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IMPORTANCE OF THE UNIVERSAL REALIZATION OF THE RIGHT OF PEOPLES TO
SELF-DETERMINATION AND THE SPEEDY GRANTING OF INDEPENDENCE TO
COLONIAL COUNTRIES AND PEOPLES FOR THE EFFECTIVE GUARANTEE AND
OBSERVANCE OF HUMAN RIGHTS

The use of mercenaries as a means of violating human
rights and impeding the exercise of the right of
peoples to self-determination

Note by the Secretary-General

The Secretary-General has the honour to transmit to the Members of the General Assembly, in accordance with paragraph 16 of resolution 1989/21 of the Commission on Human Rights, adopted on 6 March 1989, and of General Assembly resolution 43/107, of 8 December 1988, the preliminary report prepared by Mr. Enrique Bernales Ballesteros (Peru), Special Rapporteur on the question of the use of mercenaries.

Annex

Preliminary report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, submitted by the Special Rapporteur of the Commission on Human Rights

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I. INTRODUCTION

1. At its forty-third session, the Commission on Human Rights approved resolution 1987/16 whereby a Special Rapporteur was appointed to examine the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. On 3 September 1987, the appointment was announced of Mr. Enrique Bernales Ballesteros (Peru) as Special Rapporteur of the Commission on the question of mercenaries.

2. The Special Rapporteur submitted his first report to the Commission at its forty-fourth session (E/CN.4/1988/14). The report referred to a number of complaints of mercenary activities submitted by Member States, international organizations and non-governmental organizations. As a substantive part of his first report, the Special Rapporteur then emphasized the present status of the definition of the term "mercenary", outlined the methodology for the work to be carried out in the context of article 47 of Additional Protocol I to the Geneva Conventions of 1949 and, in addition, expressed some thoughts on the advisability of realizing that mercenary practices also exist in non-international conflicts where mercenaries are used to intervene in the internal affairs of a State, thereby violating its sovereignty. On this subject he stressed the advisability of differentiating methodologically between the concept of mercenarism (as a generic term including all mercenary operations and the existence of a causal agent) and that of a mercenary as an individual accountable at the level of execution.

3. The Commission adopted resolutions 1988/7 and 1988/30, by which it took note with appreciation of the report and extended for two years the mandate of the Special Rapporteur. It also requested him to submit to the Commission at its forty-fifth session a report on the question of the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination together with his conclusions and recommendations (resolution 1988/7, para. 14). In addition, it requested the Special Rapporteur to submit a preliminary report to the General Assembly at its forty-third session.

4. The Economic and Social Council, in turn, adopted decisions 1988/126 and 1988/129, by which it approved Commission resolutions 1988/7 and 1988/30, respectively.

5. For the purpose of preparing the report to the General Assembly the Special Rapporteur focused on the visit to Angola, which was made at the invitation of the Government of that country, in order to observe close at hand the effects of mercenary activities on the enjoyment of the right to self-determination and of human rights in the specific situation of south-western Africa. The Special Rapporteur attached particular importance in his report to the international context of the visit, characterized by marked progress in the negotiations to achieve peace in that region.

6. On 8 December 1988, the General Assembly adopted resolution 43/107 expressing its appreciation to the Special Rapporteur for his report and deciding to examine at its forty-fourth session the question of the use of mercenaries as a means to

violate human rights and to impede the exercise of the right to self-determination (para. 10 of the resolution). The General Assembly also emphasized the importance of having the Special Rapporteur present his report during the consideration of the item entitled "Importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights", and requested the Secretary-General to make the same report available to the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries, for its information (para. 11 of the resolution).

7. In accordance with resolutions 1988/7 and 1988/14, the Special Rapporteur also submitted a report to the Commission on Human Rights at its forty-fifth session. For this purpose he focused his attention on the visit to Nicaragua, made at the invitation of the Government of that country, in order to work on the complaints received concerning mercenary activities in that country, verify their existence and observe close at hand the effects of such possible mercenary activities on the enjoyment of human rights by the Nicaraguan population in the context of the armed conflicts affecting the Central American region.

8. On 6 March 1989, the Commission on Human Rights adopted resolution 1989/21, by which it took note with appreciation of the report of the Special Rapporteur (E/CN.4/1989/14) and reaffirmed "the right of all countries to non-interference in their internal affairs, self-determination and full sovereignty", and welcomed "the steps taken towards the peaceful solution of the conflicts in southern Africa and Central America". In paragraph 13 of the resolution, the Commission requested the Special Rapporteur, in carrying out his mandate, "to seek the point of view of those Governments in whose territories, according to the information communicated to him, mercenaries may have been recruited or trained or may have been provided with facilities for launching armed aggression against other States". In paragraph 14 of the resolution it also requested the Special Rapporteur "to develop further the position that mercenary acts and mercenarism in general are a means of violating human rights and thwarting the self-determination of peoples". The Commission likewise requested him to submit a preliminary report to the General Assembly at its forty-fourth session and a further report to the Commission at its forty-sixth session.

9. Pursuant to the resolutions referred to and after sending communications to several States in connection with complaints concerning mercenary activities, and after visiting the United States of America with the co-operation and consent of the Government of that country in order to obtain substantiated information on the mercenary phenomenon and ascertain the position of that Government on mercenary practices, the Special Rapporteur has the honour to submit to the General Assembly his fourth report on the question of the use of mercenaries as a means of violating human rights and of impeding the exercise of the right of peoples to self-determination. The present report concerns the visit to the United States. It is of a preliminary nature, as prescribed paragraph 16 of resolution 1989/21 and given the complexity and breadth of the issues addressed which require more time for analysis and verification, a task which the Special Rapporteur proposes to undertake in his next report to the Commission on Human Rights at its forty-sixth

session. In submitting this report, the Special Rapporteur expresses his appreciation to the Government of the United States of America for the facilities made available for him to carry out his mandate.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

10. This report contains information on the activities carried out by the Special Rapporteur in the period between the submission of his third report to the Commission on Human Rights and the visit which he made to the United States of America to write the present report.

A. General activities

11. On his own initiative, the Special Rapporteur visited Geneva in the second week of March 1989 in order to carry out co-ordination work with the Centre for Human Rights and take note of resolution 1989/21 of the Commission on Human Rights concerning the third report to be submitted by the Special Rapporteur at the same session of the Commission. In the context of that visit, the programme of activities to be carried out by the Special Rapporteur was drawn up for the purpose of implementing the recommendations and assignments set forth in resolution 1989/21; interviews were held with representatives of the Permanent Mission of the United States of America on the subject of the Special Rapporteur's visit to that country; and substantive communications were sent in order to elicit information and the views of several countries, as stated in paragraph 13 of resolution 1989/21, "in whose territories, according to the information communicated to him, mercenaries may have been recruited or trained or may have been provided with facilities for launching armed aggression against other States". Taking as his point of reference the information received for the third report, the Special Rapporteur sent communications to the Governments of Costa Rica, Guatemala, Honduras, El Salvador and Argentina.

12. Pursuant to paragraph 9 of resolution 1989/21, the Special Rapporteur made arrangements for sending updated communications to Member States, intergovernmental organizations, non-governmental organizations and national liberation movements recognized by regional intergovernmental organizations in order to receive credible and reliable information on situations where there might be evidence of mercenary activities violating the right to self-determination and human rights of peoples subjected to intervention involving the use of mercenary practices. Similarly, through communications sent to the Ad Hoc Committee on the drafting of a convention against mercenary practices, the Special Rapporteur reaffirmed his readiness to co-operate with the various bodies dealing with the question of mercenarism in the United Nations system. With this in mind, he is reviewing the concept of mercenary acts and mercenarism in general, as a means of violating human rights and impeding the self-determination of peoples in order to co-ordinate his proposals with the relevant guideline concepts of the Ad Hoc Committee and the progressive consensus in its deliberations, as reflected in that Committee's most recent version of January 1989.

13. In this connection, the Special Rapporteur wishes to stress that in all his reports he has used as a conceptual framework for defining a mercenary the definition in article 47 of Additional Protocol I to the Geneva Conventions of 1949. This definition has also been used in the draft convention which the Ad Hoc Committee is preparing, where it is expanded in a second paragraph to include other situations of armed conflict which violate the sovereignty and right to self-determination of peoples. Both the concept of mercenaries and the generic term "mercenarism" for determining the causal agent participating in the recruitment, training, financing and use of mercenaries, which the Special Rapporteur has used in the methodology for his reports, coincide with the approximations and status of the question in the Ad Hoc Committee. Nevertheless, the Special Rapporteur will carry the matter further in order to ensure strict implementation of the resolutions of the Commission on Human Rights.

B. Situation in Angola

14. The second report of the Special Rapporteur referred in detail to the situation in Angola and the existence of mercenary activities against that country in the context of the delicate state of tension prevailing in southern Africa owing to the armed conflict between Angola and South Africa, the occupation of Namibia and the internal conflict between the Government of Angola and the União Nacional para a Independência Total de Angola (UNITA). The third report also dealt with the Angolan question, but pointed out the positive developments taking place in the context of the tripartite negotiations between Angola, Cuba and South Africa, with the mediation of the United States, for the purpose of re-establishing peace between Angola and South Africa and implementing Security Council resolution 435 (1978) of 29 September 1978, on the independence of Namibia. The Special Rapporteur emphasized that he was dealing with those questions on the understanding that a comprehensive and satisfactory settlement of the conflicts in southern Africa would also eliminate the mercenary practices involved in acts violating the sovereignty and the right to self-determination of Angola.

15. Pursuant to paragraph 12 of resolution 1989/21, the Special Rapporteur has continued to study the measures of implementation relevant to the tripartite agreements of 8 August 1988 and 22 December 1988 concerning the cease-fire in Angola and Namibia, which was put into effect in order to initiate the process of Namibian independence as of 1 April 1989, and also the bilateral treaty between Angola and Cuba on the withdrawal of Cuban soldiers. According to international information and the evaluations made by the United Nations personnel stationed in the area by the Secretary-General for the purpose of implementing Security Council resolution 435 (1978), détente has begun to develop gradually but steadily in Namibia and on its border with Angola, the hostilities of South Africa against Angola have ceased and the timetable for the independence of Namibia is being adhered to in spite of some problems that arose when implementation of the United Nations plan began. In this connection, there have been no further complaints concerning mercenary activities in the region.

16. The summit conference of African Presidents, held at Gbadolite (Zaire) on 22 June 1989, was a further factor which contributed to détente and peace in Angola. It enabled the President of Angola and the leader of UNITA to agree on a cease-fire aimed at ending the long civil war of 14 years in Angola. This first step which is basically being respected to date, is part of the policy of clemency and national reconciliation declared by the Government of Angola. Under this policy, 700 imprisoned UNITA guerrillas have been set free and 50, who were sentenced to death, have been given amnesty. The Gbadolite Agreement prescribes effective action for promoting reconciliation and peace which, if implemented, will result in the incorporation of UNITA members into Angola's national life and the structures of the State.

17. The Special Rapporteur underscores the importance of these developments for peace in Angola and Namibia. The continuing national efforts to promote reconciliation, together with international support and co-operation, must bring the bloody civil war, which has cost so many lives, to an end and ensure development and progress for the future of Angola. The Special Rapporteur is aware of the fact that the improvement in the Angolan situation is directly linked to the assignment which he has been given by the Commission on Human Rights. Indeed, it was in the context of the civil war and of the external assistance received by the UNITA forces that military activities in which there was evidence of a mercenary component were carried out against the Government of Angola. Gradual détente and ultimate peace may also be expected to put an end to the presence of mercenaries in Angola, thus leading to the sovereignty and self-determination of the people of Angola.

18. There is one final consideration which is of a historical nature. Ever since the days of struggle against colonialism and for national independence, Africa has suffered the active presence of mercenary forces. The resolute actions taken by African Governments against mercenary activities are based on the need to affirm their sovereignty and self-determination and to reinforce the stability of their political institutions. The United Nations has always supported this African position and has condemned mercenary practices on various occasions. Angola is the African country which has most recently suffered the presence of mercenaries in its territory, and everything seems to indicate that the mercenary factor will also disappear thanks to détente and the peace process under way in southern Africa. Its disappearance is desirable in every sense and essential to the right of peoples to exercise their freedom without threats, pressures or interference of any type. Accordingly, the conclusion to be drawn is that the exercise of these rights proclaimed by the United Nations must be reinforced and preventive measures for the peoples of Africa must be guaranteed so that the presence of mercenaries shall never again interfere in the life of African nations.

C. The case of Maldives

19. The third report of the Special Rapporteur referred to the situation in the Maldivian Islands and the abortive attempt to overthrow the Government of that country by using a band of mercenaries of Tamil origin. The Special Rapporteur pointed out in that report that it was necessary to consider that serious

situation, support the constitutional Government of Maldives by applying the principles and norms of international law and United Nations resolutions and prevent that region of the Indian Ocean from becoming an area of tension and activities by mercenary forces.

20. The Special Rapporteur sent communications to the Government of Maldives to express his interest in the situation. He also sent communications to the Governments of India and Sri Lanka. On 11 June 1989, the Minister for Foreign Affairs of Maldives replied to the Special Rapporteur expressing appreciation for his interest in respect for the sovereignty and self-determination of the Maldivian people and inviting him to visit the Republic of Maldives in order to learn close at hand about the mercenary aggression, the ongoing proceedings concerning the mercenaries arrested and the measures taken to prevent a recurrence of such an act which, according to the Minister, constitutes a unique case of mercenary aggression: "As you do appreciate, the situation in the Republic of Maldives is unique and the mercenary attack on our country was quite different in character from incidents that have taken place elsewhere in the world".

21. On 24 July 1989, the Minister for Foreign Affairs sent a further letter to the Special Rapporteur in which he renewed his invitation to visit Maldives. That communication included comments on the incident which had affected his country on 3 November 1988, the lengthy proceedings concerning the mercenaries involved and the risks of international tension in the region. The Minister mentions, inter alia, in his communication that: "Situated in a region of high political volatility, the Maldives, comprising a large number of small islands, is highly vulnerable to external attack. However, in the past, the country had been extremely fortunate in that there were no threats to its sovereignty from the outside since independence. The armed aggression of 3 November 1988, though it may be viewed as an exception, has clearly demonstrated the vulnerability of the country to external attack". The Special Rapporteur exchanged views on this subject with the Permanent Representative of Maldives to the United Nations in New York in order to co-ordinate the visit to Maldives while reserving the right to pursue the matter further in the present report.

III. VISIT TO THE UNITED STATES OF AMERICA

22. On 20 March 1989, the Special Rapporteur sent a letter to the Secretary of State of the United States of America, in which, inter alia, he informed the Secretary that he had received "... diverse information pointing to the existence of private organizations acting in United States territory which offer paid employment as mercenaries in the service of one or other of the parties to undeclared armed conflicts". As an example, he cited the magazines Soldier of Fortune and Soldiers of Glory, "which apparently form part of broader organizations engaged in the recruitment of mercenaries". He also informed him of reports of "... mercenary activities in Angola and Nicaragua", which mention the presence of "alleged mercenaries from the United States". Nicaragua, for its part, had claimed that "... part of the funding granted by the United States Congress to assist the military resistance to the Nicaraguan Government was used to recruit mercenaries".

23. In this regard, the Special Rapporteur reiterated his desire to visit the United States "with a view to studying in situ complaints received about private entities which recruit mercenaries, meeting with Government officials to hear their opinion of such reports and reports on mercenary activities in which United States citizens, or nationals of other countries recruited or trained in United States territory, appear to be involved, reviewing publications and documentation on the subject and meeting with private United States organizations which have lodged complaints about this question".

24. By letter dated 8 June 1989, the Permanent Representative of the United States of America to the United Nations Office at Geneva indicated that the following State Department officials would meet with the Special Rapporteur: Cresencio S. Arcos, Deputy Assistant Secretary for Inter-American Affairs; John Bolton, Assistant Secretary for International Organization Affairs; Robert Perito, Director of Southern African Affairs; and a representative of the Office of the Legal Adviser.

25. In a letter in reply dated 20 June 1989, the Permanent Representative of the United States of America to the United Nations Office at Geneva was informed that the Special Rapporteur would visit Washington on official business from 19 to 23 July 1989. In addition to the people mentioned in the preceding paragraph, the Special Rapporteur requested meetings with representatives of the National Security Council and the Department of Justice. He also announced his intention of meeting with members of Congress, judges, private individuals and non-governmental organizations (NGOs). The Special Rapporteur would then travel to New York, where he would hold further meetings and prepare his report.

26. The Special Rapporteur's visit to the United States took place in two stages. The first stage, in Washington, lasted from 19 to 22 July 1989, during which time he met with officials of the Department of State and the Department of Justice and with representatives of Congress and various NGOs. The second stage, in New York, lasted from 24 to 27 July 1989, during which time he talked to diplomatic representatives of the United States and Maldives, met with representatives of NGOs and worked on the drafting of this report.

27. On 19 July 1989, the Special Rapporteur met with representatives of four Washington-based non-governmental organizations. Mr. Larry Birns, Director of the Council on Hemispheric Affairs, said that the existence in the United States of publications such as Soldier of Fortune was a violation of the Neutrality Act. He also denounced the existence of certain organizations based in the United States which he thinks are engaged in the recruitment of mercenaries. These include Civilian Military Assistance, an organization with a vast network of contacts which allegedly serves as a connection for the planning of mercenary activities in the struggle against communism in various Latin American countries. Mr. Birns did not provide evidence to support his views.

28. Sarah Nelson and Daniel Sheehan, representing the Christic Institute, met with the Special Rapporteur. They said that there is a trend towards the "privatization" of mercenary activities by some official security services. They claimed that former FBI agents have formed private mercenary groups which, for

ideological reasons, are opposed to human rights groups or to opponents of the United States Government. They have set up private "brotherhoods" and private training centres, one such centre being the National Intelligence Academy at Fort Lauderdale, Florida, whose members allegedly have easy access to federal officials. Leo Goodwin, the Director of the Academy, has reportedly used sophisticated listening devices belonging to the United States Government in the training of mercenaries. They also claimed that even the police are being trained there and that the Academy has audio-intelligence devices (AID) in which radio-activated detonators are used. They indicated that such detonators had been used in the Washington assassination of Chilean Orlando Letelier and in the blowing up of a Cubana de Aviación aircraft by the alleged perpetrator, Luis Posada Correa. Luis Posada is allegedly a mercenary who later became linked with the Ilopango air base in El Salvador where, under the pseudonym Ramón Medina, he worked as assistant to Félix Rodríguez. The Academy's activities had been unsuccessfully denounced to the FBI, Congress and the Department of Justice in 1977 and 1978. Complaints through judicial channels had also been unsuccessful.

29. They mentioned another well-known case of mercenarism, the creation of Brigada 2506 in southern Florida, consisting of a training base for mercenaries run by René Corvo under the pseudonym Franck Castro. Between 1959 and 1965, a private group of Cubans had been organized at Tampa, Florida, United States of America, and trained to fight against Fidel Castro in Cuba. The group had allegedly been financed covertly by intelligence services and many activists from that period had later become linked with the contras in Nicaragua, going under the collective name "Operación cuarenta". The group includes Theodor G. Shackley, Thomas Clines and Robert Secord.

30. Ms. Nelson and Mr. Sheehan offered to send written material and provided two videocassettes on covert operations in which mercenary activities appeared to be linked with other unlawful operations.

31. The Special Rapporteur also met with Juan Méndez, Washington Director of Americas Watch, and Alex Wilde and Coletta Yeagers, representatives of the Washington Office on Latin America. Both organizations provided the Special Rapporteur with additional information relevant to his mandate.

32. On 20 July 1989, the Special Rapporteur visited the State Department where he completed a programme of work proposed by the Department. He was received by Beverly Zweiben, Deputy Director of Human Rights and Women's Programs, and Charlotte M. Ponticelli, Director of Policy and Planning Staff of the Bureau of International Organization Affairs, to whom he explained the scope of his mandate and the purpose of his visit. He was then received by Cresencio S. Arcos, Deputy Assistant Secretary for Inter-American Affairs, Peter Romero, Assistant Director of Central American Affairs and two other colleagues (Alfred Barr and David Fisk). Peter Romero referred to his country's policy on Central America which, in the recent past, had divided United States society. He maintained that the Administration of President Bush is promoting a bipartisan agreement on foreign policy in Central America, which includes express support for the Esquipulas II peace plan in its entirety as an expression of the ideals of democracy, peace, security and the economic well-being of the region. He also said that his

Government was still giving humanitarian assistance to the Nicaraguan resistance, while facilitating the repatriation of Nicaraguan nationals. With regard to mercenary activities reportedly linked to the Nicaraguan contras, he stressed that the internationally accepted definition of "mercenary" excluded Nicaraguan nationals and that, moreover, 95 per cent of members of the resistance were humble Nicaraguan peasants. He indicated that a fuller examination of the conflict as a whole, rather than one focusing on a single target needed to be made. He cited as examples the Cuban soldiers sent to Angola who, in his view, were mercenaries, and what he described as mercenary activities by the Cuban Government in Central America. Mr. Romero concluded by asking the Special Rapporteur to review the definition of the concept of "mercenary", focusing his mandate on co-operation for peace and democracy in Nicaragua.

33. Cresencio S. Arcos said that the problem of Central America was very complex and went beyond legal considerations to matters of politics. Consequently, his Government's response to the problem was essentially a political rather than a legal one, in keeping with his country's political interests and bearing in mind a situation of increasing subversion, violence, arms flows and an arms buildup in Central America. He added that 25 to 30 per cent of Nicaraguans - peasants - had been forced into exile, many of them living in the United States. In this regard, he denied that the United States Government had anything to do with mercenary activities in the region or that its assistance to the Nicaraguan resistance was used for that type of operation. He also emphasized the overall collapse of the Nicaraguan economy as a result, among other things, of a needless arms race. That situation had heightened the insecurity in Central America and even affected the Organization of American States (OAS). In summing up he repeated that, in anticipation of full compliance with Esquipulas II and of bipartisan agreement on the position the United States must take in the Central American conflict, his Government supported the political opening, electoral reform and democratic electoral process in Nicaragua as means of bringing about regional reconciliation in that country, to which end both the Nicaraguan resistance and people exiled or displaced from Nicaragua should be taken into account.

34. Shortly afterwards, the Special Rapporteur was received by Mr. Richard Schifter, Assistant Secretary for Human Rights and Humanitarian Affairs, accompanied by two members of his office. Mr. Schifter recalled his Government's position that the Special Rapporteur's mandate duplicated that of the Ad Hoc Committee of the Sixth Committee of the General Assembly on the Drafting of an International Convention against Recruitment, Use, Financing and Training of Mercenaries. He also said that, in his opinion, the Special Rapporteur's mandate did not form part of the traditional agenda of the Commission on Human Rights, which basically concerned the Universal Declaration of Human Rights and its application. With regard to the Nicaraguan conflict, he emphasized that his Government's support to the democratic Nicaraguan resistance was political and had nothing to do with human rights. He also said that the Special Rapporteur's report made no mention of the Frente Farabundo Martí de Liberación Nacional (FMLN) in El Salvador and the Manuel Rodríguez Patriotic Front in Chile and the support that they were receiving from third countries, but simply focused on the assistance which the United States Government was giving to the Nicaraguan resistance. Lastly, he emphasized that the Nicaraguan contras did not come under the

traditional definition of mercenaries and that the inclusion of the question of Nicaragua on the agenda of the Commission on Human Rights was extremely far-fetched.

35. The Special Rapporteur then met with Mr. Robert M. Perito, Director of the Office of Southern African Affairs, who told him about his recent visit to southern Africa as part of the monitoring of the peace agreements between Angola and South Africa, mediated by the United States. He reported favourably on the implementation of the agreements and said that the process of implementing Security Council resolution 435 (1978) was irreversible. That process was to culminate in elections in Namibia in November 1989. The agreements also provided for the withdrawal of the South African army which would leave behind a contingent of only 1,500 soldiers stationed in two camps in southern Namibia. The repatriation of Namibian refugees under the auspices of the Office of the United Nations High Commissioner for Refugees (UNHCR) was also under way and some 40,000 people had already returned. He also said that the forces of the South West Africa People's Organization (SWAPO) had detained people in the past, many of whom, according to what a committee of relatives of disappeared persons had told him, were now missing.

36. Shortly afterwards, the Special Rapporteur met with Dave Balton, Assistant Legal Adviser, with whom he exchanged views on the draft convention against the recruitment, use, financing and training of mercenaries. With regard to the scope of the definition of the concept of "mercenary", he said that in the work on codification it had recently been agreed to include acts of mercenarism in internal armed conflicts, in addition to traditional international conflicts. In the case of mercenary activities occurring outside the context of an armed conflict draft article 1, paragraph 2, of the draft convention added some new elements to the definition of "mercenary" under international law. Thus, in the work on codification, it was now agreed that activities could be qualified as mercenary when they were aimed at overthrowing a Government, violating the territorial integrity of a State and, more recently, denying peoples the exercise of their right of self-determination in accordance with international law.

37. On the question of whether mercenary activities linked to drug trafficking would be covered by the current draft of article 1, paragraph 2, he said that that was something new and that it could potentially be linked to attempts to overthrow a Government or to violations of the territorial integrity of a State. However, he stressed that, by international definition, a mercenary must be someone who took part in an act of violence and that the purpose of the draft convention was to define a set of offences that States must prosecute under their respective domestic jurisdiction or else whose alleged perpetrators they must agree to extradite to countries that wished to try them. That concept excluded nationals as possible mercenaries, although the subject was still awaiting discussion in the work on codification. His Government was not in favour of introducing that new category into the draft convention. He also took the view that mercenary activities were not very widespread in the world and never occurred on such a wide scale as other human rights violations such as summary or arbitrary executions and torture.

38. In his office, the Special Rapporteur had an interview with Mr. Lindsay Mattison, Executive Director of the International Center for Development Policy, who said that he had been in contact with a number of former

mercenaries who had worked in Honduras under Oliver North, then a member of the National Security Council; some of them had later been hired to take part in the Iran-contra affair. One of them was Jack Terrell who had been employed as a mercenary in Honduras. He added that mercenary activities against Nicaragua came under the heading of "covert operations", which took place with the knowledge of - and possible funding from - the Government. According to his information, financing for such operations had also been sought via third countries. As for the type of persons usually recruited as mercenaries, he said that some were former intelligence agents; Viet Nam veterans were also recruited, as were members of the navy and paramilitary forces who were given short-term contracts. These were people in need of money who engaged in drug trafficking and mercenary activities off and on. He also said that recruiters of mercenaries often had links with the World Anti-Communist League, a network of neo-Nazi groups which were also engaged in the training of police forces in various Latin American countries. Mr. Mattison offered to send written documentation on his claims.

39. On 21 July 1989, the Special Rapporteur visited the office of Senator John Kerry, Chairman of the Senate Subcommittee on Terrorism, Narcotics and International Communications, where he had an interview with his legal adviser John Winer. According to a report issued by the Subcommittee, an investigation had been carried out on mercenary activities during the period 1985-1988. The report dealt with persons involved in the contras war in Nicaragua, who had been attracted by the chance to make money. This category included Civilian Military Assistance, a group that provided support for the contras by training and recruiting mercenaries or terrorists in the United States who were then sent to southern Honduras. For example, the Recondo School headed by Frank Camper in Dolomite, Alabama, served as both a training school and a source of information. Mercenaries of various nationalities are reported to have attended that school, which allegedly received part of its financing in the form of humanitarian aid from certain organizations. The Subcommittee under the chairmanship of Mr. Kerry had emphasized that that context was dangerous both for the United States and for Central America in general, since it jeopardized the security of all these countries by calling into question implementation of international drug and arms trafficking laws.

40. It was for this very reason that a bill had been introduced to incorporate certain provisions relating to mercenary activities as amendments to the current United States Neutrality Act which classifies as illegal any action by a United States citizen for the purpose of leading a military expedition from United States territory against a foreign State. The amendments would make any such action taken without State Department authorization which is brought to the attention of Congress an offence. In addition, to prevent the spread of drug trafficking, the Kerry bill also calls upon security services to make checks of their backgrounds before making payments to enterprises or individuals that may at some time have been accused of involvement in drug trafficking. In that connection, he said that he had come across four instances of drug traffickers who had worked with the contras while using humanitarian aid intended for the contras, to provide such services as flying in supplies, purchasing boats, transferring money as well as other services of a general nature. They were known as "contrapreneurs" or "businessmen" and constituted a roving mafia which took advantage of loopholes in the law to conduct its business.

41. The Special Rapporteur then visited the Department of Justice, where he was received by Mr. Ronald K. Noble, Special Counsel to the Assistant Attorney General, Criminal Division, and Mr. Drew Arena, Director, Office of International Affairs, Criminal Division. Both men were asked by the Special Rapporteur for information about the judicial practice of United States courts as it relates to implementation of the Neutrality Act in cases involving presumed mercenary ties. Both officials said that they would pass on the request to their superiors so as to provide the Special Rapporteur with the information he sought as soon as possible.

42. Later, the Special Rapporteur visited Congress, where he had an interview with Congressman George W. Crockett, Chairman of the Subcommittee on Western Hemisphere Affairs of the House of Representatives. Mr. Crockett mentioned the case of two United States citizens who had allegedly been recruited with funds approved by Congress in 1987 as mercenaries to help the contras. However, he said he did not consider the contras mercenaries, but freedom fighters. In any event, beginning in 1987, congressional appropriations had been made solely for humanitarian aid and not for any form of support for the armed struggle, although it was conceivable that some funds earmarked for humanitarian aid might have been diverted from their intended destination.

43. The Special Rapporteur had an interview in his office with the Reverend Nicolas Buscovich, head of the Unification Church in Washington, D.C., a religious sect operating in 140 countries. Reverend Buscovich spoke of his church's efforts to combat communism within the limits of the precept of non-interference in the internal affairs of other countries. However, in view of the assistance that régimes such as the Sandinist régime were receiving from Eastern bloc countries, he considered it legitimate for the United States to aid the contras. He said that Cause, an educational organization sponsored by the church and founded by the Reverend Moon, took a firm stance against communism, because it denied the existence of God, in such publications as The Washington Times, established by his church in 1984. Apparently, the editor of that newspaper had tried in 1985 to raise money for the contras, although the church had taken no part in that project. Instead, its activities were focused on acquiring humanitarian aid to be sent to Honduras and on educational efforts through the aforementioned organization, Cause. The Unification Church believed that the world struggle was taking place in the minds of men, and it was therefore unthinkable that Cause would ever have helped to raise funds for mercenary or violent activities.

44. Subsequently, the Special Rapporteur spoke to John Mattes, a lawyer living in Florida, who is defending Jack Terrell and other mercenaries in court. According to the reports and opinion of this lawyer, mercenaries who maintain ties to the contras do so in their private capacities, and thus cannot be linked to the United States Government, even though their activities are known. This fact was pointed out to the federal court in Florida. For his part, Jack Terrell admits that he worked with the contras and agrees to mercenary involvement in the armed struggle against the Nicaraguan Government. Between 1981 and 1988, mercenaries were successively recruited from Argentina, the United States, Panama, the United Kingdom, etc., so that they were never more than two dozen at a given time. They were paid in proportion to their experience and level of support. For example, the

British mercenaries, who were experts on explosives, received direct cheques which varied according to the equipment they supplied and the operation to be undertaken.

45. Shortly thereafter, the Special Rapporteur had a meeting with John N. Burstein, a member of the Washington Office on Latin America, Jeanne Woods and Gary M. Stern, of the American Civil Liberties Union, and Dr. Halperin, Director of the Center for National Security Studies, with whom he exchanged views on the scope of the United States Neutrality Act, the conflict in Central America and the phenomenon of covert operations.

46. On 22 July 1989, the Special Rapporteur was visited by the journalist Brian Barter, who talked about his professional investigations of covert operations conducted by the United States Government, which refused to accept the relevant responsibilities. He had found that during the Nicaraguan conflict covert operations had increased as from 1983 with the recruitment of mercenaries from among Viet Nam veterans and former pilots. Special Forces Unit 20, originally based in Alabama but now present in 10 states, was also involved. Fifteen members of Unit 20 in Alabama, headed by T. H. Posey, were sent in their personal capacity to Honduras beginning in August 1983 to fight as mercenaries alongside the contras. Shortly thereafter, the organization known as Civilian Military Assistance was established in Alabama, consisting initially of members of Unit 20. Some of them were paid wages in Honduras as though they were on an official Unit mission, even though to all appearances they were private mercenaries. Basically, their job was to train the contras in military sabotage and ambush techniques. Pilots were also hired, two of whom were killed in an armed raid when a helicopter they were flying was brought down by Sandinist forces on 10 September 1984 at Santa Clara, Nueva Segovia, Nicaragua. Two of the bodies found in the helicopter were identified as those of Dean Parker, a former Alabama policeman belonging to Unit 20, and the pilot, James Powell, another Unit 20 member. Most of the mercenaries recruited in Alabama to fight the contras were adventurers with no money, some of whom had alcohol or drug problems; ultimately, not all of them were paid. Mercenaries were also recruited from other countries. Five foreign mercenaries were arrested in Costa Rica on 27 April 1985 for possession of explosives and violation of the country's neutrality. Among these were a Frenchman, Claude Chauffard, and an Englishman, Peter Glibbery, who belonged to a group consisting of 14 mercenaries in all. Following their trial, they served out their sentences in a Costa Rican prison and were finally released in 1988.

47. Between 1983 and 1986, Barter said, a drug-sales network was established in Costa Rica and Honduras under the direction of René Corvo and Felipe Vidal, former Central Intelligence Agency (CIA) agents. He added that Brigade 2506, made up of anti-Castro Cubans, was financed with money obtained from illegal and undercover operations. He noted also that several accusations had been made against an American named John Hull, who lived in northern Costa Rica and owned a farm with a landing strip which was used extensively by the contras in their drug trafficking operations between 1983 and 1986 when drugs were shipped from Colombia to the United States to finance their armed activities. Brigade 2506 ostensibly continues to operate, having recruited some 200 persons to fight the contras; most of these were Cubans, although there were a few Puerto Ricans and Americans as well.

48. Later, the Special Rapporteur met with Scott Armstrong, Director of the National Security Archives, and one of his researchers, Peter Kornbluh. According to Armstrong, the "UCLA" (Unilaterally Controlled Latin Actives) forces were deeply involved in mercenary activities: they were employed in so-called low-intensity conflicts and used partially secret military manuals. He said they had ties to the special and national forces of various Latin American countries which operated legally and apparently autonomously but were actually trained and led by the UCLAs.

49. Peter Kornbluh provided the Special Rapporteur with a wealth of documentation on mercenary activities associated with the Nicaraguan contras, particularly in southern Honduras. Included were documents showing evidence of economic support and assistance in the form of personnel, training, weapons and facilitating the use of the territory and other services for carrying out such activities.

50. In New York, the Special Rapporteur met on 25 July with William Schaap and Alfred Ross, representatives of the Institute for Media Analysis Inc. This organization had previously furnished information on mercenary activities which was based on their research. On this occasion they confirmed their accusations that, during the conflict in Central America and in order to support the contras, mercenaries of various nationalities, some of whom had been recruited by organizations operating from United States territory, had played an active part. They cited Soldier of Fortune as one of the most active recruiters of mercenaries. They also mentioned the connection between mercenary activities and drug trafficking, adding that their research revealed that mercenaries had engaged in drug trafficking to obtain money for military operations in Central America.

51. The Special Rapporteur also had a meeting with the Reverend Frederick Bronkema, director of human rights sector of the National Council of Churches, who spoke of his personal experience in Honduras as a member of the Honduran Christian Commission for Development, which was founded by protestant and ecumenical churches, engaged in community projects to help Honduran farmers become self-sufficient in agriculture and carried out a comprehensive training and leadership programme. In 1988, its offices were broken into by Honduran soldiers, two staff members were abducted and tortured, and the Reverend Bronkema's car was attacked forcing him to leave Honduras with his family. He also provided information on drug trafficking and mercenary activities in Nicaragua by persons who often had ties to far-right religious organizations, such as Evangelical Crusade or the Reverend Moon's organization. However, he asked that the details be kept confidential.

52. On 27 July 1989, the Special Rapporteur had a meeting with Miss Patricia M. Byrne, Ambassador of the United States of America and Deputy Permanent Representative to the United Nations in New York. Miss Byrne was accompanied by her colleagues Carolyn Willson and Neal Waldrog. The Special Rapporteur gave them a brief account of his visit to the United States and described the documents he had collected during his interviews. Views were also exchanged on the meaning and scope of article 47 of Additional Protocol I to the Geneva Conventions of 1949, on the work of the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries and on the purview of the Special Rapporteur's mandate from the

Commission on Human Rights. Ambassador Byrne maintained that linking mercenarism and drug trafficking would give a different meaning to the conventional concept of mercenarism as it related to armed conflicts, whereas drug traffickers were common criminals. For her part, Miss C. Willson conceded that, in philosophical terms, it might be possible to speak of drug-trafficking mercenaries. However, she stressed that the status of mercenaries could not be separated from mercenary acts because the fact of being a mercenary would not constitute an offence, whereas a person's mercenary activities would. In her view, the new wording of article 1, paragraph 2, of the draft convention did not envisage any mercenary activity that could be linked to drug trafficking, despite the tragic consequences that it implied in humanitarian terms; some thought should therefore be given to that issue.

53. Finally, the Special Rapporteur had a meeting with Mr. Hussein Manikfan, Ambassador and Permanent Representative of Maldives to the United Nations in New York, who was accompanied by Mr. M. Faiz, Second Secretary. The Ambassador renewed his Government's invitation to the Special Rapporteur to visit Maldives in fulfilment of his mandate at whatever time he judged most appropriate. He said that some 67 Tamil and five Maldivian terrorists were in prison in his country awaiting sentencing for their participation in an attempted armed overthrow of the Government of Maldives on 3 November 1988. Terrorists of that type were also considered to be mercenaries by his Government which was concerned that further attacks to "liberate them" from outside might occur. The Special Rapporteur accepted the invitation of the Government of Maldives; he outlined his schedule of activities and suggested that the visit should take place in the spring of 1990, on the assumption that his mandate would be renewed by the Commission on Human Rights.

IV. OBSERVATIONS ON THE RECENT EVOLUTION OF THE CONFLICT IN CENTRAL AMERICA

54. The visits made to the Library of Congress, the interviews held with State Department officials, members of Congress, researchers, journalists, specialized centres and non-governmental organizations involved in the political oversight of government activities or the defence of human rights, and the documentation put together are a rich source of information which can contribute to a full understanding of the various aspects of cases which could be described as mercenary activities and the ways in which these activities have been evolving in the light of armed conflicts undermining the sovereignty of States, the self-determination of their peoples and the stability of legally and lawfully constituted Governments. Because of the breadth, the complexity and the delicate nature of the issues involved, all this information must be exhaustively analysed and rigorously verified. For that reason, this report is limited to putting forward general observations and hypotheses, following which the Special Rapporteur will undertake a more substantive analysis for presentation to the Commission on Human Rights at its forty-sixth session.

A. Characterization of mercenary activities according to the sources consulted

55. There can be no doubt that United States public opinion is highly sensitive about the country's image and prestige and its importance in the world and also that Americans believe strongly in the values of freedom, democracy and the rule of law on which their political system is based. It is in this context that we must view the different reactions to the United States role in the regional conflict in Central America, especially to the aid given to the opponents of the Nicaraguan Government.

56. Similar beliefs can lead to conflicting positions. The State Department believes that, for political and security reasons, by virtue of its sovereign decision-making powers it is acting lawfully in funding the resistance and imposing economic sanctions against the Nicaraguan Government, and in defence of the interests and principles of the United States democratic system. According to the authorities, all this has been done without resorting to military intervention, which would have meant becoming directly involved in an armed conflict and violating international laws. From this standpoint, the United States Government does not accept any of the charges and accusations levelled at it by the Nicaraguan Government. It claims that mercenary activities, if any, have been conducted by private individuals and do not involve it in any way.

57. The position of the United States Congress has recently diverged from that of the Administration. It is believed that there have been excesses and violations of the prohibition on funding the resistance or contras, when Congress prohibited military aid precisely because it was found that United States security organizations were involved in military operations. The report on the Iran-Contra affair and other congressional documents reflect concern at facts which would appear to indicate unauthorized direct intervention, violation of the United States Neutrality Act by some people in some situations, illegal diversion of funds to the resistance for military purposes and the existence of organizations promoting intervention in Nicaragua that were in some way linked to government circles - in short, the involvement of United States citizens in the conflict. As we know, there is now a bipartisan agreement not to allocate any more funds to the resistance for military purposes, and favouring a negotiated political solution to the Central American conflict that is fair and reasonable for all parties.

58. For the most part, a different position is taken by various sectors of the United States press and by the political and human rights organizations that expressed their opinion. Based on the material they have gathered, these organizations believe that the United States Government has committed acts of intervention which reflect ideas of hemispheric hegemony that are incompatible with respect for the principle of self-determination.

59. The position of this vast sector is important because of its influence on public opinion. The Special Rapporteur must therefore mention such organizations' forceful rejection of what they call "covert operations", by which they mean a vast power network that is kept secret because it constitutes an entire mechanism which creates the conditions whereby certain decisions are taken and whereby the channels

it controls are made responsible for their application. According to this interpretation, bodies linked to the security apparatus are aware of many illegal or interventionist activities or violations of the Neutrality Act. Accordingly, covert operations are never exclusively private: there is always someone behind them whose position makes them publicly and politically actionable.

60. Our sources think it plausible that, by their very nature, operations such as drug trafficking, arms trafficking, money laundering and contracting mercenaries may be interlinked. One action complements another and may be interchanged with it. Thus, a drug trafficker may become or be pressured to become, a mercenary, and vice versa. From this standpoint, the existence of mercenary activities in the Nicaraguan conflict is self-evident; that is, based on article 47 of the Additional Protocol I to the Geneva Conventions of 1949 (under which a mercenary may be a national of the country, which is how the Nicaraguan Government understands the term) rather than the widely used generic definition. Our sources offer abundant proof that United States citizens are responsible for mercenary activities in Nicaragua and other countries, in which nationals of other countries are also involved. Together, they not only help to provide military training for the forces combating the Nicaraguan Government, but also participate directly in hostile acts such as sabotage and criminal aggression.

61. One aspect on which these private sources of information and analysis agree is the existence of diverse mechanisms indicative of an extensive network involving the security units within the national armies of Latin America. These units operate according to identical security criteria, instructions and concepts received from United States government intelligence and security offices. The networks supposedly prevent actions of a national special unit from being considered interventionist. However, our information sources point out that these actions are consequently co-ordinated and inspired by a central power, which trains and readies their members to intervene in covert actions outside their country. Thus, there is potentially a constituted mercenary factor.

62. A final observation worthy of general comment in connection with this effort on the part of private American organizations to monitor the government actions: they claim that their research is in defence of United States democracy. In their opinion, nothing can cause greater harm to freedom, democracy and the rule of law (in other words, the fundamental values of the United States political system) than practices such as the abuse of power, the existence of covert operations involving government officials, the protection of illegal business transactions or association with private organizations that collect funds for obscure purposes, recruit mercenaries, traffic in drugs, and intervene in the affairs of other States. The Special Rapporteur has taken note of these statements, while, as in these observations, emphasizing the need for a more exhaustive, better documented analysis of the issue at the time and in the place and form deemed appropriate by the organizations of the United Nations.

B. Current status of the conflict in Central America and position of the Government of the United States of America

63. In his third report to the Commission on Human Rights (E/CN.4/1989/14, para. 169), the Special Rapporteur mentions the existence of a basic plan of action for peace, signed by the five Central American Presidents. This plan, the Esquipulas II agreement, which was signed on 7 August 1989, was and continues to be considered by the international community a real and positive step towards peace. Efforts to implement the agreement have led to the development of several important initiatives, such as the 60-day cease-fire agreement from April to May 1988 (Sapoa agreement of 23 March 1988), the decision by the United States Congress to stop allocating further military aid to the Nicaraguan resistance, the letter of 30 November 1988 from the Central American Ministers for Foreign Affairs addressed to the Secretary-General of the United Nations, asking him to co-ordinate the establishment and efficient operation of an impartial mechanism for the on-site verification, control and monitoring of the agreements concerning the halting of aid to the insurrectional groups and to the irregular forces operating in the region and the non-use of the territory for their support. Lastly, there are the agreements reached at Costa del Sol, El Salvador, on 14 February 1989. These agreements, which stipulate concrete measures to be taken within an established timetable, make it possible to implement the bases and procedures for peace and reconciliation set forth in the Esquipulas II agreements and the Alajuela declaration.

64. The Special Rapporteur places emphasis on these positive steps towards achieving peace in Central America and on the United States Government's closer position on the current problem. These two factors - that is, the strict fulfilment both of Esquipulas II as an indivisible whole and of mutual obligations on all sides, and the United States agreement to support a negotiated political settlement - are necessary to achieve peace in Central America. The Special Rapporteur made his recent visit to the United States precisely in the context of this process of détente which is not exempt from difficulties and suspicion. He saw that, despite all remaining doubts, the climate of negotiation, normalization of the democratic processes, reconciliation and, therefore, peace was slowly prevailing over resistance and military options.

65. The Special Rapporteur does not believe that these issues can be set aside. In his opinion, the mandate he received from the Commission on Human Rights cannot be reduced to formulating a descriptive account of accusations of wrongs, in which the wronged States speak of mercenary activities and the supposed wrongdoers make whatever excuses they consider appropriate. His task consists rather of appraising the areas of conflict as a whole and of indicating how recent low-intensity armed conflicts have created situations in which the presence of mercenaries can worsen and, after a fashion, internationalize the conflict. For this reason, the Special Rapporteur's report expressly includes all efforts under his mandate to achieve peace in the conflicts. He feels that, by eliminating the very substance of the conflict or conflicts, these attempts to achieve peace and, fundamentally, the successful settlement of the conflicts also eliminate the existing problems of interventionism and the presence of mercenary practices, which aggravate the conflict.

66. It is important to note that the current stage of the process of reducing tension is characterized by implementation of the Costa del Sol agreements. Under these agreements, the five Central American countries had 90 days to draw up a joint plan for the demobilization, repatriation or voluntary relocation in Nicaragua and third countries of members of the Nicaraguan resistance. While the plan was not approved by the deadline of 15 May, a technical document was drawn up by the Vice-Ministers for Foreign Affairs and was presented at the meeting of the Central American Presidents at Tela on 5 August 1989. Without prejudice to this approval, the Nicaraguan Government implemented the unilateral decisions noted in the Costa del Sol agreement. It ratified moving national elections forward to 25 February 1990; it invited the United Nations and the Organization of American States to observe each step of the process; it drafted the electoral legislation; it guaranteed the free operation of political parties, freedom of the press and of political mobilization; and it pardoned 1,894 former Somoza guards, with verification by the Secretary-General of the Organization of American States.

67. During his visit in the United States, the Special Rapporteur also became acquainted with the viewpoint of United States government officials. What stands out most in this regard is these officials' opinion regarding United States support for the Esquipulas II peace initiative. Their understanding is that it is an indivisible whole, that it cannot be applied partially and that, when fully implemented, it should result in peace and security for the region as a whole. The Special Rapporteur was told that the United States position is that all the agreements adopted by the Central American Presidents promote lasting peace in the region and political reform, while at the same time encouraging democratization in Nicaragua and promoting the repatriation of rebel forces in Central America under democratic conditions. Far from opposing these initiatives, the United States maintains that the bipartisan agreement should be seen as a complement to regional efforts, one which, in part, provides humanitarian aid to the Nicaraguan resistance while the process of democratization in Nicaragua has another chance.

68. After the bipartisan agreement was signed on 24 March 1989, President Bush commented that, for the first time in many years, all sides - the President and Congress, Democrats and Republicans, leaders of the House of Representatives and of the Senate - had spoken with a single voice on Central America. For this reason, the bipartisan agreement is seen as the expression of a new policy in Central America under which the United States supports peace, the democratization process and the fulfilment of the objectives established by the Central American Presidents in the Esquipulas II agreement.

69. United States officials also point to the bipartisan agreement's establishment of a system of consultations which will make it possible to measure progress towards the fulfilment of the objectives of peace and democracy in the region. These objectives include the actual cessation of hostilities between the Nicaraguan Government and the resistance forces and democratic provisions for voluntary reincorporation of the insurgent forces.

70. It is precisely for this reason that the President's proposal to maintain humanitarian aid to the Nicaraguan resistance at its current levels until 24 February 1990 is being considered by congressional leaders in the context of the

bipartisan agreement. According to the official American interpretation, the intent of this aid is in no way interventionist and differs from that of past aid. The agreement is in fact linked to the holding under international observation of the elections called by the Nicaraguan Government. It also allows the funds to be used to assist in the voluntary return or voluntary relocation in the region of the Nicaraguan resistance. According to United States government officials, all of this is contained in the Esquipulas II and El Salvador agreements, of which the United States supports implementation in full as a necessary prerequisite for democracy, security and peace in Central America. Obviously, the United States interprets this position as representing a new and different policy as compared to that of the previous Administration. Official emphasis is now on the provisions of the bipartisan agreement between the President and United States Congress, as well as on the conviction of acting in support of the Esquipulas II agreements and the implications of all this for the actual pacification and democratization of Central America.

71. Nevertheless, the United States Government has at various times expressed its reservations with regard to measures being adopted in Nicaragua for national elections in February 1990. On the occasion of the tenth anniversary of the Sandinist revolution, President Bush stated that the Sandinist electoral reform law does not guarantee free elections and that it contains provisions designed to favour the Sandinists, hinder the opposition campaign, limit the presence of impartial observers, restrict the freedom of the media, create difficult conditions for dialogue with the opposition and so forth. However, although he has expressed his doubts as to prospects for national reconciliation, President Bush has reiterated the call to the Nicaraguan Government to fulfil the Esquipulas II agreements and has renewed the United States commitment to support free elections and democracy in Nicaragua.

72. The position of the United States Administration is not necessarily shared by non-governmental organizations studying issues involving the existence of "covert operations". These organizations are convinced of the need for absolute transparency in government dealings in accordance with the democratic principles of the United States political system. Despite these reservations and those of the Nicaraguan Government, the Special Rapporteur has been given no reason to doubt the intentions of the United States Government or to suppose that the bipartisan agreement conceals covert operations. Despite the disputable international legality of continuing humanitarian aid to the Nicaraguan resistance under the established terms, the spirit of the bipartisan agreement appears to favour control mechanisms that would prevent actions similar to those identified and condemned in the Iran-Contra affair. In this sense, the bipartisan agreement makes it possible to reach an understanding on a policy that promotes peace in Central America, and it can be seen as a positive step towards a negotiated political settlement and peace in the region. However, there remains the issue of the legal basis for the attitudes of certain countries which reserve the right to adopt measures that in any way imply arbitrating and taking positions on internal conflicts in third countries.

C. Recent initiatives

73. Finally, the Special Rapporteur must mention two important facts. During his visit to the United States, it became public knowledge that the Secretary-General of the United Nations, following studies and favourable reports, had given the green light to the initiative to send a United Nations observer mission to Nicaragua for the national elections. The importance of this measure lies in the fact that the United Nations mission will observe all three phases or stages of said electoral process and it will be carried out with the assistance of observers from the various Member States of the Organization. Through this Nicaraguan initiative, the United Nations and OAS will help to give the electoral process a maximum of democratic guarantees and, by the same token, the reservations and objections regarding the cleanness and impartiality of the process will diminish or disappear. Thus the United Nations mission to observe the Nicaraguan electoral process not only supports those elections on conditions of freedom, authenticity and democracy but is also an objective expression of the system's interest so that the elections may be a decisive step towards national reconciliation and peace in Nicaragua.

74. The second fact relates to the fourth meeting of the five Central American Presidents held at Tela, Honduras, on 5 and 6 August 1989. This meeting continued the effort begun at Esquipulas and Costa del Sol and dealt with translating into reality the agreements leading to overall pacification of the region. In terms of practical effects, the significance of the agreements reached at that meeting stems from the measures adopted for the demobilization of the anti-Sandinist forces, withdrawal of the application filed by Nicaragua against Honduras with the International Court of Justice and the recommendation for a direct dialogue between the Salvadorian Government and the guerrilla forces of that country. With the implementation of these measures it will be possible to put an end to the war situation which has pitted the anti-Sandinist resistance forces against the Government of Nicaragua for eight years.

75. The most important aspect of the agreement relates to the demobilization and relocation of some 11,000 members of the resistance established in the south of Honduras, which is to be completed before December 1989, while Nicaragua, for its part, undertakes to withdraw the application it has filed against Honduras with the International Court of Justice. Demobilization will involve supervision by United Nations peace groups, which will be deployed all along the frontier between Honduras and Nicaragua. An international support and verification commission will be assigned the task of receiving any arms and supplies which members of the resistance may hand over, seeing to the repatriation of those who decide to return to Nicaragua or their relocation in third countries and dealing with the machinery of assistance.

76. These Tela agreements, the decision to carry out United Nations supervision through the machinery adopted upon acceptance of the request, the endorsement also of OAS and the holding of democratic elections in Nicaragua, also under United Nations and OAS supervision, provide excellent conditions for pacification in Central America and this has been the understanding of world public opinion, which has endorsed these measures. None the less, implementation of these agreements

requires the voluntary collaboration of the resistance; the latter initially reacted unfavourably to the plan of the Central American Presidents, stating that it would maintain its forces intact until after the democratic elections in Nicaragua. Another important factor is the position of the United States and its willingness to co-operate with the demobilization process. Thus the first statement, after the Tela agreements became public was that: "Demobilization of the resistance must be a voluntary process. The United States is committed to the process of peace and the democratization initiated at Esquipulas. We are committed to supporting a process of voluntary reintegration of the Nicaraguan resistance while respecting their members on democratic conditions". This cautious reaction to the agreements is reiterated when the statement continues: "The truth is that the new schedule agreed to at Tela will depend on what measures the Government of Nicaragua takes to create the conditions specifically referred to in the plan".

77. With a view to ensuring that the task entrusted to him by the Commission on Human Rights continues to be, in all cases under review, a contribution to respect for the self-determination of peoples, effective enjoyment of human rights and peace, the Special Rapporteur ventures to underscore the importance of the Tela agreements and the need for real and effective co-operation by all parties directly concerned, and by the international community, so that said agreements may be successfully implemented. It is a proven fact that there are foreigners who are involved, as mercenaries in the Central American conflict and who are acting on behalf of the resistance. However, if that occurred it was precisely because the nature of the armed conflict facilitated their presence. Elimination of this deplorable factor must inevitably follow once the main factor has been eliminated, in other words, once peace has been restored in the region by putting into practice what was agreed to in the political negotiations. That will necessarily signal the end of mercenary activities, whatever their form.

V. CONCLUSIONS

78. The Special Rapporteur notes that the number of complaints of mercenary activities has declined appreciably, which was not the case during the first two years of his mandate. At the same time, it is a fact that the world has entered a phase of significant easing of tensions and that long-standing armed conflicts have been, or are in the process of being, resolved. The complaints which the Special Rapporteur received concerned the activities of mercenaries in relation to these conflicts. The decline in such complaints within the context of the resolution of armed conflicts, currently under way, highlights the relationship between the two things and the tendency to resort to mercenaries in low-intensity armed conflicts.

79. The process of easing of tensions and peace in southern Africa has progressed significantly; peace has been signed between Angola and South Africa and the timetable for the independence of Namibia remains firmly on schedule. The Gbadolita, Zaire, summit has produced a cease-fire agreement between Angola and the rebel UNITA guerrillas, which will contribute to national reconciliation in Angola and help create a internal climate favourable to democracy and the development of Angola.

80. An analysis of the events which took place in the Maldives on 3 November 1988 leads one to conclude that that State was the victim of a violent attack on its sovereignty and constitutional Government, in which mercenaries of Tamil origin were used. However, the attackers were defeated and the mercenaries were tried in accordance with Maldivian laws. None the less, the situation in the area south of India remains tense, and the Maldives has drawn attention to the vulnerability of its territory and to the risk of being exposed to invasions, attacks, and other forms of violence so long as this climate of tension and unresolved problems in the region persists. We cannot discount the possibility of another attempt being made to use mercenaries for an adventure against the Maldives, and for that reason the situation deserves to be monitored closely, and the invitation extended by the Government of the Maldives to visit that country should be borne in mind in the future.

81. The visit by the Special Rapporteur to the United States to collect bibliographical information on the mercenary question, and also United States public opinion on the Central American conflict and the accusations levelled by the Government of Nicaragua against the Government of the United States of America concerning interventionism and the use of mercenaries against Nicaragua, has produced an abundance of material, both documentary and in the form of opinions, which calls for exhaustive review before any conclusion can be drawn. For the purposes of this provisional report we can, however, venture to say that United States public opinion is extremely sensitive to the Central American question, is against anything which might involve the United States in a military conflict, and is opposed to anything that might affect the principles and values of United States democracy. It is in that context that we must view the position taken by the Congress in the report on the "Iran-Contra affair", and the bi-partisan agreement between the Administration and Congress concerning United States support for Esquipulas II in its overall implementation and for anything that might contribute to peace and democracy in Central America.

82. Although there are differences and various positions with regard to the evaluation of the process of easing of tensions, political agreements for peace and ways of implementing the agreed measures, it is clear that the Central American conflict has entered into a stage of objective easing of tensions and reduction of the centres of military tension. Accordingly, the Esquipulas II, Alajuela, Costa del Sol and Tela agreements express the will of the Central American Governments to find effective solutions for Central American peace. Therefore, we might conclude that the will to implement the agreements and international assistance and co-operation with effective inputs can be a real contribution to the pacification process and to the integral democratization of Central America.

83. With respect to international co-operation, it is important to draw attention to the decision of OAS and the United Nations to send an observer mission to Nicaragua for the democratic electoral process and the guarantee which that mission's presence may provide for translating into reality the agreement reached at Tela regarding demobilization of the anti-Sandinist forces. Likewise, the contribution of the United States and other States to this process is considered necessary so that unrestricted and unconditional support for the successive agreements of the Central American Presidents may contribute to the effective

realization of peace and the establishment of sound bases for friendship and co-operation between the United States and the Central American countries, with strict adherence to the principles of self-determination and non-intervention.

84. During 1989 the Special Rapporteur has received no further report of mercenary activities in Central America. The presumption that there are mercenaries of various nationalities in the camps of the resistance has not meant that at the current stage of easing of tensions these mercenaries have acted in isolation in armed exploits against Nicaragua. Therefore, the provisional conclusion is that, since such mercenaries are strictly instrumental in armed conflicts and bound to one of the parties, the easing of tensions inhibits their presence and a definitive peace agreement in the region should lead to the elimination of such activities.

VI. RECOMMENDATIONS

85. Despite the preliminary nature of this report a number of recommendations, themselves preliminary, can be made on the basis of the conclusions referred to in the preceding section.

86. The principles and declarations which the United Nations has worked out with respect to mercenary practices must be maintained and strengthened by the addition of provisions regarding specific steps that may help to eliminate all types of mercenary activity. The modalities noted in recent conflict situations in which one party has used mercenaries to affect the other militarily demonstrate that these modalities have broadened and have also included attempts against the sovereignty, self-determination and human rights of peoples and their respective States. Accordingly, it is worth recommending that declarations of principle should be accompanied by the strengthening of the work of the Ad Hoc Committee on the drafting of an international convention against mercenaries, bearing in mind that that this work is nearing completion and that the most recent definition of mercenary in the work of the Ad Hoc Committee includes these aspects and modalities of mercenary activities.

87. Since there are few countries whose national legislation covers the specific offence of mercenary activities and the prohibition, prosecution and punishment for such activities, we should again recommend that States include in their national legislation adequate sanctions against mercenary activities. Likewise, since mercenary practices seem to be involved in situations of conflict, particularly in cases of undeclared war, violations of the principle of non-intervention and attacks on the self-determination of peoples, it is worth recommending that the General Assembly explicitly condemn these extremes.

88. Likewise, and in line with the General Assembly resolutions on the subject, all States should be called upon to exercise the utmost vigilance and to ensure, by both administrative and legislative measures, that the territory of those States and other territories under their control, as well as their nationals, are not used for the recruitment, assembly, financing, training and transit of mercenaries or the planning of such activities designed to destabilize or overthrow the Government or State and to fight the national liberation movements struggling against racism,

apartheid, colonial domination and foreign intervention and occupation for their independence, territorial integrity and national unity.

89. It would be worth recommending that, wherever there is objective proof that external aid is being used to intervene in the internal affairs of States and to violate the right to self-determination of peoples, such aid should be considered incompatible with the principles of the United Nations. Within this framework, utilization of humanitarian and other assistance programmes to conceal objective situations of financing, training and utilization of mercenaries is also incompatible with these principles.

90. With regard to the process of pacification in the region of south-west Africa and, in particular, the agreements which have given rise to the Namibian independence process, to peace between Angola and South Africa and to the beginnings of a solution in the internal conflict, this integral peace process should be keenly supported in the expectation that its successful translation into reality will bring about the independence of Namibia and final peace in Angola, thereby putting an end to the situations of violence, the mercenary practices and the war which has interfered with that country's development since its independence.

91. In light of the reliable reports received from the Government of the Maldives concerning mercenary activities against that Government, the Special Rapporteur recommends that the General Assembly should express its condemnation of that act and should closely monitor developments in the area south of India with a view to preventing the emergence of a centre of mercenary activities in that region.

92. Finally, with respect to the Central American conflict and bearing in mind the process of easing of tensions which has been started in the region by the express and co-ordinated will of the Central American presidents, the Special Rapporteur recommends that the General Assembly support this overall process, condemn any activity designed to distort, or prevent the successful completion of, said process and that it call instead on all Member States to express their support for and co-operation in said process and to undertake to respect the right to self-determination of the peoples of Central America. If this can be achieved it would be a very important step forward towards Central American peace and development and at the same time would put an end to the war situation and to the activities of mercenaries against the Government of Nicaragua, thereby encouraging normalization of its relations of friendship and co-operation with the United States.
