its next session.

12. Mr. CABOCHAN (Philippines) said that mercenary activities were dangerous manifestations of terrorism which had a destabilising effect on the international political environment, and whose perpetrators were motivated, not by any valid cause, but by personal gain. His delegation considered that there was an urgent need for a more concrete definition of the term "mercenary", and for more effective measures to prevent the practice of organizing and dispatching mercenaries. Developing countries were particularly vulnerable to such activities, which had contributed to the stagnation of the political, social and economic well-being of their peoples.

13. In the Manila Declaration of 1988, the Philippines, together with 12 other States, had rejected external interference and systematic recourse to violence as means of effecting changes in society. The Declaration called on Governments to desist from extending aid or support to groups or movements that constituted a threat to democratic institutions and territorial integrity. It condemned all forms of terrorism and insurgency against democracy and freely elected Governments.

(Mr. Cabochan, Philippines)

14. International legislation did not currently provide effective sanctions against mercenarism, and an international convention would undoubtedly fill a void in that regard. His delegation maintained that liability for mercenary activities should not be limited to individuals, but should extend to the States or entities which induced, supported or tolerated such activities. It thus appreciated the efforts made by the Ad Hoc Committee to draft clear and specific provisions regarding the obligations and responsibilities of States, in accordance with the practice and principles of modern international law.

15. Comparing the Third Revised Consolidated Negotiating Basis with its predecessor, his delegation had observed that certain controversial provisions had remained unchanged, either because of a lack of agreement within the Ad Hoc Committee, or for lack of time. Thus, two issues relating to the definition of a mercenary remained unresolved: the question of material compensation, and the nationality criterion.

16. Regarding material compensation, his delegation considered that the words placed in brackets in paragraph 2 (c) of article 1 should be deleted, for they limited the scope of the definition of the term "mercenary", and might thereby enable the definition to be circumvented. It was easy to envisage circumstances in which mercenaries would be willing to receive material compensation which was not necessarily in substantial excess of what they would have received in the armed forces of their own State or the territory in which they resided: some would settle for equal or even lower compensation. His delegation believed that a precise definition of the term "mercenary" was of paramount importance, since other provisions in the draft convention would necessarily hinge on that definition. The essence of the definition should thus be the act of violence or hostility motivated by a desire for private gain, and the amount of the material compensation should be irrelevant.

17. His delegation also found it difficult to support the "nationality criterion" contained in paragraph 2 (d) of article 1. The exclusion of nationals from the definition of a "mercenary" would not help deter violations of the principle of non-interference in the internal affairs of States. There were a number of cases of nationals being recruited, trained, financed and used by foreigners, for the purpose of engaging in mercenary activities against their own States. If the criterion were retained, was a national recruited by a foreign entity, whose activities in his own State actually consisted of all the elements of mercenarism, to be categorized as a common criminal? It seemed logical that an individual engaged in mercenary activities should be categorized as such, regardless of where he might be engaged in those activities.

18. His delegation dissented from the view that the exclusion of the criterion might result in bona fide political opponents of a State being mistaken for mercenaries. Exclusion of the criterion would not blur the distinction, since it was well established that the former group was essentially motivated by some political cause, and the latter by pecuniary gain.

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(Mr. Cabochan, Philippines)

19. The text of paragraph 2 (A) proposed in the informal paper reproduced in paragraph 86 of the report was worthy of consideration. His delegation could support the inclusion of the bracketed text setting forth the following exception:

"Except that where a national or resident of such State is recruited, trained, financed or used by a foreign person or entity for the commission of any of the acts described in subparagraph (a) of this paragraph, such national or resident shall be considered as falling within the meaning of a mercenary as defined in this paragraph."

20. His delegation favoured the third of the three alternatives contained in article 14 of the Third Revised Consolidated Negotiating Basis. However, it believed that the reference to humane treatment should not be limited to what was provided for in article 75 of Additional Protocol I to the 1949 Geneva Conventions, since other international instruments were relevant to the issue. His delegation remained flexible on the question of protection of the rights of the offender, provided that the draft provision agreed upon would emphasize the basic elements which would effectively guarantee the rights of the offender to fair and humane treatment and embody the corresponding legal safeguards.

21. Mr. YIMER (Ethiopia) said that, while the efforts made by the Ad Hoc Committee should by no means be underestimated, the results of those efforts had not been encouraging. On the contrary, the situation gave cause for serious concern, for, after years of discussion, the basic issues remained unresolved.

22. Referring to draft article 2, he said that his delegation had always fully supported a provision denying the status of prisoner of war to a mercenary. Therefore it could not accept the deletion of article 2. The implications of deleting the article could not be grasped fully until fundamental issues still outstanding had been resolved. His delegation fully shared the view that denying mercenaries prisoner-of-war status had a deterrent effect; it accepted the argument that the proposed convention was intended to be an autonomous and comprehensive instrument, and should not be dependent upon other international instruments for some aspects of its subject-matter.

23. Of the two proposals advanced to replace article 2, the first - seeking to treat a mercenary like an ordinary criminal - would be inconsistent with the "extradite or prosecute" principle provided for in the text, and with the characterisation of the acts of mercenaries as crimes against the peace and security of mankind. The second - providing that the treatment to be applied to a mercenary should be governed by the convention - was less objectionable than the first proposal; however, his delegation could not support it, as it might be interpreted as excluding the application of other instruments to mercenaries.

24. Regarding the use of the term "knowingly" in draft article 3, he reiterated his delegation's opposition to its use on the grounds that the word would create a dangerous loophole. It should be left to the courts to determine in each specific case whether the intentional element was present. Various formulations might serve

(Mr. Yimer, Ethiopia)

to allay the concern that innocent people might unwittingly get involved in the financing or training of mercenaries, such as the use of the words "for military purposes" or "for the purpose of engaging in hostilities or other concerted acts of violence prohibited by international law".

25. The divergence of views regarding paragraph 1 (c) of the former article 13 was largely related to the passive personality principle of establishing jurisdiction. While it might be true that the principle was not known in all legal systems, the problem raised might not be as serious as it appeared, since the State where the alleged offender was found was obligated to establish its jurisdiction if it chose not to extradite him. Furthermore, paragraph 3 provided that the application of the convention did not preclude the exercise of criminal jurisdiction under national law.

26. His delegation supported the deletion of paragraph 3 (c) of the former article 14 for the reasons adequately set forth in paragraph 43 of the report (A/43/43).

27. With regard to the former article 15, his delegation agreed that the alleged offenders should be entitled to fair treatment, but opposed the inclusion of the phrases in brackets, inasmuch as their use would complicate matters and cause unnecessary controversy in the application of the future convention.

28. Regarding the role of the International Committee of the Red Cross, his delegation took the view that there should be no reference to the organization, for the reasons set forth in paragraph 55 of the report.

29. Paragraph 4 of the former article 19 was in square brackets. His delegation considered that the brackets should be deleted, since a similar generally accepted provision was included in other international instruments, such as the Montreal and The Hague Conventions relating to international civil aviation.

30. Where the former articles 20 and 21 were concerned, Ethiopia did not find the arguments put forward in paragraphs 62 and 63 of the report convincing, particularly since it was difficult to comprehend why the interpretation of other international instruments should be affected by the proposed convention. Since the activities of mercenaries caused enormous damage to victim States, the proposed convention would not be complete without an express provision dealing with the responsibility of States for violations of their obligations.

31. On the issue of the nationality criterion, it was not inconceivable for a national to be recruited as a mercenary and to take up arms against his own country purely for private gain. Under such circumstances, the mere fact that he happened to be a national of the victim State was not a sufficient reason for not characterising him as a mercenary. In general, Ethiopia still felt that the criterion should be excluded for the reasons stated in paragraph 94 of the report.

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(Mr. Yimer, Ethiopia)

32. At the current stage, discussion of the preamble to the future convention should focus on structure, as indicated in paragraph 74 of the report, rather than on specific formulations. It must be stressed that it was now nine years since the item under consideration had first been included in the General Assembly's agenda. The issue was clearly of great importance. Otherwise, the Sixth and Third Committees and the Commission on Human Rights would not all be discussing the matter, although that method was obviously not consistent with the requirements of the rationalisation of General Assembly procedures. Ethiopia could only hope that the Ad Hoc Committee would make every effort to reach agreement on outstanding issues with a view to completing its mandate at its next session. His delegation therefore supported the renewal of the mandate.

33. Mr. HOPPE (German Democratic Republic) said that the Ad Hoc Committee's report clearly reflected the progress made in preparing a draft convention. The German Democratic Republic especially welcomed the enunciation of an obligation on the part of States to punish all mercenaries, as well as the Ad Hoc Committee's adoption of draft article 8. However, a number of proposals submitted to the Ad Hoc Committee had not yet made their way into the draft convention. The German Democratic Republic had in mind, in particular, the proposals on the definition of the term "mercenary", especially the relevant criteria, and on the activities to be prohibited by the future convention. Careful examination of those proposals and a constructive approach by all members of the Ad Hoc Committee could lead to the completion of that Committee's work at its next session and thus to the fulfilment of its mandate. However, if that goal was to be achieved, delegations must refrain from putting forward any substantive amendments, since they would jeopardise the results achieved.

34. On the issue of the criteria for qualifying a person as a mercenary under the future convention, the German Democratic Republic noted that most of the members of the Ad Hoc Committee accepted the extension of the definition of the term "mercenary" as contained in Additional Protocol I to the Geneva Conventions of 1949 to cover all kinds of armed conflict. The important thing was that there should be no clash between international norms governing warfare and the norms laid down in the future convention. The German Democratic Republic could associate itself with the majority of States if it were clearly stated at the beginning of both paragraphs of draft article 1 to which kinds of mercenary activities the respective definition was to apply. Such an approach would, at the same time, exclude a situation where a choice between the two definitions was possible. Moreover, the German Democratic Republic was prepared to agree that a State's own nationals should not be covered by the definition laid down in draft article 1, paragraph 2. The punishment of a State's own nationals could be assured if States made use of the possibility they had by virtue of their own sovereignty to prosecute and punish the activities in question in accordance with their national criminal law. The current formula which read "not [necessarily] a national ... of the State", would not be an unequivocal criterion. In any event, the German Democratic Republic wished to suggest once again that serious thought should be given to the inclusion of an obligation on the part of States to prohibit their own nationals from being

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(Mr. Hoppe, German
Democratic Republic)

recruited, trained or used as mercenaries, in accordance with numerous United Nations resolutions.

35. The close link between the definition of the term "mercenary" and the activities to be prohibited under the future convention was clearly reflected in the proposal set forth in paragraph 100 (b) of the Ad Hoc Committee's report. Progress could be achieved if the text in question were adopted, although ultimately the problem of direct participation in mercenary activities would remain. Article 4, paragraph 2, of the proposal envisaged the punishment of mercenaries participating in (international) armed conflicts for murder, hostage-taking, torture and the plundering of civilian property. Murder included any killing by a mercenary in his capacity as such. Since such acts were in any event prohibited under the criminal law of States, such a provision would appear to be appropriate only if it were formulated to indicate that they constituted aggravating circumstances. That would apply to both categories of mercenaries.

36. The German Democratic Republic continued to attach great importance to draft article 7. Since the International Law Commission had begun, at its most recent session, to define the various elements that should come within the scope of the draft Code of Crimes against the Peace and Security of Mankind, all members of the Ad Hoc Committee should make a constructive effort to complete the draft convention without delay.

37. The future convention would be a valuable contribution to a system of comprehensive international security. In that connection, the German Democratic Republic welcomed the enhanced role of the United Nations in the settlement of regional conflicts. The current favourable trends in international relations were due to a greater striving for political solutions to international conflicts. Those trends should be reflected in the early completion of the draft convention. The General Assembly should therefore renew the Ad Hoc Committee's mandate so that it might complete the drafting of the convention at its next session.

38. Mr. KOLOMA (Mosambique) said that his delegation was pleased to note that a large number of observers had attended the Ad Hoc Committee's most recent session, in accordance with General Assembly resolution 42/155, paragraph 6. It also welcomed the outcome of the Ad Hoc Committee's work, as reflected in the Third Revised Consolidated Negotiating Basis.

39. The draft convention would be an important complement to existing international legal instruments designed to combat international crime and to enhance the effectiveness of the principle of non-use of force in international relations, as well as a complement to the future Code of Crimes against the Peace and Security of Mankind. The draft convention must establish an international legal basis for combating a social phenomenon that was a matter of great concern to a good part of the international community. Many countries were victims of mercenary activities both within the context of an armed conflict and outside that context. The draft convention should respond to the reality of today's international life and cover all situations relating to mercenary activities.

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(Mr. Koloma, Mozambique)

40. The item under consideration had been in the General Assembly's agenda for a considerable length of time. While noting with satisfaction that the Ad Hoc Committee had made some progress, Ethiopia was disappointed that it had been unable to produce a final text and that many draft articles were still within brackets. If any significant progress was to be made, agreement must first be reached in the Sixth Committee on unresolved questions, particularly the issues of the definition of the term "mercenary" and of offences arising from mercenary activities, and the issues of criteria of "nationality", "personal gain" and "direct participation". The nature of the offences in question must be clearly defined by the draft convention, which must address such questions as whether the offences referred to in draft article 5 of the Third Revised Consolidated Negotiating Basis were of the same nature and of the same gravity as those referred to in draft article 6 of the same text. However, given the necessary political will, it would be possible to overcome the problems that had arisen.

41. Mozambique supported the statement made at the previous meeting of the Sixth Committee by the representative of the United Republic of Tanzania, on behalf of the Group of African States, and strongly condemned the recruitment, use, financing and training of mercenaries. It looked forward to the early conclusion of the draft convention and therefore supported the renewal of the Ad Hoc Committee's mandate.

42. Mr. BYKOV (Union of Soviet Socialist Republics) said that recent events, including some positive movement towards the settlement of regional conflicts, suggested that the world was beginning to change for the better. All countries and peoples were concerned that that encouraging trend should be strengthened. To that end, it was necessary to eliminate from international life factors which might hamper progress towards ensuring genuine security for all.

43. One of those destabilizing factors was undoubtedly mercenarism. Unless the conditions which made it possible for that most dangerous type of international crime to be committed were removed, many States and peoples in Africa, Central America and other places would not feel safe. The potential threat to their inalienable right to freedom of choice would continue to exist. The widespread use of mercenaries had dire consequences for the fate of peoples and entire countries. The entire system of international relations, which could function normally only on the basis of law, was subjected to dangerous stress. The international community could not allow that situation to continue. The adoption of effective measures against the recruitment, use, financing and training of mercenaries would be in the interest of mankind as a whole. The fact that mercenaries were used widely and could be employed for the purpose of destabilizing foreign States as well as against national liberation movements was, in the final analysis, not to the advantage of any country or group of countries. It harmed the interests of peace, security, stability and, therefore, the national interest of each country. Those were the realities of an interdependent world.

44. His delegation therefore believed it necessary to draft without delay an effective international document aimed at preventing the practice of mercenarism.

(Mr. Bykov, USSR)

He stressed the word "effective", since any other type of document would only serve the interests of mercenaries and their employers, since it would demonstrate a lack of will on the part of the international community to put an end to the crime of mercenarism.

45. The Ad Hoc Committee should in future stress the obligation of States to prevent the activities of mercenaries by including provisions which made States liable if they allowed mercenaries to be recruited, financed or trained in their territory.

46. The Ad Hoc Committee had made some progress at its most recent session. A narrowing of views had been noted in connection with some outstanding provisions. At the same time, the Ad Hoc Committee had failed to reach agreement on problems which had to be solved if the future document was to be an effective deterrent to mercenarism. The time had come for States to rise above political and other stereotypes and to make a critical examination of their own position. Work must be completed on the draft, which had been under preparation for so long and which was intended to become an important element of an international régime for a safe and secure world.

47. Mr. KULOV (Bulgaria) said that international developments were now determined by new socio-historical characteristics that could not but influence the practice of recruiting, using, financing and training mercenaries. Certain recent events, particularly those relating to Afghanistan, southern Africa and Kampuchea, gave reason to hope that the practice in question would decline. In the current favourable circumstances, the Ad Hoc Committee should be able to adopt a text whose implementation would help to eradicate a dangerous crime that undermined the principles of international law. Bulgaria noted with satisfaction the progress made by the Ad Hoc Committee at its most recent session and believed that the Third Revised Consolidated Negotiating Basis should be submitted to the General Assembly as a draft convention on the item under consideration.

48. The Ad Hoc Committee faced difficult negotiations, since the goal should be the drafting of a convention eliminating the phenomenon of mercenarism. Bulgaria therefore believed that special attention should be devoted to draft articles 1 to 5. It strongly opposed use of the principle of direct participation as the sole criterion for defining an offence. It was an established principle of law that the accomplices to a crime should be punished together with the perpetrators. It was therefore only logical that both individuals who recruited, used, financed or trained mercenaries and individuals who were recruited or trained or were acting as mercenaries should be treated as criminals under the future convention.

49. With regard to the criterion of "nationality", it must be acknowledged that there were in fact cases where nationals of a given country were recruited by foreign States and organizations as mercenaries for the purpose of carrying out hostile acts against their own country. The compromise definition suggested by Ghana at the Ad Hoc Committee's seventh session should be given due consideration. Moreover, the Ad Hoc Committee's work on the definition of a criminal offence would

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(Mr. Kulov, Bulgaria)

be facilitated if account were taken of article II, paragraphs 8 and 12, of the bilateral Agreement between the Republic of Afghanistan and the Islamic Republic of Pakistan on the Principles of Mutual Relations, in particular on Non-Interference and Non-Intervention, signed in Geneva in April 1988. That text contained suitable compromise formulas on a highly complicated and specific issue. Furthermore, Bulgaria believed that the crime of mercenarism should be qualified as a crime against the peace and security of mankind.

50. Since the Ad Hoc Committee should be able to complete the drafting of a convention as early as its next session, the Sixth Committee should give the Ad Hoc Committee a clearly defined mandate for that task.

51. Mr. KOZUBEK (Czechoslovakia) said that the time had come for the Ad Hoc Committee to make use of the current favourable climate in international relations and to take a decisive step towards overcoming the existing differences of opinion among its members so that it could complete the drafting of a convention. The draft convention should stipulate clearly and specifically the obligations of States regarding the suppression of mercenary activities. At the same time, it should not leave room for any other subjects participating in the recruitment, use, training or financing of mercenaries to find ways of evading responsibility for their actions. By their very nature, such actions were much graver offences than common criminal activities were. They endangered the Governments, constitutional order and territorial integrity of sovereign States and were frequently used to suppress the legitimate struggle of peoples under foreign domination for their self-determination and independence.

52. It was not appropriate to extend the application of the criteria of direct participation and nationality as contained in Additional Protocol I to the Geneva Conventions of 1949 to situations other than international armed conflicts. Moreover, a clear distinction must be drawn between the status of combatants and that of mercenaries, and responsibility for all forms of criminal participation in mercenary activities must be strengthened. Careful consideration should also be given, in the context of establishing the obligation of States to punish acts committed by mercenaries as criminal offences and to co-operate with one another to that end, to the extent of the guarantees to be granted to individuals accused of acting as mercenaries. There was no reason why such guarantees should be broader than those granted under other conventions in respect of perpetrators of such offences as hostage-taking.

53. Since many of the provisions of the Third Revised Consolidated Negotiating Basis could serve as a foundation for preparing a draft convention, Czechoslovakia was in favour of renewing the Ad Hoc Committee's mandate.

54. Mr. LI HUANTING (China) said that at its most recent session the Ad Hoc Committee had made some progress. The Third Revised Consolidated Negotiating Basis represented a considerable improvement over the Second Negotiating Basis, but quite a few points remained controversial such as the provisions on the nationality of mercenaries and on the various kinds of mercenaries.

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(Mr. Li Huanqing, China)

55. The definition of a mercenary should cover three types of mercenary: those operating in an international armed conflict; those operating in a non-international armed conflict, and those operating in the absence of any armed conflict. The definition given in article 1, paragraph 1, should be understood as including mercenaries operating in an international armed conflict, so as to avoid the application of different criteria to mercenaries operating in two different kinds of armed conflict. Article 1, paragraph 2, might deal exclusively with mercenaries operating in the absence of armed conflict. The definition of a mercenary was the key provision of the draft convention. It had always proved to be a difficult issue in the Ad Hoc Committee and should be given careful consideration so that a common understanding could be achieved. The definition should meet a number of criteria. It should be in conformity with the international community's struggle against mercenarism. Mercenarism was not a new phenomenon and had evolved over time; the definition should therefore take into account the new factors that had emerged. It should likewise be practical and acceptable to the majority of States and have a broad scope of application so as to contribute effectively to the struggle against mercenarism. The definition should make it clear that mercenarism, which was often detrimental to international peace and security, was fundamentally different from the struggle for national liberation and against foreign aggression and occupation, which was a just cause and deserved the support of the international community.

56. With regard to the definition of an offence, articles 3 to 6 of the Third Revised Consolidated Negotiating Basis were acceptable. His delegation saw merit in the elimination of the direct participation criterion, since that would ensure that any person who recruited or used mercenaries would not be able to escape responsibility for acts committed by them, thus paving the way for the punishment of all those involved in mercenarism. It was especially important to eliminate that criterion to take account of situations which did not constitute armed conflict, for the financing and training of mercenaries par se constituted a destructive threat to the constitutional order of States. Furthermore, under the penal code of many countries, the attempt to commit a crime constituted an offence.

57. With regard to articles 9, 10 and 12 he noted that many points of contention still existed on the issue of State responsibility. The question was whether the future convention should contain a principle on that issue, which was closely linked to the convention's purpose. If, as some States proposed, the future convention were simply to establish a penal system of jurisdiction, it would not be necessary to provide for State responsibility. However, the convention contained not only provisions on offences committed by mercenaries par se but also provisions on the offences of recruiting, using, financing and training mercenaries. If the future convention failed to establish the international responsibility of States and if a State participated in mercenary activities, it would be difficult for the international community to deal with that internationally wrongful act. His delegation therefore believed it necessary for the future convention to contain a provision on State responsibility.

(Mr. Li Huanting, China)

58. In article 12, paragraph 1 (a), it was appropriate to replace the concept of control by that of jurisdiction, since that would make it possible to prevent the illegal occupation of foreign territory from being legalized. His delegation therefore favoured retention of the words "or in any place under its jurisdiction" and the removal of the square brackets. It also supported the addition of the words "on board a ship or aircraft registered in that territory". Article 12, paragraph 1 (c), should be retained. His delegation believed that even if the offence did not occur in the territory of the victim State, that State should still be regarded as having jurisdiction and thus having the right to request the extradition of the offenders. Otherwise, the provision on jurisdiction would leave a significant loophole. Moreover, the establishment of the jurisdiction of the victim State was not only in conformity with the legal code of many countries but also in line with the principles of international law related to jurisdiction.

59. His Government and people had always opposed and condemned any form of mercenary activities and hoped that the efforts being made by the United Nations would help to eliminate mercenarism.

60. His delegation was in favour of renewing the Ad Hoc Committee's mandate and hoped that the drafting of the convention would be completed at the Ad Hoc Committee's next session.

61. Miss MEDINA (Nicaragua), said that the scope and application of the definition of a mercenary should not hinge on existing texts, since the future convention would then not have sufficient scope to cover all situations in which mercenaries might participate. The definition should encompass both mercenaries who participated in an international armed conflict and those who operated in a non-international armed conflict or in situations which did not constitute armed conflict.

62. Her delegation regretted that the Third Revised Consolidated Negotiating Basis did not incorporate the concept of interference in the internal affairs of States, since that constituted the main purpose for which mercenarism was promoted and developed. The fact that mercenarism constituted a means of intervening in the internal affairs of other States had been clearly set forth in the judgement of the International Court of Justice of 27 June 1986 in the paragraph which stated that the United States of America, by training, arming, equipping, financing and supplying the contra forces or otherwise encouraging, supporting and aiding military and paramilitary activities in and against Nicaragua, had acted against the Republic of Nicaragua, in breach of its obligation under customary international law not to intervene in the affairs of another State.

63. Ms. WILLSON (United States of America), speaking on a point of order, requested the Chairman to ask the speaker to confine her remarks to the item under discussion.

64. The CHAIRMAN said that the Committee had taken note of the remarks of the representative of the United States. He invited the representative of Nicaragua to continue her statement.

65. Miss MEDINA (Nicaragua), continuing her statement, said that the concept of intervention in the internal affairs of other States should be covered by the draft convention, since such intervention was the true motive of those who were at present seeking to overthrow or destabilize a Government or to undermine a country's constitutional order.

66. Her delegation considered that the criterion of private gain embodied in article 1, paragraph 2 (c), should be eliminated, since the offence committed by a mercenary should be recognized as such whether he received any financial compensation or not.

67. The provision to the effect that a person could not be considered a mercenary so long as he did not take a direct part in the hostilities was unacceptable to her delegation because it would limit the scope of the convention, particularly with regard to the prohibition against the recruitment, use and training of mercenaries. A person should be regarded as a mercenary if he was recruited and trained to carry out mercenary activities or if he promoted mercenarism.

68. Her delegation considered that the criterion of nationality should be excluded from the definition of a mercenary because its inclusion would limit the scope of the convention and would encourage persons, institutions and Governments to use nationals to carry out mercenary activities in violation of international law, as had been done in the case of the mercenary activities directed against Nicaragua since 1981.

69. Since mercenary activities violated fundamental principles of international law, her delegation considered that the offences committed by mercenaries should be regarded as crimes against the peace and security of mankind. Therefore, and in accordance with the offences enumerated in article 7, her delegation believed that the square brackets around that article should be deleted.

70. The obligations which States would assume under the future convention should be defined clearly and precisely so that States would be compelled to refrain from organizing, promoting, recruiting, using or financing mercenaries and persons, groups and organizations would be prevented from undertaking mercenary activities or conducting propaganda campaigns in their own territories in favour of mercenaries.

71. The future convention should establish not only the criminal responsibility of mercenaries, but also the responsibility of States that failed to comply with their obligations under that instrument. That was a vitally important point since mercenaries were currently carrying out activities with the protection and even the open support of certain States. An example of that situation was to be found in the case of the mercenary forces which had been attacking Nicaragua for eight years, as a result of the generous support given them by a State which claimed to respect international law.

72. In conclusion, her delegation supported the renewal of the Ad Hoc Committee's mandate.

73. Mr. PAOLILLO (Uruguay) said that the wording of some of the provisions of the Third Revised Consolidated Negotiating Basis, had been improved, the concepts used had been refined and there had been a real deepening of understanding of the matter under consideration. It was admittedly a very difficult topic, and a great deal of work remained to be done. His delegation therefore hoped that the Ad Hoc Committee would be able to continue its work in future, on the basis of certain principles. Firstly, the fundamentally preventive character of the proposed convention should be reaffirmed. In other words, attention should be paid not only to the punishment of mercenaries for carrying out mercenary activities but also, and especially, to the prohibition of acts leading up to such activities, since the terms of the Ad Hoc Committee's mandate referred to the recruitment, use, financing and training of mercenaries.

74. Uruguay therefore attached great importance to the wording of articles 3 and 4 to 6. Article 3 should be expanded to include groups and organisations, as set forth in article 9, and the square brackets should be removed from the words "finances or trains", since there was no reason to exclude those possibilities from the acts prohibited by the convention. The square brackets around the words "knowingly" should also be removed, because the introduction of the subjective element of intention would severely restrict the scope of the convention. Moreover, the possibility that someone could carry out any of the activities listed in article 3 unknowingly appeared to be exceedingly remote.

75. With regard to article 1, paragraphs 1 (b) and 2 (b), his delegation felt that retention of the requirement of that mercenary must in fact have taken direct part in the hostilities would weaken the convention's scope tremendously, in that the act of recruiting, training or financing mercenaries could not be punished until the mercenary activities were actually carried out. Those paragraphs should therefore be deleted, in accordance with the alternative proposal before the Drafting Group contained in paragraph 100 (b) of the Ad Hoc Committee's report (A/43/43).

76. The second principle supported by his delegation was that of universality. The convention should sanction all acts related to mercenary activities as broadly as possible, irrespective of whether the mercenaries took part in an armed conflict of any type or whether an armed conflict existed. His delegation therefore proposed that the word "international" between square brackets in article 1, paragraph 2, should be deleted. The article should retain its current structure, which considered two possible assumptions: in paragraph 1, where armed conflict existed, and, in paragraph 2, where armed conflict did not exist.

77. Thirdly, although the convention should cover the maximum number of situations, extreme care should be taken not to include situations which might present certain similarities with mercenary activities or which might be confused with them. The defining factor in mercenary activities was the motivation of whoever was carrying out such activities. The wording of article 1, paragraph 1 (c), was therefore extremely important, in that it described the motive as being the desire for private gain.

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78. Uruguay did not support the establishment of any quantification of the compensation paid to the mercenary. Although the wording in the Third Revised Consolidated Negotiating Basis was better than previous formulations, his delegation felt that the reference to the amount of compensation should be completely deleted.
79. Paragraphs 1 (c) and 2 (c) of article 1 should be brought into line with each other to correct certain unjustifiable discrepancies, such as the reference in paragraph 2 (c) to both the promise and the payment of material compensation, which was not the same wording as in paragraph 1 (c).
80. Mr. VILLAGRAN-KRAMER (Guatemala) said that his delegation was satisfied with the Ad Hoc Committee's report, although it had a minor terminological problem in that, although all delegations had agreed on the identification of the offenders, they had not found the precise word to express what the offences were. That would make it difficult for legislators and judges in his country to determine the proper sanctions against mercenaries under domestic law.
81. The Sixth Committee should not engage in an extensive or even restrictive interpretation of article 47 of Protocol II additional to the 1949 Geneva Conventions. Its work was to draft a convention on mercenaries which did not generate a legal conflict with the Additional Protocol. Paragraph 1 of article 1 of the Third Revised Consolidated Negotiating Basis did not conflict with the Additional Protocol; paragraph 2, however, should be reworded in keeping with the thinking on that issue in the United Nations since 1968. The concepts dealt with in paragraph 2 deserved to be included in the final text. However, the stipulation that the armed conflict must be international would render the instrument less effective. The word "international" should therefore be deleted.
82. His delegation agreed with Uruguay that paragraphs 1 and 2 of article 1 should not contain different wording, and that the amount of material compensation should not be specified in article 1, paragraph 2 (c), except to say that it should be in excess of that paid to an ordinary soldier or policeman.
83. There was a possible legal problem involved in article 5 as a result of the methodology used in international criminal law. If an offence committed by a mercenary was defined as being criminal, it was not advisable to use the term "criminal" again in article 5 where the mercenary had committed a serious crime such as murder or torture. Perhaps such crimes could be qualified as "aggravating" acts in the wording of that article.
84. The Sixth Committee should perhaps consider setting a deadline for the completion of the Ad Hoc Committee's work. Guatemala was already preparing to implement the future convention by endeavouring to incorporate into its legislation such considerations as comparability with the list of serious offences set forth in the proposed convention, ensuring that mercenary activities were deemed non-political for purposes of extradition and that offences under the convention were not subject to any form of amnesty provisions.

85. Mr. FAVITSOU-BOULANDI (Chad) said that the Third Revised Consolidated Negotiating Basis, although it might require some minor improvements, contained a definition of a mercenary that would undoubtedly enable the Ad Hoc Committee to advance more quickly in its work. The proposed definition appeared to be complete enough to be accepted by all delegations. It was sufficient to observe the adverse effects of mercenary activities on the peace and security of States to understand why mercenarism should be banished from the face of the earth. Mercenary acts were contrary to the principles of international law, including non-interference in the internal affairs of States, respect for the territorial integrity and independence of States and the right of self-determination. His delegation therefore strongly supported article 7 of the draft convention, which qualified the recruitment, use, financing or training of mercenaries as a crime against the peace and security of mankind. The fact that the International Law Commission had not yet completed its work on the list of crimes against the peace and security of mankind must not in any way be construed as detrimental to the Ad Hoc Committee's work. On the contrary, the latter's work would simply reinforce that of the Commission and make it possible to outlaw mercenary activities, which had always been considered unlawful under international law. His delegation would go even further by proposing that a mercenary should be treated as an ordinary criminal and should not benefit from any of the protection conferred on prisoners of war by the 1949 Geneva Conventions. Lastly, his delegation agreed with the suggestion contained in paragraph 76 of the Ad Hoc Committee's report to include in the instrument under elaboration, with a view to enhancing its effectiveness, provisions for the establishment of a mechanism of control on the observance by States of their obligations under the convention. Chad would be prepared to support the adoption of the draft convention as soon as the Ad Hoc Committee had submitted to the Sixth Committee a draft preamble, on which his delegation might also make some preliminary comments.

86. Mr. CAMPBELL (Australia) said that the issues involved in drafting a convention prohibiting mercenary activities were very complex, and progress on them had been slow. However, his delegation was encouraged that the drafting group's report, contained in annex I to the Ad Hoc Committee's report (A/43/43), recorded important progress. In keeping with Australia's firm support for the rationalization of work in the United Nations system, his delegation reaffirmed its view that responsibility for the subject of mercenary activity should be confined to the Sixth Committee. Despite Australia's traditional and strong opposition to the activities of mercenaries, it did not support the decision by the Commission on Human Rights to appoint a Special Rapporteur on mercenaries in 1987, in the light of continuing disagreement on the precise nature of the activities involved. He noted that the Commission on Human Rights, in its resolution 1988/7, had requested the Special Rapporteur to strengthen his co-operation and co-ordination with the various bodies within the United Nations system concerned with mercenarism, and it would be instructive if members of the Sixth Committee could be informed of the nature and extent of such co-operation and co-ordination.

87. The Australian Government had been resolute at the national level in taking measures to prevent the activities of mercenaries. In 1978 the Australian Parliament had enacted the Crimes (Foreign Incursions and Recruitment) Act,

(Mr. Campbell, Australia)

designed to prohibit persons from preparing for or engaging in incursions into foreign countries and to prohibit the recruiting in Australia of persons to serve in armed forces in a foreign country. That legislation had been enforced on a number of occasions.

88. His delegation supported the two-pronged definition of "mercenary" contained in article 1 of the Third Revised Consolidated Negotiating Basis, which attempted to harmonize the definitions set forth in other international instruments. Unfortunately, little progress had been achieved in resolving the text of article 1, paragraph 2. Australia supported the thrust of the paragraph but felt that its elements must be tightly defined. The notion of criminality, for instance, must be tied to actual acts committed rather than merely flowing from the defined status of mercenary. While the scope of the paragraph might indeed extend beyond situations of actual armed conflict, his delegation would have reservations about applying the definition of a mercenary to non-international armed conflicts, where the distinction between military activity, organized political violence and activity which was merely criminal might be blurred.

89. With regard to paragraphs 132-133 of the Ad Hoc Committee's report, his delegation felt that all mercenaries, however defined, should be guaranteed the minimum of humane protection provided by the Geneva Conventions of 1949, if captured. Moreover, the so-called "nationality" criteria, discussed in paragraphs 92-94 of the report, constituted a complex question on which the domestic laws of States already had much to say. Subject to seeing the practical effect of the definition when employed in later substantive provisions, his delegation felt that a national of a State against which acts of violence were carried out might, for the purposes of the convention, fall within the scope of the defined term.

90. It could be seen from paragraphs 27 to 29 of the report that a wide divergence remained as to whether mercenarism should be made a crime against the peace and security of mankind. Australia's position was that the questions of State responsibility and reparations should be left to the International Law Commission. His delegation therefore had serious reservations about the inclusion of articles 7, 20 and 21.

91. He expressed the hope that the Ad Hoc Committee would pursue a strictly legal approach to the questions before it, that the convention being prepared would not be too broad in scope and that that Committee would be able to reach a successful and speedy conclusion to its work.

The meeting rose at 6.10 p.m.