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Chairman: Mr. GASTLI (Tunisia)

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The meeting was called to order at 3.15 p.m.

AGENDA ITEM 129: REPORT OF THE AD HOC COMMITTEE ON THE DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES (continued) (A/38/43, A/38/106-S/15628, A/38/135-S/15678, A/38/327-S/15911, A/38/371-S/15944, A/38/432-S/15992 and A/38/507-S/16044)

1. Mr. SAINT-MARTIN (Canada) recalled that the task of Working Group A of the Ad Hoc Committee had been to consider the questions of the definition of the term "mercenary" and of the scope of the future Convention. With regard to the first of those questions, it was vital not to undermine either the Geneva Conventions of 1949 or their Additional Protocols I and II; the definition of the term "mercenary" appearing in article 47 of Additional Protocol I should therefore be retained and applied to all situations of armed conflict.

2. In the case of situations not covered by that article 47, the existing definition should be used as a basis and each of the criteria enumerated in partagraph 2 of that provision should be followed to the extent possible. In that connection, it could not be over-emphasized that those criteria should be cumulative, specific and as objective as possible. In addition, it was important to include in the definition the criterion of direct participation in the commission of the hostile act and not simply to specify the basic activity for which the individual concerned had been recruited. That was the only way of establishing the counterpart of the criterion of taking a direct part in the hostilities in an armed conflict, used in article 47, paragraph 2, of Additional Protocol I. That method would also make it possible to avoid incrimination by definition and any implication that the offence existed from the moment when the individual concerned was recruited.

3. Similarly, the criterion of nationality stated in article 47, paragraph 2 (d) should also be retained in that form. On the other hand, the criterion of the desire for gain should perhaps not be limited to material gain, and could usefully be expanded to cover situations in which the gain sought was not exclusively financial but was more personal and likely to accrue in the longer term.

4. The idea of using the generic concept of "hostile act" in order better to cover reprehensible activities of the individual acting outside situstions of armed conflict was undoubtedly valid from the technical legal viewpoint, in that it eliminated the problem of incrimination by simple definition. It was crucial, however, not to have an enumeration of activities the definition of which might be subjective and difficult to transpose into domestic penal law, such as "action of economic sabotage", for example. In addition, it was important to preserve the intentional element in any provision concerning the recruitment, use, training or financing of "persons" or of "mercenaries" for the purpose of committing one of the offences covered by the future Convention.

5. With regard to the responsibility of States, it was essential to adhere to the general principles of international law existing on the subject. For example, it seemed unrealistic to consider holding a State responsible for acts committed by

(Mr. Saint-Martin, Canada)

its nationals or residents outside its territory or while they were outside its immediate control, since that would amount to establishing the principle of absolute responsibility of the State.

6. The Canadian delegation favoured the inclusion in the Convention of the provision proposed by the Italian delegation (A/38/43, para. 44), whereby the future instrument would be without prejudice to the rules laid down in the instruments applicable in time of armed conflicts and to the rules of humanitarian law, in particular the Geneva Conventions of 1949 and their Additional Protocols.

7. With regard to the task of Working Group B, his delegation believed that the Ad Hoc Committee could satisfactorily resolve the problem of preventive measures by following existing legal instruments, and in particular article 10 of the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. That was the solution adopted by France in the draft Convention which it had submitted (A/38/43, annex), and it should be studied more seriously by the Ad Hoc Committee.

8. The question of the exchange of information and of co-ordination of administrative measures between contracting parties with a view to preventing the perpetration of the offences covered by the future Convention should be dealt with in a separate paragraph.

9. With regard to "damage reparation", his delegation doubted the wisdom of including a provision to that effect in the draft Convention.

10. On the subject of the settlement of disputes, he noted that the proposals made, which were based on existing convention provisions, left the future parties free to refuse, in the event of a dispute, to submit to a binding arbitration procedure. In his view, provision should be made at least for a binding conciliation procedure. The question should therefore be considered further, and the Canadian delegation was prepared to participate in any new drafting effort.

11. In conclusion, he said that it was crucial for the Ad Hoc Committee's work to proceed on the basis of consensus, if the legal instrument to be drafted was to be acceptable to all and effective. On that basis, his delegation would have no difficulty in supporting the renewal of the Ad Hoc Committee's mandate.

12. Mr. LEITE (Portugal) stressed that the international legal order urgently needed an instrument for the prevention and punishment of the reprehensible activities of mercenaries and the recruitment, training, use and financing of mercenaries, regardless of whether those activities were conducted in or outside an armed conflict. In that context, the French delegation was to be congratulated on the complete draft convention which it had submitted to the Ad Hoc Committee (A/38/43, annex) and which, in conjunction with the Nigerian draft, would lead to the successful completion of the Ad Hoc Committee's task. The Nigerian delegation was to be commended on its positive attitude, reflecting a spirit of openness and compromise.

(Mr. Leite, Portugal)

13. The Ad Hoc Committee's most recent session had not been a complete success, and problems connected with the application of the future convention to situations outside of armed conflict had hampered the progress of Working Group A. Nevertheless, thanks to the efforts made by its Chairman, the Group had worked with diligence and had obtained positive results in two important areas: the inclusion in the future Convention of the definition contained in article 47, paragraph 2, of Additional Protocol I to the Geneva Conventions of 1949, and the applicability of the future Convention both to situations of armed conflict and to peacetime situations.

14. Document A/AC.207/1983/CRP.5, which was reproduced in paragraph 30 of the report before the Committee, called for the following comments. Article 1 should incorporate paragraph 2 of article 47 of Additional Protocol I to the Geneva Conventions, but stripped of the elements limiting its scope to international armed conflicts, as advocated by some members of the Ad Hoc Committee. With regard to article 2, his delegation considered subparagraphs (b) and (c) to be essential because the desire for material gain or advantage and the criterion of nationality were the most characteristic elements of the definition of a mercenary. In article 3, while all the activities it described were reprehensible and should be taken into account, the wide diversity of concepts expressed, some of them quite vague, clouded the clarity of the article, which required greater precision; on that point, the French delegation's proposal addressed the basic purpose of the article more effectively. The Working Group had considered it preferable to postpone discusson of article 4 because it was a final clause which should be so worded as to apply to the convention as a whole; for its part, the Portuguese delegation endorsed the version proposed by the Italian delegation (A/38/43, para. 44). In article 5, an exhaustive enumeration of the situations characterizing the offence should be attempted, not merely a reference to preceding articles; in that article, too, his delegation supported the French proposal. With regard to the objective pursued by article 6, his delegation felt that the mandate conferred upon the Committee was unequivocal and that the future convention should cover the recruitment, use, financing and training of mercenaries; since subparagraphs (a) and (b) were aimed at punishing complicity to an autonomous offence, they should be qualified.

15. Commenting on articles 7 and 8 (A/38/43, para. 49), he said that his delegation regarded article 7 as balanced and not presenting any difficulties. However, some elements demanded deeper study; for example, if the reference to national law could not be made in the chapeau of the article, it should be inserted in subparagraph (b) since the measures to be taken should be legal, that is, accounted for in the legislation of each country. On the other hand, the expression "reasonable measures" in subparagraph (b) had been the object of lengthy discussion and, both in subparagraph (b) and in other provisions where the expression appeared, a whole range of adjectives had been proposed to replace "reasonable". His delegation had suggested that no adjective be used on the ground that qualification always weakened the text of law. Subparagraph (c) of article 7 could well be replaced by the text of paragraph 2 of article 8 of the French draft of the convention.

(Mr. Leite, Portugal)

16. On the controversial question of the responsibility of States raised in article 8, Portugal's position was quite clear: it accepted the principle of the State's responsibility in that as in all areas of responsibility for wrongful acts. However, it was firmly against having the future convention, for the first time, make reference to that responsibility. Such an explicit reference was dangerous first, because it might be construed to mean that wrongful acts dealt with in other international instruments which did not mention the question of responsibility did not imply responsibility for the States that committed them and secondly, because the issue was a complicated one that should not be referred to superficially in one or two articles of the convention. The issue was being studied in depth by the International Law Commission and at the proper time, a convention should be developed on the State's responsiblity.

17. With regard to preventive measures, damage reparation and settlement of disputes, which had been examined by Working Group B, article 7 of the draft submitted by France dealt with them most adequately. The text proposed for article F in paragraph 69 of the report also seemed reasonable to his delegation. Nevertheless, that article could not avoid making reference to national and international law and the phrase "practicable measures" evoked the same reservations as "reasonable measures".

18. With regard to damage reparation, article 15 of the Nigerian draft was unacceptable for the reasons clearly given in paragraph 75 of the report and cited earlier in connection with article 8, on the responsibility of States.

19. He observed, in connection with the settlement of disputes, that the question had been discussed at length in Working Group B and had been productive in that it had opened new paths which might improve the system proposed in the Nigerian and French drafts (which were similar in that respect) - particularly by authorizing the Security Council to assume a role in the settlement procedure. Any system for the settlement of disputes based exclusively on negotiation could not be effective and could interfere with the realization of the objectives pursued by the convention. His delegation supported a system which would include the participation of a third, impartial entity with decision-making capacity. While it would be difficult to build such a system given the present state of international relations, the Portuguese delegation was convinced that it was the only way to ensure the effective implementation of the proposed new convention.

20. He concluded by saying that his delegation was in favour of renewing the mandate of the Ad Hoc Committee and sincerely hoped that the implementation of the future convention would make it possible to resolve the very serious problems facing the international community created by the activities of mercenaries.

21. Mr. STEPANOV (Ukrainian Soviet Socialist Republic) said that mercenarism was one of the principal methods of aggression used by the imperialists to destabilize and overthrow régimes not to their liking and to eliminate national liberation movements. It was estimated that mercenaries had participated in over 200 armed conflicts since the Second World War and that number was growing because the

(Mr. Stepanov, Ukrainian SSR)

imperialist Powers were intervening more and more frequently in the affairs of the young States. They used mercenaries whenever a country chose a non-capitalist course of development, that is, refused to allow its resources to be plundered, and whenever, for tactical reasons, they felt that open intervention was not feasible. Mercenaries had played a part on all continents, particularly in Africa (Angola, Mozambique, Benin, Congo, Chad, etc.), in Asia (Lebanon, Afghanistan, Viet Nam, Laos, Kampuchea, Seychelles, etc.) and in Latin America (Cuba, Nicaragua, Suriname, etc.)

22. Although the Western countries claimed they did not use mercenaries, it was notorious that in many towns in Europe and the United States, there were centres for the recruitment of mercenaries which were being protected by invoking the principle of free enterprise. Governments which allowed the recruitment, financing and training of mercenaries were as guilty as those which resorted to that form of disguised aggression and as the mercenaries themselves. Consequently it was a matter of urgency to prepare an international convention against the recruitment, use, financing and training of mercenaries.

23. The Ukraininan SSR shared the view held by many delegations that mercenarism should be regarded as an international crime. It was interesting to note in that connection that article 1 of the OAU Convention described mercenarism as a crime against the peace and security of Africa and it was in the light of the criminal nature of mercenarism and the danger it posed that the report of the Ad Hoc Committee (A/38/43) should be discussed.

24. He deplored the fact that as in previous years, certain countries which were disinclined to be bound by a convention prohibiting the activities of mercenaries, had attempted to obstruct the work of the Ad Hoc Committee by trying to leave loopholes in the text of the future convention which would enable those recruiting and financing mercenaries to evade their responsibility.

25. The Ad Hoc Committee had devoted a good part of its session to the question of defining the term "mercenary" and the scope of the convention. On that last point, the Ukrainian SSR agreed with many other States that the future convention should apply not only to situations of international armed conflict, but also to peace-time situations, because mercenaries were being used mostly today outside of declared international conflicts and against young States and national liberation movements. Therefore the Ad Hoc Committee had been quite right in extending the scope of the future convention to a certain number of acts of violence perpetrated in peace time, which therefore did not come within the terms of article 47 of Protocol I to the 1949 Geneva Conventions, by enumerating "hostile acts" in article 3 and subparagraphs (a), (b), (c), (f) and (h) were particularly interesting in that respect.

26. The definition of the term "mercenary" did not present any particular difficulty in respect of armed conflicts (art. 1). In respect of situations other than those of armed conflict (art. 2), the draft defined a mercenary as any person who was specially recruited for the purpose of carrying out a hostile act against

(Mr. Stepanov, Ukrainian SSR)

any State or against a people struggling for self-determination. He noted in that connection that the offence existed as soon as the mercenary was recruited without it being necessary to show that he had in fact taken part in a hostile act. Furthermore, the nationality criterion in article 2 (c) was superfluous, because a mercenary was no less dangerous to a State just because he was a national or a resident of that State.

27. It was also encouraging to note that article 6 prohibited the recruitment, use, training and financing of mercenaries and that article 7 extended the obligations of States in that connection by specifically obliging them to take measures to prevent the commission of any of the acts prohibited under the Convention, to punish the perpetrators and to prevent their territory from being used for the commission of such acts. Nevertheless, it would be advisable to introduce into the text of the draft a provision to prohibit any dissemination of information and any propaganda which encouraged the recruitment and use of mercenaries.

28. Finally, it was also important to include a provision stating that any State party which failed to observe any of its obligations under the Convention would be held internationally responsible.

29. In conclusion, he paid tribute to the Chairman of Working Group A for his intensive efforts to produce a text acceptable to everyone, and stated that his delegation would support the renewal of the mandate of the Ad Hoc Committee.

30. Mr. GOERNER (German Democratic Republic) stressed that the terrorist activities of mercenaries organized and financed by imperialist forces to sabotage the people's revolutions in Cuba, Nicaragua, Angola, Mozambique and other parts of the world made it urgent to adopt an international convention which precisely codified the international obligations of States to prevent and combat mercenarism in all its forms.

31. In the concluding document of the Madrid meeting, the participating States of the Conference on Security and Co-operation in Europe had confirmed that they would refrain from financing, encouraging, fomenting or tolerating any terrorist or subversive activities directed towards the violent overthrow of the régime of another participating State. He hoped that those concrete obligations undertaken by the participating States of the Madrid meeting would have a direct and constructive influence on the work of the Ad Hoc Committee.

32. The report of the Ad Hoc Committee (A/38/43) showed that the finalization of a Convention would still require a great deal of time. It was possible, however, to make progress in the preparation of important articles, particularly with respect to the definition of the term "mercenary" and of the crime of mercenarism and of the obligations of States in that connection.

33. Paragraphs 56 and 69 of the report, which contained texts submitted by the Chairmen of the two Working Groups, should form the basis for the Ad Hoc Committee's future work. That Committee would not be able to perform its tasks successfully, however, unless the results so far obtained were not called into question.

(Mr. Goerner, German Democratic Republic)

34. The dangers arising from mercenarism and the objectives of the future Convention were precisely outlined in the relevant General Assembly resolutions, particularly resolutions 34/140 and 35/48, which should constitute the frame of reference for the Ad Hoc Committee's work. His country therefore advocated the preparation of a Convention which covered all forms of mercenarism and under which all States would be obliged to take effective measures to combat that crime. It also approved the inclusion in the Convention of specific provisions stipulating international responsibility of those States which violated their obligations to prevent and combat mercenarism, especially since regulations to that effect were already well established in international State practice. For instance, article 91 of Additional Protocol I to the Geneva Convention of 1949 provided for the liability of any party which violated the provisions of the Conventions or the Additional Protocols thereto.

35. His country shared the view of the great majority of States that the future Convention must contain a precise definition of the term "mercenary". In the case of international armed conflicts, the definition of the term "mercenary" should be taken from article 47, paragraph 2, of Additional Protocol I to the Geneva Conventions. That would provide a uniform definition for determining what persons, in the case of an international armed conflict, would not be entitled to the status of combatant or prisoner of war. Nevertheless, it would be advisable to expand that definition so as to cover mercenaries who acted outside an international conflict. The recruitment of refugees for the perpetration of subversive acts against their homeland was a new form of mercenarism and the restrictive criterion of citizenship should therefore not be included in the definition of the term "mercenary".

36. Like many other countries, the German Democratic Republic deemed it indispensable that the definition of the crime of mercenarism should cover acts committed not only by mercenaries themselves but also by their employers. The instigators, organizers and beneficiaries of the use of mercenaries must be prosecuted and punished. For the purpose of making the future Convention as effective as possible, his delegation had proposed that States should be obliged specifically to prohibit and dissolve groups and organizations which organized and promoted mercenary activities, and to prohibit any dissemination of information and propaganda which promoted the organizing and use of mercenaries; that would strengthen the preventive nature of the draft Convention.

37. In view of the fact that mercenarism was a gross violation of the basic principles of international law, such as respect for the territorial integrity of States and of non-interference in their internal affairs, and that it seriously impeded the self-determination of peoples struggling against colonialism, racism and apartheid and all forms of foreign domination, it was of great urgency to prepare an international Convention designed to prevent and abolish mercenarism in all its forms and thereby strengthen world peace. His delegation therefore fully supported the recommendation in paragraph 12 of the report that the Ad Hoc Committee should continue its work in 1984 with the goal of drafting an appropriate international convention at the earliest possible date.

38. Mr. CABELLO SARUBBI (Paraguay) recalled that his country had always supported unconditionally the adoption of an international convention against the recruitment, use, financing and training of mercenaries. The report of the Ad Hoc Committee (A/38/43) showed that the progress achieved made it possible to hope for the adoption in the near future of an effective legal instrument to that effect. Nevertheless, the question of the definition of mercenarism was still not settled. In that connection his delegation wished to insist once again on the need to give that term the broadest connotation possible so as to cover not only the foreigner who committed a hostile act prompted by the hope or promise of material gain, but also the person seeking any other kind of private gain. His delegation would therefore prefer to replace, in the second line of article 1 (c) submitted by the Chairman of Working Group A, the word "and" after the word "gain" with the conjunction "or". That amendment would more accurately reflect the existing reality of mercenarism because the motives which drove men to prevent the exercise of the fundamental rights of peoples were not purely material; they could also cover a whole range of different motivations, such as membership in a particular political party, conquest of limitless power, fanatical promotion of a given ideology or simple satisfaction of a taste for adventure.

39. The offences listed in articles 2 and 3 should be brought into line with current legal terminology so as to facilitate their incorporation into national legislation, with due regard, obviously, for the particular circumstances in which those offences were committed.

40. As for article 6 submitted by the Chairman, which concerned the obligations of States parties, he considered that it was extremely important for the effectiveness of the future Convention, to ensure that those obligations could not be circumvented by some States which authorized the use, for the commission of acts forbidden under the draft Convention, of territories which were in one way or another under their jurisdiction. His delegation thought that it would be advisable to use the broadest possible wording, which covered all the kinds of political control a State could exercise over a territory. In that sense, it would perhaps be more appropriate simply to use the expression "territories under their control". Article 8 submitted by Nigeria and article F submitted by the Chairman of Working Group B called for the same kind of observation. His delegation wished to point out, on the other hand, that excessive interference of the State in the activities of individuals must be avoided so as not to undermine important individual liberties.

41. He also felt that cases in which a State might be required to make reparation for damages or injury caused by its nationals should be defined in the most precise terms possible. It was understandable that some delegations were raising objections on that subject, and such liability could be established only in cases where a State had manifestly been negligent or failed in its obligations in respect of prevention. Thus his delegation believed that the cases of liability referred to in article 15, paragraph 1 of the draft submitted by Nigeria were not sufficiently significant and that the Ad Hoc Committee should further develop that point; however, it did not agree with those who proposed that the attempts to determine precisely the cases in which the liability of the State would be involved should be abandoned.

(Mr. Cabello Sarubbi, Paraguay)

42. As to the question of the settlement of disputes, his delegation was in favour of the proposal that provisions in that respect should be included in the convention. The experience of international relations demonstrated the great value of such provisions, and his delegation believed that they should be based on the Manila Declaration on the Peaceful Settlement of International Disputes adopted unanimously by the General Assembly in 1982. Other possible forms of peaceful settlement, including recourse to the International Court of Justice, the possibilities of which were regrettably not sufficiently utilized, should not be excluded, and States should also be free to choose the means they judged most appropriate in each case to settle their disputes.

43. It was clear from the report of the Ad Hoc Committee that much greater efforts would have to be made before the Commission was able to consider a full text which had the support of most delegations. His delegation felt that the General Assembly should renew the Ad Hoc Committee's mandate so that it could continue its work.

44. Mr. LE KIM CHUNG (Viet Nam) said that, in view of the serious crimes committed by mercenaries against the right to self-determination and independence of the peoples, their adverse effects on international peace and security and the universal condemnation of the activities of mercenaries in many relevant resolutions of the General Assembly and the Security Council, it might legitimately have been expected that the Ad Hoc Committee would make greater progress in drawing up an international convention against the recruitment, use, financing and training of mercenaries. The work of the Committee had been slowed down by certain circles which were the same circles which had tried to prevent at all costs the elaboration of a world treaty on the non-use of force in international relations. The circles which were clinging to an anachronistic international order had an obvious interest in preserving mercenarism, one of the most effective weapons in their activities of interference, sabotage, subversion and aggression against the independence, sovereignty, security and social progress of the peoples of Asia, Africa and Latin America.

45. Those circles were trying to demonstrate that mercenaries operating in situations other than armed conflicts were no more than common criminals and that the term "mercenary" should apply only to the situations envisaged in article 47, paragraph 2 of Additional Protocol I to the 1949 Geneva Conventions. Thus the charges against such mercenaries, defined stricto sensu, would be minimal since they would not be committing a criminal offence unless they engaged in certain specific actions such as murder, torture, mutilations, the taking of hostages, maltreatment, rape and plundering. In the course of the deliberations in the Ad Hoc Committee, many delegations had rightly observed that that would mean that any individual carrying out such acts would be punished. In that respect he wondered what purpose there would be in defining acts which would be specifically prohibited for mercenaries. Evidently an attempt was being made to limit the scope of the future convention and deny the fact that mercenaries were currently very broadly used in situations other than armed conflicts to undermine the independence, sovereignty, national unity and territorial integrity of certain countries. Thus an appropriate definition of the term "mercenary" was needed which

(Mr. Le Kim Chung, Viet Nam)

could cover all situations in which mercenaries operated and left no loophole either to the mercenary or to his employer. In view of the struggle currently being waged by the Vietnamese people, the other two Indochinese peoples and many other countries which were victims of the criminal activities of mercenaries operating on behalf of imperialists and hegemonists, his delegation believed that the definition of the term "mercenary" in article 47, paragraph 2 of Additional Protocol I to the 1949 Geneva Convention was too limited. It should be expanded to cover mercenaries operating in circumstances other than situations of armed conflict, as was currently the case in Viet Nam, and who were engaged in wars of sabotage and undeclared wars.

46. His delegation therefore welcomed the approach adopted by the Ad Hoc Committee to develop a definition of a "mercenary" operating in situations other than armed conflicts which in his view constituted a progressive development of international law on the subject. It believed that the draft articles proposed by the Chairman of Working Group A in paragraph 56 of the Ad Hoc Committee's report could serve as a basis for the future work of the Working Group.

47. Various countries and peoples, both in Latin America and southern Africa and in South-West Asia and South-East Asia, and also in Viet Nam, had to face a new type of mercenary: persons originating from the same country in which they were fighting who had been systematically recruited, financed and trained abroad in order to be sent to their countries of origin on missions of spying, sabotage and subversion to benefit imperialism, racism, apartheid and hegemonism. If those individuals were caught, proaecuted and sentenced outside the countries in which they operated, they could go unpunished because, by claiming the right of political asylum, they could be protected from demands for extradition. If suppression was to be more effective, those persons must be defined as mercenaries. Moreover, it should not be forgotten that they were recruited abroad by aliens and that they worked in the service of an illegal cause to the benefit of those aliens. To ignore that characteristic of the activities of mercenaries was to disregard a manifest reality of the struggle of the peoples and to encourage imperialism, racism and hegemonism to resort more boldly to the use of mercenaries recruited among rejected and corrupt people who were prepared to sell themselves body and soul to fight against their own country and people.

48. His delegation hoped that the observations it had made would help improve the content and scope of the future convention and enhance its efficiency in the interests of the right of the peoples to self-determination and independence and of international peace and security. It was also in favour of the renewal of the Ad Hoc Committee's mandate.

49. Mr. VREEDZAAM (Suriname) said that after granting independence to their colonies, under pressure from the United Nations and world public opinion, the former colonial Powers seemed to regret the emergence of such a large number of States on the international scene and had invented new methods of gaining back their powers of domination and exploitation, namely the use of mercenaries to overthrow or destabilize the governments of some of the newly independent States.

(Mr. Vreedzaam, Suriname)

Such actions violated international law in general, and Article 2 of the Charter in particular. They threatened international peace and security and the national sovereignty and independence of States, particularly of small States like Suriname. His Government therefore condemned the direct or indirect use of mercenaries by one State against another as a policy of intolerance, especially when the States which used such methods sought to pass as champions of democracy and defenders of the free world. It fully endorsed the drafting of an international convention against the recruitment, use, financing and training of mercenaries.

50. His delegation welcomed the Ad Hoc Committee's report (A/38/43) and congratulated the Nigerian delegation on its working paper (A/37/43, annex I) which had provided a basis for the discussions and negotiations.

51. His Government believed that the convention should cover the activities of mercenaries both in situations of international armed conflict and in peace time. However, the definition of the term "mercenary" in article 47, paragraph 2 of Additional Protocol I to the Geneva Conventions of 1949, if included in the convention, should be used only in situations envisaged by that article. While his delegation had no objection to broadening the scope of the convention to situations of international armed conflicts, it believed that it was essentially the frequent use of mercenaries in peace time with a view to overthrowing or destabilizing governments that had led the General Assembly to establish an Ad Hoc Committee to draft the convention in question.

52. It had difficulty in accepting the nationality and "official duty" criteria set forth in article 2, paragraphs (c) and (d), (A/38/43, para. 30), because experience showed that in cases in which mercenaries were used against an independent State, use was often made of nationals or residents of that State. Adoption of the nationality criterion would be tantamount to saying that if, for example, Surinamese nationals were recruited abroad as mercenaries with the aim of overthrowing the Surinamese Government, they could not be prosecuted, according to the Convention. As to the other criterion, certain States went so far as to regard mercenaries as "freedom fighters" and to assist them by sending "advisers" for military operations. Such persons must be regarded as having been sent "on official duty" and, if paragraph (d) of article 2 were included in the draft Convention, it would be used as an escape clause. The two criteria to which he had referred, which would be particularly ill advised in the case of disguised interventions against vulnerable small States, should therefore be deleted.

53. His delegation shared the opinion expressed in paragraph 52 of the report concerning State responsibility, that expressed in paragraph 62 concerning preventive measures and that expressed in paragraph 74 concerning reparation for damage.

54. In conclusion, he said that his delegation was in favour of renewal of the Ad Hoc Committee's mandate to enable it to complete its task.

55. Mr. DE STOOP (Australia) said that the Ad Hoc Committee's report (A/38/43) revealed that the Committee was on the right road: some important compromises had been made (for example, the term "mercenarism", which had presented difficulties for many delegations at previous sessions, did not appear in the new texts); the Committee had made useful attempts to overcome problems of definition and of the scope of the Convention; and it had made new attempts to come to grips with the question of State responsibility for mercenary activities by moving away from the concept of State criminal responsibility.

56. Like the majority of members of the Ad Hoc Committee, his delegation considered that the future Convention should cover both situations of armed conflict and peacetime situations. There was, however, a problem, namely that of the definition of the term "mercenary" to be retained in the various types of situation, and even that of deciding whether it was desirable to retain that concept in the absence of armed conflict.

57. It had been shown that mercenaries participated more often in civil wars - in other words, in conflicts covered by Additional Protocol II to the Geneva Conventions - than in the types of armed conflict covered by article 1 of Additional Protocol I. It was therefore essential that the proposed Convention should be effective in its application to mercenaries participating in civil wars. As to the question whether the definition given in article 47, paragraph 2, of Protocol I should apply, in the proposed Convention, to all armed conflicts or only to international armed conflicts, it could be argued that it would be confusing to provide two separate definitions of "mercenary" in one and the same instrument and that it would be artificial to apply the definition given in article 47, paragraph 2, of Protocol I in situations covered in article 1, paragraph 4, of that Protocol, namely "... armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination ...", while at the same time providing a different definition of "mercenary" in times of civil war, since often it was not easy to distinguish between situations covered by article 1, paragraph 4, and civil war. On the other hand, it could also be argued that the intention, during the negotiations, had not been that the definition given in article 47, paragraph 2, of Protocol I should be applicable to the situations covered by Protocol II, since the legal régime applicable to the armed conflicts covered by the two Protocols was quite distinct. His delegation understood the point of view of those delegations which considered the definition given in article 47, paragraph 2, too narrow and liable to make it very difficult to secure a conviction against mercenaries. One way out of the dilemma would be to retain that definition for international armed conflicts and to retain only some of its elements in non-international armed conflicts. It was essential that persons covered by the definition of "mercenary" should be liable to punishment not merely because of their status but, depending on the nature of the armed conflict, because of certain acts, which must be precisely defined. A mercenary should be criminally liable when he committed offences regarded as characteristic of mercenary activities and universally condemned.

58. Since the term "mercenary" was traditionally used in the context of an armed conflict - whether international or not - there was a danger of confusing the issue

(Mr. De Stoop, Australia)

by attempting to provide a separate definition of mercenary in peacetime. It would be preferable to concentrate on the prohibition of certain acts such as direct involvement in certain activities in foreign countries or in preparation for such activities. Articles 3 to 7 of the French draft (A/38/43, annex) provided a model of how the problem could be tackled in situations other than armed conflict. However, it would be necessary to go further than the French draft and expressly prohibit not only States but also natural and legal persons from recruiting, using, financing and training mercenaries.

59. In the matter of the questions dealt with by Working Group B, his delegation considered that emphasis should be placed on the obligation for parties to the future Convention to take steps to prohibit mercenary activities and to prevent the recruitment, use, financing and training of mercenaries and punish those who committed such acts. On the other hand, it was not in favour of including provisions concerning reparation for damage caused as a result of activities prohibited by the Convention, since the obligation to provide reparation for damage caused as a result of an internationally wrongful act was already part of customary international law and it was not desirable for conventions to reiterate an obligation that was already well established. In addition, an a contrario argument might be advanced when interpreting future treaties which did not include provisions for reparation for damage resulting from the violation of an international obligation.

60. His delegation noted with satisfaction that both the Nigerian and French drafts included a provision on the settlement of disputes based on the corresponding provisions of a number of conventions, including the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents and the 1979 International Convention against the Taking of Hostages.

61. However deplorable and criminal their acts might be, mercenaries were entitled to certain fundamental guarantees, particularly those provided in article 75 of Additional Protocol I in the case of situations of international armed conflict and those provided in article 3 common to the four Geneva Conventions of 1949 and in Protocol II in the case of situations of non-international armed conflicts. In order to avoid abuse, the proposed Convention should stipulate clearly that nothing in it affected the obligation of a State to accord to mercenaries the fundamental guarantees recognized in customary international law and the treaties to which that State had become a party.

62. Australia was one of the few countries whose legislation prohibited mercenary and comparable activities. As recently as 18 October, three men had been committed for trial in an Australian court on charges of plotting to overthrow the Government of the Comoros. In its future work, the Ad Hoc Committee might base itself on the Crimes (Foreign Incursions and Recruitment) Act, 1978, which had covered the activities of those men.

(Mr. De Stoop, Australia)

63. However, effective domestic legislation was not enough and international co-operation was essential in order to eliminate the activities of mercenaries. That was why his delegation hoped that a realistic and effective convention would soon be adopted and implemented by a large majority of States.

64. Mr. YIMER (Ethiopia) recalled the havoc wreaked by mercenaries in Africa in the early 1960s. Unfortunately, their activities, which had seemed to have subsided for a while, were again posing a threat to the countries of the third world, particularly in Africa, as evidenced by the invasion of Seychelles organized and financed by the racist Pretoria régime. Thus the work of the Ad Hoc Committee had extreme significance for the independence and stability of the developing countries.

65. In the view of his delegation, the Ad Hoc Committee had taken the right approach in separating the question of the definition of the term "mercenary" and the scope of the convention from such other issues as preventive measures, damage reparation and settlement of disputes. In the elaboration of any international instrument, the question of scope and the formulation of definitions were of paramount importance. In most cases, they caused special problems because there were no pre-existing rules. However, the drafters of the proposed convention had an advantage in that a definition of the term "mercenary" was already available in article 47, paragraph 2, of Additional Protocol I to the Geneva Conventions of 1949. That definition should be incorporated in the proposed convention, but should be broadened to include the activities of mercenaries in situations other than international armed conflicts. Mercenaries could be involved in attempts to overthrow Governments or they could be hired by dissident bands aiming to destroy the national unity of a country. The report (A/38/43) showed that the Ad Hoc Committee had examined those questions in some detail. In that connection, draft articles 1 and 2 prepared by the Chairman of Working Group A (ibid., para. 56) could serve as a useful basis for future work. However, his delegation was not convinced of the need for draft articles 3 and 4 prohibiting certain activities by mercenaries, since they might imply that a mercenary was permitted to engage in other activities not enumerated in the convention. If it was felt that draft articles 3 and 4 should be retained, the chapeau could be redrafted to read: "It shall be prohibited for any person to commit any of the acts specified under articles 1 and 2 ...". The commission of such acts would automatically make the perpetrator a mercenary within the meaning of the convention.

66. With regard to the work of Working Group B, his delegation believed that the exchange of views concerning the formulation of provisions on the obligations of States had been useful. In that connection, preventive measures and damage reparation were very important if the convention was to be effective. The convention would be incomplete if it did not contain provisions on the obligation of States parties not only to punish mercenaries, but also to prevent their recruitment and financing within the territories under their jurisdiction. It should also provide for the international responsibility of States in the event of their failure to comply with the obligation to prevent the activities of mercenaries. The convention should contain specific provisions on the obligation

(Mr. Yimer, Ethiopia)

of States to extradite or prosecute mercenaries and on the engendering of international responsibility for States that failed to do so.

67. As for the status of mercenaries, there should be no doubt that they were not lawful combatants and that, if captured, they should not be accorded prisoner-of-war status.

68. The report of the Ad Hoc Committee showed how thorough its members had been in discussing all aspects of the problem of mercenary activities. That problem was as serious as, if not more serious than, those which had already been the subject of international instruments drawn up under the auspices of the United Nations, such as the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, and the International Convention against the Taking of Hostages.

69. Inasmuch as the problem of mercenary activities was particularly acute in Africa, the Organization of African Unity had already drawn up a convention on the matter. However, since mercenaries had often been recruited from outside the continent, there was a need for concerted action by the international community to eliminate the problem. His delegation hoped that, with the necessary political will, an international convention would be elaborated in the very near future. It therefore supported the renewal of the Ad Hoc Committee's mandate.

70. Ms. PARIS (Venezuela) said that her country condemned all mercenary activities and attached great importance to the elaboration of a binding legal instrument to prohibit them.

71. The working papers and the proposals submitted to the Ad Hoc Committee and its Working Groups, particularly the draft Convention proposed by Nigeria (A/37/43, annex I), the revised version of that document (ibid., annex II) and the draft Convention submitted by France (A/38/43, annex), had made an invaluable contribution to the work of the Ad Hoc Committee.

72. The proposed convention should contain clear provisions to prevent the violations and activities which it intended to prohibit. In that connection, article F proposed by the Chairman (ibid., para. 69), which could be improved if it took account of the suggestions that had been made, was a good basis for an agreement that would satisfy the majority of delegations. Reparation for damage sustained as a result of activities prohibited by the convention was an important question. Article 15 of Nigeria's revised draft Convention which was consistent with the principle that a State's failure to fulfil an international obligation must engender international responsibility for that State, could be very useful in that regard. However, her delegation believed that paragraph 2 of article 15 should be deleted, as well as the words "which refuses to extradite or prosecute in accordance with the provisions of this Convention" in paragraph 1 of that article.

(Ms. Paris, Venezuela)

73. With respect to article 16 of the original Nigerian draft and article 14 of the French draft (whose wording was identical) regarding the settlement of disputes, paragraph 1 should be subdivided into three paragraphs dealing separately with settlement by negotiation, settlement by arbitration and referral to the International Court of Justice. Paragraph 3 should provide for the possibility of reservations with respect to the provisions of paragraph 2. Her delegation was convinced that the only valid procedures for the settlement of disputes were those which did not run counter to the wishes of the parties, and therefore believed that the convention should provide for the possibility of reservations by States parties with regard to binding procedures for the settlement of disputes. Subject to such an amendment, it supported in principle the approach taken in the articles mentioned.

74. Her delegation believed that, as provided in draft article 7 (A/38/43, para. 49), States parties should enact national legislation to prohibit the activities referred to in subparagraph (a) of that article. It likewise supported the wording of draft article 8, which provided that the failure of a State party to fulfil the obligations provided for under article 7 would engender international responsibility for the State.

75. Her delegation, being of the view that propaganda to promote the recruitment and use of mercenaries should be specifically prohibited, suggested that such propaganda should be included in the enumeration of prohibited activities.

76. Venezuela supported the renewal of the mandate of the Ad Hoc Committee.

77. Mr. YOURAN (Democratic Kampuchea) said that the working papers submitted by Nigeria and France (A/37/43, annexes I and II, and A/38/43, annex) gave the Sixth Committee and the Ad Hoc Committee much food for thought. The drafting of a convention on the question under discussion was all the more timely and necessary as the activities of mercenaries had lately posed serious threats to the independence, sovereignty and stability of newly independent third-world States, particularly in Africa. Indeed, as recognized in General Assembly resolution 37/109, such activities had a pernicious impact on international peace and security and were contrary to the fundamental principles of international law and the United Nations Charter. The convention should therefore be drafted as quickly as possible in order to uphold those principles, protect the independence of States and assist the peoples who were struggling for self-determination against colonialism, racism, apartheid and all forms of foreign domination.

78. While some progress had been made at the Ad Hoc Committee's most recent session, much still remained to be done before there could be a consensus on a draft convention acceptable to all.

79. The definition of the term "mercenary" should be both general and specific and should apply to situations of armed conflict and peace-time situations, the aim being to specify the activities to be prohibited by the convention and to determine their scope. The definition should be based mutatis mutandis on the definition

(Mr. Youran, Democratic Kampuchea)

contained in article 47, paragraph 2, of Additional Protocol I to the Geneva Conventions of 12 August 1949. Two constituent elements should be taken into consideration: on the one hand, the motivations of the mercenaries and, on the other hand, the cause which they accepted to serve by becoming involved in a conflict. Although the desire for personal gain was the primary motivation of mercenaries, a much more important factor was the unjust cause which they served, as had been demonstrated by the acts of aggression carried out against the Republic of Seychelles in November 1981.

80. With respect to the definition of the term "mercenarism", which was the subject of article 2 of the draft submitted by Nigeria, his delegation, while understanding the legitimate concern of some delegations to avoid imputing to States acts of mercenaries, shared the view that the object of the future convention was to oblige States to eradicate the grave international crime of mercenarism. The definitions of "mercenary" and "mercenarism" should therefore be included in the convention.

81. Both in the Sixth Committee and in the Working Group, some delegations had sought to establish a distinction between the "use of volunteers" and "mercenarism" in an attempt to justify acts of aggression committed against the sovereignty and territorial integrity of certain States. Democratic Kampuchea, which was the victim of the genocidal war of aggression conducted by the Socialist Republic of Viet Nam for almost five years, had a few points to make in that regard.

82. It was unconscionable to try to put the Kampuchean people's national resistance struggle against Vietnamese aggression and occupation in the same category as a virtual war by "mercenaries" or in the same category as "armed subversive activities" conducted by "reactionaries" or "mercenaries" against the very population of Kampuchea. The General Assembly had recognized, in the four resolutions which it had adopted concerning the situation in Kampuchea, that the Socialist Republic of Viet Nam was currently waging a war of aggression against the Kampuchean people. The latter, under the leadership of the Coalition Government of Democratic Kampuchea, was currently defending its independence, in its struggle for the nation's survival and against Vietnamese occupation. The link to mercenarism was to be sought within the Vietnamese army in Kampuchea. That army was being generously financed by the Soviet Union in order to carry out a policy of aggression and occupation. The Soviet Union was willing to support that unjust cause because, in return, it was enjoying certain benefits for its expansionist strategy in Asia and in the Pacific, such as the use of the strategic military bases of Da Nang and Cam Ranh. The morale of the Vietnamese troops was seriously affected by the cause which they were obliged to defend. It would therefore be wrong to compare the Vietnamese army of aggression to an army of "volunteers". The Vietnamese army of occupation had installed a puppet régime on 10 January 1979. That régime, however, could hardly have invited Hanoi to come to its aid in Kampuchea, because it had not been in existence at the time of the invasion. Because of the general condemnation of Vietnamese aggression by the world community and in an attempt to preserve the morale and reputation of the Vietnamese army in Kampuchea, the Hanoi authorities had recently dubbed their army of aggression and occupation an army of "volunteers", invoking a spurious internationalist duty for that army in Kampuchea.

(Mr. Youran, Democratic Kampuchea)

83. With respect to the settlement of disputes, his delegation, without wishing to prejudice the outcome of the important discussions under way, would support any formula which would make the new international instrument truly effective in terms of its scope and implementation. It would be useful to have a system for the settlement of disputes which would be binding on the States parties to the future convention. In that regard, he reminded the Committee that Democratic Kampuchea was one of the States Members of the United Nations which recognized and accepted as binding the jurisdiction of the International Court of Justice.

84. Mr. AGCAOILI (Philippines) said that his country was in favour of more effective measures to eliminate or reduce any threat, such as mercenarism, to international peace and security. The Secretary-General, in his report on the work of the Organization (A/38/1), had noted a weakening of the commitment to the United Nations, particularly on the part of the permanent members of the Security Council, which had led to the partial paralysis of the United Nations. The adoption of a convention on the question of mercenaries would represent a contribution from the other States Members of the United Nations to the search for peace and stability.

85. In that regard, he pointed out that developing countries were the primary victims of the activities of mercenaries. That state of affairs was a cause for even greater concern in view of the fact that those who committed the acts of violence were not inspired by devotion to any cause, but were motivated essentially by the desire for personal gain.

86. The Ad Hoc Committee had not resolved the question of the definition of the term "mercenary". His delegation felt that the definition should not be as restrictive as the one set forth in article 47, paragraph 2, of Additional Protocol I to the Geneva Convention of 12 August 1949. Several delegations had already said that the approach reflected in articles 1 and 2 of document A/AC.207/1983/CRP.5 was a valid one. The definition of the term "mercenary" should be based on the actual activities which were carried out, regardless of the existence or non-existence of an armed conflict, international or otherwise.

87. If the purpose of the convention was to outlaw mercenarism by making it a criminal act, it would be illogical to describe an operation during an armed conflict as "mercenary" and an operation in a situation not involving armed conflict as that of a criminal.

88. Furthermore, both the paper introduced by the Chairman of Working Group A (A/38/43, para. 56) and document A/AC.207/1983/CRP.5 stated that the material compensation provided to the mercenary should be "substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces" of the party which hired the mercenary. The words "substantially in excess ..." should be deleted because they limited the scope of the definition of the term "mercenary" and might facilitate the recruitment of mercenaries; it would be easy to find mercenaries who would willingly accept compensation which was not necessarily substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of the recruiting party.

(Mr. Agcaoili, Philippines)

A "mercenary" could therefore be defined in article 1 (c) as any person who "is motivated to take part in the hostilities essentially by the desire for private gain and in fact is promised by or on behalf of a party to a conflict material compensation promised or paid to combatants of similar ranks and functions in the armed forces of that party".

89. With regard to liability, mercenary activities should not be categorized as crimes of individuals alone. The States, entities or organizations which recruited, used, financed and trained those individuals were equally liable. The guilty parties were not only those who directly participated in such a crime, but also those who directly induced others to commit the crime. In that regard, he noted with satisfaction the articles on the obligations of States, preventive measures and damage reparation which were contained in the report of the Ad Hoc Committee (A/38/43).

90. With regard to the settlement of disputes concerning the interpretation or application of the future convention, he referred to the identical provisions in the drafts submitted by Nigeria and by France. Paragraph 1 of the article in question provided for the settlement of disputes through negotiation, arbitration and ultimately referral to the International Court of Justice, while paragraph 2 provided that a State party might declare that it did not consider itself bound by paragraph 1 of the same article. Such a wording would defeat the very purpose of the article since the existence of paragraph 2 in effect nullified paragraph 1. The future convention would lose its effectiveness if it was possible to avoid a binding system of dispute settlement or arbitration. In that regard, he drew attention to the Manila Declaration on the Peaceful Settlement of International Disputes, which carefully reaffirmed the principles enshrined in the Charter of the United Nations, to which all Member States had subscribed.

91. It was hoped that the renewal of the mandate of the Ad Hoc Committee would permit it to continue its work and submit a final report to the Sixth Committee in 1984.

AGENDA ITEM 120: CONSIDERATION OF THE DRAFT ARTICLES ON MOST-FAVOURED-NATION CLAUSES: REPORT OF THE SECRETARY-GENERAL (continued) (A/38/344)

92. Mr. MIKULKA (Czechoslovakia) emphasized the importance of the most-favoured-nation clause in the development of co-operative relations between States, particularly in the field of trade. Czechoslovakia had always tried to encourage co-operation between countries, without discrimination, based on the principle of sovereign equality of States.

93. The draft articles on most-favoured-nation clauses submitted by the International Law Commission would constitute a positive contribution to the codification and progressive development of international law, especially if they were used as the basis for the conclusion of an international convention, as the Commission had recommended to the General Assembly.

(Mr. Mikulka, Czechoslovakia)

94. The observations on the draft articles which Czechoslovakia had submitted (A/35/203) were still valid. His delegation wished to reiterate that the Commission's draft was a well-balanced document which took into account the interests of all groups, including the developing countries, as was clear in particular from draft articles 23, 24 and 30. The draft articles as a whole provided a good basis for the elaboration of an international convention on the subject.

95. Because of the importance of the question under consideration, Czechoslovakia considered that it would be reasonable to make the scope of the future instrument as broad as possible, covering not only clauses in treaties between States as defined in the Vienna Convention on the Law of Treaties of 1969 but also clauses in treaties concluded between States and international organizations or between two or more international organizations. It would then be posaible to treat an important aspect of international co-operation, namely, activities undertaken by international organizations by virtue of the powers conferred on them by their members; that would be of practical value in connection with international economic integration.

96. His delegation, like others, wished to emphasize once more that the conditional form, particularly in the case of articles 12 and 13, was an anachronism. The application of those clauses in the economic and commercial field would be neither just nor in the interests of international co-operation, since it would create opportunities for discrimination. Articles 12 and 13 should therefore be deleted from the draft articles.

97. If the exceptions to the system of most-favoured-nation clauses provided for in articles 23 to 26 were broadened, the very meaning of those clauses might be indirectly affected; there should therefore be no additional exceptions that would unduly limit the scope of the most-favoured-nation clause.

98. With regard to the future fate of so important a document, his delegation noted with regret that UNCTAD had not considered the substance of the draft articles, even though they related essentially to international trade.

99. He agreed with the proposals of other delegations calling for agreement on a procedure whereby a satisfactory solution could be found to questions on which there was not yet a consensus and a convention on the subject could be concluded. His delegation therefore supported the Byelorussian representative's proposal that a working group of the Sixth Committee should be established to consider those questions in a more detailed and concrete manner.

100. Mr. KOENTARSO (Indonesia) expressed appreciation to the International Law Commission for its efforts in seeking a consensus on the draft articles on most-favoured-nation clauses. Such an outcome would certainly contribute to the progressive development and codification of international norms in that vital area. At the same time, codification must not have the effect of freezing the existing situation or become unncessarily restrictive by failing to reflect

(Mr. Koentarso, Indonesia)

changing realities. In the view of his delegation, the codification should promote the legitimate objectives of all the contracting parties and should be compatible with the principles of economic co-operation for development and the establishment of the new international economic order.

101. Historically, most-favoured-nation clauses had been designed as an international trading mechanism among relatively equal partners. However, the assumptions underlying that concept had never been totally realistic. International trade today was conducted under rules that had not been formulated by the original negotiators of the General Agreement on Tariffs and Trade (GATT), and discrimination existed at both the general and the bilateral levels. There was wholesale abuse and evasion of GATT principles and rules, particularly in respect to quantitative restrictions. In 1966 a new part IV had been added to GATT, authorizing the granting of non-reciprocal tariff concessions to the developing countries and absolving them from the requirement of reciprocity. The inequality in relations between partners would have to be taken into account if draft articles 23, 24 and 30 were to provide a mutually beneficial legal instrument and offset any undue asymmetry in bargaining power. Precedents of exceptions to the most-favoured-nation principle had already been established, and the legitimate aspirations of the developing countries should be taken into account.

102. While articles 23 and 24 had incorporated an exception to most-favoured-nation clauses under a generalized system of preferences, his delegation felt that they were still inadequate. For example, article 23 imposed many limitations. The provisions of the articles generally reflected the realities of the existing generalized system of preferences, but they did not sufficiently improve that system to meet the requirements of development, in particular in the coverage of products of critical importance to developing countries. The trade policy of States, in addition to purely legal issues, was also involved. His delegation hoped that the developed countries would consider that matter from the standpoint of development of the international economy as a whole.

103. His delegation was in favour of article 30, provided that the draft articles on most-favoured-nation clauses did not prejudice the establishment of new rules of international law in favour of developing countries. Such a provision should be taken into consideration in the adoption of the new rules within the context of the new international economic order.

104. Codification of the rules relating to most-favoured-nation clauses in a legal instrument was an urgent necessity. In view of the fact that codification of those rules would contribute considerably to the development of economic and social co-operation among States, his delegation believed that the draft articles concerned should be considered by a diplomatic conference.

The meeting rose at 6.05 p.m.