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New York

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SUMMARY RECORD OF THE 41st MEETING

Chairman: Mr. TUERK (Austria)

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AGENDA ITEM 144: REPORT OF THE AD HOC COMMITTEE ON THE DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES (continued)

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The meeting was called to order at 3.10 p.m.

**AGENDA ITEM 152: INTERNATIONAL CRIMINAL RESPONSIBILITY OF INDIVIDUALS AND ENTITIES ENGAGED IN ILLICIT TRAFFICKING IN NARCOTIC DRUGS ACROSS NATIONAL FRONTIERS AND OTHER TRANSNATIONAL CRIMINAL ACTIVITIES; ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT WITH JURISDICTION OVER SUCH CRIMES (continued) (A/44/195, A/44/694)**

1. Ms. HLAJOANE (Lesotho) said that her delegation associated itself with the sentiments expressed by the Permanent Representative of Trinidad and Tobago in her letter, including the annex thereto, addressed to the Secretary-General and dated 21 August 1989 (A/44/195). There was indeed a proliferation of organized criminal activities, of which drug trafficking and international terrorism were but examples, in the world today. The proposal for the establishment of an international criminal court with jurisdiction over such crimes therefore deserved attention, the more so as it contributed towards the progressive development and codification of international law.

2. The idea of establishing such a jurisdiction had also been highlighted by the Chairman of the International Law Commission, Mr. Graefrath, in his introduction of the report of the Commission (A/44/10). It had come up in the Commission in the context of the implementation of the draft Code of Crimes against the Peace and Security of Mankind. Two main schools of thought had then emerged, one in favour of the creation of such a jurisdiction on the ground that it would facilitate an impartial, objective and consistent approach, and the other being that the offences in question should fall exclusively under national jurisdiction. Her delegation, for its part, would favour a more balanced solution whereby an international tribunal would deal with offences judged by national tribunals as courts of first instance. In that way, the advantages of an impartial, consistent body would be coupled with the harmonization of case law and the eradication of possible shortcomings of national courts.

3. There were no hard and fast rules in the field under consideration, and the form of the proposed international criminal jurisdiction would ultimately depend on the direction taken by the debate about the issue. The status of the proposed tribunal in relation to the International Court of Justice would also need to be examined. As the issue was a complex one, her delegation felt that it would best be handled by the International Law Commission and the Sixth Committee.

4. It was commonly known that international drug trafficking had become an international concern threatening the peace and security of Governments as well as the health of the drug users. Her Government, like all others, was perturbed by that threat. Lesotho was a party to the 1961 Single Convention on Narcotic Drugs and the Protocol amending it, as well as to the 1971 Convention on Psychotropic Substances. It was at present considering ratification of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. In that context, a national narcotics bureau had been established in Lesotho in 1988 with a mandate to evaluate all aspects of the problem, including revision of existing national legislation on narcotic drugs and psychotropic substances, and to make policy recommendations as required.

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(Mr. Hlajoane, Lesotho)

5. At the Ninth Conference of the Heads of State or Government of Non-Aligned Countries held in Belgrade in September 1989 it had been noted that the problem of illicit demand, production, trafficking in and consumption of narcotic drugs and psychotropic substances threatened the political, economic, social and cultural structures of the countries concerned. The Conference had expressed concern over the use of drug trafficking for political purposes and had agreed that there was a need for international co-operation in combating that international crime.

6. The international community, through its legal experts, needed to examine closely the proposal for the establishment of an international criminal jurisdiction. It was therefore appropriate to request the Secretary-General to prepare and submit to the General Assembly at its forty-fifth session a comprehensive report on work already done on the matter. The idea of setting up such a jurisdiction went back to the 1950s and could be traced in General Assembly resolutions over the years. It was her delegation's view that the issue should be further explored taking into account the consequences of establishing such a court and its relationship both with the United Nations and its organs and with national courts.

AGENDA ITEM 144: REPORT OF THE AD\_HOC COMMITTEE ON THE DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES (continued) (A/44/43 and Corr.1 (English only); A/C.6/44/L.9; see also A/C.6/44/L.1, pp. 6 and 7)

7. Mr. HAGOSS (Ethiopia), Chairman of the Working Group established by the Sixth Committee to settle outstanding issues relating to the drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries, drew attention to two typing errors in the Spanish version of document A/C.6/44/L.9, as follows: in the last preambular paragraph, the word "seguirían" should read "seguirán"; in the second sentence of article 11, the word "Deben" should read "Deberían".

8. It would be recalled that when, 10 years earlier, Nigeria had taken the initiative of proposing that a draft convention on mercenary activities should be elaborated under the aegis of the United Nations, the need for such a convention had been acutely felt by the international community in the wake of mercenary operations which had brought desolation, misery and destruction to a number of countries, particularly in Africa. Ten years later, the threat posed by mercenarism to world peace and to the integrity of national political structures remained as real as ever. The topicality of the subject was attested by the recent adoption in the Special Political Committee of a draft resolution under the item "Protection and security of small States", which reflected the concern of the General Assembly over the danger which mercenaries represented to small States. It was further illustrated by the fifth preambular paragraph of the draft convention before the Committee (A/C.6/44/L.9, annex). Against that background, the legal and political significance of the proposed draft convention and the achievement which its unanimous adoption by the General Assembly would represent for the United Nations could not be overestimated.

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(Mr. Hagoss, Ethiopia)

9. A review of the successive reports of the Ad Hoc Committee, which had been established by the General Assembly in 1980, revealed the extent of the diplomatic and intellectual investment in the draft Convention. After an unpromising beginning in 1981, the Ad Hoc Committee had undertaken a careful and patient analysis of the drafts before it, with a view to identifying the points of convergence and divergence between the various positions. That effort had resulted in 1984 in the so-called Consolidated Negotiating Basis, which had represented a major breakthrough, even though it had been replete with bracketed articles and alternative formulations. The Ad Hoc Committee had then embarked on the task of clearing the text of square brackets and had been able to produce at the end of its most recent session, held in February 1989, an almost clean text, with only four issues still awaiting a solution. He referred members of the Committee, in that connection, to section III of the Ad Hoc Committee's report.

10. Indeed, the Ad Hoc Committee had considered the results thus achieved at its 1989 session sufficiently promising to warrant a recommendation to the General Assembly that the finalization of the draft should be entrusted to a working group of the Sixth Committee. The Ad Hoc Committee's assessment of the prospects for an early agreement had been vindicated, as the Working Group established by the Sixth Committee had succeeded in settling the outstanding issues in the manner described in paragraph 4 of its report (A/C.6/44/L.9) and had agreed on final clauses and a preamble, as indicated in paragraphs 6 and 7 of the report. The Ad Hoc Committee had adopted the draft Convention; he drew attention in that connection to paragraph 8 of the report, which he read aloud.

11. The Working Group was submitting to the Sixth Committee for consideration and adoption the draft Convention reproduced in the annex to its report, on the understanding that in recommending to the General Assembly the adoption of the draft Convention, the Sixth Committee would be mindful of the agreed statement contained in paragraph 8 (a) of the report and of the text that it was generally agreed should be included in paragraph 8 (b).

12. At its current session the General Assembly would probably proclaim a decade of international law. He could not think of a more fitting curtain-raiser for the decade than the adoption by consensus of a convention that, aside from giving expression to the solidarity of all nations in the face of activities particularly harmful to smaller States, aimed to strengthen peace and security by upholding the primacy of the rule of law in international affairs. He trusted that the Sixth Committee would adopt the draft Convention under consideration by consensus and recommend it to the General Assembly for adoption.

13. Mr. MIKULKA (Czechoslovakia), speaking on behalf of the delegations of Bulgaria, the Byelorussian Soviet Socialist Republic, the German Democratic Republic, Hungary, Poland, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics, as well as his own delegation, said that during the nine years that had elapsed since the establishment of the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries, the eight countries on whose behalf he was speaking had

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(Mr. Mikulka, Czechoslovakia)

endeavoured to contribute in the most effective way to the Ad Hoc Committee's success. From the very beginning they had supported the legitimate demand for the earliest possible elaboration of an international convention on the issue, being of the opinion that such a convention would meet the practical requirements only if it prohibited the recruitment, use, financing and training of mercenaries by States themselves, and at the same time obliged States to prohibit such activities and make the corresponding offences punishable under their internal law.

14. The phenomenon of mercenarism was a matter of great concern to a good part of the international community. Several developing countries had been victims of mercenary activities both within and outside the context of an armed conflict. The widespread use of mercenaries had dire consequences for the peoples of the countries concerned and, at the same time, negative effects on international relations. The use of mercenaries in the context of acts of violence aimed at undermining the constitutional order or the territorial integrity of States, as well as against national liberation movements for the purpose of opposing the legitimate exercise of the inalienable right of peoples under foreign domination to self-determination, harmed the interests of international peace, security and stability.

15. The constructive spirit that had prevailed at the Ad Hoc Committee's two most recent sessions had made it possible to overcome long-standing political obstacles, and the decision to entrust the solution of the last problems to an open-ended working group of the Sixth Committee had proved wise. The final outcome of that hard work - the draft of an international convention against the recruitment, use, financing and training of mercenaries that was now before the Sixth Committee, whose adoption would undoubtedly contribute to the progressive development of international law and its codification - could thus today be sincerely welcomed.

16. Mrs. AINA (Nigeria) said that at its thirty-fourth session the General Assembly had, at Nigeria's request, put the item under consideration on its agenda. Nigeria had taken that initiative in view of the pernicious impact that mercenary activities were having on international peace and security, and against the background of the Geneva protocols dealing with armed conflict and international humanitarian law. At that time Nigeria had envisaged opposition and resistance, especially from States whose municipal legal systems did not discourage mercenary activities and where mercenaries could operate openly. The fact that the process of the formal adoption of the draft Convention was beginning today was clear evidence of changes that had taken place at the international level and of a greater acceptance of the need to deal with the problem of mercenarism.

17. Of course, the consensus draft under consideration could not satisfy every State, but Nigeria believed that it represented a tremendous step forward at a time when mercenarism had developed a symbiotic relationship with international drug trafficking and terrorism. It was true, and understandable, that some would have preferred to see in the draft very stiff penalties, including capital punishment, for the crime of mercenarism. However, leaving States Parties to the convention to determine the penalties through their judicial systems was a compromise solution

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(Mrs. Aina, Nigeria)

predicated on the assumption that States would treat the crime of mercenarism as a grave offence deserving a heavy penalty. The international community expected that States would act in good faith on the issue and not hesitate to extradite offenders to affected States if they had any doubt as to the efficacy of their domestic legal systems in handling such cases involving their citizens.

18. Lastly, Nigeria hoped that the Convention would be signed and speedily ratified by more than the required number of States, so as to send a very clear signal to those who still believed that acts of mercenarism could be engaged in with impunity.

The meeting rose at 3.45 p.m.