



SUMMARY RECORD OF THE 22nd MEETING

Chairman: Mr. DENG (Sudan)

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The meeting was called to order at 3.10 p.m.

AGENDA ITEM 126: OBSERVER STATUS OF NATIONAL LIBERATION MOVEMENTS RECOGNIZED BY THE ORGANIZATION OF AFRICAN UNITY AND/OR BY THE LEAGUE OF ARAB STATES (continued) (A/43/528 and Add.1 and 2)

1. Mr. KAKOLECKI (Poland) said that his country was in favour of the granting by States that were hosts to international organisations or conferences of observer status to national liberation movements recognised by the Organisation of African Unity and/or by the League of Arab States. The liberation movements in question should have the privileges and immunities laid down in the Vienna Convention on the Representation of States in their Relations with International Organisations of a Universal Character. Poland was a party to the Vienna Convention and supported the appeals made by the General Assembly to all States that had not done so to consider as soon as possible the question of ratifying, or acceding to, the Convention. His delegation had noted with interest the views expressed by the representative of India at the 21st meeting of the Sixth Committee on the item under consideration.

2. The CHAIRMAN announced that the Committee had thus concluded its general debate on agenda item 126.

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 (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)

3. Mr. TREVES (Italy), introducing the report of the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries (A/43/43), said that, in accordance with General Assembly resolution 42/155, the Ad Hoc Committee had met from 25 January to 12 February at United Nations Headquarters. It had established a working group, which had reviewed all the articles of the Second Revised Consolidated Negotiating Basis of a convention against the recruitment, use, financing and training of mercenaries (A/42/43, sect. III) still containing bracketed language. A summary of the Working Group's debates was to be found in section II of the report now before the Sixth Committee. The Ad Hoc Committee had also established a drafting group, which had considered all the articles referred to it by the Working Group. The Drafting Group had entrusted a small informal group of members of the Ad Hoc Committee, acting in a private capacity, with the task of preparing new texts for the definitional article and for the articles on offences. It had also entrusted its Chairman with the task of preparing new texts for another series of articles. The discussion of those new texts was summarized in annex I to the Working Group's report (A/43/43, paras. 81-135).

4. As indicated in paragraph 78 of the Ad Hoc Committee's report, the results of the deliberations of both the Working Group and the Drafting Group were reflected in the Third Revised Consolidated Negotiating Basis (sect. III of the report). The Negotiating Basis clearly indicated the general economy of the convention under

(Mr. Treves, Italy)

elaboration, as envisaged by the Ad Hoc Committee. The purpose of the future instrument was to strike at mercenary activities by requiring States parties to make specific acts committed by mercenaries punishable under their law, to establish their jurisdiction over the corresponding offences on the basis of fairly extensive criteria, to submit alleged offenders to their competent authorities for prosecution or to extradite them, and to provide reciprocal assistance. It had not always been possible to reflect the progress achieved at the Ad Hoc Committee's 1988 session in the Consolidated Negotiating Basis, but on many points significant progress had indeed been made. Firstly, several draft provisions, such as article 6, former article 16 (now numbered 15) and former article 17 (now numbered 16) had been completely freed of square brackets. Secondly, some new draft texts had been agreed upon: for example, article 1, paragraph 2 (f), new article 8 (replacing former arts. 8 and 9) and paragraph 3 (c) of former article 14 (now numbered 13). Lastly, new avenues had been opened for compromise on the most delicate issues.

5. The definition of a mercenary laid down in article 47, paragraph 2, of Additional Protocol I to the 1949 Geneva Conventions, which had been adopted by consensus in 1977, was intended for the context of armed conflicts, and was therefore too restricted for the purpose of a convention that it was generally agreed should cover all mercenary activities. The problem was compounded by the long-standing difference of opinion on the scope of the definition in article 47, paragraph 2, of Additional Protocol I, which was viewed by some as relating to both international and non-international armed conflicts and by others as limited to international armed conflicts. Some delegations in the Ad Hoc Committee held the view that the definition could be drafted in such a way as to make the future convention applicable to all mercenaries, whatever the context they operated in. However, other delegations maintained that, should two definitions be worked out, their respective fields of application should be clearly specified. On that point the Third Revised Consolidated Negotiating Basis did not reflect any progress. It was to be hoped that, in the search for a solution, the merits of the question would be the paramount consideration and that the current exercise would not be taken advantage of in order to provide support for a particular interpretation of the 1977 Additional Protocols, since such an approach would result in an impasse.

6. A measure of progress had, on the other hand, been achieved on the list of the possible objectives of a mercenary operation. The first three of the four subparagraphs of draft article 1, paragraph 2 (a), of the Second Revised Consolidated Negotiating Basis had been replaced by two subparagraphs on which there was general agreement. The subparagraph dealing with the repression of the struggle of peoples against colonial domination and alien occupation had not been discussed and remained between square brackets.

7. The definitional article raised two other major issues. Some progress had been achieved with respect to the private gain criterion (para. 92 of the report), whereas delegations' views remained wide apart where the nationality criterion was concerned (paras. 93 and 94). Draft article 1 also raised the issue of the criterion of direct participation. Under the definition contained in article 47,

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paragraph 2, of Additional Protocol I, a person did not qualify as a mercenary until he did in fact take a direct part in the hostilities. A number of delegations had in the past remarked that in the current context retention of the criterion of direct participation would defeat the very purpose of the future convention. That particular question was directly related to the issue of offences and was accordingly dealt with in the report in the context of draft articles 3 to 6.

8. The definition of offences raised three main questions, namely: whether the criterion of direct participation should be eliminated from draft article 1 and be transferred to the draft article defining the offences committed by mercenaries; whether participation in hostilities or in a concerted act of violence should be required for a mercenary to be considered an offender under the convention; and whether there was any need to cover acts such as murder, torture, hostage-taking, serious acts of violence and plundering of civilian property, as long as participation in hostilities or concerted acts of violence was made an extraditable offence under the future convention. It was his personal opinion that, in answering those questions, one should move away from the idea that the criterion of direct participation was a necessary component of a definition of a mercenary under the future convention. While it was true that that criterion was to be found in the definition contained in Additional Protocol I, in the current context it would have an absurd effect. The three proposals reproduced in paragraph 100 of the Ad Hoc Committee's report all reflected the idea that direct participation was required for the commission of an offence under the future convention but not for the characterization of a particular individual as a mercenary. It was to be hoped that delegations in the Sixth Committee would give those proposals due attention, since they could pave the way for completion of the Ad Hoc Committee's mandate.

9. Several articles were still entirely between square brackets, including draft articles 2, 7 and 19 to 22. However, solutions to the problems in question would be relatively easy to find once the more fundamental questions to which he had referred earlier had been settled.

10. Although the Ad Hoc Committee had not been able to meet the General Assembly's expectation expressed in resolution 42/155, paragraph 9, it had achieved tangible results at its 1988 session. The prevailing view among the members of the Ad Hoc Committee was that the seven sessions held so far had yielded positive results and that successful completion of that Committee's mandate was now within reach. It was therefore to be hoped that the Sixth Committee and the General Assembly would follow the recommendation contained in paragraph 10 of the report and invite the Ad Hoc Committee to continue its work in 1989.

11. Mr. KATEKA (United Republic of Tanzania) said that his own delegation's views differed from those in the statement that he was about to make.

12. Speaking on behalf of the Group of African States, he stressed that the peoples of Africa had suffered terribly, as a result of the recruitment, financing and use of mercenaries by extra-continental Powers. Moreover, South Africa had

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(Mr. Kateka, United Republic
of Tanzania)

used mercenaries to destabilize independent African States and national liberation movements. It had consequently been necessary to conclude the 1977 OAU Convention for the Elimination of Mercenarism in Africa.

13. It had been with a view to outlawing mercenaries at the global level that 10 years earlier Nigeria had initiated the inclusion of the agenda item under consideration. The reasons for the Ad Hoc Committee's failure to prepare the draft convention on the issue in question were clear: there was disagreement on the definition, status and characterization of a mercenary. Since mercenaries were international outlaws, it would be callous to countenance granting special status to them. The controversy in the Ad Hoc Committee concerning the status of mercenaries was unfounded. Draft article 1, paragraph 1, borrowed the exact language of article 47, paragraph 2, of Additional Protocol I to the Geneva Conventions. Many countries had accepted that language by acceding to the Additional Protocols. The Group of African States endorsed the view put forward in the Ad Hoc Committee's report that the future convention should be a comprehensive document. They did not share the view that the parties to the future convention might not be parties to the Additional Protocols. Interestingly enough, the States that opposed inclusion of an article on the status of a mercenary had not objected to the definition set forth in article 1, paragraph 1, of the draft.

14. The Group of African States trusted that, at its following session, the Ad Hoc Committee would finalize the draft convention for submission to the General Assembly at its forty-fourth session. The time had thus come to retitile the Third Revised Consolidated Negotiating Basis as a draft convention. The Group of African States wished to express its concern at the lack of progress made by the Ad Hoc Committee at its most recent session. The States in question urged all members of the Ad Hoc Committee to co-operate with the members of the African Group so that that Committee might discharge its mandate. The Ad Hoc Committee should continue to hold informal consultations as a way of making rapid progress. Moreover, with a little more co-ordination it should be possible for the Third Committee to adopt a single resolution in conjunction with the Sixth Committee.

15. Mr. ALI (Democratic Yemen), speaking on behalf of the Arab delegations of the Sixth Committee, said that it was most frustrating that, since its establishment, the Ad Hoc Committee on the Drafting of an International Convention Against the Recruitment, Use, Financing and Training of Mercenaries had been unable to make any appreciable progress and had wasted much of its time in discussions that were far removed from the substance of its task. Since the political and legal aspects of its mandate had been clearly defined in resolutions that had been adopted by the General Assembly by consensus, the Ad Hoc Committee had been expected to complete its task quickly. That had not happened, and for one simple reason: the political will on the part of the States had been lacking.

16. The Arab delegations were of the view that, at a time when the Sixth Committee had before it under other agenda items the question of the rationalization of the existing procedures of the United Nations, it would be appropriate if that fact was

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(Mr. Ali, Democratic Yemen)

reflected in a better use of the time and resources allocated to the Ad Hoc Committee. They stressed the need for the Ad Hoc Committee to fulfil its mandate at its next session or, failing that, at least to complete a draft of the future convention consisting of the preamble, the text of the articles and the final clauses. The efforts made by some of the members of the Ad Hoc Committee and by the Office of Legal Affairs of the Secretariat were nevertheless to be commended.

17. The Arab delegations were in complete agreement with the characterization of mercenarism as a crime against the peace and security of mankind. The future convention must prohibit mercenarism in all its forms and manifestations, and condemnation of the criminal acts committed by persons and entities must not be restricted to condemnation of the perpetrators of such crimes but must include all those who participated in the recruitment, use, financing and training of mercenaries. The crime of mercenarism must be condemned whether in the preparatory stage or after commission of the crime had begun and in time of both peace and war.

18. The Arab delegations were of the view that a mercenary should not have the right to be a combatant or a prisoner of war. At the same time, they stressed that he should be treated as a human being, in that he should be guaranteed a fair trial and be free to defend himself or to engage another person to defend him.

19. The future convention should contain provisions setting forth the preventive measures that States should take in order to forestall mercenary activities in their territory. It should also contain provisions stressing the responsibility of States with respect to such matters as notification and extradition and should ensure that States met their obligations in good faith and in a spirit of international co-operation.

20. The Arab delegations of the Sixth Committee, in presenting their supplementary observations, urged all Member States to make a genuine effort to expedite the fulfilment of the Ad Hoc Committee's mandate. While there were current indications of a desire on the part of the international community to establish relations of peace and co-operation that would allow mankind to live in security and tranquillity, it was nevertheless necessary to develop and codify the norms of international law as a framework for international relations. The members of the Ad Hoc Committee were also called upon to make a genuine effort to fulfil the mandate entrusted to them. All that was required was the necessary political will, sincerity and credibility. The Arab delegations of the Sixth Committee reaffirmed their readiness to co-operate with other Member States for the achievement of that goal and, in a spirit of hope and optimism, they supported the renewal of the Ad Hoc Committee's mandate.

21. Mr. ECONOMIDES (Greece), speaking on behalf of the States members of the European Community, said that the twelve States members of the European Community had repeatedly condemned the activities of mercenaries, and had therefore welcomed the initiative taken by Nigeria regarding the preparation of a draft convention, which they wished to see universally accepted.

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(Mr. Economides, Greece)

22. At the Ad Hoc Committee's most recent session, it had been possible to clarify a number of questions, which would considerably facilitate the Ad Hoc Committee's work at its following session. The adoption by the Ad Hoc Committee of the Third Revised Consolidated Negotiating Basis was also an indication of the amount of progress made. Moreover, even although there were still substantive differences of opinion among the members of the Ad Hoc Committee on certain points, particularly where draft article 1 and the draft articles dealing with offences were concerned, a certain amount of progress was reflected in the proposals considered by the Drafting Group (paras. 100-103 of the report), which had enabled the Ad Hoc Committee to come closer to a consensus. At the Ad Hoc Committee's following session, the States members of the European Community would do everything within their power to ensure that outstanding problems were solved and hoped that other States would show the same goodwill.

23. The purpose of existing conventions on subjects similar to the one under consideration was to strengthen international co-operation by means of machinery designed to ensure that offenders were either extradited or submitted by States parties to their judicial authorities for prosecution and received a punishment commensurate with the seriousness of the offence. Punishable acts must be defined as precisely as possible in the future convention - a task that was closely linked to the task of defining the meaning of the term "mercenary". That latter task must be given the highest priority, since an individual could be made subject to sanctions only if he committed acts that had already been defined precisely. The issue of nationality was also of fundamental importance, and the criterion of nationality laid down in article 47 of Additional Protocol I to the Geneva Conventions of 1949 should be included in the definition of a mercenary laid down in the future convention. Furthermore, it was important that the criterion of private gain should be included as an essential element of the definition. It also went without saying that individuals brought to justice must be treated humanely, as laid down in article 75 of Additional Protocol I and the other relevant international conventions.

24. The item under consideration was clearly within the competence of the Sixth Committee, and it was therefore a matter of concern to the States members of the European Community that the item should continue to be dealt with by other United Nations bodies. Lastly, they believed that the Ad Hoc Committee's mandate should be extended and hoped that that Committee would make every effort to fulfil its mandate at its following session, through the adoption of a draft convention.

The meeting rose at 4.15 p.m.