

**REPORT
OF THE *AD HOC* COMMITTEE
ON THE DRAFTING
OF AN INTERNATIONAL CONVENTION
AGAINST THE RECRUITMENT,
USE, FINANCING
AND TRAINING OF MERCENARIES**

GENERAL ASSEMBLY

OFFICIAL RECORDS: FORTY-FOURTH SESSION

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NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

[3 March 1989]

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I. INTRODUCTION

1. The Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries was convened in accordance with General Assembly resolution 43/168 of 9 December 1988 and met at United Nations Headquarters from 30 January to 17 February 1989. 1/
2. The membership of the Ad Hoc Committee, as appointed by the President of the General Assembly, is as follows: Algeria, Angola, Bangladesh, Barbados, Benin, Bulgaria, Canada, Cuba, Democratic Yemen, Ethiopia, France, German Democratic Republic, Germany, Federal Republic of, Haiti, India, Italy, Jamaica, Japan, Mongolia, Portugal, Senegal, 2/ Seychelles, Spain, Suriname, Togo, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Viet Nam, Yugoslavia, Zaire and Zambia.
3. The session was opened by Mr. Carl-August Fleischhauer, Under-Secretary-General, the Legal Counsel, who represented the Secretary-General at the session.
4. Mr. Vladimir Kotliar, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary of the Ad Hoc Committee. Miss Jacqueline Dauchy, Deputy Director (Codification Division, Office of Legal Affairs), acted as Deputy Secretary of the Committee and as Secretary of its Drafting Group; Mr. A. Mpazi Sinjela, Legal Officer (Codification Division, Office of Legal Affairs) and Mr. Juan Gómez-Robledo, Associate Legal Officer (Codification Division, Office of Legal Affairs), acted as Assistant Secretaries of the Committee and its Drafting Group.
5. At its 52nd meeting, on 30 January 1989, the Ad Hoc Committee elected the following officers:

Chairman: Mr. Gebre-Medhin Hagoss (Ethiopia)

Vice-Chairmen: Mr. Tullio Treves (Italy)
Mr. Siegfried E. Werners (Suriname)
Mr. Vladimir Y. Eltchenko (Ukrainian Soviet Socialist Republic)

Rapporteur: Mr. Hameed Mohamed Ali (Democratic Yemen)
6. At its 52nd meeting, on 30 January 1989, the Ad Hoc Committee adopted the following agenda (A/AC.207/L.29):
 1. Opening of the session.
 2. Election of officers.

1/ For the membership list of the Ad Hoc Committee at its 1989 session, see A/AC.207.INF/8 and Add.1.

2/ Senegal replaced Nigeria, which was a member of the Ad Hoc Committee at its previous session (see A/43/935).

3. Adoption of the agenda.
4. Organization of work.
5. Drafting of an international convention against the recruitment, use, financing and training of mercenaries, pursuant to paragraph 3 of General Assembly resolution 35/48, paragraph 2 of resolution 36/76, paragraph 2 of resolution 37/109, paragraph 2 of resolution 38/137, paragraph 2 of resolution 39/84, paragraph 2 of resolution 40/74, paragraph 1 of resolution 41/80, paragraph 2 of resolution 42/155 and paragraph 2 of resolution 43/168.
6. Adoption of the report.
7. At the same meeting and at subsequent meetings, held on 30 January and on 1, 6, 8 and 16 February 1989, the Ad Hoc Committee granted requests for observer status received from the permanent missions of Argentina, Belgium, Burundi, the Byelorussian Soviet Socialist Republic, Chile, Colombia, Czechoslovakia, Egypt, Gabon, Ghana, Guyana, Indonesia, Iraq, Madagascar, Malaysia, Mexico, Morocco, the Netherlands, Nicaragua, Oman, Peru, Romania, Rwanda, Sri Lanka, the Sudan, the Syrian Arab Republic, Trinidad and Tobago, Tunisia, Uganda, the United Republic of Tanzania and Venezuela, pursuant to paragraph 6 of General Assembly resolution 43/168, according to which the Assembly decided that the Ad Hoc Committee would accept the participation of observers of Member States, including participation in the meetings of its drafting and working groups.
8. In addition to the documents submitted at its first, second, third, fourth, fifth, sixth and seventh sessions, as listed in its reports on those sessions, 3/ the Ad Hoc Committee had before it, in accordance with paragraph 3 of General Assembly resolution 43/168, the draft articles contained in chapter III of the Committee's report on its seventh session, 4/ entitled "Third Revised Consolidated Negotiating Basis of a convention against the recruitment, use, financing and training of mercenaries".
9. At its 53rd meeting, on 30 January 1989, the Ad Hoc Committee decided to establish an open-ended drafting group to be chaired by Mr. Tullio Treves (Italy), Vice-Chairman of the Ad Hoc Committee.
10. At its 58th meeting, on 17 February 1989, the Ad Hoc Committee had before it the report of the Drafting Group, as well as a document entitled "Draft articles for an international convention against the recruitment, use, financing and training of mercenaries" which reflected the outcome of the Drafting Group's work.

3/ Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 43 (A/36/43); ibid., Thirty-seventh Session, Supplement No. 43 (A/37/43 and Corr.1); ibid., Thirty-eighth Session, Supplement No. 43 (A/38/43); ibid., Thirty-ninth Session, Supplement No. 43 (A/39/43 and Corr.1); ibid., Fortieth Session, Supplement No. 43 (A/40/43); ibid., Forty-second Session, Supplement No. 43 (A/42/43) and ibid., Forty-third Session, Supplement No. 43 (A/43/43).

4/ Ibid., Forty-third Session, Supplement No. 43 (A/43/43).

The Ad Hoc Committee recognized that, while difficult issues were still awaiting a solution, considerable progress had been achieved at the current session through effective participation of all its members, as well as observers, in preparing the draft articles for an international convention against the recruitment, use, financing and training of mercenaries. The Ad Hoc Committee was of the view that efforts could be made to produce the final text of a convention in a relatively short time.

11. It therefore recommends that the Sixth Committee should entrust a working group at the forty-fourth session with the task of settling outstanding issues, thus producing a draft convention to submit to the General Assembly at that session. That Working Group should meet for a maximum period of two weeks at the beginning of the session. Failing successful completion of a convention, the Sixth Committee should consider renewing the mandate of the Ad Hoc Committee.

12. Also at its 58th meeting, the Ad Hoc Committee took note of the report of the Drafting Group and of the "Draft articles for an international convention against the recruitment, use, financing and training of mercenaries". It decided to include those two documents in its report as sections II and III respectively. At the same meeting it approved its report as a whole.

II. REPORT OF THE DRAFTING GROUP

13. The Drafting Group, established by the Ad Hoc Committee at the first meeting of its 1989 session, held 10 meetings between 31 January and 17 February 1989 under the chairmanship of Mr. Tullio Treves (Italy), Vice Chairman of the Ad Hoc Committee.

14. Firstly, the Drafting Group reviewed some of the issues signalled by square brackets in the Third Revised Consolidated Negotiating Basis. ^{5/} Substantial progress was achieved at this stage of the work.

15. Intensive informal consultations were then held on outstanding issues under the guidance of the Chairman of the Drafting Group. Here again, substantial progress was achieved, as evidenced by the fact that 15 of the 21 provisions in the Third Revised Consolidated Negotiating Basis that were between square brackets or contained bracketed language have now been completely cleared of square brackets.

16. On 15 February 1989, the Drafting Group heard an oral report by the Chairman of the Drafting Group on the outcome of the informal consultations, which it subsequently approved and decided to include in its report. On 16 February 1989, it approved the draft articles for an international convention against the Recruitment, Use, Financing and Training of Mercenaries (see sect. III below).

17. Subsections A and B of the report of the Drafting Group are devoted respectively to the phase of the proceedings referred to in paragraph 14 and to the informal consultations mentioned in paragraph 15. Subsection C contains the text of the draft preamble proposed by the Chairman at the 1988 session of the Ad Hoc Committee.

A. Review of some of the issues signalled by square brackets in the Third Revised Consolidated Negotiating Basis

Article 1

18. The discussion initially focused on the introductory phrase of paragraph 2, more specifically on the bracketed word "international". The Drafting Group noted that there was general agreement that the convention under elaboration should cover all mercenaries, whether they operated in the framework of an international or non-international armed conflict or outside the framework of an armed conflict. It was of the view that this goal would be achieved if the words "in an armed conflict" in subparagraph (a) of paragraph 1 were to be interpreted for the purposes of the convention as covering both international and non-international armed conflicts, and if in the introductory phrase of paragraph 2 the words "in any other situation" were substituted for the words "in the absence of [international] armed conflict". The Drafting Group therefore modified the text accordingly. Consequently, paragraph 1 covers international and non-international armed conflicts while paragraph 2 as amended covers all other situations.

^{5/} Ibid., chap. III.

19. A further element of article 1 that was discussed at the initial stage of the proceedings concerned the criterion of direct participation dealt with in paragraphs 1 (b) and 2 (b). That discussion took place in the framework of the consideration of the provisions on offences and is reflected in paragraphs 22 and 23.

20. The other bracketed parts of paragraph 2 were not discussed at this stage of the proceedings within the Drafting Group. The outcome of the informal consultations that were held in this connection at a subsequent stage are reflected in subsection B below.

Articles on offences (arts. 3, 4, 5 and 6 of the Third Revised Consolidated Negotiating Basis)

21. The Drafting Group noted that the Third Revised Consolidated Negotiating Basis provided for offences committed by two categories of persons, including those committed by the persons who recruit, use, finance or train mercenaries and those committed by the mercenaries themselves.

22. As regards offences in the first group, the Drafting Group noted that if, as flowed from the definitions in article 1 of the Third Revised Consolidated Negotiating Basis, a person did not qualify as a mercenary under the convention until such time as he had directly participated in hostilities or in a concerted act of violence, those responsible for his recruitment, training or financing would themselves be immune from prosecution until the recruit had met the requirement of direct participation, an absurd result in the light of the main purpose of the convention as defined in the Committee's mandate.

23. The Drafting Group therefore decided to eliminate the requirement of direct participation from paragraphs 1 and 2 of article 1 and to constitute direct participation in hostilities or in a concerted act of violence into an offence under the convention (see para. 25).

24. As regards article 3, the view was expressed that the list of activities to be prohibited by States should be supplemented by the inclusion of the concepts of supplying arms and facilitating transit. Another view was that these concerns were already covered by the existing text. There was general agreement within the Drafting Group on a formulation proposed at the previous session and reproduced in paragraph 100 (b) of the report on that session.

25. With respect to article 4, the Drafting Group decided, as indicated above, that direct participation in hostilities or in a concerted act of violence should make the mercenary punishable under the convention. It therefore agreed to replace article 4 of the Third Revised Consolidated Negotiating Basis by a formulation proposed at the previous session to form paragraph 1 of article 4, and reproduced in paragraph 100 (b) of the report on that session.

26. The concern was expressed that the reprehensible acts a mercenary might commit in preparation of his involvement in hostilities or in a concerted act of violence (such as enlisting or undergoing training) should not go unpunished. Since there was no agreement as to which preparatory acts might amount to attempt, the Drafting Group decided to include in article 4 a paragraph 2 reading:

"Nothing in this article limits the scope of application of article 6 of this Convention".

27. The question whether enlistment should be treated as a principal offence under the convention was subsequently discussed in the framework of the informal consultations. Reference is made in this connection to paragraph 47.

28. As regards article 5 of the Third Revised Consolidated Negotiating Basis, the Drafting Group agreed that, since the new article 4 made the aut dedere aut iudicare principle applicable to any mercenary having participated in hostilities or in a concerted act of violence, such a mercenary would automatically be answerable before the courts for any other offence he might have committed while participating in hostilities or in a concerted act of violence and that article 5 was therefore unnecessary.

29. The discussion held at this stage of the proceedings within the Drafting Group on article 6 was inconclusive. For the outcome of the discussion that took place at the stage of informal consultations, see paragraph 35.

Article 12

30. The Drafting Group agreed to replace the text of paragraph 1 (a) as contained in the Third Revised Consolidated Negotiating Basis by the corresponding language to be found in article 5, paragraph 1, of the International Convention against the Taking of Hostages (General Assembly resolution 34/146 of 17 December 1979, annex).

Article 18

31. The Drafting Group noted that paragraph 4 had been placed between square brackets not because of a disagreement on substance but because it contained a reference to article 12, which itself contained a bracketed subparagraph (para. 1 (c)). The Drafting Group decided to remove the square brackets around paragraph 4, it being understood that the decision was without prejudice to the solution that would be arrived at as regards paragraph 1 (c) of article 12. For the solution arrived at at the stage of the informal consultations, see paragraph 36.

B. Summary of the oral report presented to the Drafting Group by its Chairman on 15 February 1989 at the conclusion of informal consultations on outstanding issues

32. The purpose of the present statement is to inform the Drafting Group of the outcome of the intensive negotiations that were held under my guidance in the framework of informal consultations between 6 and 15 February 1989. The results may be assessed as very positive since a sizeable number of problems have been solved. Owing to lack of time and various other factors, however, the work could not be completed and certain points remain unsettled.

33. The present statement will first indicate the points on which agreement was reached and then deal with the points on which no agreed solution has as yet been found.

1. Points on which agreement was reached

34. In article 1, paragraph 2 (c), it was agreed to eliminate all the bracketed language appearing after the word "compensation". It was felt that it would be difficult to devise in a convention a precise criterion for determining what is substantial material compensation in the case of mercenaries who are not operating in the framework of an armed conflict, so that the matter had to be left to national legislations and courts. Some delegations preferred the formulation in the Third Revised Consolidated Negotiating Basis but were willing to substitute the word "substantial" if it were to be linked to the retention of paragraph 1 (d) of article 1 (see para. 42). No agreement was reached as to the retention or deletion of "substantial", which therefore remains in the text between square brackets (see paras. 42 and 44).

35. Article 6 was discussed at length. It had first been envisaged to use the formulation to be found in paragraph 100 (b) of the report of the Ad Hoc Committee for 1988, but it was eventually agreed to retain as article 6 of the draft articles provisionally adopted the wording appearing in the Third Revised Consolidated Negotiating Basis. This article should be read in conjunction with the following agreed statement:

"It was recognized that States Parties to the Convention may seek guidance in article 9 (a) in order to identify preparatory acts relevant for defining attempts".

36. In article 12, it was agreed to delete subparagraph (c) of paragraph 1: "When the offence is committed against that State". The caveat relating to paragraph 4 of article 18, which is to be found in paragraph 31 above, was thus disposed of. It had initially been proposed to include in the blank space in paragraph 2 a reference to articles 3, 4 and 6, but this reference was subsequently placed between square brackets at the request of one delegation.

37. The following text was agreed upon for article 14:

"Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in this Convention shall be guaranteed at all stages of the proceedings fair treatment and all the rights and guarantees provided for by the law of the State in question. Applicable norms of international law should be taken into account".

38. In article 17, it was agreed to delete the reference to the words in square brackets: "and, as appropriate, the International Committee of the Red Cross".

39. In article 18, it was agreed to include in the blank space in paragraph 1 a reference to articles 3, 4 and 6. It was also agreed to delete paragraph 5.

40. As for articles 2, 19, 20 and 21, it was agreed to delete them and to include a saving clause reading as follows:

"The present Convention shall be applied without prejudice to:

"(a) The rules relating to the international responsibility of States;

"(b) The law of armed conflict and international humanitarian law, including the provisions relating to the status of combatant or of prisoner of war".

2. Points on which no agreed solution has as yet been found

41. Paragraph 2 (a) of article 1 of the Third Revised Consolidated Negotiating Basis contained a third indent between square brackets. Two proposals have been made in that connection. One is to include a third indent reading:

"~~Denying~~ peoples the legitimate exercise of their right of self-determination as recognized by international law"

and to insert in the preamble a paragraph reading:

"~~Recognizing~~ that States have a duty not to use mercenaries to deprive forcibly peoples of their inalienable right to self-determination".

The other is to have no third indent and to include the following in the preamble:

"~~Recognizing~~ that States have a duty not to use mercenaries to deprive forcibly peoples of the legitimate exercise of their inalienable right to self-determination as recognized by international law".

42. In paragraph 2 (c), as previously indicated, the word "substantial" remains between square brackets.

43. As regards paragraph 2 (d), there seemed to be agreement at one stage of the discussion to retain it without square brackets and without the bracketed word "necessarily". At a later stage, however, it was agreed to keep it between square brackets (without the word "necessarily"), pending agreement on other questions.

44. Some delegations consider that paragraphs 2 (c) and 2 (d) are interlinked. Others do not consider the retention of paragraph 2 (d) as dependent upon the deletion of the word "substantial" in paragraph 2 (c).

45. At a previous stage, the idea of adding the words "if specifically indicated by a State when signing this Convention" at the end of the subparagraph, or to insert in the chapeau of paragraph 2 of article 1, after the words "any person", the words "without distinction of any kind including national or social origin who, ..." had been proposed.

46. As regards paragraph 2 (e) which appeared between square brackets in the Third Revised Consolidated Negotiating Basis, it was not possible to reach agreement, as certain delegations wished to retain it while others favoured its deletion. It therefore appears in the draft articles between square brackets.

47. As regards the articles concerning offences, mention should be made of a proposal that sought to constitute enlistment as a non-extraditable offence under the convention. It was eventually felt preferable not to include such an article in the convention.

48. As for the question of the characterization of offences under the convention as crimes against the peace and security of mankind, there was general agreement to include in the report the following paragraph:

"Due note was taken of the fact that the International Law Commission is considering an item entitled 'Draft Code of Crimes against the Peace and Security of Mankind' and of paragraphs 268-274 of the report for the Commission's fortieth session (A/43/10). In this connection, it was recognized that nothing in the Convention against the Recruitment, Use, Financing and Training of Mercenaries was intended to prejudge in any way the question of whether or not certain grave offences created by it should be regarded also as crimes against the peace and security of mankind".

49. There were, however, several views as to whether and how the question should be addressed in the convention. Some delegations felt that the question should be disposed of through the insertion in the preamble of a paragraph reading as follows:

"Considering that the conclusion of a convention against the recruitment, use, financing and training of mercenaries should in no way be construed as prejudging particular characterizations under international law of certain offences considered in it".

Others thought it preferable to deal with the issue through the inclusion of a saving clause reading as follows:

"Nothing in this Convention shall be construed in any way as derogating from the principles relating to the criminal responsibility of individuals under international law."

Still others were of the view that the agreed paragraph in the report was sufficient and that the convention should not deal with this point at all, either in the preamble or in the text itself.

50. At a late stage of the proceedings, it was suggested to include in the convention an article reading as follows:

"Nothing in this Convention should in any way be construed as prejudging particular characterizations under international law of certain offences considered in it".

51. A brief discussion was held on article 22. Some delegations continue to support the article in its current form, which they regard as flexible and balanced and as reflecting a compromise also to be found in a series of existing conventions. Others remain of the view that paragraphs 2 and 3 significantly detract from paragraph 1 and that, given the seriousness of the subject-matter of the convention, agreement should now be possible on a more effective dispute settlement clause.

52. It was agreed to retain article 22 between square brackets.

53. Because of lack of time, it was not possible to hold discussions on the preamble to the convention.

54. In conclusion, it should be noted that at none of the sessions that have preceded the present one has so much progress been achieved. The text that emerged from the Drafting Group and from the informal consultations clearly indicates that, although difficult issues still await a solution, the end of the exercise is now in sight and it should be possible to achieve the desired result in a relatively short time.

C. Draft preamble proposed by the Chairman of the 1988 session of the Ad Hoc Committee

The States Parties to this Convention,

Bearing in mind the need for strict observance of the principles of sovereign equality, political independence, territorial integrity of States and self-determination of peoples enshrined in the Charter of the United Nations and developed in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

Having in mind the purposes and principles as enshrined in the Charter of the United Nations concerning the maintenance of international peace and security,

Recognizing that the activities of mercenaries are contrary to fundamental principles of international law, such as non-interference in the internal affairs of States, territorial integrity and independence, and seriously impede the process of self-determination of peoples struggling against colonialism, racism and apartheid and all forms of foreign domination,

Considering that the resolutions of the Security Council and General Assembly of the United Nations are indicative of the development of new rules of international law making mercenary activities international offences,

Considering that mercenary activities are offences of grave concern to the international community and that any person committing any act prohibited in this Convention shall either be prosecuted or extradited,

Convinced that the progressive development and codification of the rules of international law on mercenaries would contribute immensely to the implementation of the purposes and principles as enshrined in the Charter of the United Nations, and that it is necessary to develop international co-operation among States for the prevention, prosecution and punishment of all mercenary activities,

Have agreed as follows:

III. DRAFT ARTICLES FOR AN INTERNATIONAL CONVENTION AGAINST THE
RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES a/

Article 1

For the purposes of the present Convention,

1. A "mercenary" is any person who:

(a) Is specially recruited locally or abroad in order to fight in an armed conflict;

(b) 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 the conflict material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that party;

(c) Is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;

(d) Is not a member of the armed forces of a party to the conflict; and

(e) Has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.

2. A mercenary is also any person who, in any other situation,

(a) Is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at:

- Overthrowing a Government or otherwise undermining the constitutional order of a State,

- Undermining the territorial integrity of a State,

- Denying peoples the legitimate exercise of their right of self-determination as recognized by international law; b/

a/ The provisions that are free of square brackets were provisionally adopted. Those which are between square brackets or which contain bracketed language are accompanied by a footnote making reference to the relevant paragraph of the report.

b/ It was proposed that this third indent be complemented by a preambular paragraph reading as follows:

"Recognizing that States have a duty not to use mercenaries to deprive forcibly peoples of their inalienable right to self-determination".

(Footnote continued on following page)

(b) Is motivated to take part therein essentially by the desire for private gain and, in fact, is promised or paid [substantial] material compensation; g/

[(c) Is not a national or a resident of the State against which such act is directed;] d/

(d) Has not been sent by a State on official duty; and

[(e) Is not a member of the armed forces of the State on whose territory the act is undertaken]. e/

Article 2 (former article 3)

Any person who recruits, uses, finances or trains mercenaries, as defined in article 1 of this Convention, commits an offence for the purposes of this Convention.

Article 3 (former article 4)

1. A mercenary, as defined in article 1 of this Convention, who participates directly in hostilities or in a concerted act of violence, as the case may be, commits an offence for the purposes of this Convention.

2. Nothing in this article limits the scope of application of article 6 of this Convention.

Article 4 (former article 6)

An offence is committed by any person who:

(a) Attempts to commit one of the offences defined in the present Convention;

(b) Is the accomplice of the person who commits or attempts to commit the offences defined in the present Convention.

(Footnote continued)

An alternative proposal was to delete the third indent and to include in the preamble a paragraph reading as follows:

"Recognizing that States have a duty not to use mercenaries to deprive forcibly peoples of the legitimate exercise of their inalienable right to self-determination as recognized by international law".

g/ See paragraphs 34 and 44 of the report.

d/ See paragraphs 43-45 of the report.

e/ See paragraph 46 of the report.

Article 5 (former article 8)

1. States Parties shall not recruit, use, finance and train mercenaries and shall prohibit such activities in accordance with the provisions of this Convention.

2. They shall make the offences set forth in the present Convention punishable by appropriate penalties which take into account the grave nature of those offences.

Article 6 (former article 9)

States Parties shall co-operate in the prevention of the offences set forth in this Convention particularly by:

(a) Taking all practicable measures to prevent preparations in their respective territories for the commission within or outside their territories of those offences, including the prohibition of illegal activities of persons, groups and organizations that encourage, instigate, organize or engage in the perpetration of such offences;

(b) Co-ordinating the taking of the administrative and other measures, as appropriate, to prevent the commission of those offences.

Article 7 (former article 10)

States Parties shall co-operate in taking the necessary measures for the implementation of the present Convention.

Article 8 (former article 11)

Any State Party having reason to believe that one of the offences mentioned in this Convention has been, is being or will be committed shall, in accordance with its national law, communicate relevant information, as soon as it comes to its knowledge, directly or through the Secretary-General of the United Nations, to the States Parties affected.

Article 9 (former article 12)

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over any of the offences set forth in this Convention which are committed:

(a) In its territory or on board a ship or aircraft registered in that State;

(b) By any of its nationals or, if that State considers it appropriate, by those stateless persons who have their habitual residence in its territory.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in articles [2, 3 and 4] f/ in the case where the alleged offender is present in its territory and it does not extradite him pursuant to article 12 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 10 (former article 13)

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or alleged offender is present shall in accordance with its laws take him into custody or take such other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted. The State Party shall immediately make a preliminary inquiry into the facts.

2. When a State Party, pursuant to this article, has taken a person into custody or has taken such other measures referred to in paragraph 1 of this article, it shall notify without delay either directly or through the Secretary-General of the United Nations:

- (a) The State Party where the offence was committed;
- (b) The State Party against which the offence has been directed or attempted;
- (c) The State Party of which the natural or juridical person against whom the offence has been directed or attempted is a national;
- (d) The State Party of which the alleged offender is a national or, if he is a stateless person, in the territory of which he has his habitual residence;
- (e) Any other interested State Party which it considers it appropriate to notify.

3. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled:

- (a) To communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to protect his rights or, if he is a stateless person, the State in the territory of which he has his habitual residence;
- (b) To be visited by a representative of that State.

4. The provisions of paragraph 3 of this article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with paragraph 1 (b) of article 9 to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

f/ This reference was placed in square brackets at the request of one delegation pending further instructions.

5. The State which makes the preliminary inquiry contemplated in paragraph 1 of this article shall promptly report its findings to the States referred to in paragraph 2 of this article and shall indicate whether it intends to exercise jurisdiction.

Article 11 (former article 14)

Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in this Convention shall be guaranteed at all stages of the proceedings fair treatment and all the rights and guarantees provided for in the law of the State in question. Applicable norms of international law should be taken into account.

Article 12 (former article 15)

The State Party in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

Article 13 (former article 16)

1. The States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in this Convention, including the supply of all evidence at their disposal necessary for the proceedings. The law of the State whose assistance is requested shall apply in all cases.

2. The provisions of paragraph 1 of this article shall not affect obligations concerning mutual judicial assistance embodied in any other treaty.

Article 14 (former article 17)

The State Party where the alleged offender is prosecuted shall in accordance with its laws communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States concerned.

Article 15 (former article 18)

1. The offences set forth in articles 2, 3 and 4 of this Convention shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of those offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those offences as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. The offence shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 9.

Article 16 (former articles 2 and 19-21)

The present Convention shall be applied without prejudice to:

(a) The rules relating to the international responsibility of States;

(b) The law of armed conflict and international humanitarian law, including the provisions relating to the status of combatant or of prisoner of war.

[Article 17 (former article 7)

Nothing in this Convention shall be construed in any way as derogating from the principles relating to the criminal responsibility of individuals under international law.] g/

g/ As an alternative to this formulation it was proposed to include the following paragraph in the preamble:

"Considering that the conclusion of a convention against the recruitment, use, financing and training of mercenaries should in no way be construed as prejudging particular characterizations under international law of certain offences considered in it".

Still another view was that the convention should not deal with this point at all, either in the preamble or in the text itself.

There was general agreement to include in the report a statement that is reproduced in paragraph 48 of the report.

See also paragraphs 49 and 50 of the report.

Article 18 (former article 22)

[1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.] h/

h/ See paragraphs 51 and 52 of the report.