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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO
PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Report on the question of the use of mercenaries as a means of impeding
the exercise of the right of peoples to self-determination, submitted
by Mr. Enrique Bernales Ballesteros, Special Rapporteur, pursuant to
the mandate under Commission on Human Rights resolution 1989/21

CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
I. INTRODUCTION	1 - 6	1
II. ACTIVITIES OF THE SPECIAL RAPPORTEUR	7 - 29	2
III. PRESENT STATUS OF THE QUESTION OF MERCENARIES IN THE LIGHT OF INFORMATION RECEIVED BY THE SPECIAL RAPPORTEUR	30 - 105	7
A. Information received from States	32 - 51	7
B. Information received from international organizations	52 - 66	11
1. United Nations bodies	55 - 64	12
2. Specialized agencies of the United Nations system and international and regional organizations	55 - 66	13
C. Information received from non-governmental organizations	67 - 105	14
IV. ADOPTION OF THE INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES	106 - 112	23
V. DEVELOPMENTS AND AGREEMENTS ON POLITICAL SOLUTIONS IN SOUTHERN AFRICA	113 - 118	24
VI. SITUATION IN MALDIVES	119 - 121	26
VII. DRUG TRAFFICKING AND MERCENARIES IN COLOMBIA ..	122 - 127	27
VIII. SITUATION IN THE COMOROS	128 - 132	29
IX. EVOLUTION OF THE CENTRAL AMERICAN CONFLICT	133 - 156	30
A. Information gathered in the United States of America	135 - 148	30
B. Political and military dynamics of the conflict	149 - 156	35
X. CONCLUSIONS	157 - 170	38
XI. RECOMMENDATIONS	171 - 186	42

I. INTRODUCTION

1. At its forty-third session the Commission on Human Rights adopted resolution 1987/16, in which it decided to appoint a special rapporteur 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. Later, it was announced on 3 September 1987 that Mr. Enrique Bernales Ballesteros (Peru) had been appointed as the Commission's Special Rapporteur on the question of mercenaries.
2. The Special Rapporteur submitted his first report on the question of the use of mercenaries to the Commission at its forty-fourth session (E/CN.4/1988/14). The Commission adopted resolutions 1988/7 and 1988/30, taking note with appreciation of the report and extending the Special Rapporteur's mandate by two years, with the request that he 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 people to self-determination, together with his conclusions and recommendations (resolution 1988/7, para. 14). He was also requested to submit a preliminary report to the General Assembly at its forty-third session.
3. The Special Rapporteur submitted his second report to the General Assembly at its forty-third session (A/43/735, annex), focusing on his visit to Angola. On 8 December 1988 the Assembly adopted resolution 43/107, in which it expressed its appreciation to the Special Rapporteur for his report and decided to examine at its forty-fourth session the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right to self-determination. The Assembly also decided that the Special Rapporteur should submit his report under 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".
4. The Special Rapporteur submitted his third report to the Commission on Human Rights at its forty-fifth session, focusing on his visit to Nicaragua, where he received complaints about activities by mercenaries (E/CN.4/1989/14). On 4 March 1989 the Commission adopted resolution 1989/21, in which it took note with appreciation of the report by the Special Rapporteur and reaffirmed "the right of all countries to non-interference in their internal affairs, self-determination and full sovereignty". The Commission requested the Special Rapporteur 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" (resolution, para. 13). The Commission 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" (para. 14). Lastly, he was also requested 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.

5. The Special Rapporteur submitted his fourth report to the General Assembly at its forty-fourth session (A/44/526, annex). In that report of a preliminary nature, he focused on his visit to the United States of America to obtain the point of view of the United States Government on mercenary practices. On 8 December 1989 the General Assembly adopted resolution 44/81, in which it condemned mercenary practices aimed at the overthrow of the Governments of southern Africa and Central America and of other developing States and fighting against the national liberation movements of peoples struggling to exercise their right to self-determination (resolution 44/81, para. 2). The Assembly also requested the Secretary-General to report at its forty-fifth session on the use of mercenaries (para. 10).

6. Pursuant to the requests made in the above-mentioned resolutions, the Special Rapporteur has the honour to submit for consideration by the Commission this document containing his fifth 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. The report describes the Special Rapporteur's activities and sets out his final conclusions in connection with his visit to the United States of America from 19 to 27 July 1989.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

7. The Special Rapporteur visited New York from 18 to 20 October 1989 in order to hold consultations and to submit his fourth report to the Third Committee of the General Assembly, at its forty-fourth session (A/44/526, annex). He also took advantage of the occasion to establish the outlines of the report he was to prepare for the Commission on Human Rights at its forty-sixth session, a report contained in the present document.

8. On 2 November 1989 the Special Rapporteur wrote to the Minister for Foreign Affairs of Colombia expressing a wish to receive from his Government "all relevant information on recent complaints regarding alleged mercenary activities connected with armed paramilitary gangs and drug-trafficking rings. Such mercenary activities would constitute acts of repudiation of Colombia's national sovereignty and of its constitutional Government".

9. In reply to the Special Rapporteur's letter, the Under-Secretary for International Organizations and Conferences at Colombia's Ministry for Foreign Affairs wrote on 7 December 1989 that "the acts denounced indicate that, between December 1987 and May 1988, five nationals of the State of Israel and eleven from the United Kingdom of Great Britain and Northern Ireland were hired by known drug-traffickers and went to Colombia to give illegal military training to self-defence groups operating in the Magdalena Medio region and that they maintain ties with organized drug-trafficking". In view of the seriousness of the acts, the Under-Secretary also reported that his Ministry was asking the countries of origin of the mercenaries to co-operate in shedding light on these unlawful activities. He added that, since there were claims of a link between elements of the Colombian armed forces and the presence of mercenaries in Colombia, the President of the Republic "requested the Attorney-General to conduct the most thorough investigations necessary".

Such investigations are being carried out by the Third Court of Public Order and are now at the pre-trial stage, for which reason the Under-Secretary has not been able to supply many details but has undertaken to keep the Special Rapporteur informed of developments.

10. Again on 2 November 1989, the Special Rapporteur wrote to the Minister for Foreign Affairs of Nicaragua, expressing the wish to receive from his Government "up-to-date information on the situation regarding the effective implementation of the Tela agreements of 7 August 1989 reached by the five Central American Presidents". In particular, it would be useful to learn "whether there have been further complaints about the presence of mercenaries in Nicaraguan territory", as well as the Government's position "on the process of demobilizing the Contra forces".

11. The Permanent Representative of Nicaragua to the United Nations Office at Geneva answered the Special Rapporteur's letter on 13 December 1989 and attached a report by the Directorate-General of International Organizations and Conferences at Nicaragua's Ministry of Foreign Affairs. In the Tela agreements, reached at the meeting held from 5 to 7 August 1989, the Central American Presidents signed a "Joint Plan for the voluntary demobilization, repatriation or relocation in Nicaragua or third countries of members of the Nicaraguan resistance and their families, as well as assistance for the demobilization of all those involved in armed actions in the countries of the region when they voluntarily request it". Similarly, the Central American Presidents approved implementation machinery, namely, an International Support of the Verification Commission (CIAV). Furthermore, the Nicaraguan resistance was urged to accept implementation of the plan within 90 days from the date of the establishment of CIAV, during which period the Government of Nicaragua and CIAV would maintain direct contacts with the Nicaraguan resistance in order "to promote its return to the nation and its integration in the political process".

12. The report adds that "for Nicaragua, demobilization of the Contras is imperative and it considers that the main responsibility lies with Honduras ... as the State exercising sovereignty over the territory in which the Contras are to be found", and therefore Honduras should "take all action necessary to impede the use of its territory, which in turn implies reducing and disarming mercenary groups". However, in Nicaragua's view, "Honduras has not fulfilled its obligations under international law to impede the use of its territory by irregular forces, which has meant that the time-limit set in the Tela agreements to implement the Joint Plan (5 December 1989) can no longer be met". Nicaragua concludes that, as a result, Honduras is still subject to the legal consequences of the case brought against it in the International Court of Justice.

13. The report also affirms that "the United States, by the fact of creating and arming, financing and supplying this mercenary army, is under a legal, political and moral obligation to support demobilization". However, on 30 November 1989 the so-called "humanitarian aid" was renewed, for an amount of \$US 30 million, and according to Nicaragua "it has been used as the true logistic support for terrorist acts by mercenary forces on Nicaraguan territory". On the other hand, under the Tela Plan "genuine humanitarian aid is aid intended for the purposes of demobilization".

14. Nicaragua adds that, in the course of talks held in New York and Washington between the Nicaraguan and Honduran Governments, CIAV and the leadership of the Nicaraguan resistance (9-21 November 1989), the Government of the United States of America "refrained from bringing its decisive influence to bear on these groups of irregulars so as to reach an agreement to demobilize them", thereby persisting "in keeping these terrorist forces alive, at least until after the elections on 25 February 1990, in accordance with the United States bipartisan agreement of March 1989".

15. With reference to the presence of mercenaries in its territory, Nicaragua also informed the Special Rapporteur that "there has been an increase in terrorist attacks against civilian, military and economic targets, compelling the Government of Nicaragua to suspend the cessation of offensive military operations that it has been unilaterally extending since March 1988". According to Nicaragua, the United States State Department "has recognized the massive infiltration of counter-revolutionary groups into Nicaraguan territory to carry on the attacks and to affect the electoral process". According to estimates by Nicaragua, the number of armed actions from April 1989 onwards was higher than those in the same period of the previous year. Attacks by the Contras, which include economic sabotage, abductions, killings, ambushes of military and civilian vehicles, attacks on co-operatives and clashes with the Sandinista Army, totalled 1,523 from January to September 1989, whereas the number of acts of this type from April to December 1988 was 1,004.

16. Lastly, Nicaragua informed the Special Rapporteur about the meeting held by the five Central American Presidents at San Isidro de Coronado (Costa Rica) from 10 to 12 December 1989. At that meeting they confirmed the Esquipulas II Agreements, especially in regard to eliminating war from the region, and were agreed in condemning armed actions and terrorist acts committed by the irregular forces in the region; they expressed their support for the President of El Salvador in his concern to find a solution to the Salvadorian conflict by peaceful and democratic means; they vigorously urged the Farabundo Martí National Liberation Front (FMLN) to cease hostilities and join in the process of dialogue, and to renounce all violent action that could affect the civilian population. As to the Joint Plan for demobilization, the five Presidents requested the International Support and Verification Commission (CIAV) to start its activity to demobilize the FMLN, and at the same time, they supported the Nicaraguan Government so that the "funds for the Nicaraguan resistance will, after the signature of this Agreement, be handed over to CIAV in order to carry out the process of voluntary demobilization, repatriation or relocation in Nicaragua and third countries of the members of Nicaraguan resistance and their families". The Presidents also called on the Nicaraguan resistance "to cease any kind of action against the electoral process and the civilian population, so that the process will take place in a climate of normality". In the opinion of the Presidents, the processes of demobilizing both the Nicaraguan resistance and the FMLN "are a fundamental factor in overcoming the crisis in the peace process, for which reason ONUCA [United Nations Observer Group in Central America] should speed up its activities to impede the supply of weapons to the FMLN and the Nicaraguan resistance". For its part, the Government of Nicaragua gave an assurance that all those who return before 5 February 1990 can register to vote. In addition, the Government of Nicaragua will establish the corresponding contacts with ONUCA and CIAV, to start on the process of demobilization of the Nicaraguan resistance forces in Honduras, in conformity with the Tela agreements.

17. The Central American Presidents also agreed to request the Secretary-General to broaden ONUCA's mandate to include verification of the processes of cessation of hostilities and demobilization of irregular forces agreed on in the region. Full deployment of ONUCA is of "the utmost importance for fulfilment of the above-mentioned undertakings".

18. The Presidents also agreed to set up a bilateral Commission to try to reach an extrajudicial agreement within six months on the legal action brought by Nicaragua against Honduras before the International Court of Justice ("armed actions along and across the border"). At the same time, the representatives of both countries to the Court will ask it to allow Honduras until 11 June 1990 to submit its counter-memorial. If no extrajudicial agreement is reached, the representatives of the two countries will ask the Court to set a time-limit of six months for the submission of the counter-memorial in question.

19. The Special Rapporteur also sent a letter to the Minister for Foreign Affairs of Honduras on 2 November 1989 asking for his Government's views "on the degree of implementation of the Tela agreements ... and in particular the process of demobilization of the camps of the Nicaraguan resistance, which is reportedly based in Honduras".

20. On 13 November 1989, the Permanent Representative of Honduras to the United Nations Office at Geneva replied, attaching the text of the statement made by the Honduran Minister for Foreign Affairs to the United Nations General Assembly at its forty-fourth session. He recalled that the Tela agreements of 7 August 1989 among the five Central American Presidents are embodied in three documents: a political Declaration, the Joint Plan for the voluntary demobilization, repatriation or relocation of the members of the Nicaraguan resistance and other armed groups, and the extrajudicial Agreement between Honduras and Nicaragua on the action brought before the International Court of Justice in 1986. The Minister stated that the Nicaraguan resistance demobilization plan "is absolutely dependent on substantial progress being made in the process of national reconciliation and democratization to which the Nicaraguan Government has committed itself", so that the Government's fulfilment of its commitment to dialogue and national reconciliation "is essential for the proper reintegration of returnees in the economic, social and political life of Nicaragua...". In the view of the Honduran Government, "the responsibility for carrying out all the activities necessary for the voluntary demobilization, repatriation or relocation lies with the International Support and Verification Commission (CIAV), consisting of the Secretaries-General of the United Nations and the Organization of American States".

21. Honduras also expressed its satisfaction at the adoption of Security Council resolution 637 (1989), which unanimously approved the deployment of United Nations Observer Group in Central America (UNOCA). Honduras described the Observer Group as being "made up of specialized personnel from Canada, the Federal Republic of Germany and Spain", its purpose being "to verify compliance by the five Central American countries with their undertakings in regard to security".

22. Honduras also stated that it had requested the Security Council to set up "an international peacekeeping force to prevent our territory from being used as a sanctuary" if "armed Nicaraguan or Salvadorian opposition elements" had not ceased to use Honduran territory by the time-limit set in the Joint Plan.

23. Lastly, a note from the Minister for Foreign Affairs of Honduras, dated 24 October 1989, addressed to the Nicaraguan Ambassador to Honduras, pointed out that "... the problems created by the presence of the Nicaraguan resistance and the actions of Salvadorian rebel forces are causing tensions which affect the five Governments in the area and must be dealt with by co-ordinated action on their part". Consequently, Honduras cannot accept the proposed "bilateralization of a problem which is multilateral, precisely when CIAV is discharging the functions assigned to it".

24. The Special Rapporteur visited Geneva from 17 to 19 December 1989 in order to hold consultations, to proceed with drafting this report and to maintain contacts with a number of diplomatic delegations. Accordingly, on 19 December 1989 the Special Rapporteur held a meeting with the Permanent Representative of Colombia to the United Nations Office at Geneva and had an exchange of views with him on the recent reports of mercenary activities linked with armed paramilitary and drug-trafficking groups. The Permanent Representative assured the Special Rapporteur that his Government was fully prepared to co-operate with him in the performance of his mandate, and undertook to keep him informed of the judicial inquiries being conducted in Colombia with a view to identifying those responsible for the reported mercenary activities.

25. Also on 19 December 1989, the Special Rapporteur received the Counsellor of the Permanent Mission of Nicaragua to the United Nations Office at Geneva, who passed on to him information and statements made by his Government relevant to the Special Rapporteur's mandate, as reported above (see above paras. 10-18).

26. The Special Rapporteur also took up the question of the mercenary attack on the Comoros, which resulted in the death of President Abdallah on 26 November 1989 and the seizure of power by a gang of mercenaries led by Bob Denard, a French national (for further details see section VIII below). On 19 December 1989 the Special Rapporteur wrote to the Permanent Representative of the Comoros to United Nations Headquarters in New York, asking for official information on the events in question, since it was a clear case of mercenary activity which must be reported and dealt with. He also expressed his readiness to extend any co-operation the Comoros Government might require, including a visit to the Comoros should the presence there of the Special Rapporteur be considered desirable in order to shed further light on the matter.

27. The Special Rapporteur also wrote to the Permanent Representative of France to the United Nations Office at Geneva on 19 December 1989, recalling that "the action of France in response to a request for assistance from the legitimate Government of the Comoros had restored the situation to normal, since Denard and his group had temporarily taken refuge in South Africa". Accordingly, the Special Rapporteur requested the French Government to provide the "information available to France concerning the mercenary attack on the Comoros and the international assistance received by the French Government in

restoring their sovereign rights to the people of the Comoros, as well as information on the current legal status of Bob Denard before the French courts".

28. In the same connection, the Special Rapporteur also wrote to the Permanent Representative of South Africa to the United Nations Office at Geneva on 19 December 1989 informing him of the mercenary attack on the Comoros and requesting his Government to provide "precise information on the circumstances of Denard's admission to South Africa and, in general, any information available to his Government on the mercenary activities of the group in question".

29. Finally, the Special Rapporteur investigated reports that Suriname was being subjected to mercenary attacks affecting its sovereignty and the stability of its Government. In that connection, the Special Rapporteur wrote to the Permanent Representative of Suriname to United Nations Headquarters in New York on 19 December 1989, requesting information on "the existence of any mercenaries engaged in illegal activities in Suriname, where they came from, in whose interests they were acting, the number of activities recorded and the year when they started operating ...".

III. PRESENT STATUS OF THE QUESTION OF MERCENARIES IN THE LIGHT OF INFORMATION RECEIVED BY THE SPECIAL RAPPORTEUR

30. In a note verbale dated 21 April 1989, the Secretary-General transmitted to States Members of the United Nations, non-members, recognized national liberation movements, international organizations and non-governmental organizations, a letter of the same date, from the Special Rapporteur in accordance with the request of the Commission on Human Rights, contained in paragraph 9 of resolution 1989/21 of 6 March 1989.

31. In his letter, the Special Rapporteur requested States to provide credible and reliable information "on the existence of mercenary activities both in their preliminary stages and in operational terms (recruitment, financing, training, use of territory, transport, etc.), ... with the aim of organizing acts of military intervention which will affect the sovereignty and self-determination of a people". In particular, the Special Rapporteur was interested in information "on the presence of recruitment personnel and mercenaries as such "either within or outside the national territory of a given country. He also asked States for "information on national legislation and international treaties" relating to the question of mercenary acts. Finally, the Special Rapporteur asked for the views of States "regarding article 47 of Additional Protocol I (1977) to the 1949 Geneva Conventions, which refers to mercenaries" and for "any suggestions that might be of value in elaborating on your country's view on preventive measures and penal sanctions concerning mercenarism and mercenary activities".

A. Information received from States

32. By 21 November 1989 the following 20 Member States had replied to the Special Rapporteur's letter: Argentina, Botswana, Byelorussian Soviet Socialist Republic, Colombia, Honduras, Iran (Islamic Republic of), Jamaica, Malawi, Maldives, Mexico, Nicaragua, Pakistan, Panama, Peru, Qatar, Sudan, Suriname, Sweden, Union of Soviet Socialist Republics and Venezuela.

Botswana

33. Botswana said that a number of mercenary activities had taken place in its territory, with the result that one person was currently serving a prison sentence and one other had been extradited to a neighbouring country. Other cases of mercenary activities during the 1970s were mentioned.

Colombia, Honduras and Nicaragua

34. Colombia, Honduras and Nicaragua responded to the requests of the Special Rapporteur in communications dated 7 December, 13 November and 13 December 1989 respectively. Their contents have already been discussed elsewhere in this report (see section II above, paras, 8-9, 19-23 and 10-18 respectively).

Iran (Islamic Republic of)

35. The Islamic Republic of Iran said that it had been subjected to mercenary attacks carried out by what it described as a "terrorist organization", the People's Mojahedin Organization. It said that the Organization was based in Iraq, where it was provided with every facility for its war on Iran. In particular, apart from repeatedly making use of Iraqi territory for its propaganda and military activities, it had trained its forces with the direct assistance of Iraq, recruited young Iraqis and Iranians into its ranks and received financial assistance from Iraq. It had thus been able to equip itself with artillery, tanks and military equipment which it had used to kill 40,000 Iranian soldiers. In the course of its mercenary activities in Iranian territory, the terrorist organization in question burned hospitals, schools, farms and business premises, causing further casualties both among the armed forces and among the Iranian civilian population. In the view of Iran, the terrorist organization in question has carried out acts which exhibit most of the characteristics of mercenarism.

Maldives

36. On 11 July 1989, the Minister for Foreign Affairs, invited the Special Rapporteur to visit Maldives to see first-hand the consequences of the mercenary attack which it had experienced on 3 November 1988. On 24 July 1989, in a second communication, the Minister referred to the trial taking place in Maldives of captured mercenaries involved in the attack, and to the risks of international tension existing in the region (for further details, see A/44/526, paras. 19-21).

Mexico

37. With regard to the definition of "mercenary", Mexico said that "mercenarism can apply to both international armed conflicts and non-international armed conflicts, and in peace-time". Consequently, "it is necessary to determine who were active or passive subjects of the crime, establish a system of punishment and provide for specific obligations on the part of States".

38. As to its national legislation, Mexico said that, under article 123 of the Criminal Code, it is an act of treason for a Mexican national to be "a member of armed groups led or advised by aliens, organized within or outside the country, and intended to undermine the independence, sovereignty, freedom or territorial integrity of the Republic ...".

39. Mexico also considered that "the mercenary activities in Central America and southern Africa ... are affecting the peace and security of those regions, and Mexico therefore condemns such activities".

40. With reference to article 47 of Additional Protocol I to the 1949 Geneva Conventions, Mexico expressed the view that the requirement of material compensation established in subparagraph (c) of that article should be moderated to the effect that "although persons practising mercenarism are motivated by personal gain, the actual amount is not of overriding importance". With regard to the nationality requirement referred to in subparagraph (d) of the same article, Mexico expressed the view that "the activity of mercenarism does not prevent an individual from enlisting as a mercenary to fight against the country of which he is a national", since "the important thing is not merely to punish the mercenary himself, since he can be dealt with under national law, but to punish the person recruiting, training or financing mercenarism, so that the nationality criterion is irrelevant".

Panama

41. Panama reiterated complaints made in other international forums about "systematic action by the United States Government contrary to the principles of the sovereign equality, political independence, territorial integrity and self-determination of the Panamanian people". In its communication of 11 July 1989, Panama refers to "movements of armed units of the United States Army supported by tanks, aircraft and helicopter gunships, without the authorization or permission of the Panamanian authorities, in residential areas, as part of an intimidation operation, violating Panamanian airspace in flagrant violation of the Torrijos-Carter agreements and Panamanian sovereignty".

42. Panama also "condemns and penalizes the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination by making such practices a crime". Article 312 of the Panamanian Criminal Code states that "anyone recruiting persons, acquiring arms or carrying out other hostile acts not approved by the Government and engaging, within or outside the territory of Panama, in actions against another State which expose Panama to the risk of war or the severing of international relations shall be liable to imprisonment for three to six years".

Qatar

43. Qatar was of the view that all States should prohibit, within their national territory, the activities of individuals, groups or organizations engaged in the recruitment or training of mercenaries with a view to overthrowing Governments or political régimes, or impeding the struggle of liberation movements for independence and freedom, and should establish a clear distinction between mercenaries, who under article 47 of Additional Protocol I, do not have the status of combatants or prisoners of war, and "freedom fighters of national liberation movements", whose struggle against

colonial or foreign domination, particularly in the case of occupied Palestine and southern Africa, has been recognized in General Assembly resolution 2787(XXVI).

44. Qatar also pointed out that article 5 of its Provisional Constitution provided that "the foreign policy of the State shall aim to strengthen ties of friendship with peace-loving States and people in general...". For its part, Qatar acknowledges it has no basic legislation on the use of mercenaries, although chapter X of its Criminal Code refers to crimes against the State which can affect its relations with other States.

Byelorussian Soviet Socialist Republic

45. The Byelorussian Soviet Socialist Republic took the view that the use of mercenaries constitutes both a grave threat to international peace and security and a serious crime against humanity. As regards its national legal system, the Byelorussian SSR said that the use of mercenaries is alien to its political, economic and social system, and that consequently no need has arisen to adopt special legislation covering such crimes. Article 28 of the Constitution and article 68 of the Criminal Code prohibit war propaganda. Furthermore, the Criminal Code classifies the following as crimes: acts of aggression against another State (art. 70); organization of armed groups and participation therein (art. 74); smuggling of weapons, explosives, munitions and military equipment (art. 75); assassination of a representative of a foreign State in order to provoke war (art. 64) and unlawful exit from or entry into the territory of the Republic (art. 80).

Sweden

46. Article 19, paragraph 12, of the Swedish Criminal Code stipulates that the recruitment of persons for military or similar service abroad, or inducement to leave the country unlawfully to join such foreign forces shall be punished "for unlawful recruiting, to ... a fine or to imprisonment for at most six months or, if the country was at war, to imprisonment for at most two years".

Suriname

47. Suriname said that the Criminal Code contains no specific provisions on the punishment of mercenary activities, although a number of provisions may apply in that respect, such as article 128, relating to crimes against the State, article 132 (a) relating to violence against the Government, and article 135 (a) relating to support for a revolution.

Union of Soviet Socialist Republics

48. The Union of Soviet Socialist Republics said that it agreed in principle with article 47 of Additional Protocol I to the 1949 Geneva Conventions, inasmuch as it does not grant mercenaries the right to be a combatant or a prisoner of war. As to Soviet legislation, mercenarism is inherently alien to the Soviet system, as it contravenes article 29 of the Constitution, which establishes the principles of sovereign equality, the inviolability of frontiers and territorial integrity in relations between the Soviet Union and other States.

49. Moreover, the Soviet "Preservation of Peace Act" of 12 March 1951 stipulates that war propaganda constitutes a crime against humanity, and persons charged with the crime are brought before the courts. Moreover, the Soviet "Criminal Liability for State Crimes Act" of 25 December 1958 also classifies the following acts as crimes: war propaganda; crimes against another State; organization of armed groups; smuggling of weapons, munitions, military equipment and explosives; and terrorist acts against Soviet or foreign officials and authorities. Article 20 of the Act also specifies that it is an offence to enter or leave the country unlawfully, and hence it is impossible for mercenaries to cross Soviet territory illegally.

Venezuela

50. Venezuela reported that there are no mercenary activities within its territory. As to its national law, there are no legal provisions defining mercenary acts, although Venezuela's position in favour of the self-determination of peoples and respect for sovereignty is clearly established by the Constitution, the Criminal Code, the Code of Military Justice and the Weapons and Explosives Act.

51. As regards article 47 of Additional Protocol I to the 1949 Geneva Conventions, Venezuela endorses any initiative aimed at adopting a definition of mercenary acts "that eliminates or in some way diminishes the requirement of an actual promise of material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of a party to the conflict, or that removes the requirement for the person to be neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict".

B. Information received from international organizations

52. The Special Rapporteur also sent letters to world-wide and regional intergovernmental organizations, United Nations specialized agencies and the appropriate United Nations bodies. In his letters the Special Rapporteur requested information on the existence of mercenary activities aimed at organizing acts of military intervention affecting the sovereignty and self-determination of a people. In particular, he requested information on the use of the territory of any specific country to organize mercenary activities in blatant disregard of the Constitution, the laws and national sovereignty or concealing such activities under an appearance of legality.

53. Similar information was also requested on any mercenary activities in territorial areas that affect a region, a continent or several countries by subjecting them to intervention by a foreign Power or a private group using mercenaries to carry out acts of aggression.

54. These organizations were also asked for their opinions on national legislation or international treaties covering the issue of mercenary activities, and on article 47 of Additional Protocol I to the 1949 Geneva Conventions. Lastly, the organizations were invited to put forward suggestions on preventive measures and the appropriate penalties for mercenary acts and activities.

1. United Nations bodies

55. The Special Rapporteur received replies from the following specialized United Nations bodies: the Centre against Apartheid; the Office of Legal Affairs; the Office for Political and General Assembly Affairs and Secretariat Services; the Office of the United Nations High Commissioner for Refugees (UNHCR); the United Nations Development Programme (UNDP), and the United Nations Office in Vienna.

56. UNHCR replied that the issues raised by the Special Rapporteur in his letter were not directly within its competence. It nonetheless pointed out that its main concern was to guarantee the physical safety of refugees throughout the world. Accordingly, "armed attacks launched by various types of military forces, whether regular or irregular, on refugee camps and settlements have often endangered the security of the refugees". It also added that "the fact of being a mercenary may negatively influence a decision for refugee status determination, should such a person seek protection under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and/or the Statute of the Office".

57. The Centre against Apartheid cited the report of the Special Committee Against Apartheid to the forty-third session of the General Assembly (A/43/22) which observed that "the undeclared war waged by South Africa and its surrogate forces against its neighbours, the front-line States, intensified in the past year, resulting essentially in the destruction of Mozambique and Angola" (para. 53). This has led to substantial loss of human life, to 2.5 million displaced persons and a cost in terms of regional destabilization in excess of \$US 27 billion since 1980. The figure for 1985-1986 alone was in the region of \$15 billion. The same report identified Mozambique as one of the countries most affected by the economic destabilization fomented by Pretoria through the sabotage of its essential infrastructure by RENAMO (Mozambique National Resistance) and the expulsion of its migrant workers from South Africa. RENAMO carries out systematic and co-ordinated terrorist activities, which cannot be considered as isolated or spontaneous incidents. Thus, RENAMO has destroyed primary schools, health centres and production units. This had led to flows of more than 600,000 Mozambican refugees to Malawi since September 1986 (para. 56 of the report).

58. As to Angola, the report estimated that in October 1987 South Africa sent approximately 6,000 men to the country, where they fought under an integrated command structure with the United States-supplied UNITA (National Union for the Total Independence of Angola) (para. 57)).

59. South African military aggression also involved commando raids in Zambia, threats and a partial border blockade against Botswana, together with terrorist acts in Swaziland and Zimbabwe causing deaths, injuries and property damage, the alleged objective of the acts being "to eliminate ANC cadres living not only in the neighbouring countries but also in other parts of the world" (para. 58). Among those acts was, the murder of Mrs. Dulcie September in Paris on 29 March 1988, when she was representing ANC in France, Switzerland and Luxembourg. Godfrey Matsope, the ANC representative in Belgium, was also the victim of an attack, as was Albie Sachs, a white South African lawyer and member of ANC, who lost an arm in a car explosion outside his apartment in Maputo, Mozambique (para. 59).

60. The Special Committee against Apartheid also mentioned in its report the quadripartite talks aimed at finding a negotiated solution to the raging conflict in south-western Africa, which had led to a cessation of hostilities (para. 60).

61. The Office of Legal Affairs transmitted the report of the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries (A/44/43). The activities of the Committee focused on the definition of the term "mercenary". In the words of article 1, paragraph 1, of the draft articles, a "mercenary" is any person who "is specially recruited locally or abroad in order to fight in an armed conflict"; "is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised by or on behalf of a party to the conflict material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that party"; "is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict"; "is not a member of the armed forces of a party to the conflict"; and "has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces".

62. Under article 1, paragraph 2, of the draft articles, the term "mercenary" also includes any person who, in any other situation, "is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at: overthrowing a Government or otherwise undermining the constitutional order of a State; undermining the territorial integrity of a State". The question of "denying peoples the legitimate exercise of their right of self-determination as recognized by international law" is still under discussion (see section IV, paras. 106 to 112 below, which contain a commentary on the text finally adopted by the General Assembly).

63. Pursuant to article 1, paragraph 2, subparagraph (b), the term "mercenary" shall also include "any person who is motivated to take part therein essentially by the desire for private gain and, in fact, is promised or paid [substantial] material compensation".

64. The desirability of considering as "mercenaries" in the categories covered by draft article 1, paragraph 2, any person who "is not a national or a resident of the State against which such act is directed", "has not been sent by a State on official duty", and "is not a member of the armed forces of the State on whose territory the act is undertaken" (subparagraphs (c), (d) and (e)) is also being discussed.

2. Specialized agencies of the United Nations system and international and regional organizations

65. The Special Rapporteur received replies from three United Nations specialized agencies: the International Labour Organisation (ILO), the Food and Agriculture Organization of the United Nations (FAO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO).

66. He also received replies from one worldwide international organization, the International Criminal Police Organization (INTERPOL), as well as from a regional organization, the Commission of the European Communities.

C. Information received from non-governmental organizations

67. On 2 May 1989 the Special Rapporteur wrote to a wide range of concerned non-governmental organizations to request credible and reliable information "on the existence of mercenary activities both in their preliminary stages and in operational terms (recruitment, financing, training, use of territory, transport, etc.), either on the mercenaries' own initiative or on the initiative of a third party, with the aim of organizing acts of military intervention which will affect the sovereignty and self-determination of a people". He asked in particular for information "regarding the presence of recruitment personnel and mercenaries as such using the territory of your country to organize mercenary activities in blatant disregard of the Constitution, the laws and national sovereignty, or concealing such activities under an appearance of lawfulness". He also requested information on similar situations affecting a region as a whole, continent or a number of countries, subjecting them to the intervention of a foreign Power or private group making use of mercenaries in order to carry out acts of aggression. In addition he requested their opinion on national legislation or international treaties on the issue of mercenary activities, and on article 47 of Additional Protocol I (1977) to the 1949 Geneva Conventions, relating to mercenaries, as well as any other suggestion on preventive measures and the appropriate penalties for mercenary acts and activities.

68. At the time of completion of this report, the Special Rapporteur had received replies from the following 14 non-governmental organizations: the International Law Association, the International Association of Democratic Lawyers, the International Centre of Sociological, Penal and Penitentiary Research and Studies (Messina), the International Commission of Jurists, the International Committee of the Red Cross, the International Confederation of Free Trade Unions, the Fé y Alegría (Faith and Joy) Radio Station in Santa Cruz de la Sierra (Bolivia), the International Aid and Defence Fund for Southern Africa (London), the International Institute of Humanitarian Law (San Remo), the League for Human Rights and Fundamental Freedoms (Finland), the Peace and Justice in Latin America Service (Rio de Janeiro), the International Union of Lawyers, the International Association of Judges and the Inter-Parliamentary Union.

International Association of Democratic Lawyers

69. The International Association of Democratic Lawyers drew attention to the Belgian Act of 1 August 1979 relating to service in a foreign army or force located on the territory of a foreign State. Article 1 of the Act prohibits the recruitment and any activities leading to or facilitating the recruitment in Belgium of persons for a foreign army or force located on the territory of a foreign State. Under article 3, the Act also prohibits, outside Belgium, the recruitment or activities leading to or facilitating the recruitment of Belgian nationals, by a Belgian national, on behalf of a foreign army or force located on the territory of a foreign State. Pursuant to article 4, infringements of articles 1 and 3 carry penalties of three months' to two years' imprisonment.

70. The Association also mentioned the judgement by the Chambre d'accusation of the Paris Court of Criminal Appeal on the charges brought against three French citizens (Denard, Danet and Boyer) for their involvement in mercenary activities in Benin on 16 January 1977. The judgement said it was proved that, on that date, a plane landed at Cotonou airport in the capital of the Republic of Benin and 90 armed men disembarked with the intention of occupying the presidential palace and other strategic places in the capital, overthrowing President Kerekou and setting up another political régime by force. In the face of heavy armed opposition they were forced to withdraw to the plane which had brought them and in which they left for the airport at Libreville (Gabon). According to the findings of an investigation carried out by the special mission set up by the United Nations Security Council, the armed conflict left 2 of the attackers dead (one European and an African), and 6 Beninese were killed and 41 were wounded. Moreover, an unspecified number of foreigners were wounded. A member of the commando, of Guinean origin, Ba Alpha Oumarou, was also detained. According to a statement made by Oumarou, the mercenary commando was under the orders of a certain "Colonel Maurin" and had been hired by an organization known as the "Front for the Rehabilitation of Dahomey" in order to overthrow the Government in place in Benin. Documents confiscated from the attackers revealed that a French national, named Gilbert Bourgeaud, an adviser to the President of the Republic of Gabon, was identified by Oumarou as "Colonel Maurin", alias Bob Denard, the holder of an identity card issued by the Paris Police Prefecture.

71. The judgement also confirmed that the group of 90 mercenary attackers comprised 60 Europeans, and that Bob Denard received \$1,050,000 from a member of the Beninese opposition, Gratien Pognon, to recruit 60 European mercenaries, most of whom were French, and 30 African mercenaries. Fifty-eight of the mercenaries were identified, including: Olivier Danet, Robert Denard and Philippe Boyer, as well as 22 Africans. "Colonel Maurin", alias Bourgeaud or Denard, was well known on account of his frequent interventions at the head of armed troops in the former Belgian Congo and Katanga.

72. Another of the European mercenaries who took part in the operation was a British national, Philippe Vigoureux de Kermorvan, who stated that he had been hired by "Colonel Maurin", with whom he had, together with two other persons, gone from France to Casablanca (Morocco) on 30 December 1976, to a Moroccan military base at which they had been given intensive physical training. They had then flown to Franceville (Gabon) and then to Cotonou (Benin) with the rest of the commando. During this flight Bob Denard had informed them that the purpose of the operation was to overthrow the dictatorial régime in Benin and help the politician Gratien Pognon return from exile. When the operation failed on account of unexpected resistance by "North Korean forces", they returned to the plane they had used and first flew to Libreville and then to Franceville (Gabon). From there they had gone to Morocco, where Denard had paid them 15,000 francs. Vigoureux identified Bourgeaud, Denard and "Colonel Maurin" as one and the same person.

73. The same judgement sets out the statements made by Olivier Danet, according to which he was hired in Paris to "combat international communism in Africa", on a salary of 6,000 francs a month. In this connection, he went to Casablanca in December 1976 with two other men recruited under the same conditions. When they reached Casablanca, the police and customs formalities were waived for the three men, and they were immediately transferred to the

Ben Guedir military base. There, Danet was given the nickname of "Volunteer Lenormand"; after a medical examination by a Moroccan doctor, he was declared unfit for service because of poor sight and as a result returned to France. Nevertheless, his statements contradict the fact that between December 1976 and February 1977 an amount corresponding to three months' pay was credited to his bank account in Rouen.

74. In his statement, reproduced in the same judgement, Phillipe Boyer said that he answered an advertisement in L'Est Républicain for "volunteers to work in Africa". He was immediately hired in Paris at 6,000 francs a month, his ultimate destination being Gabon, and he went there via Morocco. Boyer and two other persons unknown to him were given physical and military training in Rabat, under the orders of a commander and supervised by soldiers of the Moroccan army. For the Cotonou operation he was given the name of "Volunteer Martel". When the coup d'état in Benin failed, Boyer withdrew in the same plane from which he had disembarked and returned to France via Morocco. A sum of 18,000 francs, equivalent to three months' service, was deposited in his French bank account.

75. On these grounds, the judgement of 12 November 1987 of the Paris Court of Appeal committed Denard, Danet and Boyer for trial for the crime of "association de malfaiteur" (criminal conspiracy) covered by article 265 of the Criminal Code, the judgement established that the three had travelled to a foreign country, where they had received military training, and travelled to another country and then to the place where they planned to carry out their unlawful action, as well as being responsible for several crimes against individuals and property, in violation of article 285 of the Criminal Code. The Court also ordered further investigations and pre-trial detention of the three accused.

76. In the light of this judgement, the International Association of Democratic Lawyers observed that, although the judgement did not adopt any specific definition of the term "mercenary", it demonstrated that "mercenary" need not be established as a specific category in law, in spite of the difficulty of implementing the provisions of article 47 of Additional Protocol I. In the view of the Association, what matters is "for States to be able to find the legal measures necessary when they are determined to suppress mercenarism".

International Committee of the Red Cross

77. The International Committee of the Red Cross (ICRC) said in reply to the Special Rapporteur that article 47 of Additional Protocol I did not seem useful in establishing mercenarism as a means of violating human rights and the right of peoples to self-determination. According to paragraph 5 of the preamble, the provisions of Additional Protocol I must be applied "without any adverse distinction based on the nature or origin of the armed conflict or on the causes espoused by or attributed to the Parties to the conflict", for which reason the Protocol applies regardless of whether mercenarism is employed against the self-determination of a people, and regardless of whether or not it violates human rights.

International Confederation of Free Trade Unions

78. The International Confederation of Free Trade Unions informed the Special Rapporteur of its support for the adoption of a convention in which one definition of a mercenary would be sufficiently broad to cover all individuals involved in the repression of basic human rights for financial gain. Consequently, the Confederation holds that the definition should include individuals recruited or operating within the frontiers of their own country, as well as on the territory of other States. In its view, in recent years there has been an increase in the number of trade unionists killed by assassins (i.e. mercenaries) operating in the pay and under the orders of private individuals. Such mercenary activities have increased in Brazil, particularly in rural areas, where many trade unionists had been murdered by hired gunmen, operating on the orders of landowners to defend their own interests and to prevent workers from organizing.

79. Another similar case is that of Colombia, where some 500 Colombian trade unionists were murdered last year by paramilitary groups and paid assassins, connected with drug traffickers, landowners and guerrilla fighters. The Government of Colombia itself is said to have stated that most of the murders were carried out by hired killers acting either alone or together. Only a few of them have been tried.

80. In April 1989 the Colombian press revealed the existence of a confidential document prepared by a Colombian security service, according to which some 2,000 men belong to paramilitary groups, including men who operate drug laboratories, clandestine airstrips, etc., for the drug traffickers. According to this information, the paramilitary organization functions under cover of the "Stock breeders' and Farmers' Association of Magdalena Medio" (ACDEGAM), located in the city of Puerto Boyacá, which has a network of 32 schools for training mercenaries, with capacity to train 50 new mercenaries every two months. Each course takes 30 to 60 days and includes camouflage techniques, use of weapons and explosives, self-defence, intelligence and counter-intelligence, bodyguard work, communications and first-aid. The instructors are said to include a number of foreigners, including Israeli and British citizens. Their pay ranges vary from a minimum of 30,000 Colombian pesos a month for a member of a patrol to 1.5 million pesos for the commander of an elite squad. Hired gunmen are paid according to the work they do. The Confederation maintains that the people involved in this type of activity should be considered as mercenaries, inasmuch as their acts of violence clearly impede the enjoyment of human and trade union rights and the exercise of a people's right to self-determination.

81. The Confederation added that, according to articles in the press, a report by Colombia's "Administrative Security Department" (DAS) revealed the existence of the paramilitary network in that country. According to the report, the head of the DAS himself, General Miguel Maza Márquez, former Government-Attorney Horacio Serpa Uribe and the leader of the Patriotic Union Party, Bernardo Jaramillo Osso, have received death threats from paramilitary gangs. These gangs appear to be financed by known drug traffickers such as Pablo Ochoa, Gonzálo Rodríguez Gacha, Pablo Escobar Gaviria, Gilberto Molina (since killed), Victor Carranza and Hernando Murcia. The report also states unequivocally that the paramilitary network has a military and political infrastructure which includes two major training centres and specialized classes taught by foreign personnel. The military wing was concentrated in

Puerto Boyacá, Pacho (Cundinamarca), Puerto Berrío and Puerto Olaya (Antioquía), under the Command of Alfredo Baquero, alias Vladimir, and Doradal, La Danta, Las Mercedes and Puerto Triunfo (Antioquía) under the Command of Pedro Aristizábal, alias Pedrito, who has allegedly replaced Ramón Isaza, alias Lenin.

82. According to the same report, the self-defence patrols extended to Palevaca, Yacopí and Terán, in Cundinamarca; Puerto Pinzón, El Marfil and Puerto Boyacá, in Boyacá; La Carcovada, Vuelta Cuña, San Fernando, Cimitarra, Las Montoyas and San Vicente de Chucuri, in Santander; Vista Hermosa, Puerto López, Acacias and Caviona, in Meta, under the command of Juan de Dios Toro; La Azulita and Puerto Asís, in Putumayo; San Vicente del Caguán and El Recreo Yarí, in Caquetá; and Puerto Escondido, Córdoba and Caucasia, in Antioquía.

83. As for the training camps, mention is made of the schools in Puerto Boyacá and in Pacho, Cundinamarca; the former run by Henry Pérez; the latter, by Marcelino Panesso, alias Benitia or Beto. These two leaders, and others such as Nelson Lesmes and Gonzálo Pérez, interview people who want to join paramilitary groups. The training course lasts 30 to 60 days and includes camouflage techniques, use of weapons, explosives, etc. These courses are sometimes given by foreigners. Thus five Israelis gave the "Pablo Emilio Guarín Vera Course" at Information Centre No. 50 in Puerto Boyacá; they were identified as Amancio, Zadaca, Dean, Teddy, and a fifth name which is not known.

84. For its part, a group from the "British Legion" taught the "Alberto Acosta Course"; the foreigners were named Peter, Alex, Gordon, David, George, and six more were not identified.

85. The pay was from 30,000 to 50,000 pesos a month (for a patrol member) and a possible 5 million pesos a pilot can earn for every drug shipment.

International Aid and Defence Fund for Southern Africa

86. The International Aid and Defence Fund for Southern Africa supplied information on "Battalion 32" of the South African Defence Force (SADF), consisting mainly of mercenaries recruited in Angola or other countries. "Battalion 32", widely utilized in northern Namibia to attack Angola, has recently been settled near the Botswana border, in the community of Pomfret together with the families. This battalion had been secretly set up by South Africa using the survivors of Holden Roberto's "Angola Liberation Front", which was destroyed in 1975 during the civil war in Angola. In 1981, thanks to public statements by one of its members, Trevor Edwards, the world learned of the battalion's existence and its methods, which included torturing children, summary executions and destructing towns, schools and medical facilities. According to Edwards's statements, "Battalion 32" received its name in 1986, when it was officially declared part of the South African Army. In its incursions into Angola, the Battalion is known to have participated in the Protea, Askari, Modular and Hooper operations, killing thousands in the South West Africa People's Organization (SWAPO) and Angolan MPLA forces. According to recent information, "Battalion 32" is estimated to include some 6,000 individuals.

87. In May 1986 the Fund published a work by Gavin Cawthra entitled Brutal Force: The Apartheid War Machine. This work reveals that the majority of the mercenaries who belong to the SADF are black Angolans, Mozambicans, Zimbabweans or nationals of other neighbouring countries recruited through dependent forces such as the National Union for the Total Independence of Angola (UNITA) and the Mozambique National Resistance (RENAMO), trained on South African or Namibian military bases, and deployed in their countries of origin for destabilization purposes. Many of these mercenaries have been found both in "Battalion 32" and "Battalion 201", in the "reconnaissance squads" of the South African army and in "Brigade 44" of the "Pathfinder Company", which was formed exclusively with mercenaries from November 1980 to January 1982. The white mercenaries include Chilean and Israeli nationals, recruited through international networks such as the Soldiers of Fortune organization. During 1982 and 1983, SADF appears to have hired fewer white mercenaries, for during that period many entered the ranks from Rhodesia as a result of the independence of Zimbabwe. Many Rhodesians are known to belong to the regrettably well-known "Selous Scouts" and the "Special Air Services". They were placed both in "Battalion 32", "Battalion 44" of the "Pathfinder Company", and the secret "reconnaissance squads". Other Rhodesians joined South African security companies or military units in the Bantustans. Thus Colonel Ron Reid Daly, the well-known commander of the "Selous Scouts", was appointed Commander-in-Chief of the Transkei Army in 1981.

88. In 1983 South Africa amended its legislation and established sentences of up to five years for recruitment of mercenaries in the country. According to G. Cawthra, this was due to international pressure following the attempted coup d'état in the Seychelles, organized by the SADF and National Intelligence Service. It is all too well known that a group of mercenaries landed in the Seychelles and, once the coup had failed, hijacked an Air India plane and forced the pilot to take them to Durban (South Africa), where they were detained and sentenced to light prison terms. Despite the anti-mercenary legislation in force, some of the mercenaries who took part in the Seychelles coup remained in their SADF posts, and the officials in charge of recruiting mercenaries for the SADF are not being prosecuted. The South African Minister of Defence admitted in 1982 that there were 2,000 foreigners in the SADF, including 672 career soldiers.

International Institute of Humanitarian Law

89. The International Institute of Humanitarian Law informed the Special Rapporteur that the question of mercenaries is part of the curriculum of the periodic courses held in San Remo on armed conflict law and international humanitarian law. In the Institute's opinion, the use of mercenaries in any type of armed conflict should be prohibited.

League for Human Rights and Fundamental Freedoms (Finland)

90. The League for Human Rights and Fundamental Freedoms (Finland) made reference to the Finnish Penal Code, amended on 1 July 1983, which in chapter 22, paragraph 22, lays down a maximum penalty of one year or a fine for anyone who recruits a person to perform military service for a foreign power. Despite this provision, the League states that an undetermined number of Finns have been mercenaries abroad, and the Finnish authorities are not known to have adopted measures against them.

Peace and Justice in Latin America Service

91. The Peace and Justice in Latin America Service (SERPAJ-AL) provided the Special Rapporteur with information on Uruguayan legislation, which has no explicit rules on mercenarism. Nevertheless, the Uruguayan Penal Code covers a few matters that may be considered as applying to mercenaries. For example, under article 310 of the Penal Code payment or promise of payment is a "highly aggravating" factor in crimes of homicide, since the judge may increase the sentence, if necessary, from 15 to 30 years (Penal Code, art. 312.2).

92. Again, acts by mercenaries may be considered to fall within the purview of title I, book II of the Penal Code ("Offences against State sovereignty, against foreign States, their heads or representatives"); this also includes "offences against one's country", which article 132 of the Penal Code defines as attacks against the integrity of the national territory, independence or unity of the State; supplying military or political services to a foreign State; war with Uruguay; disclosing State security secrets; intelligence dealings with foreign countries for purposes of war: sabotaging war facilities and equipment; and attacks against the Constitution.

93. In addition, article 133 of the Uruguayan Penal Code lays down penalties for acts that might expose the Republic to the danger of a war or of reprisals; disloyalty to a political mandate in national matters and providing supplies to an enemy State in time of war; trade with the enemy, participation in its loans and breach of a truce or armistice. Article 135 of the Penal Code also mentions "offences against an ally State". For all these cases, article 136 of the Penal Code also provides that responsibility "extends to foreigners living in or outside the country, but the penalty shall be reduced by one third to one half".

94. Furthermore, article 150 of the Uruguayan Penal Code includes "association to commit an offence" among "offences against the public peace". This category may be considered to include the recruitment, use, financing and training of mercenaries to commit unlawful acts. Under article 150 the punishment for association to commit an offence is six months to five years in prison.

95. With regard to Nicaragua, the Peace and Justice Service was of the view that mercenaries are an instrument for carrying out a policy that the International Court of Justice described as contrary to customary international law, because it undermines the sovereignty of States in choosing their of political-social and economic and cultural systems and disregards the customary international obligation not to intervene in the affairs of another State.

96. Regarding article 47 of Additional Protocol I, the Peace and Justice Service feels that, for foreigners, payment is obviously the basic reason for enlisting, whereas for nationals "the motivations are more complex and it is not easy to determine the main one". In any event this does not prevent legislation - such as Uruguayan legislation - from considering the unlawful act to be more serious when the person involved is a national.

International Union of Lawyers

97. The International Union of Lawyers spoke in favour of an international convention on mercenary activities both in time of war and in time of peace; both in international armed conflicts and in non-international armed conflicts and other situations. The convention should make clear which unlawful acts mercenaries commit and should make both the use and the recruitment, financing and training of mercenaries a crime against the peace and security of mankind. The convention should not grant prisoner-of-war status to mercenaries. In addition, the Union considers that the development of Additional Protocol I will tend to eliminate mercenarism even in its indirect forms; in the meantime, provisions should be included that guarantee mercenaries the right to a defence, when they are tried, in keeping with the Geneva Conventions and the United Nations International Covenants.

International Association of Judges

98. The International Association of Judges transmitted to the Special Rapporteur replies from two of its national affiliate organizations: Tunisia and Denmark. The Tunisian organization was of the opinion that the traditional concept of a mercenary has shifted due to advances in war technology, so that specialists able to operate sophisticated war machinery are increasingly being called upon. In these cases the specialist receives special remuneration, but he is no longer considered to be a mercenary. Therefore, the decisive factor today in determining whether the person involved is a mercenary is participation in activities that undermine a people's self-determination and sovereignty. For example, mention is made of the attempted coup d'état against Benin on 16 January 1977, as a result of which the Security Council condemned the recruitment of mercenaries to destabilize Governments of States Members of the United Nations (resolution 405 (1977)).

99. According to the same national organization, Tunisian legislation does not contain references to the offence of mercenarism. However, the Act of 10 January 1957 requires members of the army to be Tunisians. In addition, article 123 of the Military Code lays down the death penalty for anyone who recruits another person to perform military service for a country at war with Tunisia. The penalty is reduced to 10 years in time of peace for any Tunisian who enlists in a foreign army or terrorist organization. Article 61 of the Penal Code, for its part, lays down penalties for any Tunisian or foreigner who, in time of peace, hires soldiers in Tunisian territory to form part of the army of a foreign power. Article 32 of the Nationality Code stipulates that it is a ground for loss of nationality if a Tunisian continues to hold public office in a foreign State or foreign army six months after he has been duly summonsed. Similarly, article 33 of the Code withdraws Tunisian nationality from anyone who has acquired it and later performs for the benefit of a foreign State, acts that are incompatible with Tunisian nationality.

100. The same Tunisian national organization cites the measures contained in Act No. 7/68 of 8 March 1968, on the situation of foreigners in Tunisia, as measures for preventing mercenary activities. The Act regulates the terms and conditions regarding foreigners' entering and leaving the country, so that the authorities can determine who might endanger the peace in Tunisia, in the light of the reason for their visit and for whom they are working. If danger is believed to exist, the foreigner may be expelled from the country.

101. The Tunisian judges' organization considers article 47 of Additional Protocol I to be inadequate because it does not mention mercenarism as such, does not prosecute States and groups that recruit mercenaries and does not establish compulsory criminal sanctions, leaving this to the States in their domestic legislation. As for material remuneration, the organization does not consider it to be a factor in determining mercenary status; a mercenary might well agree to equal or even lower pay than the regular combatants, since mercenaries characteristically hire out their services regardless of payment, which is something that concerns only the mercenary and the recruiter.

102. Furthermore, the requirement in article 47 that a mercenary should not have the nationality of either of the two parties to the conflict is not decisive in the view of the Tunisian organization. A country might recruit nationals from another country and send them to their country of origin to attack it or undermine its sovereignty.

103. On the other hand, the Tunisian organization believes that the definition in article 47 is very broad if one takes into account that anyone who participates in the hostilities is considered to be a mercenary. However, the organization points out that some countries of the so-called third world, in defence of their sovereignty and self-determination, must resort to foreign specialists, given the fact that modern warfare is increasingly based on highly-advanced technology and industries. In these cases both the motive of the recruiting country (to defend its sovereignty and not to attack other countries) and the recruit (to help a country preserve its sovereignty and not to attack it) should be borne in mind in deciding whether or not the person involved is a mercenary.

104. The Danish judges' organization, for its part, said that there is no specific legislation on mercenaries in Denmark, although chapters 12 and 13 of the Penal Code might be applicable, since they regulate offences against the Constitution and against the security of the State.

Inter-Parliamentary Union

105. The Inter-Parliamentary Union informed the Special Rapporteur that the 69th Inter-Parliamentary Conference, held in Rome in 1982, condemned "acts of aggression, destabilization and State terrorism perpetrated against Mozambique, Zimbabwe, Zambia, Botswana, Lesotho, Seychelles and Angola by the racist régime of South Africa, which recruits, trains, arms, supplies and finances bandits and mercenaries". Subsequently, the 70th Inter-Parliamentary Conference (Seoul, 1983) requested the "racist South African régime to stop frustrating the economic and political aspirations of its neighbours, especially in the context of the Southern Africa Development Co-ordination Conference (SADCC)". In the opinion of the Conference, South Africa is creating instability in the region through military aggression, the use of terrorist mercenary forces, sabotage of economic facilities, etc. Lastly, the 81st Inter-Parliamentary Conference (Budapest, 1989) declared "its total solidarity with the countries of southern Africa, in particular Angola and Mozambique, and their just and difficult struggle against armed bandits in the pay of Pretoria".

IV. ADOPTION OF THE INTERNATIONAL CONVENTION AGAINST THE
RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES

106. After nine years of substantive work, the Ad Hoc Committee established under General Assembly resolution 35/48 of 4 December 1980 completed the task of drafting an International Convention against the Recruitment, Use, Financing and Training of Mercenaries. This important document was recently adopted on 4 December 1989 by General Assembly resolution 44/34 containing the text of the Convention, which was opened for signature and ratification or accession by Member States.

107. The Special Rapporteur draws attention to the importance of this document and recalls that, until now, there had been no other international legal reference than article 47 of Additional Protocol I to the 1949 Geneva Conventions. The article broadly covered cases of mercenaries in international armed conflicts, but a number of States affected by other types of mercenary activities had expressed the view that the provision was not sufficient and that there was a need to adopt a convention which would relate broadly, specifically and in detail to the problem of mercenaries in its different forms. In addition, article 47 provides that, under international humanitarian law, mercenaries do not have the right to be regarded as prisoners of war. The Convention thus fills a gap and confirms the legal nature of the many United Nations declarations and resolutions which have condemned mercenary activities.

108. The Convention takes account of the objective fact that, even at present, mercenaries are being used, recruited, financed and trained for activities which are contrary to principles of international law. These activities are, as stated in the the preamble, offences for which the persons responsible must be prosecuted or extradited. The Convention also recognizes the fact that mercenary practices have become widespread by referring to "new unlawful international activities linking drug traffickers and mercenaries in the perpetration of violent actions which undermine the constitutional order of States" (fifth preambular paragraph). The Convention thus contains an update that may help to ensure stricter observance of the purposes and principles of the Charter of the United Nations, without prejudice to the fact that issues not covered will continue to be governed by the rules and principles of international law.

109. The Special Rapporteur does not intend to make an exhaustive and detailed study of the Convention, but, on the basis of the knowledge and experience gained in following situations in which mercenaries have been shown to be present, he draws attention to the usefulness of the Convention for the unmistakable identification of situations with a mercenary element and for the prosecution and punishment of persons involved in mercenary activities. In this connection, article 1 is of particular importance: the first part reproduces article 47 of Additional Protocol I, but the second part expands on and adds to it by making the definition of a mercenary applicable to any person recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at overthrowing a Government or otherwise undermining the constitutional order or territorial integrity of a State, in addition to the other known requirements, such as payment, status as a non-national, and the fact of not having been sent by a State on official duty and of not being a member of the armed forces of the State on whose territory the act is undertaken. It is obvious that this provision gives States better

protection against mercenary activities, in view of the variety of criminal and destabilizing ends for which mercenaries are now used. Moreover, article 2 also characterizes as a mercenary any person who recruits, uses, finances or trains mercenaries, thereby filling another gap, since the characterization of an act as an offence derives not only from direct action by a mercenary agent, but also by the person behind him. Article 4 defines the scope of this provision and article 5 extends the prohibition on recruiting, using, financing and training mercenaries to States Parties, which are under an obligation to take appropriate preventive measures and to provide in their internal legislation for appropriate penalties for the offences defined in the Convention.

110. Other articles refer specifically to the procedures for the implementation of the provisions of the Convention: preventive co-operation by the States Parties (arts. 6 and 7); the establishment of jurisdiction by each State Party (art. 9); custody of an alleged offender in the territory of a State Party and the relevant notifications (art. 10); fair treatment (art. 11); extraditable offences (art. 15); and disputes (art. 17). Article 19 provides that the Convention will enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

111. This description of the main elements of the Convention against mercenary activities is not intended to be analytical. The Special Rapporteur has referred to them in order to draw attention to the importance of the step which was taken by the General Assembly and will definitely help to strengthen the sovereignty of States, to guarantee the self-determination of peoples and to defend the stability of lawfully constituted Governments. The presence of mercenaries, which is unfortunately apparent in the case of a number of offences, may find an effective means of repression under this Convention, and that its implementation can be further improved.

112. The Special Rapporteur draws attention to the fact that the text of the Convention does not contain any provision on monitoring machinery. Since the cases covered include situations which affect fundamental rights of peoples with a bearing on political freedoms, human rights, the sovereignty of States and self-determination, the Special Rapporteur is of the opinion that consideration of one type of monitoring machinery may fall within the competence of the Commission on Human Rights. In other words, complaints about mercenary activities of various kinds, such as those received by the Special Rapporteur, could better be studied and characterized as part of flexible Commission machinery, without prejudice to the relevant domestic legal remedies. The Commission could thus help to guarantee the implementation of this valuable Convention.

V. DEVELOPMENTS AND AGREEMENTS ON POLITICAL SOLUTIONS IN SOUTHERN AFRICA

113. The topic of mercenary activities in southern Africa has been given priority attention by the Special Rapporteur because of the seriousness of the complaints which he received and which referred in particular to the active presence of mercenaries in Namibia and Angola. The Special Rapporteur visited Angola in August 1988 and he referred at length to his *in situ* observations in his second report, as submitted to the General Assembly in November 1988.

The third report submitted to the Commission on Human Rights in February 1989 (E/CN.4/1989/14) referred to the question in paragraphs 11 and 12, in the conclusions contained in paragraphs 179 and 180 and in the recommendation contained in paragraph 194. The fourth report dated October 1989 (A/44/526, annex) again emphasized this point and focused on the positive trend towards gradual and complete détente in the region in the framework of the tripartite agreements concluded by Angola, South Africa and Cuba with the mediation of the United States and in the implementation of Security Council resolution 435 (1978), on the independence of Namibia.

114. The Special Rapporteur continues to believe that the full and satisfactory settlement of conflicts in southern Africa will have the effect of eliminating mercenary practices involved in acts against the sovereignty and self-determination of Angola. Accordingly, the tripartite agreements designed to bring about a cease-fire in Angola and Namibia, to put an end to South African hostilities against Angola, to implement the United Nations timetable for the independence of Namibia and, under a separate agreement, to bring about the withdrawal of Cuban forces from Angola must be regarded as genuine progress towards peace in the region.

115. On the basis of international information, the assessments made by the United Nations staff sent to the area by the Secretary-General for the implementation of Security Council resolution 435 (1978) and the elections held in Namibia in November 1989, it may be said that détente has gradually begun in the border area between Namibia and Angola, hostilities by South Africa against Angola have ceased and the process of Namibian independence is also proceeding according to plan. As may be seen, the military conflict has virtually been settled and, in this connection, the Special Rapporteur has not received any new complaints concerning mercenary activities in the region.

116. The Special Rapporteur must also refer to the internal conflict in Angola, since UNITA resistance to the lawfully constituted Government affected the country's sovereignty, as well as the lives and property of its inhabitants. Previous reports stated that UNITA was receiving considerable foreign assistance, part of which it used to ensure the presence of a mercenary component with which it stepped up its military actions in the country. The fact is that, compared with the past, the civil war in Angola has died down considerably and efforts are being made with a view to a final political solution. A cease-fire was agreed on at the summit conference of African Presidents held in Gbadolite (Zaire) on 22 June 1989. The Government of Angola has implemented a policy of clemency and national reconciliation that has made it possible to release 700 detained UNITA guerrillas and to grant amnesty to 50 persons under sentence of death. In this light, completion of the process should mean the gradual integration of the members of UNITA into Angolan national life and the structures of the State as part of a general reconciliation and peace agreement.

117. Despite these advances, the conflict is still going on and UNITA's military resistance continues, although sporadically. According to the international press, arms shipments intended for UNITA have been discovered and the head of that organization, J. Savimbi, failed to attend the second round of negotiations recently convened in Zaire. Although, as already stated, the Special Rapporteur has not received any further complaints from Angola about the mercenary component in UNITA forces, he is not unaware

that their resistance comes partly from the foreign assistance they receive and from their military advisers, some of whom are mercenaries. Only a genuine peace agreement would therefore reliably put an end to the presence of mercenaries in Angola, thereby paving the way for a genuine process of internal reconciliation, peace and development for the entire Angolan population.

118. In this connection, the Special Rapporteur wishes to repeat the historical consideration to which he referred in his fourth report to the General Assembly:

"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" (A/44/526, annex, para. 18).

VI. SITUATION IN MALDIVES

119. Since his third report, the Special Rapporteur has referred to the events that occurred in Maldives on 3 November 1988, when a group of mercenaries of Tamil origin tried to overthrow the Government. The attack did not achieve its objective, the constitutional Government retained its authority and some of the attackers were detained and brought to trial. The attack led the Special Rapporteur to draw attention in his third and fourth reports to the need to consider the situation and lend support to the constitutional Government of Maldives by applying the principles and rules of international law to prevent this part of the Indian Ocean from becoming the scene of tensions and activities by mercenary forces.

120. Communications with the Government of Maldives and the meeting with the Permanent Representative of Maldives to the United Nations in New York confirmed this concern. The Maldivian authorities reported that the situation has been settled and solved in accordance with the internal rules of that country, but they also state that such action is a clear sign of their country's vulnerability to an outside attack, which could quite easily occur again because of the tension in areas near Maldives. In short, Maldives does not have any internal problems, but the large number of small islands that make up the Maldivian archipelago lay it open to an outside attack in which the invasion and occupation of one or more of its islands could be a way of involving it in unsolved conflicts in neighbouring areas.

121. The Government of Maldives has expressed its concern about this situation, which affects the security of the Maldivian people and respect for its sovereignty and self-determination. In this connection, it has invited the Special Rapporteur to visit the Republic of Maldives in order to gather information about the mercenary attack and the trial of the mercenaries who were detained and about the measures taken to prevent anything of this kind from occurring again. The Special Rapporteur has accepted the invitation and hopes to be able to make the visit in 1990 if his mandate is renewed by the Commission. It is, moreover, relevant to consider the topic of the vulnerability of small States, particularly if they are islands and if, because of their geographical location, they are of great strategic importance from the geopolitical and military point of view.

VII. DRUG TRAFFICKING AND MERCENARIES IN COLOMBIA

122. The international press has referred on a number of occasions to the serious acts of violence which are taking place in Colombia as a result of concerted criminal action by organized gangs of drug traffickers. These groups not only operate outside the law, contrary to fundamental human rights, but have also financed paramilitary gangs to commit murders and carry out acts of sabotage, destroy infrastructure, intimidate and kidnap people, and so on, in violation of Colombian sovereignty and in order to undermine the constitutional Government.

123. According to complaints received by the Special Rapporteur, these paramilitary gangs have been formed and trained by mercenaries of various nationalities hired especially for the purpose and for even larger-scale criminal acts. Thus, the complaint by the International Confederation of Free Trade Unions, quoted at length in the present report (see above, paras. 78 to 85), speaks of the network of paramilitary groups linked to drug traffickers who allegedly killed some 500 Colombian trade unionists. Referring to a confidential document prepared by a Colombian security service, the Confederation states that some 2,000 men belong to the paramilitary organization operating under cover of a peasant association of ranchers and farmers in Magdalena Medio. The association has 32 schools for the training of mercenaries, who are hired out for all kinds of crimes and paid from 30,000 Colombian pesos a month for a patrol member to 1.5 million pesos for the leader of an élite squad. The instructors are Israeli and British mercenaries. Another report mentioned by the Confederation describes the military and political infrastructure of these groups, their training centres and specialized courses, as well as the parts of Colombian territory in which they operate.

124. It is well known that these paramilitary gangs are carrying out criminal activities. The most recent acts include the murder of the liberal political leader, Luis Carlos Galán Sarmiento, the attack on the Bogotá newspaper, El Espectador, the sabotage of an Avianca airplane in which 109 persons died and the bombing of the DAS (Administrative Security Department) building, in which 72 persons died. It is public knowledge that mercenaries have taken part in these acts, which were carried out on the orders of the drug traffickers to force the Colombian Government to take measures for their benefit and primarily to avoid being extradited to the United States.

Interviews have even been published with the main foreign mercenaries. The report by the International Confederation of Free Trade Unions refers by name to Amancio, Zadaca, Dean and Terry, identifying them as Israeli mercenaries, and to Peter, Alex, Gordon, David and George, identifying them as British mercenaries.

125. The reply sent by the Under-Secretary for International Organizations and Conferences in the Ministry of Foreign Affairs of Colombia to the letter by the Special Rapporteur (see above, section II, paras. 8-9) recognizes that foreigners are involved in internal affairs and have been hired by drug traffickers to carry out criminal activities. It thus refers to 5 Israeli nationals and to 11 nationals of the United Kingdom of Great Britain and Northern Ireland. It states that the presence of mercenaries in Colombia is being thoroughly investigated and that a request has even been made for the co-operation of the mercenaries' countries of origin in order to shed light on the links with the criminal drug trafficking organization and the scope of its unlawful activities. The investigations in Colombia are being carried out under the responsibility of the Third Court of Public Order. The Government is committed to fighting an all-out war against the drug traffickers and the paramilitary groups which carry out their orders.

126. The Special Rapporteur is in contact with the Colombian authorities and is waiting for further information on this serious matter. Without prejudice to this information, he wishes to draw attention to this type of illegal association. In his first report, he stated that there was a possibility of variations on the classic mercenary model, noting that mercenaries could be involved in internal armed conflicts or linked to military actions in so-called low-intensity wars and conflicts and even to situations which jeopardize the sovereignty of States and the stability of constitutional Governments, such as the arms traffic or the drug traffic. The Colombian case would seem to confirm the validity of this hypothesis in that it involves an association between drug trafficking mafias which need military support for their unlawful operations and the existence of mercenaries who are available for good pay to form paramilitary armies and carry out large-scale criminal actions which not only endanger lives and property, but also affect the sovereignty, stability and peace of the countries in which such criminal associations are established. In this connection, the link between mercenaries and drug traffickers is a serious new danger for the enjoyment by peoples of human rights which even goes as far as to violate the sovereignty of States by using violent and criminal means to establish forms of subjection and domination that undermine the freedom, democratic values and legal systems that guarantee peace, order and collective security.

127. The acts described in the present report have been totally rejected by the Colombian people and have provoked a reaction on the part of the Colombian authorities, which have not hesitated to tell the entire world about the seriousness of the criminal acts being committed and about their intention to take strong measures to combat the drug traffic and its paramilitary gangs. In this connection, they have been receiving support from the international community and, in particular, from the United States of America, which is firm in its co-operation. The Special Rapporteur is closely following developments in the situation and draws the Commission's attention to the seriousness of the complaints which have been received and which closely relate to the mandate entrusted to him, since the criminal activity being carried out in Colombia has an obvious mercenary element.

VIII. SITUATION IN THE COMOROS

128. According to information in the international press, a coup d'état took place in the Comoros on 26 November 1989 in which President Ahmed Abdallah Abderemane was overthrown. The coup was led by Bob Denard and a group of 30 French and Belgian mercenaries who had belonged since 1978 to President Abdallah's presidential guard, which was estimated to have 650 members. As a result of the violence, President Abdallah died of gunshot wounds and Bob Denard and his gang of mercenaries took power in the Comoros. Bob Denard is a well-known mercenary of French origin who had already led the attempt to overthrow the Benin régime on 16 January 1977, using aliases such as "Colonel Maurin" and "Bourgeaud". His actions as the leader of armed troops in the former Belgian Congo and Katanga are also well known. As a result of his part in the mercenary acts in Benin in 1977, he was brought before the Chambre d'Accusation of the Paris Court of Criminal Appeal (for further details, see above, section III.C. on information received from non-governmental organizations, paras. 70 to 75). The same sources state that South Africa was financing the European mercenaries who were part of President Abdallah's presidential guard, since the Comoros had been a supply point for the RENAMO Mozambican rebels.

129. International reaction to these events was not long in coming. Thus, the head of the Egyptian State and current President of the Organization of African Unity (OAU) deplored such an inadmissible intervention in the internal affairs of an independent State, describing the hostage-taking of an OAU member State by a handful of mercenaries as "an odious act". France for its part has repeatedly ordered Bob Denard and his gang to leave the Comoros and suspended its economic assistance to that country, which was estimated at some 130 million French francs a year. France also has 102 voluntary workers in the Comoros, 30 of whom are soldiers assigned the task of training the Comorian armed forces. A total of 1,600 French citizens now live in the Comoros.

130. Bob Denard explained to the press that President Abdallah died of shots fired by one of his own bodyguards, Sergeant-Major Jaffar, who also died in the acts of violence committed at the Presidential Palace in Moroni on 26 November 1989.

131. Bob Denard also made his departure from the Comoros conditional on the dispatch of 30 French officials to take charge of transferring power and the flag. In addition, he demanded financial remuneration as compensation for the "moral and material investment" he had allegedly made in the presidential guard in Comoros. He also demanded the payment of compensation for the dismissal of his mercenaries, which would amount to six months' pay for his 30 mercenary officers in the presidential guard. According to estimates published in the press, one of his captains earns 18,000 French francs a month and one of his lieutenants, 12,000 French francs. Another of his requirements is that the French authorities should guarantee him immunity from judicial proceedings before the courts of justice, whether French or Comorian.

132. The mercenaries finally abandoned Comoros on 15 December 1989 on board a South African transport plane bound for Johannesburg, but its final destination is not known. Shortly before, Bob Denard gave a French army contingent responsibility for the Comorian security forces, particularly the

presidential guard. According to official information from France and South Africa, the mercenaries left Comoros without receiving any financial compensation. The acting President of Comoros, Saïd Djohar, stated that the French soldiers might stay in Comorian territory for one or two years.

IX. EVOLUTION OF THE CENTRAL AMERICAN CONFLICT

133. In his third and fourth reports, the Special Rapporteur referred to the complaints he had received about alleged mercenary activities in Nicaragua, as well as in other parts of the region, in connection with the Central American conflict. In order to investigate the complaints and their nature, scope and complexity, the Special Rapporteur first visited Nicaragua in December 1988 and, as a result of his visit, drafted the third report (E/CN.4/1989/14), which the Commission considered at its forty-fifth session. In July 1989, he visited the United States of America to study in situ the Nicaraguan complaints linking that country to interventionist acts with a mercenary component, as well as to conduct a more thorough investigation and hear the views of the United States on the question of mercenary activities, the Central American conflict and the role being played by the United States in that conflict. The fourth report, submitted to the Third Committee of the General Assembly in October 1989 (A/44/526), spoke at length about that visit and gave what the Special Rapporteur described as a preliminary picture both because the conflict is continuing, although the main trend is towards the easing of tensions, and because of the amount of information received and the role of the United States Government with regard to the various possibilities and options for a peaceful solution in Central America.

134. Since there have been new developments in the region and an analysis of the information gathered in the United States of America may offer keys to an understanding of the evolution of the conflict, the Special Rapporteur is again taking up the Central American question in the present report. The previous reports should none the less be consulted for more detailed and chronological explanations.

A. Information gathered in the United States of America

135. Public and private sources consulted by the Special Rapporteur all point out that, under President Reagan's Administration, the United States of America became involved in the Central American conflict not only through political, economic, financial and military assistance activities which are legal or, in other words, authorized by Congress, but also by tolerating or sponsoring activities that went beyond the framework of the lawful authorizations granted. Mercenaries were used for the lawful activities through organizations which received funds; with regard to the unlawful activities, the investigations conducted by the Congressional Committee on the Iran-Contra affair, as well as those carried out by private United States organizations, all draw attention to the existence of illegal acts which were committed to obtain financial and military assistance for the Nicaraguan contras and in which United States Government officials appeared to be involved. For example, in connection with covert operations carried out to raise funds for the contras or to commit acts of sabotage against Nicaragua, it is stated that the participation of mercenaries was known and tolerated.

136. In 1981, President Reagan issued his first "finding" (an official document containing the President's authorization) expressly authorizing covert paramilitary action against the Government of Nicaragua. Under United States law, covert action may be initiated only on the decision of the President. As a result of the debates on this question, Government spokesmen explained in 1982 that the purpose of covert action was not to overthrow the Nicaraguan Government, but to prevent it from exporting its revolution to El Salvador. In this way, aid to the contras was portrayed more as an act to defend El Salvador than as a hostile act against Nicaragua. This has continued to be one of the main explanations given by the United States Administration.

137. A number of congressional agreements referred to in the report of the Iran-Contra Committee reflect concern about aid to the Nicaraguan resistance and the positions of those opposed to such aid. For example, the first Boland amendment to the Defence Appropriations Act was adopted in 1983 and prohibited the intelligence services from using funds to overthrow the Government of Nicaragua. Limitations on contra assistance would pave the way for parallel operations that would lead to the scandal of the Iran-Contra affair. This became even more evident when the second Boland amendment was adopted in 1984 to prohibit United States Government intelligence and defence agencies from giving the contras any assistance for two years. In this context Lieutenant Colonel Oliver North and others undertook to obtain financial resources from third States and private sources and managed to raise some \$US 34 million. 1/ In connection with these operations, the sources consulted refer to three-way operations involving the Cayman Islands Bank and Switzerland, which were used to divert funds to the contras, as well as retired United States military personnel, foreigners who signed on as mercenaries and even members of the so-called Medellín drug trafficking cartel. 2/ Drug sales, part of which were used to provide logistic support to the contras, are referred to in the sources consulted as one of the fund-raising methods for which mercenaries of various nationalities were used.

138. The Enterprise is referred to as one of the organizations responsible for raising funds and financing the purchase of rifles, explosives and ammunition intended for the contras, as well as paying for the cost of sabotage and other actions to weaken the Sandinista Government. This private organization played a major role in covert operations for support to the contras and its existence compromised Oliver North, Richard V. Secord and Albert Hakim, among others. The Enterprise had its own airplanes, pilots, landing strips, boats, communication services and Swiss bank accounts. 3/ For several months, it was used as a secret weapon by the staff of the National Security Council (NSC) to channel covert assistance to the contras without the restrictions imposed by United States law. According to the sources, The Enterprise hired mercenaries such as John Hull, an American-born naturalized Costa Rican, who own land on the border between Costa Rica and Nicaragua; Luis Posada (alias Ramón Medina), a Cuban from Miami; and David Walker, an Englishman. The latter had allegedly taken part in various attacks against military installations in Nicaragua and also offered training services in counter insurgency, quick response units, parachuting, infiltration by air, sea and land, communications and demolition. According to Oliver North's testimony, Walker's services were paid for either by the Nicaraguan resistance or by Richard V. Secord. Oliver North admitted to Rep. Thomas Foley that he had authorized David Walker

to support the Nicaraguan resistance in internal operations in Managua and the rest of the country. In order to carry out his activities, David Walker hired mercenaries of various nationalities, including Cubans, Panamanians and North Americans.

139. According to the sources consulted, another organization which took part in the covert operations and which also hired mercenaries, was Civilian Military Assistance (CMA), established in July 1983 by Thomas Posey, a former member of the Ku Klux Klan. According to Thomas Posey's description of his organization, "We like to think of ourselves as missionary-mercenaries". 4/ This organization also raised funds and recruited and trained mercenaries in the United States to be sent to southern Honduras. Its task was the military training of the contras in sabotage and ambush techniques. In January 1984, four members of CMA led by Thomas Posey transported automatic pistols and ammunition to the contra camps. Mention may also be made of other organizations, such as Frank Camper's Recondo Military Training School in Dolomite, Alabama, and the 2506 Brigade in Miami, Florida. The latter was a training base for mercenaries. One of its leaders was René Corvo, a veteran of the Bay of Pigs invasion who was involved in arms shipments and operations linked to John Hull's ranch. 5/ Frank Camper's Recondo Military Training School was used as a training centre for mercenaries of various nationalities. Two of its graduates are said to have been linked to the bombing of an Air India 747 Jumbo jet in 1985 in which 350 passengers died. 6/

140. Another organization said to have provided support for the Nicaraguan resistance through covert operations and the use of mercenaries is the World Anti-Communist League (WACL), headed by retired Major-General John K. Singlaub, who was actively involved in raising funds and supplying sophisticated military assistance to the Nicaraguan resistance. A number of persons who have been arrested, others who died in action (Dana Parker Jr. and James Powell III, members of Civilian Military Assistance) and still others identified as having participated in military activities belonged to these contra support networks and all the evidence shows that they were mercenaries: they were specially recruited and trained foreigners who were not members of regular military forces, openly took part in hostile operations on behalf of the contras and against the Government of Nicaragua, actually received payment, etc. Other reports of mercenary activities between January and March 1985 refer to two British mercenaries, John Davies and Peter Glibbery, a Frenchman, Claude Sheffard, two soldiers who did not belong to any army, Steven Carr and Robert Thompson, as well as an unspecified number of Cubans from Miami, who were in charge of collecting and transporting several tons of weapons, which included 20 mm guns, G-3 automatic rifles, M-16s, .50 calibre firearms, 60 mm mortars, etc. These weapons were sent to the Ilopango Military Air Base in El Salvador and from there to Costa Rica. On 25 April 1985, Carr, Glibbery, Sheffard, Thompson, Davies and nine Nicaraguans were arrested at John Hull's property by Costa Rican Rural Guards "for carrying out unauthorized activities". They were tried and served their sentence in Costa Rica and were finally released in 1988. 7/

141. The disclosure of the activities of these and other groups, such as Soldiers of Fortune (SOF), Project Democracy, The Wild Geese, etc. revealed that there were paramilitary gangs linked to the covert operations directly involved with the contras, and carrying out armed attacks against Nicaragua. The well-publicized Hasenfus case gave ample proof that mercenaries were taking part in the Nicaraguan conflict. Some of the information given here

was obtained from private sources but much of it also appears in the Iran-Contra Congressional Report. According to the report, there is conclusive evidence of Oliver North's involvement in these covert operations. However, the report also notes that Oliver North's covert actions were not approved by the President of the United States in writing, Congress was not informed about them and the funds to pay for them were not accounted for.

142. The Special Rapporteur ventures to point out that in his fourth report he mentioned interviews he had had with United States State Department officials on the United States Government's position regarding its involvement in the Central American conflict. The view expressed was one of concern and alarm over the increase in subversion, the flow of weapons and the arms build-up in the Central American region. He also noted that the United States Government strongly denied any connection with mercenary activity in the region or that the support it gave the Nicaraguan resistance movement was intended for operations of that kind. Furthermore, the Special Rapporteur was given explanations about the Bush Administration's policy of supporting détente, i.e. full observance of the Esquipulas II Agreements, and the United States bipartisan agreement that in the Central American conflict, it would maintain a position of support for political openness, electoral reform and the democratic electoral process in Nicaragua, as means of achieving national reconciliation; consequently, both the Nicaraguan resistance and the Nicaraguan exiles or displaced persons should be taken into account.

143. It should be noted that the United States Administration believes that it is acting in exercise of its sovereign decision-making power and in defence of the interests and principles of the United States democratic system which it views being threatened to some extent by the growing aggression in the Central American region and by the direction being taken by the Nicaraguan Government. The United States Government none the less maintains that it has not resorted to military intervention entailing involvement in an armed conflict, in breach of international law. From that standpoint, the declared support for the contras is regarded as falling within a political and security framework that does not necessarily mean support for all contra activities and still less any acceptance of mercenary activities. If such activities do indeed take place, they are the work of private agents. The United States Administration denies links with any such situations which may have occurred.

144. However, seen against the background of international law, the United States position is a controversial one. As the Special Rapporteur noted in his third report, in April 1984, Nicaragua brought a case against the United States of America in the International Court of Justice and listed a number of acts it considered violations of the principles of self-determination and non-intervention. The Court conducted a full and lengthy investigation and on 17 June 1986 rendered a judgment in favour of Nicaragua stating that United States involvement in various military activities harmful to Nicaragua had been proven. Paragraph 3 of the Court's judgment stated unequivocally that the United States had violated the principle of non-intervention.

"Decides that the United States of America, by training, arming, equipping, financing and supplying contra forces or otherwise encouraging, supporting and aiding any military and paramilitary activities in and against Nicaragua has acted, against the Republic of Nicaragua, in breach of its obligation under customary international law not to intervene in the affairs of another State."

145. The United States Government's official position has met with strong opposition at home. On the one hand there are those sectors of the public opinion who disagree with the methods used to support the contras, which they claim are contrary to the values and principles of the United States democratic system. On the other hand, there is the United States Congress, which, it is well known, disagreed with the Reagan Administration over the use of funds granted to the contras and over a number of other authorized procedures which were a violation of the Neutrality Act when it intervened directly, overriding the authority of Congress, which had imposed restrictions and prohibited funds to the contras for military aid. The Iran-Contra report, which was consulted by the Special Rapporteur, contains a wealth of material on the investigation carried out by the Congressional Committees. On top of this, the ban on providing funds for military aid is still in force and a bipartisan agreement reached at the beginning of the Bush Administration has decided that no more military funds will be granted to the resistance and stated that it favours a negotiated political solution to the Central American conflict, one which is fair and reasonable for all parties.

146. Paragraphs 58 to 62 of the fourth report of the Special Rapporteur provide specific information about the "covert operations" and the irritation that these have caused the United States opposition both because they are used for acts of intervention and because they pave the way for dirty dealings and operations linked with arms and drug trafficking, money laundering and the hiring of mercenaries, all of which the United States public strongly opposes. Those paragraphs give sufficiently explicit information on the subject.

147. Given this background, it is important to point out that, despite the United States Government's misgivings and distrust of the Sandinista Government of Nicaragua, a desire for détente and for political solutions to bring peace to the Central American region prevails. This change of course has occurred under the Bush Administration and has been demonstrated in the United States support for the peace initiative which formed the basis of the Esquipulas II Agreement and in the understanding that the Agreement is an indivisible whole that cannot be implemented piecemeal and that the proper outcome should mean peace and security in the entire region. It helps the implementation of the agreements reached by the Central American Presidents and the bipartisan agreement of 24 March 1989 whereby the United States supports peace, the process of democratization and the attainment of the objectives set by the Central American Presidents when they signed the Esquipulas II Agreement. Hence, for example, military funds were halted and only humanitarian aid was allowed to the Nicaraguan resistance, up to 24 February 1990, in other words, until the elections convened by the Government of Nicaragua are held in the presence of international observers. The bipartisan agreement has served to show that these funds can be used to help finance the voluntary return or voluntary relocation of the Nicaraguan resistance.

148. This set of proposals, which did not escape criticisms and reservations throughout 1989, appears in fact designed to help the effective implementation of the Esquipulas II Agreement and marks the beginning of a gradual and complete peace plan for Central America. Notwithstanding this, the Special Rapporteur would point to the questionable international lawfulness of the maintenance of humanitarian aid to the Nicaraguan resistance and the propriety of one country reserving the right to assess and adopt measures in

the light of how the internal conflict in another country is developing, an attitude which would mean recognizing that it has a particular right to arbitration and to intervention; naturally, under international law no State, however powerful, has any such right. Lastly, whatever the outcome of the war in Central America, which will be discussed elsewhere, the Special Rapporteur feels obliged to warn that the recent United States military intervention in Panama might have an adverse effect on the situation in the Central American situation. If this intervention is to be construed as a hardening of the Bush Administration's position in its relations with its Central American neighbours and with Latin America at large there can be little hope that solutions through negotiation and political agreements will bring the peace for which the Central American peoples yearn.

B. Political and military dynamics of the conflict

149. Even though the main centres of conflict have been in El Salvador with the Farabundo Martí National Liberation Front (FMLN) and in Nicaragua with the military resistance of the contras to the Sandinista Government, it is a fact that the five Central American countries have been affected to varying degrees by the armed violence in the region. After the early 1980s, when there was absolutely no dialogue among those countries because of mutual distrust and recrimination, about aid to tolerance of and complicity with armed groups, a new climate of political negotiation emerged and was marked by the desire to achieve peace by this means. The desire for a peaceful solution was endorsed in the Esquipulas II Agreement signed by the five Central American countries on 7 August 1987.

150. This Agreement now stands as a milestone on the road to peace in the region and this is how it is perceived by the international community, which has supported it. Even the United States Government has stated on various occasions that it regards Esquipulas II as a complete and indivisible set of obligations binding all the parties and must be applied in its entirety in order to achieve peace in Central America. After Esquipulas II, the Central American Presidents met in Alajuela, Costa del Sol, Tela and recently in San Isidro de Coronado, Costa Rica, to ratify the Esquipulas II Agreement, assess the progress made, decide on verification, control and compliance mechanisms, as well as timetables for application and measures for demobilization, termination of assistance to illegal groups and the non-utilization of territory in order to support such groups. As the Special Rapporteur stated in his third report, "These negotiations were not free from tension and conflict and came more or less to a standstill from June 1988. A plausible explanation for this situation is the internal conflicts within the FDN between anti-Sandinista civilians and former National Guards and the refusal of the latter to accept the terms of the negotiations, preferring the military option and continued aid from the United States. This aid, however, was officially brought to a halt by the refusal of the United States Congress to approve new funds for the contra forces (E/CN.4/1989/14, para. 171).

151. In fact, although a series of measures were adopted pursuant to Esquipulas II: a cease-fire, the release of prisoners, calling elections for February 1990, direct negotiations between representatives of the Sandinista Government and the contra forces, observation and supervision machinery by the United Nations, OAS, etc., the peace process has moved forward at a snail's pace, there is still military resistance in various parts of Nicaragua

and El Salvador and the camps on the Honduran border with Nicaragua have not been demobilized. This other point was discussed at length during the meeting of the Central American Presidents in Tela, Honduras, on 5 and 6 August 1989. At that meeting it was agreed, inter alia, to demobilize the anti-Sandinista forces, Nicaraguan suit legal action against Honduras before the International Court of Justice, and it was recommended that there should be direct dialogue between the Government and the guerrilla forces in El Salvador. The 11,000 resistance troops stationed in the south of Honduras were to be demobilized and relocated before 5 December 1989, while Nicaragua should keep its promise to withdraw the action against Honduras before the International Court of Justice. Other conditions of the demobilization were that United Nations peace groups should be deployed along the frontier between both countries and there should be an International Support and Verification Commission (CIAV) to receive the weapons and equipment returned and to observe closely the repatriation and the assistance given to those who took the decision to return to Nicaragua or to resettle in third countries.

152. At the end of December 1989, not only had the substantive Tela agreements not been implemented, but, as is widely known, there was increased military tension in the region in October and November. As a result complaints about greater armed hostility by the contra forces inside Nicaraguan territory, Nicaragua claimed, forced the Government to "suspend the cessation of military offensive operations which it had unilaterally extended since March 1988". Furthermore, the demobilization had become bogged down when the talks in New York and Washington from 9 to 21 November 1989 between the Government of Nicaragua, CIAV, the Government of Honduras and the leadership of the contra forces fell through. At the same time, the United States Administration remained sceptical and did not co-operate in reaching an agreement on the demobilization. Lastly, the renewed military activity in El Salvador caused more diplomatic tension and sparked Salvadorian accusations against Nicaragua.

153. The outcome of all this was to bring about a special meeting of the Central American Presidents at San Isidro de Coronado, Costa Rica, from 10 to 12 December 1989, to discuss the delicate situation in the region and how its deterioration was affecting the Esquipulas II peace process. The Special Rapporteur had access to the agreements of that meeting while he was completing this report and decided that it was essential to include a comment on them, both because the final agreement is important and also because, objectively, it is an expression of Central America's renewed determination to settle the regional conflict through political negotiation.

154. Paragraph 1 of the San Isidro de Coronado Agreement reaffirms vigorous condemnation of the armed action and terrorism being waged by irregular forces in the region. Paragraph 2 expresses determined support for the President of El Salvador, as a demonstration of backing for governments established as a result of "democratic, pluralistic and participatory processes". The pursuit of dialogue is urged in paragraph 3, which appeals to FMLN in El Salvador to lay down its arms and settle differences through political negotiation. Substantive sections relating to demobilization take up the bulk of the agreement, in view of the urgent need to put into effect a joint plan for demobilization, which constitutes an integral and indivisible whole. Mention is made of the active participation of the International Support and Verification Commission (CIAV) as a prerequisite for demobilization, as well as the funds appropriated for the Nicaraguan resistance, which should be turned over to CIAV as of the signing of the agreement of San Isidro, for use

in the process of voluntary demobilization, repatriation or relocation in Nicaragua or third countries. The need for an immediate start to the demobilization of the Nicaraguan resistance forces is reaffirmed, while the Government of Nicaragua reiterates guarantees that those of its nationals who decide to be repatriated before 5 February 1990 may participate in the elections. Lastly, as a further expression of determination to reach political agreement, paragraph 13 of the Agreement notes, in connection with the Government of Nicaragua's application against Honduras to the International Court of Justice, the establishment of "a commission with bilateral representation to seek an out-of-court settlement to the dispute within six months of today's date".

155. This long reference to the recent agreements reached in San Isidro de Coronado is fully justified by the evidence they contain of perseverance in working towards a political settlement of the conflict in the region, with the five Central American Presidents making equal contributions to this end. It is clear that against this background, the entire international community and all the Governments throughout the world should, without exception, help to ensure that this Central American effort to achieve peace and reconciliation by political means and by respect for human rights and for the right of peoples to self-determination meets with success as rapidly as possible. In this context, demobilization and co-operation on the part of Honduras to ensure that this operation is carried out constitute an objective necessity in terms of international law. Similar co-operation is to be hoped for on the part of the United States of America, so that the détente it claims to be seeking facilitates demobilization under international supervision. In this regard, the Special Rapporteur notes that, in a communication sent to him on 7 December 1989, the Government of Nicaragua repeated its objections to the humanitarian aid being provided to the resistance forces by the United States: "The new Administration has offered no proof of a political will to assist in the demobilization of the mercenary forces. On the contrary, what is euphemistically known as 'humanitarian aid' - \$30 million was again allocated on 30 November 1989 - has in fact been used as logistic support for terrorist acts by the mercenary forces on Nicaraguan territory." The letter continues: "It should be remembered that under the Tela plan, genuine humanitarian aid is aid intended for demobilization, and that from 6 September 1989 onwards, the organization and distribution of such aid should be in the hands of the International Support and Verification Commission (CIAV)".

156. From the standpoint of making sure that the mandate assigned to him by the Commission on Human Rights covers all factors that contribute to the realization of the right of peoples to self-determination and the effective enjoyment of human rights and peace, the Special Rapporteur would point to the useful and positive nature of the San Isidro de Coronado agreements, which in turn endorse the spirit of Esquipulas II, Alajuela, Costa del Sol and Tela. Demobilization is a prerequisite for the cessation of military hostilities and for an effective process of peace, reconciliation, democracy and progress. Demobilization and a halt to military hostilities should put an end to military action of all kinds in Central America, interference by countries from outside the region and the presence of foreign mercenaries who have become involved in the Central American conflict. Obviously, the elimination of these deplorable mercenary activities should follow on from the principal objective: they will vanish from the region when the resistance and the military conflict which made use of them have been eliminated. Hence the

implementation of the peace agreements with the backing of the international community is a necessity both for peace in Central America and for the right of peoples to self-determination and the enjoyment of human rights to be restored throughout the region.

X. CONCLUSIONS

157. It is to be concluded from the information, reports and observations received by the Special Rapporteur during 1989 from Member States, recognized national liberation movements, international organizations and non-governmental organizations that mercenary activities have been clearly condemned and repudiated. Such activities have tended to decrease in the armed conflicts in which they were mentioned and which have been or are being settled, thereby highlighting the tendency to make use of mercenaries in low-intensity conflicts. Thus it may be noted that, as the use of mercenaries declines or ceases, there may also be a fall in the number of reports of mercenary activities connected with such conflicts.

158. Notwithstanding the above conclusion, it can be observed from the reports received that, regrettably, the world offers a supply of individuals who, because of their military experience, for ideological reasons, or for reasons of adventurism, lifestyle or financial motivation, are prepared to hire out their services for unlawful mercenary activities. Such individuals, in turn, are usually involved with organizations which recruit, train and employ them, at the request of third parties, in activities which violate international law, State sovereignty, the exercise of the right of peoples to self-determination, the stability of constitutional governments and human rights. In this way, it may be concluded that the notion of a mercenary has changed as far as the traditional characteristics are concerned and has become a kind of independent criminal occupation. This is so because of a readiness to participate in unlawful acts and acts which may objectively be characterized as mercenary or terrorist acts, by virtue of both the individual perpetrating them and the damage caused in the territory and among the population affected, causing serious prejudice to territorial sovereignty and human life, even when the context in which they occur is not necessarily that of an international armed conflict.

159. The use of mercenaries is something that particularly affects small States, notably archipelagic States, especially when their geographical position places them close to areas of acute conflict, or when they are of strategic importance to third parties involved in activities relating to the political, military or economic control of the entire area which has been or is intended to be placed under their influence. These small States, many of them recently established, are extremely vulnerable to expansionist policies, invasion from outside, or to internal conspiracies to destabilize the government that make use of mercenaries. Proven mercenary activity in the cases of Benin, Seychelles, Maldives and the Comoros in recent years demonstrates that there are small States exposed to dangerous situations in which mercenaries are used to jeopardize their sovereignty, their right to self-determination, their constitutional stability and the human rights of their peoples.

160. As regards mercenary activities in southern Africa, the Special Rapporteur would point out that the process of détente and peace embarked upon by Angola and South Africa, and the current process leading to independence in

Namibia, have led to a marked reduction in mercenary activity in that part of southern Africa. In fact the Special Rapporteur has received no new reports of operations of that kind. However, he cannot but mention that, until the internal military conflict in Angola is settled and effective national reconciliation achieved, Angola will remain exposed to the risk of mercenary activities on the part of such groups or individuals employed by UNITA. It is well known that the UNITA rebel guerrilla group receives military assistance and funds from outside which, as indicated in the third report (E/CN.4/1989/14, paras. 179-180), are used in part to hire mercenaries. The Special Rapporteur has also received information from Botswana about mercenary attacks; consequently, the mercenary presence cannot be said to have totally disappeared from southern Africa.

161. The invasion of Maldives by mercenary groups on 3 November 1988 was thwarted, and the mercenaries of Tamil origin were tried under Maldivian law. The Special Rapporteur has kept in touch with the Maldivian authorities, which have pointed to the vulnerability of Maldivian territory and the risk of invasion, terrorist attacks and other forms of violence while an atmosphere of tension reigns in the Indian Ocean region and could spread to threaten Maldives too. The Maldivian authorities have not ruled out the possibility that mercenaries might be used again in an attack on the sovereignty of the State, and have invited the Special Rapporteur to examine the situation in Maldives on the spot.

162. On 4 December 1989 the General Assembly adopted the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. The text of the Convention was prepared by an ad hoc committee set up under resolution 35/48 of 4 December 1980. The complex work of discussion and preparation culminated in a convergence of views which broadens, deepens and refines the scope of the definition of a mercenary, the elements and situations which combine to characterize mercenary activity and the qualification both of mercenary acts, and any actions which deliberately advance them, as indictable offences. In this sense, the Convention fills a gap, constitutes an important instrument to enable member States to adapt their national legislation on this subject, and also confirms the legal scope of the many United Nations declarations and resolutions condemning mercenary activities.

163. It is to be concluded from the text, the preamble and the body of the Convention that the extent and the variety of forms of mercenary practices are recognized. Noteworthy in this regard is the preamble to the Convention, which acknowledges the links between the drug traffic and mercenary activities in its reference to "new unlawful international activities linking drug traffickers and mercenaries in the perpetration of violent actions which undermine the constitutional order of States" (preamble, fifth paragraph). In this regard, as well as through the broad definition in article 1, the Convention brings matters up to date in a way which should contribute to proper observance of the purposes and principles set out in the Charter of the United Nations, without prejudice to the fact that matters which are not regulated will continue to be governed by the rules and principles of international law. After the Convention has been in force for a reasonable period of time, it would be desirable to analyse and review a number of objections raised to the text, for example the requirement that mercenaries must be foreigners, or the amount of payment made.

164. Lastly, it can be seen from the text that the Convention contains no provision establishing machinery to monitor implementation. However, such monitoring will be a task for the domestic courts of the States parties. Bearing in mind that the Convention refers to the basic rights of peoples, such as political freedoms, human rights, State sovereignty and self-determination, which may be affected by mercenary activities, the Special Rapporteur concludes that part of the international machinery for monitoring this instrument may fall within the competence of the Commission on Human Rights. If this is the case, reports of mercenary activities of various kinds, such as those which have been reaching the Special Rapporteur, might better be studied within flexible Commission machinery under the mandate of the Special Rapporteur, without prejudice to actions falling within the scope of the competent domestic forums. In this way the Commission could contribute to effective implementation of this Convention.

165. In reply to letters sent by the Special Rapporteur, non-governmental organizations and the Government of Colombia itself referred to the serious cases of violence which are systematically disrupting public order and affecting individuals and public and private property in that country. Preliminary information indicates that such acts of violence involve groups with a political motivation and also paramilitary gangs in the pay of organized drug traffickers. According to this preliminary information, evidence and facts of public record highlight a criminal association between Colombian drug traffickers and mercenaries recruited for them, who have participated in the formation and training of paramilitary gangs. These mercenaries, reported to be of Israeli and British nationality, are said to have prepared and taken part in large-scale attacks and criminal acts designed to subject the Colombian Government to pressure on the part of these illegal groups and secure advantages for the drug traffickers. It may thus be concluded that this unlawful association between drug traffickers and mercenaries affects the sovereignty and constitutional stability of the Government of Colombia and the people, creating a situation presenting serious risks for Colombia and the international community itself.

166. Various press reports have taken up the generally accepted fact of the mercenary invasion of the Comoros on 26 November 1989 in a coup d'etat which led to the overthrow and assassination of President Ahmed Abdallah Abderemane. The invasion was carried out by Bob Denard and a group of about 30 French and Belgian mercenaries. The mercenaries stayed in the Comoros until 15 December 1989, and then left for Johannesburg on a South African cargo plane. The departure of the mercenaries was essentially due to French action in support of the sovereignty and legitimate authorities of the Comoros. This event highlighted the vulnerability of the Comoros and, once again, the active presence of mercenaries in Africa. The Special Rapporteur considered it pertinent to draw the attention of the Commission on Human Rights to this serious occurrence, as well as the withdrawal of the mercenaries to South African territory, and would point out the need for a thorough investigation, for which reason he has made appropriate requests for full and detailed information on this regrettable event.

167. As to the Central American conflict and the role played in it by the United States of America, the Special Rapporteur has continued to examine the extensive information and documentation obtained when he visited the United States. Although open to further analysis, all the material examined

so far indicates that, under the Administration of President Reagan and in the context of policy decisions designed to provide assistance to the Nicaraguan resistance and - as the Administration saw it - prevent the Sandinista Government from helping the FMLN guerrillas in El Salvador, covert actions and operations did indeed take place and they went beyond the legal authority granted by Congress for aid and funds for the Nicaraguan resistance (or contras). Some of these covert operations, carried out to raise funds for the contras or to perform acts of sabotage against Nicaragua, involved the creation of all-purpose networks and the recruitment and active participation of some foreign mercenaries. This participation by foreigners, on terms corresponding to mercenarism, has been noted in the Iran-Contra Affair report prepared by Committees of the United States Congress, as well as in reports drawn up by experts and investigators working in United States non-governmental organizations dealing with human rights matters. However, it may also be concluded from the information which has been gathered that these illegal acts were carried out by officials acting without authorization from the highest government authorities or from Congress. The United States Government neither recognizes nor acknowledges any connection with mercenary activities, and has stated that any such activities as may have taken place are the sole responsibility of the private organizations which made use of them.

168. On the basis of the documentation studied, it may also be concluded that the United States public is greatly aware of the Central American issue, opposes anything that might involve the United States in a military conflict and is against anything that might affect the principles and values of United States democracy. It is also important to note that the Bush Administration has stated its readiness to contribute to peace in the region, on the understanding that the most appropriate tool for such a purpose is the implementation of the Esquipulas II Agreement as a comprehensive and indivisible set of obligations for all the parties. This stance underlies the bipartisan agreement and the Congress's policy of not granting the Nicaraguan resistance funds for military purposes.

169. The effort made by Central American leaders to promote political negotiation, détente and peace, despite differences of view between some of them, is a matter of record. In this context, the Esquipulas II, Alajuela, Costa del Sol and Tela agreements, and recently those adopted in San Isidro de Coronado, demonstrate a determination on the part of the Governments of Central America to seek and implement effective solutions to achieve peace in Central America. There is no doubt that demobilization of the Nicaraguan resistance, voluntary repatriation of its members to Nicaragua or third countries, resumption of dialogue and holding democratic elections, which are now under way, can constitute genuine measures to accelerate the process of restoring peace and democracy throughout the Central American region.

170. As a contribution to international co-operation in the relaxation of tension, the United Nations has set up observer machinery and an International Support and Verification Commission (CIAV) to study issues relating to demobilization, such as the acceptance of returned weapons and ammunition and repatriation as well as assistance to persons deciding to return to Nicaragua or resettle in third countries. On the basis of the Tela and San Isidro de Coronado agreements, and the positions in this regard taken up by the Governments of Honduras and Nicaragua, it may be concluded that such

United Nations machinery is the most appropriate means of guaranteeing the implementation of the various arrangements for bringing about reconciliation and peace. Consequently, the stronger this machinery and the guarantees for its operation and the greater resources and funds for its activities, the more rapidly and effectively will it be possible to achieve the desired result of peace in Central America.

XI. RECOMMENDATIONS

171. The following recommendations stem from the information received by the Special Rapporteur, the analysis carried out and the conclusions drawn in the previous section.

172. Bearing in mind that, despite the rejection and condemnation of mercenary activities by the United Nations, they are still being carried out; it is desirable for such a stand to be maintained and strengthened by provisions on concrete measures and actions to help eliminate mercenary activities of all kinds. To this end it will be necessary to take into account the methods used in recent conflict situations in which one of the parties has made use of mercenaries to subject the other to military action and inflict material damage, or to destabilize a sovereign State internally.

173. Condemnation and punishment of mercenary activities should apply both to the mercenary agents directly involved in such activities and to those who make use of them, as well as to the bodies or individuals recruiting and training them at the request of third parties for participation in actions in violation of international rules, State sovereignty, the exercise of the right of peoples to self-determination, the stability of constitutional Governments and human rights. In addition, to ensure that this recommendation is effectively applied, it should be borne in mind that there are a variety of ways of making use of mercenaries and that mercenaries now form a kind of independent criminal occupation by virtue of their readiness to take part, on agreed terms, in unlawful acts, as well as acts which may objectively be characterized as mercenary acts, by virtue of both the individual perpetrating them and the damage caused to the population and the territory affected.

174. The use of mercenaries has been particularly intense against small States, especially archipelagic States, when their geographical position places them close to areas of acute conflict, or when they are of strategic importance to the interests of third parties involved in activities relating to the political, military or economic control of the area which has been or is intended to be placed under their influence. In this context, and bearing in mind attacks by mercenary gangs against Benin, Seychelles, Maldives and the Comoros, it is desirable for the Commission to look into the vulnerability of small States and strengthen the principles of self-determination and the unrestricted realization of the human rights of their peoples, by warning against attempts at expansionist policies, invasions from outside or destabilizing internal conspiracies involving the use of mercenaries, thereby violating the sovereignty, self-determination, domestic constitutional order and human rights of nations.

175. In view of the variety and scope of the uses to which mercenaries may be put, all States should be urged to exercise maximum vigilance and apply legislative and administrative measures to prevent and punish the use of their territory and other territories under their control, as well as their

nationals, for the recruitment, concentration, funding, training and transit of mercenaries, as well as their use in activities designed to destabilize or overthrow the Government of any State or combat national liberation movements fighting against racism, apartheid, colonial domination and foreign intervention and occupation and for their independence, territorial integrity and national unity.

176. As to the principles underlying United Nations action, it would be desirable to point out the incompatibility with international rules of any external assistance which can be objectively demonstrated as for use in intervening in the internal affairs of other States and for attacks against the exercise of the right of peoples to self-determination. The recommendation on incompatibility should include any diversion of programmes of humanitarian or other assistance to cover up actual situations in which mercenaries are financed, trained or used.

177. In view of the fact that on 4 December 1989 the General Assembly adopted the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, it is desirable for the Commission to express its satisfaction at the successful finalization of the work of the Ad hoc Committee and the adoption of the Convention and declare at the same time that this constitutes a meaningful step forward and an important instrument for Member States to adapt their national legislation in this area, and also express the hope that the Convention will be signed by the greatest possible number of States in the shortest possible time, so as to ensure prompt entry into force.

178. In view of the text of the Convention itself and the fact that there are few States in which domestic legislation specifically classes mercenary activities as unlawful and provides for the prohibition of such activities and the prosecution and punishment of those responsible, States should once again be urged to establish in their domestic legislation that mercenary activities are an offence and stipulate the appropriate penalties.

179. It is of relevance to point out that the Convention contains no provisions establishing machinery to monitor implementation. Given the legal precedents and the subject-matter of the Convention, it is desirable for the Commission to bear in mind that it can itself form part of the monitoring machinery, in all matters relating to the unrestricted applicability and the protection of human rights. In this context, reports of mercenary activities in violation of the right to self-determination and the human rights of peoples received by the Special Rapporteur might better be studied under the mandate of the Special Rapporteur - without prejudice to any legal action initiated in competent national courts.

180. In connection with the peace process in the southern African region, and in the light of the peace agreements signed by Angola and South Africa, as well as the current independence process in Namibia, it is recommended that these initiatives should be supported, together with the relaxation of tension discernible in the region, for their successful culmination may consolidate independence in Namibia and lasting peace in Angola. Mercenary practices arose in the context of the existing violence and conflicts in the region, and hence it is to be hoped that halting them will contribute to the disappearance of mercenary activities once and for all. For this same reason, this recommendation should include a reference to the internal military conflict in

Angola, expressing support for a national reconciliation process which will lead to the disappearance of the UNITA guerrilla movement, together with its use of mercenaries, and seeking peace among Angolans, and their contribution to, and political participation in, the development of their country.

181. Bearing in mind the fact that, according to a number of reports, mercenary activities have not ceased in Africa, and indeed the recent occupation of the Comoros by a mercenary force highlights the existence of groups intended to effect the sovereignty, self-determination and stability of the Governments of certain States, it is recommended that the Commission should clearly condemn this situation, express full support for the sovereign rights of States and peoples in the region and demand an explanation from the Government of South Africa about its alleged connection with mercenary activities, or in any event, the protection of persons taking part in them.

182. With regard to the invasion of Maldives by mercenary groups on 3 November 1988, the prosecution and punishment of the mercenaries found guilty of the invasion, and the concern expressed by the Government of Maldives in drawing attention to the vulnerability of its territory and the risk of exposure to invasion, attacks and other forms of violence affecting its sovereignty, self-determination and political stability and the human rights of its people, it is desirable for the Commission to condemn the mercenary aggression to which Maldives was subjected and express support for the country's sovereign rights. At the same time, the Commission might reiterate its call on the Governments concerned to continue co-operating with the Special Rapporteur in this regard.

183. In the light of the reports and evidence which highlight criminal links between organized groups of Colombian drug traffickers and foreign mercenaries recruited to work for them and participate in the formation and training of paramilitary groups and in acts of extreme violence that have disrupted public order and affected individuals and public and private property in Colombia, it is desirable for the Commission to condemn this serious unlawful association, and at the same time assure the Government of Colombia of its readiness to co-operate within the Commission's field of competence in eliminating this association that affects the sovereignty and constitutional stability of Colombia.

184. The Commission should vigorously condemn the occupation of the Comoros by a mercenary force on 26 November 1989, express support for the sovereign rights of the people of the Comoros, and welcome the French initiative which helped to bring the mercenary occupation of the country to an end and re-establish the sovereignty and constitutional authority of the Comorian Government. At the same time, this recommendation should include the need for an exhaustive investigation of the causes of, and responsibility for, this mercenary act, as well as the legal situation of the mercenaries who have been publicly accused of perpetrating it.

185. As regards the Central American conflict, particularly the armed actions in Nicaragua which have caused objective harm to its sovereignty, population, territory and economy, and bearing in mind that, in this context, there has been external interference to help one of the parties to the conflict, and mercenaries have been recruited and used through the use of outside funds raised by covert operations that ignored and exceeded the legal authorizations by the United States Congress and the authorities for aid to the Nicaraguan

resistance, it is desirable to reaffirm the right of Nicaragua and the other countries in the Central American region to non-interference in their internal affairs, self-determination and full sovereignty, while condemning the mercenary activities of foreigners recruited as mercenaries and the practices and operations that made those activities possible.

186. Finally, noting the process of détente which has begun in the Central American region by express and agreed decision of the five presidents; that the Esquipulas II, Alajuela, Costa del Sol, Tela and San Isidro de Coronado agreements set out solutions, machinery and procedures for the settlement of all aspects of the conflict in a manner that is satisfactory to all parties; that, in addition, the United States of America, through the bipartisan agreement, has indicated its readiness to co-operate in seeking a peaceful political solution for Central America on the basis of the comprehensive application of the Esquipulas II agreements as an indivisible whole; and that machinery for observation (ONUCA) and verification (the International Support and Verification Commission) has been established under the United Nations to contribute to democratization, détente and demobilization in the region - the Special Rapporteur considers it desirable for the Commission to express explicit support for this comprehensive peaceful political negotiation process, support the initiatives set out in the San Isidro de Coronado agreement designed to speed up the process of comprehensive application of the peace agreements, and invite all Member States to express their support for and co-operation in the negotiations and political settlement under way and in the demobilization of the Nicaraguan resistance forces and their voluntary repatriation to their own or a third country, as well as an undertaking to respect the sovereignty and self-determination of the peoples of Central America and their contribution to all actions that strengthen democracy and development in the region as a whole.

Notes

1/ Iran-Contra Congressional Report, section I, part I, p. 4, and part II, chap. 2, pp. 41 and 45.

2/ Kornbluh, Peter, Nicaragua, the price of intervention, Institute for Policy Studies, Washington, D.C., 1987, chap. 4, pp. 201-203; The Christic Institute, Inside the Shadow Government, Declaration of Plaintiffs' Counsel filed by the Christic Institute, United States District Court, Miami, Florida, pp. 113-114.

3/ Iran-Contra Congressional Report, section I, part I, p. 4.

4/ Kornbluh, Peter, op. cit., chap. 1, p. 82.

5/ The Christic Institute, op. cit., pp. 206-207.

6/ Kornbluh, Peter, op. cit., pp. 239-240.

7/ Kornbluh, Peter, op. cit., pp. 85-86.

8/ Iran-Contra Congressional Report, section I, part I, pp. 4-5.