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Chairman: Mr. TUERK (Austria)

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MERCENARIES (continued)

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The meeting was called to order at 10.05 a.m.

AGENDA ITEM 144: REPORT OF THE AD HOC COMMITTEE ON THE DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES (continued) (A/44/43 and Corr.1; A/C.6/44/L.9)

1. Mr. TREVES (Italy) said that his delegation welcomed the completion of the draft Convention against the Recruitment, Use, Financing and Training of Mercenaries (A/C.6/44/L.9, para. 9). Italy had played an active role in the negotiations on the text since it strongly opposed mercenary activities. While there were still motivations that rendered the use of arms morally acceptable in certain circumstances, in modern times the use of violence to satisfy personal greed was entirely unacceptable. Moreover, the use of mercenaries contributed to the distortion of conflicts between States and also within States, and sometimes facilitated the violation of certain basic principles of international law. Both mercenary activities and the use of mercenaries must be eliminated.
2. The draft Convention, which was the product of nine years of work, adequately reflected the basic view expressed in the negotiations that a purely legal approach should be taken. The draft identified two basic types of offences, those committed by mercenaries and those committed by persons who recruited, used, financed or trained mercenaries; at the same time, States would be required to establish their jurisdiction over such offences in accordance with rather comprehensive criteria, and either to submit offenders to their authorities for prosecution or to extradite them to another State party that requested such extradition. Moreover, States parties would undertake certain obligations relating to prevention and co-operation.
3. The legal mechanism provided for by the draft Convention was the same as that found in a number of international criminal-law conventions that had often been used as models for the text under consideration. However, the text now before the Committee had some special characteristics that had given rise to a number of difficulties in the negotiating process. The greatest difficulties had arisen from the need to define both mercenaries and the offences connected with mercenaries, on the basis of article 47 of Additional Protocol I to the Geneva Conventions of 1949.
4. The first such difficulty had been that Additional Protocol I applied to "international armed conflicts", even though it referred to an "armed conflict" when defining mercenaries. General agreement had developed that the draft Convention was totally independent of the Geneva Protocols, and that where the draft referred to "armed conflicts" all conflicts were covered. That meant that in practice most situations fell within the scope of paragraph 1 of article 1 of the draft. It must be recalled that armed conflicts in which peoples were fighting against colonial domination, alien occupation or racist régimes in the exercise of their right of self-determination were treated in the same way as all other armed conflicts considered.
5. Secondly, it had been obvious that activities involving mercenaries did not occur only in the context of armed conflicts. In modern practice, mercenaries had

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(Mr. Treves, Italy)

been used, in particular, to overthrow Governments of small and weak States. The definition set forth in article 47 of Additional Protocol I, particularly paragraph 2 (c), concerning material compensation, had therefore needed to be adapted for use in the draft Convention by means of a second paragraph in article 1.

6. A third problem had been that Additional Protocol I provided that a mercenary was any person who did, "in fact, take a direct part in the hostilities". It had been possible to tackle the definition of offences only after States had recognized that, in a convention establishing criminal offences, the prerequisite of "direct participation" could not be included in the definition of the mercenary himself, and must be dealt with in the context of the definition of the offences committed by the mercenary. It had then been possible to agree that the basic offence committed by a mercenary would be that of participating directly in hostilities or in concerted acts of violence. That approach was reflected in article 3 of the draft, which was supplemented by article 4, on attempts and complicity.

7. The nationals of a party to a conflict had not been included in the definition of a mercenary, in accordance with the Geneva definition, which had also been adhered to in defining mercenaries in situations not involving armed conflict. That solution not only was in keeping with a widely held view, but also provided a solid bulwark against possible abuse of the draft Convention on the part of Governments in respect of political adversaries.

8. Another special factor relating to the draft Convention was that States sometimes recruited, used, financed and trained mercenaries. Article 5 stated very clearly that States parties should not recruit, use, finance or train mercenaries, and that they should prohibit such activities in accordance with the provisions of the draft Convention. That would seem to be unnecessary, since the rules establishing criminal offences set forth in the draft contained the most severe form of prohibition. To develop further rules on recourse to mercenaries by States, in addition to those set forth in article 5 and in the provisions on co-operation, would have been tantamount to repeating entire chapters on international law. Obviously, the violation of an obligation set forth in the draft Convention entailed the usual consequences provided for by international law. The saving clause in article 16 (a), which indicated that simple truth, was in fact unnecessary. On the other hand, the other saving clause, in article 16 (b), was particularly relevant.

9. The draft Convention was a useful instrument for discouraging people from engaging, directly or through other persons, in activities that it defined as offences. The very fact that it had been elaborated, and that it had been elaborated by consensus, would appear to indicate that a legal approach yielded better results than purely hortatory condemnation, such as that which sometimes prevailed on the very subject of mercenaries in forums other than the Sixth Committee.

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10. Mr. ALVAREZ (Uruguay) said that the draft Convention now before the Committee (A/C.6/44/L.9, para. 9) represented the culmination of a codification endeavour that paved the way for early implementation of the rules it contained. It was not entirely satisfactory, however. The first rule set forth in a convention providing a precise definition of a mercenary, in article 47 of Additional Protocol I to the Geneva Conventions of 1949, had been developed in the late 1970s - over 20 years after the first decolonization conflicts had begun. Although that rule was an important one, it did not deal with mercenarism comprehensively. It was not a criminal rule but, rather, a provision designed to establish that certain persons were neither combatants nor prisoners of war.
11. Owing both to that definition's cumulative nature and to the acceptance of such criteria as that of nationality, the definition did not meet the requirements for a criminal rule. The State had the burden of proof in respect of a whole series of different elements. If there was a lack of proof, attribution of an offence was impossible. Such difficulties were duplicated in the draft Convention, since they arose in connection with both paragraphs of article 1. The reference in article 1, paragraph 1 (b), to material compensation was superfluous and might give rise to interpretation and implementation difficulties. The inclusion in the text of a reference to the nationality of the persons concerned had major practical implications. Nationality was not a fundamental characteristic of a mercenary, and its inclusion in the text had a clearly restrictive effect. Lastly, the title of the draft Convention should perhaps either refer to the rule set forth in article 3, paragraph 1, or make a general reference to mercenary offences.
12. It should be made clear that the draft Convention covered both mercenaries and the individuals referred to in article 2. Furthermore, Uruguay welcomed the inclusion in the preamble of a paragraph expressing the international community's concern about new unlawful international activities linking drug traffickers and mercenaries. If adopted, the draft Convention could make a significant contribution to the struggle currently being waged by the international community against drug trafficking. It was gratifying that the Working Group had accepted the inclusion of the concept of attempts to commit one of the offences set forth in the draft Convention, and of the concept of complicity in the commission of, or in the attempt to commit, any of the offences set forth therein.
13. The Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries had now fulfilled its mandate. Since mercenarism led to human-rights violations and constituted a serious threat to international peace and security, it must be dealt with by means of appropriate implementation of the Convention.
14. Mr. HOHENFELLNER (Austria) noted with satisfaction that the open-ended Working Group set up by the Sixth Committee had fulfilled its task of settling the outstanding issues and, almost 10 years after the first initiative taken in the General Assembly regarding the elaboration of a convention against mercenary activities, had finalized a draft Convention against the Recruitment, Use, Financing and Training of Mercenaries. The achievement was indeed a remarkable one. In the view of his delegation, the draft Convention was a highly useful

(Mr. Hohenfellner, Austria)

document which provided a sound basis for States wishing to punish offenders under domestic legislation. The legal system of international co-operation to be created under the draft Convention would greatly contribute to the eradication of the scourge of mercenary activities. The fact that article 11 of the draft guaranteed fair treatment of any person against whom proceedings were in progress in connection with an offence set forth in the Convention deserved particular mention.

15. For his country, which had adopted a status of permanent neutrality and thereby assumed all the obligations deriving from international law governing neutrality, the prevention of any mercenary activity was of essential importance. Legislation making it an offence to form or maintain a force of voluntary soldiers and to open or maintain a recruitment office for such a force, or for the military service of one of the parties to an armed conflict, had been enacted in 1974. The illegal recruitment, financing and training of armed bands was also subject to punishment. Furthermore, any Austrian national who of his own volition joined the armed forces of a foreign State forfeited his nationality.

16. Mr. van BOCHOVE (Suriname) said that during the past few years, mercenary activities had continued to threaten the political stability, sovereign equality, independence and territorial integrity of States, and the inalienable right to self-determination of peoples. Lately, by becoming linked with illicit drug trafficking, mercenarism had taken on a new dimension. The evil system of deploying mercenaries should not be regarded as a passing phenomenon; on the contrary, concerted pressure had to be applied and maintained in order to achieve its prevention and elimination. Efforts in that direction clearly required regional and preferably global co-operation, and called for the elaboration of an international instrument encompassing both preventive and curative measures. His delegation had been a member of the Ad Hoc Committee from its inception and had chaired its deliberations in 1988. It was therefore particularly pleased that the Working Group set up by the Sixth Committee at the current session and its Drafting Group had succeeded in settling the last remaining issues which had stood in the way of the acceptance of a Convention against mercenarism.

17. While realizing that the present draft might not be perfect in every respect, his delegation was convinced that it would serve the purpose for which it had been prepared. It was now up to the international community as a whole to show political will and determination by adopting the draft and transforming it into an effective instrument against the reprehensible activities of mercenaries. Its adoption would be an important contribution to the inauguration of the decade of international law. His delegation therefore hoped that the report of the Working Group and the text of the draft Convention annexed thereto (A/C.6/44/L.9) would be adopted without a vote. It also hoped that the Convention would become operative within a short period of time, and that States parties would diligently enact in their national legislations the necessary provisions and penal sanctions reflecting the grave nature of the offences covered by the Convention.

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18. Mr. DA COSTA (Angola) said that his country had always believed that the practice of using mercenaries was contrary to fundamental principles of international law, such as non-intervention, territorial integrity and political independence, and seriously impeded the process of self-determination of peoples struggling against colonialism, racism and apartheid, and all forms of foreign domination. Although several African, Asian, Latin American and Caribbean countries had suffered from the activities of mercenaries, which included the killing of innocent civilians and the destabilization of independent States, the African peoples had experienced by far the greatest suffering. Such activities should be regarded as crimes against the peace and security of mankind, particularly when they were linked to the involvement of a State in acts of armed aggression. The draft Convention before the Committee would complement the existing conventions against terrorism, and was a fundamental part of the progressive development and codification of international law. It should therefore be adopted by the Committee.
19. Mr. TA-AMPA (Togo) said that the question of mercenarism was a matter of serious concern to his Government. The use of mercenaries to impede the exercise of the right to self-determination or to attempt to overthrow or destabilize the Governments of newly independent States had made it essential that mercenarism should no longer be tolerated. In the absence of appropriate penalties, however, the activities of mercenaries, which caused indescribable suffering, might continue to go unpunished. In fact, despite the adoption by organs of the United Nations of numerous resolutions condemning mercenarism, such activities had continued. It was clear, therefore, that only an effective international instrument could bring an end to the crime of mercenarism.
20. The draft Convention met with the approval of his delegation, as it was based on a consensus, with regard to the definition of the term "mercenary", placed primary emphasis on those who used mercenaries while containing provisions relating to mercenaries as individuals, and called on States to refrain from any type of activity having a direct or indirect connection with mercenarism. Hence, its adoption by consensus would be highly significant.
21. Mr. MENON (India) said that the role of mercenaries had undergone a significant change in recent times as a result of decolonization and the emergence of nationalist aspirations. In addition to being paid instruments of contending Powers, they had become a threat to the independence, sovereignty and territorial integrity of many developing countries.
22. The efforts to define mercenarism as a crime against humanity and to codify provisions against it represented a relatively new area of international law. The adoption of General Assembly resolutions 1514 (XV) and 2464 (XXIII) had represented landmarks in that process. However, despite the global expressions of concern and outrage, mercenaries continued to thrive, owing to the absence of co-ordinated legislative measures on the part of States.
23. His country viewed the practice of using mercenaries with deep concern, and had consistently stressed the need for the adoption by the United Nations of a

(Mr. Menon, India)

convention sufficiently comprehensive and effective to encompass all situations involving mercenaries. The Working Group should be commended for its efforts to satisfy that need. He supported the Working Group's decision to submit the draft Convention to the Committee for consideration and adoption and subsequent transmittal to the General Assembly at the current session.

24. Mr. MIRZAEI-YENGEJEH (Islamic Republic of Iran) commended the efforts of the Working Group which had resulted in the draft Convention (A/C.6/44/L.9, para. 9). The Committee was concluding its consideration of the item at a time when the use of mercenaries was an established fact, as revealed in recent armed conflicts. Under those circumstances, the adoption of the draft Convention would constitute another milestone in the progressive development and codification of international law, as well as an achievement for the Committee.

25. Although the definition of the term "mercenary" in article 1 of the draft Convention was based on the definition in Additional Protocol I to the Geneva Conventions of 1949, it had been broadened to include the activities of mercenaries both in armed conflicts and in other situations. However, nationals of States involved in the conflict in question were excluded from the definition.

26. The draft Convention extended the notion of offender to cover any person who was the accomplice of a person committing or attempting to commit any of the offences which it enumerated. States were called upon to refrain from using mercenaries, prohibit such activities in areas within their jurisdiction, provide mutual judicial assistance and exchange information concerning mercenaries, and punish or extradite offenders. For those reasons, although the draft did not satisfy all of his delegation's concerns, it was willing to accede to the wish of the majority and support its adoption at the current session. His delegation emphasized, however, that problems could not be solved merely by adopting conventions; States must fulfil their obligations in good faith.

27. Mr. HEROUY (Ethiopia) said that his delegation welcomed the positive outcome of the Working Group's efforts. International co-operation for the prevention of mercenary activities and the prosecution and punishment of offenders was essential if the scourge of mercenarism was to be eradicated.

28. A decade of efforts had led to a definition of mercenarism and to the embodiment of rules and procedures which made it possible to bring offenders to justice. The task which now lay ahead was the adoption, ratification and implementation of the Convention.

29. Mr. NGUYEN TRUONG (Viet Nam) said that the draft Convention was an important contribution to the development of modern international law. Although the text was acceptable to his delegation on the whole, subparagraph (c) of paragraph 2 of article 1 seemed to contradict the overall purpose of the paragraph, which was to cover all types of mercenaries in all circumstances other than "armed conflicts". Viet Nam strongly believed that a national of a State participating in mercenary activities against that State should be considered a mercenary.

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30. Mr. ALZATE (Colombia) said that the draft convention represented a step forward in the gradual eradication of mercenarism. His country, which had been a victim of mercenary action, felt that international co-operation in the prevention, trial and punishment of such offences was the appropriate means for abolishing all mercenary practices. His delegation urged all States to contribute to that effort, to which his country was firmly committed.

31. It was no secret that mercenaries were working together with drug traffickers, thus undermining the constitutional order of States and spreading chaos and death throughout the world. His country had for quite some time been combating drug trafficking. That had undoubtedly led to an increase in violence within the country, but it had not caused the Government to retreat from the struggle. It might be easier to avoid facing the facts by arguing that consumption was concentrated in other countries. However, the battle went on. The States of origin or residence of mercenaries and of those who financed and trained them should not be satisfied with the argument that such activities did not take place in their territory; not only was that premise debatable, given the possibilities for financing mercenary actions with drug money, but it showed a lack of commitment towards co-operation and friendly relations.

32. The draft Convention had been negotiated on the premise that nationals or residents of the State against which the act was directed could not be considered mercenaries. That premise led to the conclusion that only foreigners could be punished, on the grounds that nationals had the right to rebel against tyranny. The question arose as to what created that right as far as residents were concerned. Likewise, what or who gave third States the right to finance, train, use and recruit nationals of the State against which the act was directed? There was no philosophical or legal justification for such a right.

33. His delegation agreed with the provisions of article 5, which prohibited States parties from recruiting, using, financing or training mercenaries. His delegation also noted with satisfaction that a similar prohibition had been included to protect the right of peoples to self-determination, and hoped that in future there would be severe penalties against the use of mercenaries to deny that right.

34. Finally, he stressed the importance of international co-operation in solving the problem of mercenarism. His delegation, desiring to contribute to the development of the rules of international law, endorsed the report of the Working Group contained in document A/C.6/44/L.9.

35. Ms. GAO Yanping (China) said that the elaboration of the draft Convention provided the international community with a forceful legal weapon in the struggle against mercenarism. If the provisions of the draft Convention were widely accepted and strictly observed by all countries, that struggle would gain positive momentum. The draft as it stood could not, of course, be regarded as perfect. Many countries took the view that, in line with the position adopted by the International Law Commission in connection with the preparation of the draft Code of Crimes against the Peace and Security of Mankind, mercenarism should have been

(Ms. Gao Yanping, China)

defined as an offence under the Code. Furthermore, in view of the nature and special character of the activities of mercenaries, the international responsibility of States involved in such activities should have been more clearly spelled out. As for the relationship between mercenary activities and the free exercise of the inalienable right of peoples to self-determination, the draft Convention, while providing that mercenaries must not be used for the purpose of opposing those who exercised the right to self-determination, failed to draw a clear distinction between the struggle against colonial oppression, apartheid, foreign intervention and alien occupation, on the one hand, and the activities of mercenaries, on the other.

36. Notwithstanding those and other shortcomings, her delegation believed that the basic tenor and substance of the draft were good and that, as a product of co-operation and compromise by all concerned, it deserved serious consideration by the international community and a positive response. The Chinese Government and people had always opposed all forms of mercenary activities and had actively supported all efforts made by the United Nations to eliminate that scourge. In that spirit, and taking into consideration the merits of the draft Convention itself and its realistic approach to the problem, her delegation endorsed the view that the Sixth Committee should recommend to the General Assembly the adoption of the draft Convention.

37. Mr. ACHITSAIKHAN (Mongolia) said that his delegation viewed the conclusion of an international convention against the menace of mercenarism as timely and of great importance. Recently reported acts of collaboration between mercenaries and drug traffickers clearly demonstrated that the menace was more serious than ever. His delegation considered that mercenarism also went hand in hand with international terrorism and arms trafficking, and constituted an increasing threat to the political integrity and security of States. In establishing an international mechanism for the prohibition and eradication of mercenarism, the draft Convention before the Committee would complement existing legal instruments in the field and would represent a major step forward, serving as an important instrument for the future development and enforcement of legal norms relating to the struggle against mercenarism, and thus helping to assert the rule of law in international affairs.

38. His delegation saw the main value of the draft in the fact that it widened the definition of the term "mercenary" to include not only those who served as mercenaries, but also those who recruited, trained and used them. It also contained important provisions concerning measures to be implemented by States in order to prevent mercenary activities. Those provisions created a valid basis for co-operation between States in that field. However, while duly appreciating the significance of the draft Convention, his delegation took the view that it failed to deal with some important matters, and that the wording of some of the articles was not firm enough. The definition of a mercenary lacked a very important element in that it failed to recognize that a national of a State who engaged in hostilities against that State could also be a mercenary. It was a well-known fact that mercenaries were often recruited from among the victim State's nationals as a

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(Mr. Achitsaikhan, Mongolia)

tool for destabilization and intervention in its internal affairs. His delegation would have preferred a more comprehensive and adequate draft, but it recognized that a compromise had been necessary in order to reach a consensus. It therefore supported the draft Convention and hoped that States would demonstrate the necessary political will by taking positive measures to make the Convention a major instrument for the elimination of mercenarism.

39. Mr. DELON (France), speaking on behalf of the 12 States members of the European Community, said that the Twelve had supported the Nigerian initiative from the outset, and had worked towards the universal acceptance of a body of rules to govern the struggle against mercenarism. They therefore welcomed the completion of many years of efforts in that field, and trusted that the General Assembly would duly adopt a draft resolution recommending the adoption of the draft International Convention against the Recruitment, Use, Financing and Training of Mercenaries. They wished to thank the Chairman and Vice-Chairman of the Working Group, who had also served as Chairman and Vice-Chairman of the Ad Hoc Committee at its 1989 session, as well as the members of the Secretariat who had assisted those bodies.

40. The fact that the sponsors of draft resolution A/C.3/44/L.10, adopted under agenda item 105 at the 23rd meeting of the Third Committee, had failed to take into account the work done and the results achieved in the Sixth Committee was to be regretted, but the Twelve hoped that the unfortunate episode would soon be forgotten. In joining the consensus in favour of the adoption of the draft resolution recommending the adoption of a draft Convention, they expressed the wish that the historic outcome of the negotiations on the draft Convention would encourage more countries to pursue mutual understanding and consensus as being indispensable to progress.

41. Mr. GARRO (Peru), noting that the draft Convention was the product of many years of negotiation, said that it reflected a position that was generally acceptable. The definition adopted was not as broad as his delegation would have desired, nor was the reference to the right to self-determination as strong as it should have been. Moreover, a reference to the fact that mercenarism was a crime against the peace and security of mankind would have been useful. Nevertheless, the Convention would fill a serious gap in international law. It included characterizations of offences and established the obligation to try or extradite the perpetrators of such offences. It established responsibility for attempts at and complicity in mercenary activities, as well as the obligation to co-operate in the prevention and punishment of such offences. Thus, the draft Convention should help to eliminate the scourge of mercenarism. It was to be hoped that it would soon enter into force, and that the norms contained therein would rapidly be adopted as part of national legislation.

42. The easing of tensions in international relations, especially in certain regional conflicts had given rise to an erroneous impression that mercenarism was decreasing. That should not lead the international community to relax in its

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(Mr. Garro, Peru)

efforts, since mercenary activity still existed and might reappear with greater intensity in the near future. If repudiated in one area, mercenaries would turn to others, and even start wars where there were none. Moreover, whenever possible, they would become involved in the most reprehensible activities in order to protect their illicit profits. The execrable attack which mercenaries and drug traffickers had recently perpetrated against the stability and constitutional order of Colombia was evidence of that new and dangerous facet of mercenarism. Hence, the international community must constantly be on guard and prepared to act. The adoption of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries would be an important step in the right direction.

43. Ms. WILLSON (United States of America) said that her delegation viewed with satisfaction the completion of a draft Convention which was fully consistent with the existing internationally recognized definition of a mercenary, and which set up a prosecution and extradition régime for dealing with the offences it identified. The approach had proved to be successful in past conventions and was, in her delegation's view, the most appropriate way to meet the objectives of the exercise now nearing completion. The draft Convention was a product of tense negotiations and reflected sincere efforts by all parties to accommodate the positions of others. That tendency, particularly prevalent during the 1989 session of the Ad Hoc Committee and subsequent consultations within the framework of the Sixth Committee, had enabled the participants to complete the draft now before the Committee. The result was a tribute to what could be achieved when the vital goal of general agreement was borne in mind.

44. Her delegation had responded positively to the appeal for rationalization made by the African Group in 1988, and would have welcomed co-ordination between the Third and Sixth Committees along the lines suggested in that appeal. It had therefore been particularly disappointed to find the Third Committee unwilling to defer consideration of draft resolution A/C.3/44/L.10 to a later date, pending developments in the Sixth Committee. However, it remained hopeful that the sponsors of that resolution would yet take action to recognize the Sixth Committee's role and achievement, and would respond to the efforts made by all regional groups to complete the draft Convention. In conclusion, she thanked the Ad Hoc Committee, the Working Group and the Drafting Group, as well as all others who had participated over the years in the elaboration of the draft Convention, and addressed some words of special appreciation to the Deputy Director of the Codification Division, who had assisted those efforts from beginning to end.

45. Ms. KRILL (International Committee of the Red Cross), speaking at the invitation of the Chairman, said that the International Committee of the Red Cross (ICRC) had examined with great interest the draft International Convention against the Recruitment, Use, Financing and Training of Mercenaries. Important as the issue was, it was not within ICRC's competence to give its views on the draft as a whole. However, considering the institution's special responsibility for the implementation and development of international humanitarian law, the ICRC wished to express satisfaction that article 1, paragraph 1 and article 3, paragraph 1 took

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(Ms. Krill)

up, in substance, the definition of the term "mercenary" contained in article 47 of Additional Protocol I to the Geneva Conventions of 1949, which was now binding on 91 States.

46. The ICRC also appreciated the insertion of a safeguard clause, in article 16 (b), upholding "international humanitarian law, including the provisions relating to the status of combatant or of prisoner of war". Under those provisions, any person having taken part in hostilities during an international armed conflict, and hence also any person suspected of being a mercenary, was entitled to be presumed innocent until he was proved guilty and his status had been determined by a competent tribunal. That was of the utmost importance to prevent any arbitrary or hasty decisions or measures.

47. ICRC would like to make some comments on article 10, paragraph 4, since it was mentioned therein. It first of all wished to thank the authors of the draft for the confidence they had shown in ICRC, as a neutral and independent institution, by expressly referring to it in the draft Convention. In international armed conflicts, alleged violators of the Convention would be entitled to treatment as prisoners of war until they had been proved guilty and their status had been established. Consequently, ICRC would be entitled to visit them and to interview them without witnesses, whether or not it had been invited to do so by the alleged violator's State of origin or of residence. Those visiting rights were safeguarded by article 16 (b) of the draft.

48. In situations other than international armed conflicts, the role ICRC might be called upon to play under article 10 was perfectly consistent with the mandate entrusted to the institution, in the event of non-international armed conflict, by article 3 common to the 1949 Geneva Conventions and, in other circumstances, by its own statutes and those of the International Red Cross and Red Crescent movement. It was, however, vital that ICRC should retain the freedom to either accept or refuse any such invitation. In that connection, ICRC was pleased to note that the word "invite" was used in the draft, since it would do nothing without the agreement of the detaining State or the detainee himself. Moreover, ICRC would not in principle agree to take action unless it was impossible for a State representative to carry out the visit, as stipulated in article 10, paragraph 3. It must further be emphasized that the ICRC would not regard itself as acting on behalf of the requesting State; it would work independently and solely on the basis of humanitarian considerations.

49. In conclusion, she wished to say a few words on the practical steps ICRC might agree to take should it be invited to "communicate with and visit the alleged offender". ICRC visits to all categories of prisoners must meet certain indispensable criteria if they were to be truly effective. In particular, ICRC must be allowed to interview detainees without witnesses and make repeated visits. ICRC would agree to visit detainees only if the detaining State accepted those conditions. ICRC did not communicate with detainees outside the context of its

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(Ms. Krill)

formal visits. On the other hand, it could agree to forward messages to and from relatives of detainees if there was no other means of communication available. That was how ICRC interpreted the words "communicate with and visit the alleged offenders".

The meeting rose at noon.