

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

GENERAL ASSEMBLY

OFFICIAL RECORDS: FORTIETH SESSION

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NOTE

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

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I. INTRODUCTION

1. At its 99th meeting, on 13 December 1984, the General Assembly, on the recommendation of the Sixth Committee, 1/ adopted resolution 39/84 entitled "Drafting of an international convention against the recruitment, use, financing and training of mercenaries", which read as follows:

"The General Assembly,

"Bearing in mind the need for strict observance of the principles of sovereign equality, political independence, territorial integrity of States and self-determination of peoples, enshrined in the Charter of the United Nations and developed in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 2/

"Recalling its resolutions, particularly resolutions 2395 (XXIII) of 29 November 1968, 2465 (XXIII) of 20 December 1968, 2548 (XXIV) of 11 December 1969, 2708 (XXV) of 14 December 1970 and 3103 (XXVIII) of 12 December 1973, and its resolution 1514 (XV) of 14 December 1960, as well as Security Council resolutions 405 (1977) of 14 April 1977, 419 (1977) of 24 November 1977, 496 (1981) of 15 December 1981 and 507 (1982) of 28 May 1982, in which the United Nations denounced the practice of using mercenaries, in particular against developing countries and national liberation movements,

"Recalling in particular its resolution 38/137 of 19 December 1983, by which it renewed the mandate of the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries,

"Having considered the report of the Ad Hoc Committee on its fourth session, 3/

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

"Bearing in mind the pernicious impact that the activities of mercenaries have on international peace and security,

1/ Official Records of the General Assembly, Thirty-ninth Session, Annexes, agenda item 129, document A/39/777.

2/ Resolution 2625 (XXV), annex.

3/ Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 43 (A/39/43 and Corr.1).

"Considering that the progressive development and codification of the rules of international law on mercenaries would contribute immensely to the implementation of the purposes and principles of the Charter,

"Taking account of the fact that, although the Ad Hoc Committee has made some progress, it has not yet fulfilled its mandate,

"Reaffirming the need for the elaboration, at the earliest possible date, of an international convention against the recruitment, use, financing and training of mercenaries,

"1. Takes note of the report of the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries and the progress made by the Ad Hoc Committee, especially during its fourth session;

"2. Decides to renew the mandate of the Ad Hoc Committee to enable it to continue its work on the drafting of an international convention against the recruitment, use, financing and training of mercenaries;

"3. Requests the Ad Hoc Committee, in the fulfilment of its mandate, to use the draft articles contained in chapter IV of its report, entitled 'Consolidated Negotiating Basis of a convention against the recruitment, use, financing and training of mercenaries', as a basis for future negotiation on the text of the proposed international convention;

"4. Invites the Ad Hoc Committee to take into account the suggestions and proposals of Member States submitted to the Secretary-General on the subject and the views and comments expressed at the thirty-ninth session of the General Assembly during the debate in the Sixth Committee devoted to the consideration of the report of the Ad Hoc Committee; 4/

"5. Decides that the Ad Hoc Committee shall accept the participation of observers of Member States, including participation in the meetings of its working groups;

"6. Requests the Secretary-General to make available to the Ad Hoc Committee at its fifth session a topical summary of the discussions which took place in the Sixth Committee during the thirty-ninth session of the General Assembly and any up-to-date and relevant documentation on the subject;

"7. Also requests the Secretary-General to provide the Ad Hoc Committee with any assistance and facilities it may require for the performance of its work;

"8. Decides that the Ad Hoc Committee shall hold its fifth session for four weeks, from 8 April to 3 May 1985;

4/ See A/C.6/39/SR.49-57 and 64.

"9. Requests the Ad Hoc Committee to make every effort to complete its mandate at its fifth session and to submit a draft convention to the General Assembly at its fortieth session;

"10. Decides to include in the provisional agenda of its fortieth session the item entitled 'Report of the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries'."

2. The membership of the Ad Hoc Committee, as appointed by the President of the General Assembly, is as follows:

Algeria	Nigeria*
Angola	Portugal
Bangladesh	Senegal
Barbados	Seychelles
Bulgaria	Spain
Canada	Suriname
Cuba	Togo
Democratic Yemen	Turkey
Ethiopia	Ukrainian Soviet Socialist Republic
France	Union of Soviet Socialist Republics
German Democratic Republic	United Kingdom of Great Britain and Northern Ireland
Germany, Federal Republic of	United States of America
Haiti*	Uruguay
India	Yugoslavia
Italy	Zaire
Jamaica	Zambia
Japan	
Mongolia	

3. The Ad Hoc Committee held its fifth session at United Nations Headquarters from 8 April to 3 May 1985. 5/

4. The session was opened on behalf of the Secretary-General by Mr. Carl-August Fleischhauer, Under-Secretary-General, the Legal Counsel, who represented the Secretary-General at the session.

5. Mr. Georgiy Kalinkin, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary of the Ad Hoc Committee. Miss Jacqueline Dauchy, Deputy Director for Research and Studies (Codification Division, Office of Legal Affairs), acted as Deputy Secretary of the Committee, as well as Secretary of the Working Groups of the Ad Hoc Committee. Mr. Boris Grigoriev and Mr. A. Mpazi Sinjela, Legal Officers, and Miss Maritza Struyvenberg, Associate Legal Officer (Codification Division, Office of Legal Affairs), acted as Assistant Secretaries of the Ad Hoc Committee and its working groups.

* Haiti and Nigeria replaced Guyana and Benin (see A/39/327 and Corr.1, A/39/850 and A/39/851).

5/ For the membership list of the Ad Hoc Committee at its fifth session, see A/AC.207/INF/5 and Add.1.

6. At its 31st, 32nd and 33rd meetings, on 8, 9 and 10 April, the Ad Hoc Committee elected the following officers:

Chairman: Mr. Harley S. L. Moseley (Barbados)

Vice-Chairmen: Mr. Abdallah Baali (Algeria)

Mr. Boris I. Tarasyuk (Ukrainian Soviet Socialist Republic)

Mr. Tullio Treves (Italy)

Rapporteur: Mr. Hameed Mohamed Ali (Democratic Yemen)

7. At its 31st meeting, on 8 April, the Ad Hoc Committee adopted the following agenda (A/AC.207/L.21):

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Drafting of an international convention against recruitment, use, financing and training of mercenaries pursuant to paragraph 3 of General Assembly resolution 35/48, paragraph 2 of resolution 36/76, paragraph 2 of resolution 37/109, paragraph 2 of resolution 38/137 and paragraph 2 of resolution 39/84.
6. Adoption of the report.

8. At the same meeting and at subsequent meetings, held on 9, 10, 11 and 12 April, respectively, the Ad Hoc Committee decided to grant requests for observer status received from the Permanent Missions of Benin, Chile, Iraq, Mexico, Morocco, Mozambique, Nicaragua, Tunisia, Viet Nam and Zimbabwe, pursuant to paragraph 5 of General Assembly resolution 39/84 according to which the Assembly decided that the Ad Hoc Committee should accept the participation of observers of Member States, including participation in the meetings of its working groups.

9. In addition to the documents submitted at its first, second, third and fourth sessions, as listed in the Ad Hoc Committee's reports on these sessions, 6/ the Ad Hoc Committee had before it:

(a) A draft convention against the recruitment, use, financing and training of mercenaries submitted by Cuba (A/AC.207/L.22);

6/ Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 43 (A/36/43); *ibid.*, Thirty-seventh Session, Supplement No. 43 (A/37/43 and Corr.1); *ibid.*, Thirty-eighth Session, Supplement No. 43 (A/38/43); and Thirty-ninth Session, Supplement No. 43 (A/39/43 and Corr.1).

(b) A topical summary prepared by the Secretary-General under paragraph 6 of General Assembly resolution 39/84 (A/AC.207/L.23).

The Ad Hoc Committee had also before it the "Consolidated Negotiating Basis of a convention against the recruitment, use, financing and training of mercenaries", (chapter IV of the Ad Hoc Committee's report on its fourth session 3/) which the General Assembly, by paragraph 3 of its resolution 39/84, had requested the Ad Hoc Committee to use "as a basis for future negotiation on the text of the proposed international convention".

10. At its 33rd meeting, on 10 April, the Ad Hoc Committee decided to reconstitute Working Groups A and B, it being understood that Mr. Abdallah Baali (Algeria), Vice-Chairman of the Ad Hoc Committee, would act as Chairman-Rapporteur of Working Group A, and Mr. Tullio Treves (Italy), Vice-Chairman of the Ad Hoc Committee, as Chairman-Rapporteur of Working Group B. The Ad Hoc Committee further agreed on the following:

(a) The Bureau would play a central role in monitoring the progress of work and the number of plenary meetings would be kept to a minimum;

(b) Negotiations would focus on issues on which there was need to achieve further areas of agreement; more specifically, Working Group A would deal with the issues arising from articles 1 and 2 and 4 to 8, and Working Group B with the issues arising from articles 9 and 11 to 13, it being understood that consultations would take place at a later stage on how to discuss articles 3 and 10 and that every effort would be made to build upon existing understandings;

(c) The Chairmen of the Working Groups would consult among themselves and with the other members of the Bureau to work out new formulations either to facilitate discussion or to reflect ideas expressed in such a discussion with a view to achieving general agreement;

(d) New formulations should replace elements in the consolidated text only on the basis of agreement within the Working Groups.

11. At the 34th meeting of the Ad Hoc Committee, on 11 April, the observer for Chile and the representative of the Union of Soviet Socialist Republics made statements of a general nature.

12. At its 36th meeting, on 3 May, the Ad Hoc Committee had before it a document (A/AC.207/1985/CRP.4) entitled "Consolidated Negotiating Basis of a convention against the recruitment, use, financing and training of mercenaries (Revised version)". The Ad Hoc Committee heard a presentation of this document by the Chairmen of Working Groups A and B and then approved the document as representing the work of the current session.

13. At the same meeting, some delegations considered that in order to comply with the mandate of the Committee, provisions of the preambular and final clauses should be included in the revised Consolidated Negotiating Basis so that the General Assembly and Member States might consider a complete negotiating basis for the future convention and suggested that the Bureau or the Secretary-General be asked to prepare the draft. Some other delegations considered that any such effort would be premature within the context of the Consolidated Negotiating Basis, since these issues had not been considered by the Working Groups and were likely to distract the Committee from the substantive task before it.

14. Taking into account the fact that the Ad Hoc Committee had not completed the mandate entrusted to it under paragraph 2 of General Assembly resolution 39/84, the Committee recommends to the Assembly that it should invite the Committee to continue its work in 1986 with the goal of drafting, at the earliest possible date, an international convention against the recruitment, use, financing and training of mercenaries.

15. At its 37th meeting, on 3 May, the Ad Hoc Committee approved its report and decided to include the reports of Working Groups A and B and of the joint meeting of Working Groups A and B in its report to the General Assembly.

16. The Ad Hoc Committee furthermore decided to annex to its report the draft convention submitted by Cuba (A/AC.207/L.22), it being understood that any such proposal which might be tabled in the future would be entitled to the same treatment.

II. REPORT OF WORKING GROUP A

A. Introduction

17. Working Group A held 17 meetings between 10 April and 2 May 1985.
18. Taking account of the request addressed to the Ad Hoc Committee by the General Assembly in paragraph 3 of its resolution 39/84, the Working Group used the draft articles contained in section IV of the report of the Ad Hoc Committee on the work of its fourth session, entitled "Consolidated Negotiating Basis of a convention against the recruitment, use, financing and training of mercenaries", as a basis for negotiation on the text of the proposed international convention. It was none the less understood that due consideration would be given to the elements of proposals submitted to the Ad Hoc Committee which might help to resolve outstanding problems.
19. In accordance with the Ad Hoc Committee's decision on the organization of work (see para. 10 above), negotiations in the Working Group would focus on articles 1 and 2 and 4 to 8.
20. The Working Group first considered articles 1 and 2 and the "Proposed alternative to the definition of a mercenary" and then reviewed articles 4 to 7. Article 8 was not considered for lack of time.
21. The consideration of articles 1 and 2 and the proposed alternative to the definition of a mercenary, and also article 6, led to the presentation by the Chairman of a consolidated text concerning the definition of a mercenary to serve as article 1. The consideration of article 7 of the Consolidated Negotiating Basis led to the presentation by the Chairman of an article 2 concerning offences committed by persons who recruited, used, financed or trained mercenaries.
22. Since the consideration of the provisions of the Consolidated Negotiating Basis was intended to help the Chairman to identify points of agreement and disagreement and since these points re-emerged in the course of consideration of the texts proposed by the Chairman, the present report gives an account only of the discussion which took place on the texts proposed by the Chairman.

B. Summary of the discussion

Articles 1 and 2 and "Proposed alternative to the definition of a mercenary" and article 6, as they appear in the Consolidated Negotiating Basis

23. The text proposed by the Chairman of Working Group A in the light of the discussion and in consultation with other members of the Bureau read as follows:

"Article 1

"1. For the purposes of the present Convention, a 'mercenary' is any person who:

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

"(b) Does, in fact, take a direct part in the hostilities;

"(c) 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;

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

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

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

"2. A 'mercenary' is also any person who:

"(a) Is specially recruited for the purpose of participating in a concerted act of violence designed to attain one or more of the following objectives:

The overthrow of a Government;

The suppression of the struggle of a people in the exercise of its right to self-determination and independence;

The violation of the territorial integrity, sovereignty or independence of a State and the safety of the public;

The occupation of a territory by force;

"(b) Acts in a manner which indicates clearly his intention to participate in carrying out that activity;

"(c) Is motivated essentially by the desire for gain with a view to obtaining material compensation;

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

"(e) Is not acting on official duty in the State against which the activity is directed.

24. In presenting this text, the Chairman explained that his proposals should be viewed as a substitute for the corresponding provisions of the Consolidated Negotiating Basis only if they were generally recognized to represent progress over those provisions. He recalled that the Consolidated Negotiating Basis was a major achievement and that its status should not be called into question by proposals which would not meet with broad agreement.

25. He then explained that his proposal for article 1 combined into a single article the two provisions of the Consolidated Negotiating Basis concerning the definition of a mercenary and that he had deleted the chapeaux of articles 1 and 2,

which needlessly reintroduced into the context of the convention the difference of views that existed as to the scope of the definition contained in article 47, paragraph 2, of Additional Protocol I to the Geneva Conventions of 12 August 1949. The proposed article 1 covered all mercenaries, regardless of the context in which they operated, and, in order to avoid calling into question in any way the provisions of the Geneva Conventions, opened with the words "For the purposes of the present Convention", which were designed to avoid any interference between the proposed Convention and the Additional Protocols. Apart from that introductory phrase, paragraph 1 reproduced article 47, paragraph 2, of Additional Protocol I unchanged.

26. Paragraph 2 referred to categories of mercenaries not covered by the definition contained in paragraph 1 and, while it did not automatically transpose the provisions of the first definition to the second, maintained a certain parallelism between the two definitions.

27. With regard to subparagraph (a) of paragraph 2, the Chairman emphasized that, while there was agreement not to extend the scope of the convention to cover the conduct of isolated individuals, the general feeling was that it would unduly restrict the scope of the convention to consider as mercenaries only those persons who were knowingly involved in a large-scale network. With regard to the words "against the Government of a foreign State", he had thought it preferable to delete the reference to the target of a concerted act of violence by indicating in the text that the act in question was intended to violate one of the attributes of the State - territory, population, independence or sovereignty. The proposed text therefore specified the objective of the concerted act of violence by transposing into the definition the concepts which, in the Consolidated Negotiating Basis, appeared in article 6.

28. The first of these concepts, namely the overthrow of a Government by violence, was already generally accepted and required no further comment. The Chairman observed that some delegations would no doubt consider the other concepts to be imprecise. He emphasized none the less that it was not the purpose of the definition to create offences and that the concept of the overthrow of a Government by force, on which everyone was agreed, was probably also a rather imprecise concept in domestic criminal law.

29. Subparagraph (b) differed from the corresponding provision of paragraph 1 in that, instead of referring to direct participation in hostilities, it referred to the intention to participate in the activity referred to in the preceding subparagraph. Subparagraph (b) should be read in conjunction with the article concerning offences committed by persons who recruited, used, financed or trained mercenaries. If a definition similar to that in paragraph 1 was retained in paragraph 2, persons who recruited mercenaries would be covered by the convention only from the point at which the mercenary fulfilled all the criteria of the definition, including that of direct participation in a mercenary activity. It was in order to avoid guaranteeing the recruiter's impunity that the proposed text replaced the criterion of direct participation by that of intention. The same solution could no doubt have been envisaged in subparagraph 1 (b) but it would then have had the drawback of reopening the discussion on the generally accepted definition in article 47, paragraph 2, of Additional Protocol I.

30. Subparagraph (c) was designed to bring out more fully the idea that a mercenary was someone who sold himself and was motivated purely by the desire to

earn money, an approach which made it unnecessary to quantify the amount of remuneration, especially in view of the variety of situations in which mercenaries operated and the diversity of their geographical origins.

31. With regard to subparagraph (d), which appeared in square brackets, the Chairman said that he was unable to propose a formula which would bridge the gap between existing positions and had therefore kept to the text of the Consolidated Negotiating Basis.

32. Subparagraph (e) was based on subparagraph (e) of article 2 of the Consolidated Negotiating Basis, but its scope was broader in that the official duty envisaged therein was not limited to military duty and could cover other kinds of duty.

33. The Chairman's proposal was generally regarded as a useful contribution to the progress of work.

34. The idea of combining the two definitions into a single article and of specifying that those definitions were intended "For the purposes of the present Convention" was favourably received. In this connection, it was pointed out that the article should be presented in such a way that the clause in question was applicable to both paragraphs. The comment was made by some delegations that the deletion of the chapeaux of articles 1 and 2 as they appeared in the Consolidated Negotiating Basis would spare domestic courts from having to rule on a political question - that of the nature of the situation in which the mercenary was involved - with which they were not competent to deal.

Paragraph 1

35. Some delegations were of the view that subparagraph (a) must make it clear that the paragraph referred to international armed conflicts. It was recalled in this connection that there were many kinds of armed conflict and the suggestion was made that, in order to avoid any overlapping between the scope of the two paragraphs, the words "within the meaning of Additional Protocol I to the Geneva Conventions of 1949" might be inserted at the end of subparagraph (a) of paragraph 1 in order to leave the law of Geneva intact.

36. Other delegations pointed out that the introduction of such an element into the text would cancel out the attempt at simplification reflected in the Chairman's proposal. It was noted that the interpretation advanced by some members, to the effect that the scope of paragraph 1 was limited to international armed conflicts, excluded any possibility of interpreting paragraph 1 to refer to situations of armed conflict and paragraph 2 to other situations; those delegations therefore objected to adding a specific reference to Additional Protocol I. It was added that the criteria set forth in paragraph 2 were less strict than those set forth in paragraph 1 and that there was a risk that the definition in paragraph 2 might be applied in all circumstances, at the expense of that in paragraph 1. It was suggested therefore that the words "in the absence of armed conflict" should be inserted in square brackets after the words "any person who" in paragraph 2.

37. Later on in the discussion, it was suggested that a paragraph 3 should be inserted in article 1 which would read as follows:

"The definition in paragraph 1 of this article applies to situations covered by Additional Protocol I to the Geneva Conventions of 1949 and the definition in paragraph 2 to situations other than those covered by this Protocol".

38. Some delegations were of the view that this addition marked a step backwards since it reintroduced the problem of the scope of the two definitions. It was said in this connection that, while the definition in article 47, paragraph 2, of Additional Protocol I had been borrowed from that Protocol for reasons of convenience, it was meant to have a scope of application of its own, so that the scope of article 47, paragraph 2, of Additional Protocol I would remain unimpaired.

39. Other delegations reiterated that they could not agree to extend the scope of the definition in article 47, paragraph 2, of Additional Protocol I to all armed conflicts. They emphasized that the diplomatic conference on humanitarian law had deliberately restricted the scope of the definition to international armed conflicts and that to make the definition in Additional Protocol I applicable to the situations referred to in Additional Protocol II would be to go against the law of Geneva. They also pointed out that the criteria set forth in article 47, paragraph 2, were very restrictive and had no relevance outside the context of international armed conflicts and that extending the scope of article 47, paragraph 2, would restrict the possibilities for making penal law applicable to mercenaries. The comment was also made that it was difficult to understand why some delegations were so attached to article 47, paragraph 2, and wanted to give it a scope which it did not have in Additional Protocol I when their Governments were not parties, and had no intention of becoming parties, to that Protocol.

40. Those same delegations supported the inclusion of paragraph 3 and noted that the absence of a provision along the lines of paragraph 3 would open the way for making changes in paragraph 1.

41. At the close of the discussion, it was agreed to include the proposed new paragraph 3 in square brackets, to add the words "in the absence of armed conflict" in square brackets after the words "any person who" and to accompany paragraph 3 by a footnote indicating that the final outcome of the consideration of paragraph 3 would determine the attitude of some delegations to paragraph 1. It was also agreed to reproduce in a footnote the text of the "Proposed alternative to the definition of a mercenary" contained in the Committee's report on the work of its fourth session.

Paragraph 2

42. With regard to subparagraph (a), some delegations were of the view that the word "specially" had the twofold drawback of being unnecessary, since it was clear from the text that mercenaries were recruited for the objectives referred to in the subparagraph, and of creating an unfortunate loophole. Others commented that the deletion from paragraph 2 of a word which appeared in paragraph 1 would give rise to problems of interpretation. It was also emphasized that the word "specially" was particularly appropriate in the context of paragraph 2, which applied to persons recruited for specific operations.

43. The Working Group agreed to put the word "specially" in square brackets.

44. The fear was expressed that the words "concerted act" might be interpreted as requiring participation in a large-scale operation. The Working Group agreed

therefore to indicate in its report that, in order to prove the existence of concerted action, it might suffice to establish a link between the mercenary and another person.

45. It was also suggested that the words "concerted action of violence" should be replaced by the words "concerted action or acts of violence" in order to broaden the scope of the text. That suggestion gave rise to objections on the part of delegations which considered that the criterion of being violent and that of being concerted were cumulative and not alternative.

46. The Working Group agreed to place the words "or acts" in square brackets and, for the sake of consistency, to replace the word "activity" wherever it appeared in paragraph 2 by the alternative "action/acts".

47. With regard to the list of "objectives", it was suggested that the last three subparagraphs should be replaced by the following six points: (a) to create a breakdown in law and order; (b) to endanger public safety; (c) to damage public or private property; (d) to interfere in the internal affairs of a State; (e) to undermine the territorial integrity and independence of a State; and (f) to seriously impede the process of self-determination of peoples struggling against colonialism, racism and apartheid and all forms of foreign domination. It was pointed out that the last three points had been borrowed from the preamble of General Assembly resolution 39/84.

48. That suggestion was supported by some delegations, but other delegations expressed doubts about their relevance and value in a definitional article: one of them thought that the proposed concepts perhaps included acts which the concepts of danger to life and to property could adequately cover; another delegation considered that the concept of interference in internal affairs was interesting but felt that point (f) was both unnecessary - because it was covered by Additional Protocol I and was therefore not related to the situations envisaged in paragraph 2 - and unacceptable, because it limited the principle of self-determination to specific situations. Another delegation said that points (a) to (c) were necessary, because they echoed concepts of penal law but that the last three points were taken from international law and therefore had no place in an instrument of penal law. It was noted in response that there was no objection to having the definitional article deal with general concepts such as overthrow of Governments and interference in internal affairs as long as other categories noted were captured in the draft convention under other articles. In any case, it was pointed out, to accept some categories and reject the other might not be politically acceptable.

49. It was agreed to keep the first of the objectives mentioned in the Chairman's text and to place in square brackets the six points mentioned above, on the understanding that in the sixth point the word "seriously" would also be placed in square brackets.

50. With regard to subparagraph (b), it was agreed to reproduce the text appearing in the Consolidated Negotiating Basis.

51. In connection with subparagraph (c), several delegations supported the text suggested by the Chairman. Some of them felt, however, that it would be advisable to add the idea of the promise of compensation, as it appeared in the definition of "mercenary" contained in article 47, paragraph 2, of Additional Protocol I. It was agreed to include that idea between square brackets.

52. Some delegations, while acknowledging that the criterion of the amount of compensation used in the second part of subparagraph (c) of the "Proposed alternative" was not entirely satisfactory, insisted that the criterion should appear between square brackets in subparagraph (c) of paragraph 2. In their view, an objective criterion was needed. Other delegations considered that the criterion proposed - and, in particular, the words "substantially in excess" - would be unduly restrictive.

53. Subparagraph (d) of the Chairman's proposal was considered unacceptable and irrelevant by some delegations and essential by others.

54. In support of the nationality criterion, it was pointed out that the purpose of the convention was to put an end to a phenomenon which resulted in outside interference in the affairs of States and not to protect States against the doings of their own nationals, and that elimination of the nationality criterion was tantamount to removal of the foreign element which justified the activation of international co-operation. While it was acknowledged that it was not unprecedented on the international scene for groups of individuals to take up arms against their country, it was stated that such activities, however misguided, came within the purview of domestic law or of the law of extradition but not that of the convention being drafted. Attention was drawn in that connection to the views reflected in paragraph 63 of the topical summary prepared by the Secretary-General (A/AC.207/L.23). It was also pointed out that a professional mercenary was called on to pursue his activity in diverse countries and would therefore be covered even if the nationality criterion was adopted and that, in the situations referred to by the opponents of the nationality criterion, the nationals of the victim State were necessarily under the remote control of foreigners intervening from abroad: that constituted the foreign element required to activate the machinery of the convention, probably not against the perpetrators themselves but against the persons who recruited, used and financed them. It was also remarked that Additional Protocol I, the Convention of the Organization of African Unity (OAU) for the Elimination of Mercenarism in Africa and the draft prepared by the International Commission of Enquiries which had met at Luanda all embodied the nationality criterion. It was pointed out by some delegations that, if nationals of a country rebelling against the established order were considered as mercenaries, there would be obstacles in the way of national liberation movements and that the nationality criterion provided protection for bona fide political opponents. The criterion of pecuniary gain, it was said, did not always permit a distinction to be drawn between mercenaries and political opponents and should be supplemented by the nationality criterion so that the convention would not cover persons who, possibly for money but possibly also for political ends, engaged in activities that were misguided from the standpoint of international law but that did not pose the same danger to the international legal order as did conventional mercenary activity. It was added that a request to States to determine whether or not individuals who took up arms against the Government of their country were acting lawfully ultimately amounted to an invitation to those States to interfere in the internal affairs of another State.

55. In opposition to the nationality criterion, it was pointed out by some delegations that various countries in Africa, Asia and Latin America offered numerous examples of large-scale use of nationals by foreigners for mercenary activities directed from abroad against their country of origin. It was said that the convention should be geared not to the realities of international life existing 10 years previously but to the present, and that elimination of the nationality criterion would broaden the scope of the instrument and enhance its effectiveness:

in that connection, it was emphasized that mercenaries of the nationality of the victim State, while they would probably be treated as traitors by the courts of that State if they were caught on its territory, would go unpunished in a foreign country because they possessed the nationality of the victim State; exclusion of nationals of the victim State from the definition would therefore have the effect of leaving open the way for foreign interference in the internal affairs of States by allowing and encouraging nationals of a State to resort to mercenary activities against their own country and of giving a free hand to those who recruited and used them. On the subject of the argument derived from the inclusion of the nationality criterion in article 47, paragraph 2, of Additional Protocol I, it was emphasized that the Protocol defined the scope of application of prisoner-of-war status and therefore pursued a different aim from the convention, which was designed to prevent and punish mercenarism. In that connection, surprise was expressed at the attachment displayed by certain delegations to a provision of an international instrument to which their respective Governments did not intend to become parties. It was noted that mercenarism, like terrorism, hijacking and the taking of hostages, was an unacceptable method of fighting, whatever the political objectives pursued. It was also argued that an opponent could in no circumstances be mistaken for a mercenary since their motives were different and since the criteria of the definition, according to the other view, were considered as cumulative. It was added that, far from leading to acts of interference in the internal affairs of States, elimination of the nationality criterion would help to prevent such acts and that numerous international treaties obliged States parties to accord the same treatment to their nationals and to foreigners.

56. With regard to the word "necessarily" in square brackets in paragraph 2 (d) of article 1 of the Consolidated Negotiating Basis, some delegations stated that it could afford a basis for a compromise, while others took the view that it made subparagraph (d) totally meaningless. The point was made, however, that under the rules governing the interpretation of treaties, the word "necessarily", if retained, should be presumed to have some meaning, and that the only possible interpretation of subparagraph (d) would be that the obligation set forth therein was a flexible obligation and that States were free to decide whether or not the nationality criterion applied. The criterion of residence was supported by some delegations, but rejected by others.

57. With respect to subparagraph (e), several delegations felt that it would be preferable to keep to the corresponding provision of the Consolidated Negotiating Basis without the words in square brackets. It was stated that the deletion of the words "a member of its armed forces" had the effect of broadening the scope of subparagraph (e) and that, inasmuch as the subparagraph sought to exclude certain persons from the subjects covered by the definition, such a broader scope did not serve the purposes of the convention.

58. It was suggested that subparagraph (e) should be preceded by a subparagraph (d bis), reading as follows:

"who is not a member of the armed forces of the State against whose government the action is carried out".

59. Another suggestion was that the following subparagraph should be inserted at the end of paragraph 2:

"is not acting on official duty nor acting as a member of armed forces in, and at the request of, the State against which the activity is directed".

60. The Working Group agreed to include the three aforementioned formulations in square brackets.

Article 7 as it appears in the Consolidated Negotiating Basis

61. The text proposed by the Chairman of Working Group A in the light of the discussion and on the basis of consultations with the other members of the Bureau read as follows:

"Article 2

"An offence is committed by any person who recruits, uses, trains, finances or promotes a mercenary or a group of mercenaries or procures for them means for the purpose of committing an offence referred to in the present Convention."

62. In introducing the text, the Chairman indicated his view that in order to respond to the wishes of a number of delegations and to take into account the objective of the convention being prepared, as embodied in the Committee's mandate, he had made the former article 7 the first of the provisions dealing with offences covered by the convention. The text was a simplified version of article 7 and used the various elements contained in the title of the convention. The word "means" was intended to cover all the identifiable physical means which the mercenary needed in order to engage in his activities, whereas the concept of promotion related to the methods used to encourage mercenarism, such as incitement.

63. Some delegations pointed out that the text under consideration was a key provision summing up the essence of the convention. They noted that the recruitment, use, financing and training of mercenaries were condemned by world legal opinion, as demonstrated by the consensus on the Committee's mandate, and that those four activities should constitute principal offences under the convention inasmuch as they would perpetuate the existence of mercenaries. The view was expressed that it was illogical to consider the recruitment of a few mercenaries to be a principal offence, while characterizing as acts of complicity or as attempts activities that were at least as dangerous, such as large-scale financing or the training of hundreds of persons for such operations. It was suggested that the scope of the proposed article should be broadened with the inclusion of the concepts of organization, supply, equipping and maintenance.

64. Other delegations took the view that only recruitment should be treated as a principal offence, and that the other types of activity referred to in the new article 2 came under acts of complicity or attempts. In that connection, the positive precedent of the International Convention against the Taking of Hostages (General Assembly resolution 34/146, annex) was cited.

65. One argument was that it was difficult to state a priori whether the use, training and financing of mercenaries should be treated as principal offences or as acts of complicity or attempts, and that it all depended on the circumstances of the case. It was noted that this argument went to the location as well as the content of the article.

66. It was agreed that the words "uses", "finances" and "trains" should appear in square brackets and should be accompanied by a footnote indicating the difference of opinion reflected in the preceding paragraphs.

67. Some delegations felt that the phrases "promotes" and "procures ... means" were too vague to be used in a provision that characterized offences. Other delegations considered that they usefully gave the new article 2 an all-embracing scope. It was agreed that the words should appear in square brackets.
68. Some delegations proposed that the word "knowingly", taken from article 7 of the Consolidated Negotiating Basis, should be inserted before the word "recruits".
69. There were objections to that suggestion. Some delegations stated that the proposed insertion would limit the scope of the article and offer a loophole to perpetrators of the offences in question. It was also stated that it would be for the criminal jurisdictions to determine whether a person had recruited, used, financed or trained mercenaries unknowingly - an unlikely hypothesis, in the opinion of the delegations concerned. Another comment was that since, under the text, the activities were bound to entail the commission of an offence, there could be no doubt as to the criminal intent of the persons involved.
70. Other delegations expressed support for the proposed insertion. It was stated that it was illogical to claim that the acts referred to in article 2 were bound to be performed knowingly, and, at the same time, claim that the insertion of the word "knowingly" would limit the scope of the text. It was added that the word introduced into the text the essential concept of criminal intent and was necessary, especially as innocent persons could unwittingly become involved because the activities in question were often clandestine.
71. It was suggested that the words "mercenary or a group of mercenaries" should be replaced by "person or a group of persons". In that connection, it was stated that according to the definition contained in article 2 of the Consolidated Negotiating Basis, a person could be described as a mercenary only after participating directly in a mercenary operation; article 2, therefore, could apply only after the operation had taken place. However, some delegations considered it imperative to retain the word "mercenary", which was essential to the definition as offences of the activities referred to at the beginning of the text. It was suggested that the problem could be solved by the following formulation: "a person or a group of persons in order to make them mercenaries within the meaning of article 1". Reservations were also expressed about the word "group". It was stated that the word suggested collective offences; that was a concept with which some legal systems would be unable to come to terms.
72. With regard to the words "for the purpose of committing an offence referred to in the present Convention", it was suggested, as a way of dispelling the impression of a vicious circle created by the use of the word "offences" with two different meanings, at the beginning and at the end of the text, that the end of the text should be reformulated as follows: "the offences referred to in the subsequent articles".
73. Some delegations took the view that the text, even thus amended, focused unduly on offences, when it should have laid the emphasis on conduct prohibited by the convention. It was agreed that the two approaches should be reflected, in square brackets, in the text of the article.
74. The results of the work of Working Group A are reflected in articles 1 and 2 of the revised Consolidated Negotiating Basis (see sect. V below).

III. REPORT OF WORKING GROUP B

A. Introduction

75. Working Group B held nine meetings between 17 April and 2 May 1985.
76. Taking into account the request addressed to the Ad Hoc Committee by the General Assembly in operative paragraph 3 of resolution 39/84, the Working Group used the draft articles contained in section IV of the report of the Ad Hoc Committee on the work of its fourth session, entitled "Consolidated Negotiating Basis of a convention against the recruitment, use, financing and training of mercenaries", as a basis for negotiation on the text of the proposed international convention.
77. In accordance with the Ad Hoc Committee's decision on the organization of work (see para. 10 above), the negotiations in the Working Group focused on articles 9 and 11 to 13. In a first stage the Working Group considered the articles in question as they appeared in the Consolidated Negotiating Basis. In a second stage, the Working Group considered a series of texts prepared by the Chairman in the light of the discussion and on the basis of consultations with the members of the Bureau concerning the above-mentioned articles.
78. Inasmuch as the purpose of the review of the provisions of the Consolidated Negotiating Basis was to assist the Chairman in identifying areas of agreement and disagreement, and inasmuch as those areas became apparent again during consideration of the texts proposed by the Chairman, the present report reflects only the discussion on the texts proposed by the Chairman.

B. Summary of the discussion

79. The text proposed by the Chairman in the light of the discussion and on the basis of consultations with the other members of the Bureau concerning articles 9, 11, 12 and 13 of the Consolidated Negotiating Basis read as follows:

"A. States parties shall make the offences set forth in the present Convention punishable by appropriate penalties which take into account the seriousness of those offences.

"B. States parties shall ensure full implementation of the provisions of the present Convention within their domestic legal systems.

"C. States parties shall not recruit, use, finance or train mercenaries.

[Note: The question of reserving the application of rules of international law providing for other obligations will be discussed later.]

"D. State parties shall take all practicable measures [consistent with [national and] international law] in order not to allow the use of their territories or of territories under their control for the commission, within or outside their territories, of the offences set forth in the present Convention or for preparations therefor. These measures shall include the prohibition of illegal activities of persons, groups and organizations that

encourage, instigate, organize or engage in the perpetration of such offences as well as of direct soliciting for the recruitment or use of mercenaries.

"E. States parties shall co-operate in taking the necessary measures for the fulfilment of the goals of the present Convention."

80. In introducing the text, the Chairman pointed out that he had basically sought to organize the content of articles 9, 11, 12 and 13 more rationally, eliminating redundancy and overlapping. He added that instead of proposing articles bearing numbers and titles, he had preferred to submit to the Working Group five points designated by the letters A to E, so as to leave open the question of the order and possible consolidation of the points.

81. With regard to point A, the Working Group agreed, after an exchange of views, to replace the words "the seriousness" with "the grave nature", which were taken from article 2 of the International Convention against the Taking of Hostages. Some delegations stated that the words "the grave nature of those offences" should be considered in the light of the outcome of the discussion on the provisions relating to offences.

82. Point B was considered acceptable by some delegations. One specific comment was that it would give States the necessary latitude in implementing the Convention within their respective legal systems. Some delegations, while expressing reservations about the words "within their domestic legal systems", indicated that, in a spirit of compromise, they subscribed to the Chairman's text.

83. Other delegations suggested that point B should be deleted, or at least enclosed in square brackets. In that connection, it was stressed that the Conventions often cited as useful precedents in the ongoing exercise, and, in particular, the International Convention against the Taking of Hostages, did not contain any similar provision, and that the reaffirmation in the convention of a well-established norm of customary international law was pointless and might even be dangerous if the proposed formulation should be considered as having a different effect to articles 26 and 27 of the Vienna Convention on the Law of Treaties.

84. There were objections to that approach. It was stated that delegations which considered it pointless to reiterate an established principle of customary international law should defer to the wishes of delegations which believed that it was important, in the specific context of the convention being prepared, to refer explicitly to the principle in question. It was observed that while the International Convention against the Taking of Hostages was silent on the question, that was not true of many other conventions, such as the International Convention against the Suppression and Punishment of the Crime of Apartheid, the International Covenant on Civil and Political Rights (art. 2) and Additional Protocol I to the 1949 Geneva Conventions (arts. 1 and 80). A final comment was that it was hard to see how the formulation proposed by the Chairman departed from articles 26 and 27 of the Vienna Convention on the Law of Treaties; specifically, it was pointed out that the concept of "full implementation" was perfectly compatible with that of good faith, which was embodied in the articles in question.

85. At the end of the discussion, it was agreed that two alternative versions of point B should be enclosed in square brackets: the text proposed by the Chairman; and a text based on article 80 of Additional Protocol I to the 1949 Geneva Conventions reading as follows:

"States parties shall take all necessary measures for the execution of their obligations under the present Convention."

86. With regard to points C and D, the Chairman explained that the former restated the idea contained in article 11 (a) of the Consolidated Negotiating Basis and that the latter combined paragraphs (b), (c) and (d) (iii) of article 11 and paragraph (a) of article 13. He noted that point D was taken in part from article 4 of the International Convention against the Taking of Hostages.

87. It was suggested that the words "organize" and "equip" should be added to the list of verbs in point C. The remark was made, however, that the concepts in question were implicit in the text as proposed by the Chairman.

88. It was also suggested that the words "and shall prohibit such activities" should be added at the end of the text; it was pointed out that the concept of prohibition went beyond that of the definition of particular acts as crimes and encompassed not only measures under criminal law, but also administrative and other measures. That approach prompted objections on the part of some delegations: it was stated that there was no more effective way of prohibiting an activity than by bringing it within the purview of criminal law, and that the proposed insertion added nothing to the content of points A and D, or to article 7 of the Consolidated Negotiating Basis.

89. At the end of the discussion, it was agreed that the text proposed by the Chairman should be retained and that the words "and shall prohibit such activities" should be added in square brackets.

90. On the question of the note enclosed in square brackets in the Chairman's text, several delegations reiterated their position regarding the need to reserve the application of rules of international law relating to the obligation set forth in point C and other obligations under the convention. It was agreed that the note proposed by the Chairman should be retained with slight amendments.

91. With respect to point D, it was suggested that the format followed in article 13 of the Consolidated Negotiating Basis should again be used. In other words, the obligation referred to in that formulation should become one aspect of a broader obligation, namely the obligation to co-operate in the prevention of offences. It was agreed that the beginning of point D should be reformulated as follows:

"States parties shall [co-operate in the prevention of the offences set forth in this Convention, particularly by]:
[[a)] Take]/[Taking]".

92. The word "practicable" was considered acceptable by some delegations, which pointed out that it was taken from article 4 of the International Convention against the Taking of Hostages. However, it was found too restrictive by other delegations. Several alternatives were considered. At the end of the discussion, it was agreed that the words "practicable" and "effective" should be enclosed in square brackets.

93. As to the words "consistent with national and international law", several delegations indicated that they had no objection either to their retention or to their deletion. Other delegations, however, insisted that the words should be kept in square brackets.

94. It was agreed that the wording of the English version of point D should be improved by replacing the words "in order not to allow" with "to prevent".
95. With respect to the phrase "prevent the use of their territories", some delegations endorsed the approach reflected in the Chairman's proposal. In their opinion, the concept of use of territory appropriately highlighted the obligation of States to exercise control over all activities in the territory under their jurisdiction. Other delegations took the view that the obligation to prevent preparations for offences was broader than the obligation to monitor the use of the territory, and that the text should lay the emphasis on that obligation. It was agreed that only the latter obligation should be retained in point D.
96. It was suggested that the second sentence should be combined with the first. It was also suggested that the word "perpetration" should be enclosed in square brackets and should be followed by the alternative "perpetration or preparation", also in square brackets. It was noted, however, that both the latter part of article 4 of the International Convention against the Taking of Hostages and the latter part of article 13 (a) of the Consolidated Negotiating Basis used the concept of perpetration, rather than that of preparation. This argument was found unconvincing by some delegations which insisted that the article should also contain the concept of preparation as provided in article 13 of the Consolidated Negotiating Basis.
97. It was suggested that the word "offences" in the penultimate line of the text should be replaced by "mercenary activities" and that, accordingly, the last part of the text, relating to direct soliciting, should be deleted. It was stated that the use of the word "offences" made the end of the text meaningless, at least to some extent, because its effect was to present as illegal the activities of persons who committed offences. It was agreed that two alternative formulations should be included in the text, namely, "offences" and "acts prohibited by this Convention".
98. With regard to the last part of the text, it was felt that the concept of direct soliciting was inadequate to cover propaganda. In that connection, it was proposed that the word "organizations" should be followed by the words "and also organized and all other propaganda activities, which promote ...", which were taken from article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. Another suggestion was that paragraph (d) (iii) of article 11 of the Consolidated Negotiating Basis should be inserted at the end of the text in place of the words "as well as of direct soliciting ...". It was agreed that the first of the two suggested formulations should be included in the text between square brackets.
99. With respect to point E, it was agreed that the Chairman's proposal should be kept in square brackets.
100. The results of the work of Working Group B are reflected in articles 8 to 12 of the revised Consolidated Negotiating Basis (see sect. V below).

IV. REPORT OF THE JOINT MEETING OF WORKING GROUPS A AND B

101. On 29 April 1985, Working Groups A and B held a joint meeting chaired under the co-chairmanship of the Chairman of Working Group A and the Chairman of Working Group B to consider article 10 of the Consolidated Negotiating Basis.

102. At the outset, one of the co-Chairmen emphasized that the article as a whole was enclosed in square brackets and contained three alternatives that were also enclosed in square brackets. He pointed out that the last alternative seemed to be a duplication of that part of the article on penalties which contained the words "the grave nature". He then inquired whether any delegations supported the first alternative and noted that that was not the case. Accordingly, it was decided to delete the first and third alternatives. The discussion therefore concentrated on the second alternative, under which "the offences referred to in articles ... constitute crimes against the peace and security of mankind".

103. Some delegations objected to the inclusion of such a provision in the convention and to the very principle of the qualification of offences in the context of this convention. They pointed out that the criminal responsibility of individuals guilty of the offences referred to in the convention was covered by article 9 and that there was no need to consider it again in another article. They considered that the concept of "crime against the peace and security of mankind" had a special meaning in the light of the work of the International Law Commission and could not be used as a general formula indicating that the offences were serious. They further considered that the use of the phrase was inappropriate in this context and that, in any event, the Ad Hoc Committee should not prejudice the work of the International Law Commission. They noted that, if article 10 referred to the responsibility of States, it again gave rise to serious reservations; the concept of the criminal responsibility of States was unacceptable.

104. It was also pointed out that the approach reflected in article 10 differed radically both from that taken by the International Law Commission - which, in its work on the draft Code of Offences against the Peace and Security of Mankind, had considered only the most serious and outrageous acts - and from the approach adopted by the Special Rapporteur of the Commission, Mr. Doudou Thiam, in his third report on that topic (A/CN.4/387, paras. 159-164). Reference was made to draft article 4 as proposed by the Special Rapporteur, in which he proposed to qualify mercenary activities as offences against the peace and security of mankind only if they were the act of a State, involved the use of armed force and were of such gravity as to amount to an act of direct aggression such as invasion, blockade, bombardment etc. In view of the difference in approach reflected in article 10 of the Consolidated Negotiating Basis and the article proposed by the Special Rapporteur, it was felt preferable not to consider the question in the Ad Hoc Committee, which could only deal with it piecemeal, but to leave it to the International Law Commission to propose a comprehensive solution. It was added that the Committee could, for its part, include in the preamble to the future Convention a formula expressing the concern of States about mercenary activities and calling attention to the threat they posed to international relations.

105. Other delegations disagreed with the arguments mentioned in paragraph 103 and 104 above and objected to such an approach as unfounded and contrary to the purposes of the future convention. They thought it essential to include a clause on the lines of article 10 in the convention. They stressed that in numerous resolutions the General Assembly had recognized mercenarism as violating the

fundamental principles of international law, respect for which was a condition sine qua non for the maintenance of international peace and security. Mercenary activities, it was noted, were harmful not only to the States which were the direct victims but to the entire international community; it was therefore logical to qualify them as crimes against the peace and security of mankind. It was emphasized that, under the terms of the OAU Convention on the Elimination of Mercenarism in Africa, the crime of mercenarism was a crime against peace and security in Africa; the future convention should extend that concept to the world as a whole. Such a step, it was emphasized, would have both political impact, since it would express the wish of States to put an end to a phenomenon that was poisoning international relations, and legal significance since it would introduce into the convention a concept that would represent a remarkable advance in the development of international law. In that regard, it was recalled that apartheid had been qualified as a crime against the peace and security of mankind in a convention adopted by the General Assembly. With regard to the relevant work of the International Law Commission, it was noted that the Commission was discussing the idea of qualifying the activities under consideration as crimes against international peace and security and had expressed the wish to take into consideration the work of the Ad Hoc Committee.

106. While agreeing with the view that not all offences sought to be enumerated in the draft convention would qualify as offences against the peace and security of mankind, the desirability and indeed the duty of the Ad Hoc Committee was emphasized to deal with the matter with the political and legal sensibility which was expected of it. It was also noted that the work of the Ad Hoc Committee and of the International Law Commission in this regard had a mutually reinforcing effect.

107. With regard to the text of article 10, some delegations which favoured its inclusion recognized that a distinction should be made between offences in accordance with their gravity. It was therefore proposed that the article should be redrafted to read:

"The recruitment, use, financing and training of mercenaries, regardless of whether it is practised in times of peace or war, is a crime against the peace and security of mankind."

and to place that provision at the very beginning of the convention. That proposal was supported by several delegations. Others objected to it, emphasizing that their reservations with regard to the concept of a crime against the peace and security of mankind similarly applied to the proposed new wording of article 10.

108. Another proposal was to redraft the text of article 10 to read:

"The offences set forth in articles ... constitute serious crimes which affect the peace and security of mankind."

and to place that formulation immediately before article 9. That proposal gave rise to the same reservations as those contained in the previous paragraph.

109. After the debate, one of the co-Chairmen suggested that the question of determining which offences should be qualified as crimes against the peace and security of mankind should be left open by replacing the four activities mentioned in the proposal in paragraph 107 above by the words "the offences set forth in articles ... of the present Convention". At the concluding stage, the text of the

whole provision was retained between square brackets. It was agreed that it should start with two alternatives between square brackets reflecting the language appearing at the beginning of the proposals contained in paragraphs 107 and 108 above. It was further agreed that in the latter part of the text a further alternative, namely "crimes/a crime", would be inserted. It was specified that the second alternative was intended to emphasize that the convention was directed against a policy rather than against individual offences.

110. The results of the joint meeting of Working Groups A and B are reflected in article 7 of the revised Consolidated Negotiating Basis (see sect. V below).

V. CONSOLIDATED NEGOTIATING BASIS OF A CONVENTION AGAINST THE
RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES
(Revised version) 7/, 8/

Article 1* 9/, 10/

For the purposes of the present Convention,

1. a "mercenary" is any person who:
 - (a) is specially recruited locally or abroad in order to fight in an armed conflict;
 - (b) does, in fact, take a direct part in the hostilities;

7/ This text is subject to the second paragraph in section (3) of the report of Working Group A at the fourth session of the Ad Hoc Committee (A/39/43 and Corr.1, sect. II, para. 65) and to the second paragraph in section (c) of the report of Working Group B at that same session (A/39/43 and Corr.1, sect. III, para. 120). It is understood that this text is also subject to agreement being reached on the future draft convention as a whole.

The order of the articles is provisional and does not prejudge the final structure of the convention.

8/ The articles marked with an asterisk contain a revised version, worked out during the present (fifth) session, of the corresponding provision of the Consolidated Negotiating Basis, as approved at the fourth session.

9/ This article replaces articles 1, 2 and 6 of the 1984 version of the Consolidated Negotiating Basis (see A/39/43 and Corr.1, sect. IV).

10/ At the fourth session, the following "Proposed alternative to the definition of a mercenary" was submitted:

For the purposes of this Convention, a "mercenary" is any person who:

- (a) Is specially recruited locally or abroad in order to fight in an armed conflict or, in the absence of armed conflict, in order to carry out a concerted action aimed at overthrowing a Government by armed force;
- (b) Does, in fact, take a direct part either in the hostilities or in the above-mentioned action;
- (c) Is motivated to take part therein essentially by the desire for personal gain and, in fact, is promised by or on behalf of a party to an armed 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 or, in the absence of armed conflict, material compensation substantially in excess of that promised or paid to persons of similar ranks and functions in the armed forces

(c) 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;

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

(e) is not a member of the armed forces of a party to the conflict; and

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

2. a mercenary is also any person who [in the absence of armed conflict]:

(a) is [specially] recruited for the purpose of participating in a concerted action [or acts] of violence designed to attain one or more of the following objectives:

to overthrow a Government

[to create a breakdown in law and order]

[to endanger the safety of the public]

[to damage public or private property]

[to interfere in the internal affairs of a State]

[to undermine the territorial integrity and independence of a State]

[to [seriously] impede the process of self-determination of peoples struggling against colonialism, racism and apartheid and all forms of foreign domination];

[(b) does in fact take direct part [in carrying out or attempting to carry out such [action] [acts]];

(continued)

of the State of which he holds the nationality, or, failing that, in whose territory he resides;

(d) Is neither a national of a party to an armed conflict nor a resident of territory controlled by a party to such a conflict or, in the absence of armed conflict, is neither a national of the State against whose Government the action referred to in subparagraph (a) above is undertaken nor a resident of territory controlled by that State;

(e) Is not a member of the armed forces of a party to an armed conflict or, in the absence of armed conflict, has not been sent by a State on official duty as a member of its armed forces;

(f) In the case of an armed conflict, 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.

(c) is motivated essentially by the desire for private gain with a view to obtaining material compensation [and in fact is promised material compensation [substantially in excess of that promised or paid to persons of similar ranks and functions in the armed forces of the State of which he holds the nationality, or, failing that, in whose territory he resides]];

[(d) is not [necessarily] a national [or a resident] of a State against which such [action is] [acts are] directed];

[(e) is not a member of the armed forces of the State against whose government the [action is] [acts are] carried out;] and 11/

[(f) has not been sent by a State on official duty as a member of its armed forces] [is not acting on official duty nor acting as a member of armed forces in, and at the request of, the State against which the [action is] [acts are] directed].

[3. The definition in paragraph 1 of this article 12/ applies to situations covered by Additional Protocol I to the Geneva Conventions of 1949 and the definition in paragraph 2 to situations other than those covered by this Protocol.]

Article 2 13/

[A mercenary shall not have the right to be a combatant or a prisoner of war.]

[A mercenary is in no case a lawful combatant and shall not have the right to be a prisoner of war.]

Article 3* 14/

An offence is committed by any person who [knowingly] recruits, [uses, trains, finances or promotes] 15/ a mercenary/person or a group of mercenaries/persons or [procures for them means [necessary]] [for the purpose of committing the offences referred to in the subsequent articles] [for the [action] [acts] as contained in paragraph 2 of article 1].

11/ To be placed at the end of the penultimate subparagraph of paragraph 2.

12/ Some delegations indicated that the final outcome of the consideration of paragraph 3 of article 1 will determine their attitude in relation to the content of paragraph 1.

13/ This article corresponds to article 3 of the 1984 version of the Consolidated Negotiating Basis.

14/ This article replaces article 7 of the 1984 version of the Consolidated Negotiating Basis.

15/ For some delegations this phrase - and for some others, the entire article - will have to be dealt with depending on the approach to article 6 on complicity and attempt.

Article 4

[A [criminal] offence is committed by any person who associates with/enlists in a group under the terms and for the purposes referred to in the definition[s] contained in the present Convention.] or

[A [criminal] offence is committed by any person meeting the description[s] contained in the present Convention from the time when he participates directly in hostilities or action referred to in the definition of a mercenary not covered by article 47, paragraph 2, of Additional Protocol I.]

Article 5

A [criminal] offence is committed by any mercenary as defined in the present Convention who: [Text resulting from the discussion of article 4 of the draft introduced by the Chairman of Working Group A (A/38/43, para. 56) 16/ and of article 2 of the French draft (A/38/43, annex).] 17/, 18/

16/ Which reads as follows:

"Article 4

"It shall also be prohibited for any mercenary to:

"(a) Destroy State property or private property;

"(b) Commit aggravated assault or serious acts of violence, rape, against any person;

"(c) Commit murder, torture in any form, whether physical or mental, acts of mutilation [, hostage taking, or the security of civil aviation]."

17/ Which reads as follows:

"Article 2

"A criminal offence is committed by any mercenary within the meaning of article 1 who, participating directly in combat, engages in one of the following acts:

"(a) Murder, torture in any form, whether physical or mental, acts of mutilation, hostage-taking;

"(b) Serious acts of violence, rape;

"(c) Plundering of civilian property."

18/ Should the "Proposed alternative to the definition of a mercenary" be retained, consideration will be given to unifying articles 4 and 5.

Article 6 19/

[A [criminal] offence is committed by any person who:

(a) Participates as an accomplice in the offences defined in articles ... of the present Convention, by knowingly aiding or abetting the person or persons committing the action in acts which led up to or facilitated such action, or by procuring arms, instruments or any other means used in the action, knowing that they were to be so used, or by provoking such action or giving instructions to have it committed, by means of gifts, promises, threats, abuse of authority or power, machinations or culpable trickery;

(b) Attempts to commit the offences defined in the present Convention, once the attempt has been manifested by a commencement of the act and provided the attempt was not suspended or did not fail to take effect save through circumstances beyond the control of the person making such attempt.] or

[A [criminal] offence is committed by any person who:

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

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

Article 7* 20/

[[The offences set forth in articles ... of the present Convention] [The recruitment, use, financing and training of mercenaries] constitute [crimes] [a crime] against the peace and security of mankind].

Article 8* 21/

States Parties shall make the offences set forth in the present Convention punishable by appropriate penalties which take into account the grave nature 22/ of those offences.

19/ Corresponds to article 8 of the 1984 version of the Consolidated Negotiating Basis.

20/ Replaces article 10 of the 1984 version of the Consolidated Negotiating Basis.

21/ Replaces article 9 of the 1984 version of the Consolidated Negotiating Basis.

22/ For some delegations this phrase will have to be considered in the light of the outcome of the discussions on the provisions relating to the offences.

Article 9* 23/

[States Parties shall ensure full implementation of the provisions of the present Convention within their domestic legal systems] [States Parties shall take all necessary measures for the execution of their obligations under the present Convention].

Article 10* 24/

States Parties shall not recruit, use, finance or train mercenaries 25/ [and shall prohibit such activities]. 26/

Article 11* 27/

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

[[a] taking] [take] all [practicable [and effective]] measures [consistent with [national and] international law] to prevent preparations in their respective territories [or in any territory under their control] for the commission within or outside their territories of the offences set forth in the present Convention [, including the prohibition of illegal activities of persons, groups and organizations [as well as organized and all other propaganda activities] which encourage, instigate, organize or engage in the [perpetration] [preparation or perpetration] of [such offences] [acts prohibited by the present Convention]]

[[b] [co-ordinate] [co-ordinating], as appropriate, the taking of the necessary administrative and other measures to prevent commission of those offences].

23/ Replaces article 11 (d) (i) and article 12 of the 1984 version of the Consolidated Negotiating Basis.

24/ Replaces article 11 (a) and (b) of the 1984 version of the Consolidated Negotiating Basis.

25/ In connection with this provision, particular reference was made to footnote 1.

26/ The question of reserving the application of rules of international law relating to these and other obligations will be discussed later.

27/ Replaces article 11 (c) and (d) (ii) and (iii) and article 13 of the 1984 version of the Consolidated Negotiating Basis.

Articl. 12 28/

[States Parties shall co-operate in taking the necessary measures for the fulfilment of the goals of the present Convention.]

Article 13

Any State having reason to believe that one of the offences mentioned in article ___ has been, is being or will be committed shall, in accordance with its national law, furnish any relevant information, directly or through the Secretary-General of the United Nations, to those States which it believes would be affected. or

Each State Party shall be obliged to communicate directly or through the Secretary-General of the United Nations to any other State Party concerned any information related to the activities of mercenaries as soon as it comes to its knowledge. 29/

Article 14 30/

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over any of the offences set forth in articles ___ in the following cases:

(a) When the offence is committed in its territory [or in any territory under its control];

(b) When the offence is committed by one of its nationals [or officials] [or body corporate registered in that State];

[(c) When the offence is committed against that State.]

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in articles ___ [and also over attempts to commit and participation as an accomplice in such offences,] in the case where the alleged offender is present in its territory and it does not extradite him pursuant to article 19 to any of the States mentioned in paragraph 1 of this article.

28/ Did not appear in the 1984 version of the Consolidated Negotiating Basis.

29/ There was no objection on the principle contained in the above two versions of article 13. Since, however, the Working Group did not have time to reach a final decision on the matter, both versions have been included here.

30/ It is understood that the question as to whether the "articles" referred to in paragraph 1 and those referred to in paragraph 2 should be the same is left open to be decided after an agreement on the question of the definition of offences has been reached.

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

Article 15

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

2. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States mentioned in article 14 as well as in paragraph 3 (a) of this article, and, if it considers it advisable, any other interested States, of the fact that such person is in custody and of the circumstances which warrant his detention.

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

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

(a) To communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to protect his rights or, if he is a stateless person, the State in the territory of which he has his habitual residence; 31/

(b) To be visited by a representative of that State.

Article 16

Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in this Convention shall be guaranteed fair treatment from the time of arrest until the end of the proceedings [in accordance with national law] [in accordance with generally recognized principles of regular judicial procedure] [and humane treatment as provided for in article 75 of Additional Protocol I to the 1949 Geneva Conventions and other international instruments].

Article 17

The State Party where the alleged offender is prosecuted shall in accordance with its laws communicate the final outcome of the proceedings to the

31/ The question of the protection of refugees was raised. The Working Group agreed to consider this question at a later stage.

Secretary-General of the United Nations, who shall transmit the information to the other States concerned and the international intergovernmental organizations concerned, [as well as the International Committee of the Red Cross.]

Article 18

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offence stated in articles ___ of this Convention including the supply of all evidence at their disposal necessary for the proceedings. The law of the State whose assistance is requested shall apply in all cases.
2. The provisions of paragraph 1 of this article shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

Article 19

The State Party in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

Article 20

1. The offences set forth in articles ___ of this Convention shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
 2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of those offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
 3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those offences as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.
 4. [The offence shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 14.]
- [Each of the States Parties required to establish its jurisdiction under article 15 shall be entitled to consider the offence as committed in its territory and to request extradition from the other State Party where the alleged offender is found.]
- [5. For the purpose of extradition between States Parties, the offences [under articles ___] [under the Convention] shall not be regarded as political offences.]

Article 21

[Failure of a State Party to the Convention to fulfil the obligations specified in [relevant] articles of the present Convention constitutes an international wrongful act engendering the international responsibility of that State.] 32/

Article 22

[States Parties to this Convention shall be obliged to make reparation for damages caused by them in violation of their obligations under this Convention.] 33/

Article 23

[Nothing in the present Convention shall be interpreted as altering in any way or affecting the application of existing international instruments relating to the law of warfare or to humanitarian law, in particular the Geneva Conventions of 1949 and the Protocols of 10 June 1977 annexed thereto.] 34/

Article 24

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

32/ The differences of opinion among delegations relate not so much to the principle stated but rather to the desirability of including a provision relating to the international responsibility of the State in the future convention. There are links between this text and article 22.

33/ Articles 21 and 22 could be merged at a later stage. The following text has been prepared for that purpose:

"[Failure of a State Party to this Convention to fulfil the obligations provided under article ___ shall constitute an international wrongful act engendering international responsibility and the obligation of reparation of damages for that State.]"

34/ This text is the one appearing in paragraph 44 of the report of the Special Committee on its 1983 session (A/38/43). The positions of delegations thereon are reflected in section B.7 of the report of Working Group B at the 1984 session of the Ad Hoc Committee (A/39/43 and Corr.1, paras. 109-117).

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

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.] 35/

35/ This text is identical to article 16 of the Nigerian draft and article 14 of the French draft. The positions of delegations thereon are reflected in section B.6 of the report of Working Group B at the 1984 session of the Ad Hoc Committee (A/39/43 and Corr.1, paras. 104-108).

ANNEX

Draft convention against the recruitment, use, financing
and training of mercenaries, submitted by Cuba

The High Contracting Parties,

Recalling General Assembly resolutions 31/34 of 7 December 1976 and 32/14 of 7 November 1977, which reaffirm the legitimacy of the struggle of peoples for independence, territorial integrity, national unity and liberation from colonial and foreign domination and alien subjugation by all available means, including armed struggle,

Seriously concerned at the persistent use of mercenaries to oppose, by armed force, the process of national liberation and to perpetuate colonial, neo-colonial and racist oppression and exploitation,

Considering that a number of resolutions of the General Assembly of the United Nations, such as resolutions 2395 (XXIII) of 29 November 1968, 2465 (XXIII) of 20 December 1968, 2548 (XXIV) of 11 December 1969, 2708 (XXV) of 14 December 1970, 3103 (XXVIII) of 12 December 1973 and 3314 (XXIX) of 14 December 1974, as well as Security Council resolutions 239 (1967) of 10 July 1967, 405 (1977) of 14 April 1977 and 419 (1977) of 24 November 1977, condemn, inter alia, any State which persists in permitting or tolerating the recruitment of mercenaries with the objective of overthrowing the Governments of States Members of the United Nations,

Considering that similar views have been expressed by the Organization of African Unity, in declarations such as those of the Heads of State and Government issued at Kinshasa in 1967 and at Addis Ababa in 1971 and by the Summit Conferences of the Non-Aligned Countries, at Cairo in 1964, Colombo in 1976 and Havana in 1979,

Noting that the resolutions mentioned above call on States to adopt appropriate measures to prevent, in their territory, the organization, recruitment or dispatch of mercenaries, and to bring the offenders and their accomplices to justice,

Observing that the large number of resolutions of international organizations, as well as the practice of a growing number of States, clearly show the progressive development of international law towards regarding mercenarism as an international crime,

Convinced of the need to codify in a single text the norms of international law so far developed to prevent mercenarism,

Have agreed as follows:

ARTICLE I

Mercenarism is a crime under international law which must be prevented and punished.

ARTICLE II

"Mercenarism" means any of the following acts perpetrated with the aim of opposing by means of armed force a national liberation movement or the achievement of independence or self-determination by a people or State:

(a) Organizing, financing, supplying, equipping, training, promoting, supporting or employing in any way military forces consisting of or including persons who are citizens of the country in which those forces will be operating and who act for personal gain in the form of a salary, wages or any other kind of remuneration;

(b) In the case of a State, permitting the activities mentioned in paragraph (a) to take place in territories under its jurisdiction, authority or control, or providing transit, transport and other operational facilities for the above-mentioned forces;

(c) Enlisting, enrolling or attempting to enrol in the above-mentioned forces.

ARTICLE III

The provisions of article II of this Convention shall apply as follows:

(a) Those set forth in paragraph (a) shall apply to individuals, groups, associations, representatives and agents of a State, and the State itself;

(b) Those set forth in paragraph (b) shall apply to States and their representatives and agents;

(c) Those set forth in paragraph (c) shall apply to individuals or groups.

ARTICLE IV

The criminal acts defined in article II of this Convention shall be punished even if they have not been carried out.

ARTICLE V

Under the terms of this Convention, both the perpetrators of such offences and their accomplices shall be held responsible.

ARTICLE VI

The persons referred to in article III shall incur responsibility for any other offence that they may have committed, irrespective of the responsibility that they may incur for the crime of mercenarism as defined in this Convention.

ARTICLE VII

Taking command of or giving orders to mercenaries shall be considered aggravating circumstances.

ARTICLE VIII

When a State is found to be responsible for acts defined in this Convention, any other State may:

- (a) Take a decision with respect to its relations with the State responsible;
- (b) Refer the matter to the competent international bodies.

ARTICLE IX

Any Contracting State may try in its own courts any individual in its territory who is accused of committing the crime of mercenarism as defined in this Convention, unless it decides to hand him over to the competent authorities of the State in which the mercenary forces were operating or proposing to take action.

ARTICLE X

Because of their status as international offenders, captive mercenaries shall not benefit from international agreements on prisoners of war, nor be granted provisional release during pre-trial proceedings.

ARTICLE XI

A State which is the target of any of the criminal acts listed in article II may request the extradition of the person detained for such acts from the State detaining him.

The State which receives such a request shall, as soon as possible, take either of the decisions referred to in article IX of this Convention.

The State in which the trial is held must inform the other interested parties of its outcome.

For the purposes of extradition, no form of mercenarism shall be considered to be a political offence.

ARTICLE XII

The procedural guarantees outlined below shall be extended to any person accused of any of the criminal acts defined in article II, in the interests of a fair and proper trial:

(a) The right to be informed of the charges against him and to make any statement he considers pertinent to his defence;

(b) The right to participate in the proceedings from the time of the preliminary examination of the charges, either personally or through a lawyer of his choice;

(c) The right to have access to, and to use, any evidence pertinent to his defence.

In any event, the defendant shall be informed of these proceedings in his own language, which he shall also be permitted to use during proceedings in which he must participate in person.

ARTICLE XIII

The Contracting Parties agree to give one another the necessary help and assistance for the due conduct of legal proceedings instituted by any of them in respect of the crime of mercenarism to which this Convention refers.

ARTICLE XIV

Each Contracting State shall adopt the necessary administrative, judicial or other measures in order to prevent accused persons from evading the course of justice for crimes attributed to them. The State in which the trial is eventually held shall ensure that a just and appropriate sentence is handed down.

ARTICLE XV

Any dispute concerning the interpretation, application or implementation of this Convention shall be settled by the Contracting Parties involved through negotiation or by an international tribunal acceptable to them.

ARTICLE XVI

The Contracting Parties undertake to adopt, in accordance with their respective Constitutions, the legislative or other measures necessary for full compliance with the provisions of this Convention, and especially to include in their legislation the crime of mercenarism as defined herein, establishing appropriate sanctions to punish those found guilty of the offence.

ARTICLE XVII

This Convention shall be open for signature by all States until ...

ARTICLE XVIII

This Convention shall be subject to ratification; the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

ARTICLE XIX

This Convention shall be open for accession by any State from the date of its entry into force. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

ARTICLE XX

This Convention shall enter into force on the ninetieth day following the date of deposit of the tenth instrument of ratification with the Secretary-General of the United Nations.

For each State ratifying or acceding to the Convention after the deposit of the tenth instrument of ratification, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.

ARTICLE XXI

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness whereof, the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

Done at ... on ... 198 .