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SUMMARY RECORD OF THE 27th MEETING

Chairman: Mr. GASTLI (Tunisia)

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ORGANIZATION OF WORK

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The meeting was called to order at 10.55 a.m.

AGENDA ITEM 121: PROGRESSIVE DEVELOPMENT OF THE PRINCIPLES AND NORMS OF INTERNATIONAL LAW RELATING TO THE NEW INTERNATIONAL ECONOMIC ORDER: REPORT OF THE SECRETARY-GENERAL (continued) (A/38/106-S/15628, A/38/323, A/38/329, A/38/325-S/15905, A/38/366 and Corr.1 and Add.1)

1. Mr. VERCELES (Philippines) said it was regrettable that document UNITAR DS/6, which was necessary for the consideration of item 121, had been issued only the day before the Committee was to begin its consideration of the item.
2. He recalled the relevant papers which UNITAR had prepared to date but regretted the Institute's inability to complete for the current session the final analytical study on the existing and evolving principles and norms of international law relating to the new international economic order, as requested by the General Assembly the previous year. He appreciated, however, that the task was a complex one which required adequate time and dedication. The analytical study had to be completed in order to achieve the ultimate purpose of "progressive development of the principles and norms of international law relating to the new international economic order".
3. The negotiations for the establishment of a new international economic order were at an impasse and a deep sense of disillusionment and despair pervaded the global scene, particularly in the developing countries. Global conferences were being convened only for protagonists from developed and developing countries to confront each other while, amid an abundance of analyses of the problems, there was a long drought of solutions. More than just a concept, the new international economic order represented a practical call to action, a movement to effect a peaceful transition to a new economic system of justice and equality. The historical relevance and urgency of that movement needed to be grasped. Existing inequalities must be corrected, not by destroying but by building on the advances made in the total global effort.
4. His delegation perceived the exercise before the Committee as a legal route to the establishment of the new international economic order. It had maintained that international law had a genuine and substantial contribution to make in the amelioration of the human condition and should be placed at the service of development to help to elevate the quality of life of impoverished millions of the third world to one worthy of human dignity as envisaged in the United Nations Charter. The analytical study must therefore be completed, and the next step would be to proceed with the task of "progressive development" per se, which, according to article 15 of the statute of the International Law Commission, meant the preparation of draft conventions on subjects that had not yet been regulated by international law or in regard to which the law had not yet been sufficiently developed in the practice of States. It was a task of blazing the legal trail on a subject of contemporary relevance and of extreme importance, particularly to developing countries.

(Mr. Verceles, Philippines)

5. His delegation would wish that task to be undertaken by a small ad hoc group of experts, composed of five government experts and five independent experts serving in their individual capacity. The President of the General Assembly, after due consultations with the Chairmen of the regional groups, would appoint the five government experts on the basis of equitable geographical distribution and representation of the principal legal systems of the world. The five independent experts would be selected by the Secretary-General, in consultation with the Executive Director of UNITAR, on the same basis as the government experts. UNITAR would be requested to complete the analytical study in time for a meeting of the group of experts in 1984. His delegation would expect a progress report on the work of the group of experts to be submitted to the General Assembly at its thirty-ninth session, and the final report at the fortieth session. His delegation would undertake consultations to that effect and would submit a draft resolution together with like-minded delegations.

6. His delegation would like to commend UNITAR for the analytical papers and the analysis of texts of relevant instruments contained in document UNITAR DS/6, and also to commend the three consultants who had prepared the topics assigned to them under great time pressure and with a paucity of background materials and applicable jurisprudence. The defrayal of Professor Espiritu's consultancy fees and travel expenses to New York and other places was his Government's modest contribution to the analytical study and to UNITAR.

7. Mr. MAZILU (Romania) said contemporary economic realities showed that world economic relations needed to be restructured in order to promote the economic advancement of all countries, and in particular, of the least developed countries.

8. Romania attached great significance to the elaboration, within the United Nations, of a set of principles and norms, binding on all States, which reflected the requirements of the new international economic order. Those principles and norms should contribute to the enhancement of the role of international law, the promotion of trade in all fields on an equitable basis, the strengthening of the economic independence of developing countries, the encouragement of structural transformations in the world economy and the promotion of social and economic progress, particularly in developing countries.

9. The elaboration of such principles and norms should begin with a recognition of the need to firmly establish the criteria for the organization and development of world economic relations on just foundations. In the view of his delegation, a systematic process of codification should be embarked upon, taking into account the need for an adequate legal framework for the development of international economic relations. That codification should establish the following norms and principles: the sovereign economic equality of States; permanent sovereignty over natural resources; equity and mutual assistance in economic relations; the co-operation of all States in efforts towards progress, development and the elimination of existing economic disparities; non-interference in the internal affairs of other States; renunciation of economic pressure and constraint of any kind; settlement by peaceful means of all disputes between States, including economic disputes; and

(Mr. Mazilu, Romania)

the effective participation of all countries, on an equal basis, in the solution of world economic problems. Although some of those principles were to be found in previous international documents, they needed to be systematically and coherently elaborated if they were to respond to the requirements of the new international economic order. They should not only stipulate the general rights and obligations of States, but also set out rules of conduct designed to guarantee the development of just and equitable international economic relations.

10. The codification efforts must be geared to the requirements of the economic development of all States, so that the establishment of new principles and norms would be in total harmony with those requirements and contribute to the attainment of the objectives of progress and development for all countries and peoples of the world.

11. Codification of the principles and norms of international law as they related to the new world economic order should include the elaboration of a code on the transfer of technology, a code governing international trade, a set of regulations governing international financial relations, and so on.

12. The final objective of that process of codification should be the elaboration of a charter of international economic relations systematically enunciating all the principles and norms of international law relating to the new international economic order. Such a charter would also encourage the implementation of those principles and norms in the practice of international relations, the ones which had been elaborated over the past decade by the United Nations, being hardly ever applied in practice. The economic situation of developing countries continued to deteriorate, difficulties were encountered in the transfer of technology, and high interest rates had led to an unprecedented increase in the foreign debt of developing countries. His delegation was ready to contribute to the drafting of a charter of international economic relations establishing a set of principles and norms, which would contribute significantly to ensuring a commitment by all States to observe them.

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, A/38/507-S/16044)

13. Mrs. AHMADI (Islamic Republic of Iran) said that the future convention should deal both with situations of armed conflict and with peace-time situations in which, in some regions of the world, mercenaries were used to overthrow legitimate Governments or to thwart the struggle of peoples for independence and self-determination. While the definition of the term "mercenary" should take account of the definition in article 47, paragraph 2, of Additional Protocol I to the 1949 Geneva Conventions, the Ad Hoc Committee should take a comprehensive approach to the future convention and cover the various aspects and situations involved. Such an approach had been reflected both in articles 1, 2 and 3 of

(Mrs. Ahmadi, Islamic Republic
of Iran)

document A/AC.207/1983/CRP.5 and in draft articles 1 and 2 submitted by the Chairman of Working Group A. Her delegation had some reservations about the inclusion of private or personal gain in the definition of the term "mercenary" in situations other than those of armed conflicts. While that criterion was fully applicable in situations of armed conflict, it was not relevant to other situations.

14. The future convention should focus not only on the mercenary as an individual, by providing a comprehensive definition and identifying the crimes and offences that he might commit, but also, and in particular, on the prohibition of enlistment as a mercenary and of the recruitment, use, financing and training of mercenaries by a State. It should also provide for the international responsibility of States which did not fulfil their obligations under it. The chapeaux of draft articles 3 and 4 did not fully reflect that viewpoint and needed improvement. Her delegation did, however, support the ideas contained in draft article 6, as well as the relevant suggestions made by members of the Working Group. The draft articles contained in paragraph 56 of the report of the Ad Hoc Committee (A/38/43) could serve as a useful basis for its future work.

15. The future convention must include provisions on preventive measures and damage reparation. The text relating to preventive measures proposed by the Chairman and appearing in paragraph 69 of the report, along with the suggestions mentioned in paragraphs 70 and 71, and article 15 of the revised working paper submitted by Nigeria on damage reparation, constituted a good basis for the future work of Working Group B.

16. Her delegation supported the renewal of the mandate of the Ad Hoc Committee and fervently hoped that it would be able to complete its task at its next session.

17. Mr. YASSIN (Malaysia) said that the current volatile international situation had been caused in no small measure by the use of mercenaries to violate the political independence and territorial integrity of a number of small developing countries. That was a matter of concern to the international community and, if allowed to go unchecked, could pose a serious threat to international peace and security. He was convinced that a universally acceptable convention would go a long way towards removing the constant threat to the peaceful coexistence of States.

18. He was pleased to note that there was wide support in the Ad Hoc Committee for a comprehensive convention applicable within and outside the framework of armed conflict. A convention would prove to be inadequate, given the present-day situation, if it was applicable only to a limited situation of armed conflict.

19. If the scope of the convention was agreed upon, the main problem would then be to arrive at a definition of a mercenary which was acceptable to all. A formulation based on the definition given in article 47 of Additional Protocol I to the Geneva Conventions of 1949 could be drafted to provide a broader definition which encompassed a situation other than that of armed conflict. The definition

(Mr. Yassin, Malaysia)

formulated in articles 1 and 2 of document A/AC.207/1983/CRP.5 was quite comprehensive enough to cover all situations. His delegation would therefore support the compromise formulation if it was based on the draft articles presented by the Chairman of Working Group A, as contained in paragraph 56.

20. Another fundamental element for a universal convention was the need to specify correctly the activities of mercenaries particularly in relation to situations other than armed conflict. His delegation supported the definition of those activities as formulated in articles 2 and 3 by the Chairman of Working Group A. It also supported the proposal that the convention should establish the principle of State responsibility, the omission of which would weaken the very intention of the convention. If States were serious in their endeavour to stamp out mercenaries, it was incumbent on them to fulfil certain obligations consistent with existing international law. The formulation in article 6 by the Chairman of Working Group A was acceptable.

21. The concept of preventive measures was also an essential element in the convention, which could be effective only if States parties undertook legislative, administrative and other practical steps to prevent the recruitment, use, financing and training of mercenaries. His delegation therefore supported the formulation of that element along the lines of article F proposed by the Chairman of Working Group B.

22. His delegation also believed that a convention should make adequate provision for the peaceful settlement of disputes. The mechanism finally adopted should be based on a workable system which was binding and was in accordance with existing international law.

23. Despite the enormous tasks that remained, the results achieved thus far by the Ad Hoc Committee were encouraging. His delegation therefore supported the renewal of its mandate.

24. Ms. MULAMFU (Zambia) said that, as far as situations of international armed conflict were concerned, her delegation accepted the definition of the term "mercenary" contained in article 47, paragraph 2, of Additional Protocol I to the Geneva Conventions of 1949. However, since the objective of the future convention was to outlaw mercenary activities as a whole, the definition should be extended to cover other situations, such as that of persons specially recruited to carry out acts against peoples struggling for self-determination, and civil war situations. The similarities in the definition of the term "mercenary" in draft articles 1 and 2 were not simply repetition but served to cover two different situations - international armed conflict and non-international armed conflict. Since the mercenary activities defined in draft articles 1 and 2 would, if perpetrated by a national against his own country, be tantamount to treason, her delegation felt that national legislation against mercenaries should specify that such activities were treasonable. She therefore proposed that the first set of brackets in article 2, paragraph 1 (d), should be deleted.

(Ms. Mulamfu, Zambia)

25. Draft article 3 was acceptable. It would be for the States parties to the convention to ensure that the activities prohibited by it were adequately covered under national legislation. Article 4, however, could be deleted, since the acts covered by it were already recognized and prohibited under the criminal law of most, if not all, Member States.

26. Her delegation supported the formulation of article 5 in document A/AC.207/1983/CRP.5, as reflected in draft article 3 of the text submitted by the Chairman of Working Group A. However, the word "knowingly" proposed in draft article 3, paragraph 2 (b), should be deleted because, given the considerable planning involved in recruiting, using, training and financing mercenaries, an individual promoting such acts would know from the outset the nature and implications of what he was doing. The responsibility of accomplices should serve as a guide to drafters of national legislation to include entities such as corporate bodies involved in the recruiting, use, training, financing or promoting of mercenaries.

27. The provisions on preventive measures were an important feature of the future convention. Specific measures should be elaborated concerning preventive actions to be taken where a State reasonably believed that an individual, group or association was involved in activities described in draft article 2, paragraph 2, and where that person was covered under draft article 1. Such measures should include prohibition of entry into or departure from the territory of that State and denial of transit facilities. Since preventive measures were closely related to punitive measures, her delegation believed that some of the penalties arising out of measures taken under draft article 6 could be applied to individuals against whom preventive measures had been taken. For example, where an individual had been prohibited from leaving the country which reasonably suspected that he was involved in mercenary activities, that country would be able to extradite him under its national legislation. The brackets round the words "and suppressing" in draft article 6, paragraph 2 (b) should be removed as that would make it easier to extend the national legislation envisaged in that article to situations arising in the implementation of article 8 of the Nigerian draft.

28. The future convention should contain an article elaborating minimum judicial guarantees of universal application to be accorded to mercenaries, in order to overcome the differences that might exist in national legislation. She took note of the proposal by the delegation of Italy in document A/AC.207/1983/CRP.7 and expressed the hope that a compromise would be reached at the next session of the Ad Hoc Committee after agreement on the definitions in draft articles 1 and 2.

29. On the question of settlement of disputes, her delegation favoured a provision calling for alternative courses of settlement, rather than simply compulsory arbitration by the International Court of Justice.

30. Taking into account the urgent need for the Ad Hoc Committee to fulfil its task, and encouraged by the progress made at the last session, her delegation supported the renewal of its mandate.

31. Mr. CURIA (Argentina) said that States should spare no efforts to eradicate the activities of mercenaries from international relations, if they wanted a world in which peace and security were permanent situations and not merely rhetorical statements.
32. The draft articles submitted by the Chairman of Working Group A were a useful frame of reference for the future work of the Ad Hoc Committee. The Nigerian and French draft conventions also made a significant contribution to reconciling the divergent positions that had been expressed in the Committee.
33. If the ultimate aim was to make the future convention genuinely universal in character, it should establish broad but precise criteria for the application of its provisions by the States parties. The possibility of using the terms "hostile act" and "concerted action" as a focus of debate and discussion was useful from the standpoint of the material scope of the future convention, since it took due account of certain activities and actions undertaken outside situations of conflict. His delegation was also of the view that due note should be taken of the Italian proposal concerning the safeguarding of all elements of international humanitarian law.
34. With respect to the obligations and resulting responsibilities of States, there were some fundamental points that had not yet been settled and further efforts should be made to analyse them and subsequently draft the relevant clauses.
35. Where the questions discussed by Working Group B were concerned, there was an undoubted need for a clear and precise provision relating to prevention, which was a fundamental legal institution in a convention of that nature.
36. Lastly, the Convention should provide an appropriate and reasonable mechanism for the settlement of disputes. There had not yet emerged from the exchange of ideas any system which had the support and approval of all States. The differing approaches and opinions revealed in the debate clearly showed the need to continue the search for other ways of achieving a solution.
37. The work of the Ad Hoc Committee involved a difficult mixture of political and legal aspects. Nevertheless, it had succeeded in establishing a set of categories and concepts which could form the basis of the future convention. The Argentine Republic therefore supported the renewal of the Committee's mandate.
38. Mr. OUYANG Chuping (China) said that the international community could not fail to be gravely concerned at, and strongly condemn, the continued use of mercenaries as a tool for aggression and suppression. It was imperative that mercenaries should be strictly and unequivocally prohibited under international law. His delegation whole-heartedly supported the appeal of the Seventh Conference of Heads of State or Government of Non-Aligned Countries that a draft convention against mercenaries should be concluded and adopted immediately and was ready to join in the efforts of all countries that loved peace and upheld justice.

(Mr. Ouyang Chuping, China)

39. Although the definition of the term "mercenary" in article 47 of Additional Protocol I to the Geneva Conventions of 1949 was basically valid, it appeared inadequate when applied in general terms. The definition of a mercenary in a peace-time situation should be based on the actual activities carried out in several developing countries. The view that mercenaries operating in situations other than armed conflicts should be regarded as ordinary criminals could give rise to ambiguity in determining the responsibility of parties recruiting and dispatching mercenaries and would not be in line with the strong and organized response required of the international community against the criminal activities of mercenaries. The definition of the term "mercenary" should therefore be fairly comprehensive.

40. Noting that article 3, paragraph 1 of the draft articles submitted by the Chairman of Working Group A prohibited mercenaries from committing any of the acts specified under article 2, paragraph 2, he said that "a hostile act", as defined in article 2, applied solely to situations other than armed conflicts. Consideration should be given to including provisions expressly prohibiting mercenaries in armed conflicts from taking part in aggression against sovereign States or in the suppression of national liberation struggles.

41. To be effective, legislation against the mercenary system must not only provide penalties for individual mercenaries but must also specify the responsibility of persons, groups or States engaging in the recruitment, training, financing and dispatch of mercenaries. A clear provision on the responsibilities and obligations of States would promote the effective prevention and suppression of mercenary activities. However, his delegation was disappointed with the discussion on articles 7 and 8 of document A/AC.207/1983/CRP.6 in the Ad Hoc Committee. The third world countries had made major concessions and had drastically revised the draft articles concerning State responsibility. Now that the Chairman of Working Group A had introduced a revised article 6 on the obligations of States parties to the convention, his delegation hoped that the draft could be considered in a constructive and serious way and that the Ad Hoc Committee could proceed towards further developing an article on State responsibility. The article on actions for damages reparation in the revised draft submitted by Nigeria also represented a major compromise, but there was still a serious divergence of views. If it was generally recognized that States were obliged to prevent and curb mercenary activities, it was obvious that the argument that the activities of mercenaries were simply actions by individuals, for which the State was not responsible, was untenable.

42. If consensus could be achieved on those main articles, the difficulties with the other articles would be easily resolved. No difficulty was insurmountable as long as the importance of the issue for the maintenance of international peace and security was borne in mind and the necessary political will demonstrated. As the Ad Hoc Committee had not yet completed its task, the General Assembly should renew its mandate, so that it could step up its efforts and finish its work at the earliest possible date.

43. Mr. MUFTI (Pakistan) said that the activities of mercenaries had assumed international proportions and constituted a constant menace to the international community, particularly the developing countries. There was therefore an urgent need to draft an international convention to prohibit the recruitment, training, financing and use of mercenaries. Such a convention would compliment the various conventions on international terrorism and would be a useful step forward in the codification and progressive development of international law.

44. Pakistan was committed to the principle of non-intervention and non-interference in the affairs of other States, respect for the sovereignty, territorial integrity and political independence of other States, the principle of peaceful coexistence, the policy of non-alignment, the freedom of a State to choose its own political and religious ideology, and respect for the United Nations Charter. Accordingly, it had worked ceaselessly for the prohibition of mercenarism. At the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, it had supported the inclusion of a separate article on mercenaries. It had also fully supported the Nigerian proposal to draft an international convention on the subject.

45. Although the definition of the term "mercenary" contained in article 1 of the draft convention submitted by France and in article 1 of document A/AC.207/1983/CRP.5 was reasonably comprehensive, his delegation felt that there was merit in the attempt, in articles 2 and 3 of document A/AC.207/1983/CRP.5, to broaden the definition. Those articles, inter alia, described a "mercenary" as a person who "is especially recruited for the purpose of carrying out a hostile act against any State or a people struggling for self-determination" and defined "hostile act" as armed violence to "carry out concerted action aimed at overthrowing a Government by armed force", and as armed violence to "violate the sovereignty, political independence, territorial integrity, national unity and security of any State, in violation of the Charter of the United Nations".

46. Further discussion was required on the provisions concerning the obligations of a State. Since there was a relationship between the effect of the proposed articles and the national legislation of States, it would be worth while to seek the views of Member States.

47. The concept of preventive measures was an essential element of any instrument directed against mercenary activities. The articles on the subject should enjoin States to take legislative, administrative and practical steps to prevent the recruitment, use, financing and training of mercenaries. The approaches reflected in article 8 of the draft submitted by Nigeria and article 7 of the draft submitted by France were useful and needed to be examined further.

48. It was encouraging that article 16 of the draft submitted by Nigeria and article 14 of that submitted by France, both of which concerned the settlement of disputes should be identical. Pakistan had always supported international, and particularly United Nations-sponsored, efforts for the peaceful resolution of conflicts. It was therefore gratifying that both drafts should provide for arbitration by the International Court of Justice.

(Mr. Mufti, Pakistan)

49. Although Working Group B had deferred consideration of the status of mercenaries, his delegation felt there was merit in article 5 of the Nigerian draft, which would deny mercenaries prisoner of war status. A similar provision existed in article 47 of Additional Protocol I to the 1949 Geneva Conventions.

50. In view of the importance of concluding an international convention against the recruitment, use, financing and training of mercenaries at the earliest possible date, his delegation supported the renewal of the mandate of the Ad Hoc Committee.

51. Mr. KAHALEH (Syrian Arab Republic) said that the crime of mercenarism was one of the vilest known to man, since it turned murder into a business and was a means of stifling the aspirations of peoples for liberation and self-determination, fomenting local conflicts to topple Governments and violating the sovereignty of small States. It was therefore very important to draft an international convention describing the forms that that crime could take and the ways to eradicate it.

52. Both Working Groups had made some modest but tangible progress on the main issues before them. He hoped that their future work had been identified, and that the prevailing divergence of views would not prevent a positive outcome. His delegation supported the general trend of the discussion in Working Group A and the efforts being made to find a middle ground between the texts submitted by Nigeria and France. It supported the wording of the draft articles submitted by the Chairman of the Working Group, since they provided a broader definition of the term "mercenary" than the one contained in article 47 of Additional Protocol I to the Geneva Conventions and a more comprehensive list of actions that could be classified as crimes committed by mercenaries. Draft article 6 was particularly welcome, in that it defined the responsibilities and obligations of States. It should, however, say clearly that a State could not plead ignorance of the activities described in it as an excuse for failing to take appropriate action.

53. As far as the work of Working Group B was concerned, he stressed the importance of preventive measures and the need to take severe action to punish the crime of mercenarism. He agreed that mercenaries should not be entitled to prisoner of war status. The Working Group had also made some progress on the article relating to damage reparation. Its task of reconciling the differences in the texts submitted by Nigeria and France was nevertheless a difficult one.

54. His delegation felt that the mandate of the Ad Hoc Committee should be renewed and hoped that the two Working Groups would successfully complete the tasks before them.

55. Mr. OKELIO (Uganda) said that, although the Ad Hoc Committee had made only modest progress, his delegation believed that its mandate should be extended.

56. The purpose of the proposed convention was to outlaw all activities involving the recruitment, use, financing and training of mercenaries, and it was therefore necessary to anticipate all the situations in which such activities might take

(Mr. Okello, Uganda)

place. Three situations had been identified so far: international armed conflict; civil or internal armed conflict; and peace-time. Since the definition laid down in article 47, paragraph 2, of Additional Protocol I to the Geneva Conventions of 1949 was too narrow, an appropriate new definition should be formulated. Mercenary activities conducted outside armed conflict should not be interpreted simply as criminal acts. His delegation supported the approach adopted in document A/AC.207/1983/CRP.5, which was based on practical experience and not merely on the definition in Additional Protocol I.

57. With regard to the report of Working Group B, he said that consideration of preventive measures was an essential component of the Ad Hoc Committee's work, and the proposed convention should require States to take the necessary legislative, administrative and practical measures to ensure that mercenary activities were prevented. It was the duty of States to ensure that their territories were not used either for the planning of such activities or as a spring-board for carrying them out. His delegation therefore endorsed the proposal that the future convention should include specific provisions concerning the international responsibility of States that violated the obligation to prevent and combat mercenary activities in their territories. The convention should also provide for the reparation of damage resulting from activities that were prohibited under it.

58. Mr. DIA (Senegal) said that mercenary activities were a cause of constant concern to his Government. Although in 1977 the African countries had adopted, through the Organization of African Unity, the Convention for the Elimination of Mercenarism in Africa, only international co-operation would make it possible to remove the threat of mercenarism from Africa and the rest of the third world. The General Assembly must therefore draw up and adopt an appropriate international convention.

59. Although the definition of the term "mercenary" contained in draft article 1 of the text proposed by the Chairman of Working Group (A/38/43, para. 56) was not perfect, it presented fewer difficulties than any of the alternatives. For instance, article 47 of Additional Protocol I to the Geneva Conventions of 1949 covered only mercenary activities that took place in international armed conflicts, whereas in Africa such activities occurred chiefly in peace-time.

60. With regard to the work of Working Group B, his delegation shared the general view that prevention was essential but believed that the obligations of States should be defined more clearly. Where damage reparation was concerned, it supported the proposal put forward by the delegation of Nigeria. The future convention should require States to adopt appropriate domestic legislation and should provide for sanctions against States that tolerated the planning of mercenary activities in their territories.

61. Lastly, he drew attention to the relevant portions of the statement made by the Minister for Foreign Affairs of Senegal at the previous session of the General Assembly (A/37/PV.10, p. 56).

62. Mr. FERRARI BRAVO (Italy) said that Italy fully adhered to the statement made by the representative of Greece concerning the position of the 10 States members of the European Economic Community on the problem under discussion. However, as both the representative of Italy and the Chairman of Working Group B, he would like to add a few comments that might be useful for a better understanding of the work of the Ad Hoc Committee.

63. Together with the texts produced by Working Group B in 1982 and 1983, the conference room papers prepared in the context of Working Group A would be useful for identifying areas of possible agreement. Despite appearances, the Ad Hoc Committee had made substantial progress, and it would now be possible to embark upon the comprehensive drafting of the future convention. One of the reasons why Working Group B had held only a limited number of meetings was that there had been a widespread view that further progress in that Working Group was contingent on progress in Working Group A and, moreover, that the separation of political and technical issues might no longer be necessary. He therefore believed that at the beginning of its next session the Ad Hoc Committee should review its methods of work.

64. It was important to be aware of the distinction between the obligations of States in the field under consideration and the issue of the punishment of individuals. Naturally, if a convention spelt out the obligations of contracting States, then breaches of those obligations would entail State responsibility. However, it might be useful to explore whether, in connection with particular aspects of the violation by States of their obligations, a specific consequence of such violations should be indicated in the future convention. If such a course was followed, that issue should be linked with the question of the reinforcement of means for the settlement of disputes. The assessment of an obligation to repair damage and the quantification thereof normally gave rise to international disputes and often required the interposition of an independent party.

65. Another important aspect of the obligations of States under the future convention related to the problem of preventive measures. It was important to build up, at the national level, an effective system for monitoring the activities of individuals or groups of individuals that might be preparatory to the commission of the crimes to be made punishable under the convention. If police information was conscientiously exchanged among contracting parties, the prevention of crimes would be extremely effective, and if, after crimes had been committed, liberal judicial assistance was granted, punishment would be effective, fair and expeditious.

66. With regard to the criminal responsibility of individuals, the recruitment, use, financing, and training of mercenaries was criminal per se. States had a parallel obligation to refrain from such activities. If it was recognized that the problem of punishing the mercenary was perhaps less important than the problem of prevention and of punishment for those who used, financed, recruited and trained mercenaries, perhaps the problem of defining the terms "mercenary" and "mercenary activities" would appear less intractable. A general clause aimed at preserving the integrity of the body of humanitarian law was one of the keys to a solution.

(Mr. Ferrari Bravo, Italy)

His delegation had put forward a proposal (A/38/43, para. 44) whose purpose was to deal not only with the question of the definition of a mercenary set forth in article 47, paragraph 2, of Additional Protocol I to the Geneva Conventions of 1949 but also with any encroachments by the future convention upon that Protocol.

67. Those participating as mercenaries in non-international armed conflicts should be identified by means of a definition in the future convention. The number of non-international armed conflicts had become so great that it was difficult to justify differentiation in the treatment of individuals qua mercenaries according to the nature of the conflict concerned. The question of "direct participation in the hostilities" should not be taken too literally. Furthermore, perhaps the references, in connection with situations outside international armed conflicts, to acts intended to suppress the struggle of a people to achieve self-determination, were not needed, since national liberation conflicts were covered by article 1, paragraph 4, of Additional Protocol I. However, it was necessary to keep an open mind on the question whether mercenaries in non-international armed conflicts should be equated with the persons referred to in draft article 1 of the text proposed by the Chairman of Working Group A or with the persons referred to in draft article 2 of that text.

68. In any event, that question was less important than the question which activities were to be regarded as criminal. Negotiation on that matter might benefit from a parallel study of questions relating to jurisdiction and extradition. Indeed, with imagination and a slight departure from the virtually identical formulae used in the recent past in conventions relating to international criminal law, it might be possible to allay fears about the definition of criminals and criminal acts.

ORGANIZATION OF WORK

69. The CHAIRMAN said the African Group had proposed that Mr. Ramadan (Egypt) should be appointed Chairman of the Working Group on the Review of the Multilateral Treaty-Making Process. He understood that there was a consensus in favour of that proposal and he would take it, if there was no objection, that the Committee wished to appoint Mr. Ramadan as Chairman of the Working Group.

70. It was so decided.

The meeting rose at 1.05 p.m.