



SUMMARY RECORD OF THE 18th MEETING

Chairman: Mr. CALLE y CALLE (Peru)

CONTENTS

AGENDA ITEM 115: REPORT OF THE AD HOC COMMITTEE ON THE DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES
(continued)

ORGANIZATION OF WORK

UN LIBRARY

NOV 3 1981

UN/SA COLLECTION

* This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, room A-3550, 866 United Nations Plaza (Alcoa Building), and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate fascicle for each Committee.

Distr. GENERAL
A/C.6/36/SR.18
27 October 1981
ENGLISH
ORIGINAL: SPANISH

The meeting was called to order at 10.45 a.m.

AGENDA ITEM 115: REPORT OF THE AD HOC COMMITTEE ON THE DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES (continued) (A/36/43, 116 and 438, A/AC.207/L.3)

1. Mr. MAYNARD (Bahamas) said that his delegation had participated in the work of the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries because it wished to strengthen the right to self-determination and independence of peoples, non-interference in the internal affairs of other countries and other cardinal principles of the United Nations Charter.
2. Condemnation of the recruitment of mercenaries had been practically universal and had found expression in various international instruments such as the Organization of African Unity's Convention for the Elimination of Mercenarism in Africa, the international conventions on aerial hijacking and those relating to the taking of hostages. In spite of that, mercenaries had been used throughout the developing world in recent years, particularly against the interests of the peoples of Africa. Similarly, in the West Indian region, a number of States had been victims of that practice and it was pertinent to mention, in particular, the case of the island of Dominica and the activities of mercenaries and subversive elements from the United States.
3. The Bahamian delegation expressed its satisfaction at the progress made by the Ad Hoc Committee and pointed out that it found no substantial contradiction between the two approaches which existed within the Committee with regard to the general emphasis of the convention. There was no incompatibility between legal norms which would be equally applicable to mercenaries and to States implicated in their activities and a convention which placed special emphasis on the harmonization of domestic legislation on the subject.
4. The Ad Hoc Committee would have to formulate a precise and acceptable definition of the terms "mercenary" and "mercenarism", and select the word which best suited the purpose of the convention. Although it had first been thought convenient to use the term "mercenary" as defined in article 47, paragraph 2 of Additional Protocol I to the 1949 Geneva Conventions, the applicability of that definition to the text being prepared by the Ad Hoc Committee was now being questioned. On the other hand, the Bahamian delegation believed that the differences of opinion regarding the possibility of expressing the term "mercenarism" in different languages were not insurmountable.
5. Another delicate task which the Committee would have to perform was that of ascertaining to what extent different States were prepared to assume legal obligations to prohibit the recruitment, use, financing and training of mercenaries. The Bahamian delegation considered that the convention should provide not only for the criminal liability of individuals but also for the responsibility of the States involved in those activities.
6. He considered that all of those questions should be considered in depth, outside the general debate, on the basis of the draft put forward by Nigeria

(Mr. Maynard, Bahamas)

(A/AC.207/L.3), and was therefore favourably disposed to renewing the mandate of the Ad Hoc Committee.

7. Mrs. BABOERAM-ADHIN (Surinam) considered that the serious threat which the activities of mercenaries posed to the peoples of developing countries in the exercise of their right to self-determination explained the urgent need for an international convention against the recruitment, use, financing and training of mercenaries.
8. Hence her satisfaction at the mandate entrusted to the Ad Hoc Committee by the General Assembly in its resolution 35/48 and her regret that the Committee had not had more time during its first session for discussion of substantive matters. The activities of mercenaries had a destabilizing effect on the international political environment and urgent measures therefore had to be adopted to restrict them. The Committee must therefore avoid lengthy discussions on purely formal questions and concentrate instead on the crux of the problem.
9. The Surinamese delegation considered that the term "mercenary" as defined in article 47 of the Additional Protocol I to the 1949 Geneva Conventions could be helpful in formulating the new convention. It should be borne in mind, however, that the Protocol had not been drafted with the aim of combating the activities of mercenaries and dealt with an entirely different situation. Consequently, the definition ultimately adopted in the convention should include all the elements of the activities of mercenaries, as manifested at the present time.
10. It was of course difficult to reach an agreement acceptable to all countries, but a constructive attitude on the part of States would facilitate the task. Surinam, as a member of the Ad Hoc Committee, would do everything possible to help it to fulfil its mandate rapidly and successfully.
11. Mr. QUATEEN (Libyan Arab Jamahiriya) expressed the hope that the Ad Hoc Committee would be able to finish drafting the international convention against the recruitment, use, financing and training of mercenaries at its next session. To do that, it would have to bear in mind, among other international instruments, the definition of aggression approved by the General Assembly in 1974, the Organization of African Unity's convention for the elimination of mercenarism in Africa and the draft convention presented by Nigeria (A/AC.207/L.3).
12. Articles 1 and 2 of the latter working paper were a good starting point for a clear and precise definition of mercenary activities, the corner-stone of the Ad Hoc Committee's work. The definition contained in article 47, paragraph 2, of Additional Protocol I to the 1949 Geneva Conventions had to be taken into account, bearing in mind, however, that it had been formulated with a different purpose. For that reason, the Committee should not limit itself to that definition, but should seek one more appropriate to the objectives of the new convention.
13. Similarly, the new convention must declare all the activities included in such a formulation to be criminal. There were countries which were trying to restrict or undermine the practical effects of the convention by claiming that the Spanish, French and Anglo-Saxon legal systems did not recognize the concept of the mercenary. However, international conventions could be a valid complement to the

(Mr. Quateen, Libyan Arab
Jamahiriya)

positive laws of States, as shown by the international conventions on aerial hijacking and those relating to the taking of hostages. His delegation considered that all countries must make an effort to bring their domestic legislation into line with the development of international law.

14. Some States were trying to evade the question of possible legal responsibility for the activities of mercenaries by claiming that that was a subject for the International Law Commission to decide. The convention would not be effective unless it clearly established the responsibility of a State which encouraged, allowed or neglected to exercise vigilance against the activities of mercenaries in its territory. Every State party to the convention must take responsibility for repressing those activities, which presented a serious obstacle to the self-determination of peoples still under the colonial yoke.

15. Finally, the Libyan delegation, which had attended meetings of the Ad Hoc Committee as an observer, regretted that it had not been allowed to take part in the work of the Working Group of the Whole. In its opinion, every working group ought to be open to any State Member of the United Nations which was interested in the subject under consideration. For that reason, his delegation was also in favour of increasing the number of members of the Ad Hoc Committee in accordance with the geographical criteria which applied to other organs, and also supported renewal of its mandate.

16. Mr. ANDERSON (United Kingdom), speaking on behalf of the delegations of the ten member States of the European Economic Community, said that there was general agreement among them that the use of mercenaries should be condemned. The Ad Hoc Committee's report set out many different points of view because at the thirty-fifth session, the Sixth Committee had given the Ad Hoc Committee very little guidance. As the report indicated, the idea had been advanced of creating a crime of "mercenarism" for which, according to some delegations, there would in some cases be international responsibility on the part of States. It had also been argued that any draft convention prohibiting the use, recruitment, financing and training of mercenaries, as called for by the Ad Hoc Committee's mandate, should aim at harmonizing the legislation of States parties. In that connexion, it should be recalled that the international community had already had occasion to deal with analogous problems when elaborating the international Conventions on the hijacking of aircraft, the taking of hostages and the protection of diplomats. All those Conventions had provided for greater harmonization of national criminal law as well as international collaboration in regard to prohibited activities. The approach adopted in those Conventions had been not to create crimes to be judged by an international criminal court or to lay down rules on State responsibility, but to intensify international co-operation with a view to ensuring that individuals who committed specific offences would be brought to justice and, upon conviction by a competent national court, suffer appropriate penalties.

17. With those factors in mind, the ten member States of the European Community urged the Committee to pay particular attention to efforts to harmonize and unify national legislation and intensify international co-operation. The accent of the future convention should be on individual responsibility, without denying that questions of State responsibility could arise under the rules of international

(Mr. Anderson, United Kingdom)

law if a State party failed to fulfil its obligations. That approach offered a better chance of finding internationally agreed solutions to the problem of mercenaries and of elaborating a convention which would win general ratification.

18. With regard to the definition of the term "mercenary", the members of the European Community supported the definition contained in article 47, paragraph 2, of Additional Protocol I of the 1949 Geneva Conventions and were also conscious of the importance of the humanitarian values protected by article 75 of the Protocol and common article 3 of the 1949 Red Cross Conventions.

19. They strongly condemned the use of mercenaries, shared the concerns of African States and others in Asia and Latin America in that regard, and were very conscious that the involvement of mercenaries could make the settlement of internal disputes more difficult by introducing an international dimension in those disputes. For those reasons, they supported the renewal of the mandate of the Ad Hoc Committee and looked forward to continuing to participate in the formulation of a convention.

20. Mr. HUANG JIAHUA (China) said that his delegation had always attached great importance to efforts to end the activities of mercenaries. In modern times, the institution of mercenarism had become a tool used mainly by imperialism, colonialism and hegemonism to carry out aggression and expansion and to suppress national liberation struggles. The countries and peoples victimized by mercenaries, with Africa bearing the brunt of their activities, were now strongly urging the international community to draft an international convention to eliminate the criminal activities of mercenaries. The Chinese people and Government staunchly supported that just and reasonable demand.

21. The question of mercenaries had been dealt with in traditional international law from the point of view of the rights and duties of neutral States, an approach which was obviously inadequate to meet the requirements of contemporary international life. Many United Nations resolutions and documents had touched on different aspects of the struggle against mercenary activities, but the United Nations had so far failed to formulate a comprehensive and systematic document on the subject. Existing multilateral conventions against mercenary activities, notably the Convention for the Elimination of Mercenarism in Africa adopted by OAU in 1977, were regional in character and lacked universal binding force. His delegation therefore associated itself fully with preambular paragraph 6 of General Assembly resolution 35/48.

22. The Committee should identify the most essential characteristics of mercenaries from mercenary activities, and on that basis formulate a reasonably precise definition. The basic attribute of the mercenary as an individual was the pursuit of material gain, but at the same time, mercenaries were organized and despatched to achieve definite political objectives such as interference in the internal affairs of States, subversion of Governments and the suppression of national liberation movements. Therefore, both the personal motivation and the political goals of mercenaries must be kept in mind in elaborating a scientific and realistic definition. The definition should also draw a sharp distinction between the activities of mercenaries and those of international volunteers and freedom fighters who supported the national liberation struggle and peoples which were victims of

(Mr. Huang Jiahua, China)

aggression. Today, it was claimed in some circles that their armed aggression against a weaker nation was designed to counter an allegedly undeclared war waged by mercenaries. That was the height of absurdity. Article 1 of the draft convention proposed by the Nigerian delegation incorporated the definition of a mercenary contained in Article 47 of Additional Protocol I of the Geneva Conventions, but although the basic idea was acceptable, it needed to be fleshed out.

23. The activities of mercenaries were by no means crimes attributable only to those individuals, for the main responsibility lay with those States and entities that recruited, organized, financed and despatched mercenaries. Therefore, the convention should not only provide for the criminal liability of mercenaries as individuals, but also contain clear language concerning the international obligations and responsibilities of States and other entities, in conformity with the fundamental principles of modern international law. The convention should also refer to the obligation of States to take all necessary measures to prevent the recruitment, organization, financing and training of mercenaries in their territories, prohibit the transit of mercenaries through their territories and prohibit their nationals from enlisting as mercenaries. At the same time, States should clearly establish their jurisdiction over the crimes of mercenaries to ensure that they were prosecuted and punished according to law. The convention should also make mercenary activities an extraditable crime.

24. Finally, the convention should take account of the 1977 Additional Protocol I to the Geneva Conventions and stipulate that mercenaries did not enjoy the legal status of legitimate combatants and that captured mercenaries should not be accorded prisoner-of-war treatment. Article 11 of the Nigerian working paper concerning judicial safeguards already basically embodied the humanitarian spirit. His delegation was convinced that the Ad Hoc Committee would complete its mandate in good time, thereby making a contribution to the struggle against aggression and to the preservation of peace.

25. Mr. MICHIEWICZ (Poland) said that he shared the view that the United Nations should draft a convention against the recruitment, use, financing and training of mercenaries, which would codify the principles on the subject already embodied in United Nations resolutions and declarations, giving them the value of legal norms of international law.

26. The report of the Ad Hoc Committee revealed that the basic principle of the elimination of mercenaries' activities had not been questioned by anyone, although it was true that some differences of opinion had arisen regarding specific questions such as the definition of the terms "mercenary" and "mercenarism", the links existing between the international legal order and the domestic criminal legislation of States, the distinction between criminal responsibility of individuals acting as mercenaries and international liability of States which did not prohibit the recruitment, transport, financing, use or training of mercenaries.

27. In the opinion of the Polish delegation, the draft convention should include the following elements: the definition of "mercenaries" should be based on article 47 of Additional Protocol I to the 1949 Geneva Conventions, thus meeting

(Mr. Michiewicz, Poland)

the requirement of uniformity of international legislation; it should state that mercenarism constituted a crime against humanity under international law; the convention should stipulate the responsibility of States for rendering support to or tolerating mercenaries as well as for non-execution of obligations arising from its provisions; it should establish collective duties of States parties to the convention with regard to co-operation aimed at suppression of mercenaries; it should specify the obligation of States to submit mercenaries' acts to appropriate jurisdiction, although another possible alternative would be extradition of mercenaries, except for one's own citizens, to the State against which their activities had been directed; the States parties to the convention should undertake to adopt the legislative, judicial, administrative and practical measures necessary to prevent the recruitment, transport and training of mercenaries on their territory. The Polish delegation supported the continuation of the Ad Hoc Committee's work, so that it could complete drafting of the text as soon as possible, and hoped that the convention would win universal acceptance by the international community.

28. Mr. GREY (United States of America) said that, as indicated in its report, the Ad Hoc Committee had made some initial progress in its work. It had identified the important issues to be resolved—namely, the current status of mercenaries under international law, the elements to be included in any convention, the definition of a mercenary, the distinctions to be drawn between mercenaries and other types of combatants and military advisers, the designation of the acts to be encompassed by an eventual convention, the standards to be applied with regard to humane treatment and fair trial, and the wisdom of dealing in an instrument of that kind with the delicate and intricate question of State responsibility.

29. The subject of mercenaries was a complex one requiring serious, dispassionate, non-polemical and lengthy consideration. Unfortunately, attention had not yet focused on the legal aspects of the question, owing partly to the tendency of some to engage in political discourse rather than legal analysis and to the lack of adequate preparatory material. The only material supplied to the Ad Hoc Committee had been the bare list of national legislation and international and regional agreements and documents, prepared by the Secretariat in pursuance of paragraph 5 of resolution 35/48. The list had not even included information on the signature and ratification of the 1977 OAU Convention.

30. His delegation associated itself with the observations in paragraph 16 of document A/36/43 on the current status of mercenaries under international law and the threat posed to States by other more frequent forms of intervention. With regard to paragraph 15, the United States had consistently supported United Nations resolutions condemning illegal uses of force, including the use of mercenaries. The elements set out in paragraph 48 of the report were, in his delegation's view, some of the necessary components for any eventual convention.

31. The United States had already suggested previously that emphasis should be placed on the harmonization of domestic criminal legislation. The current international law of a non-regional nature relating to mercenary activity was based on the neutrality provisions of the 1907 Hague Convention. In that connexion, it should be noted that, subsequent to the Ad Hoc Committee's session, individuals who had been planning an action violating the United States

(Mr. Grey, United States)

domestic laws enacted pursuant to The Hague Convention had been apprehended and successfully prosecuted in United States courts. His delegation had already cautioned against hasty and over-ambitious drafting of the convention to cover areas not universally accepted and not essential to the problem of mercenaries. At the first session of the Ad Hoc Committee, it had been demonstrated that an attempt to go beyond the immediate question of mercenaries and try to deal as well with basic issues of State responsibility would only complicate the Committee's work. Nor was it essential to analyze the word "mercenarism".

32. The goal of the Ad Hoc Committee should be to produce a reasonable convention acceptable to all nations and legal systems. If its mandate was renewed, that Committee should concentrate on determining precisely the activities to be dealt with in the convention and the most effective method of addressing the problem. The Secretariat should also prepare papers showing the current status of some of the questions described earlier, which would provide the Committee with a firm basis for its future work. Lastly, it was important for all the members of the Ad Hoc Committee to avoid allowing polemics to replace careful legal analysis.

33. Mr. FERRARI-BRAVO (Italy) reiterated his delegation's support for the Nigerian initiative concerning the drafting of an international convention on mercenaries and its readiness to participate actively in the deliberations of the Ad Hoc Committee in order to find a solution acceptable to all regional and political groups.

34. The phenomenon of mercenarism was very old, and had not always been the object of condemnation. It had occupied an important place in the history of Europe during the Renaissance, and for centuries wealthy and important State entities had relied on mercenaries for their defence. However, at the end of the fifteenth century the Italian republics had disappeared from the international scene, under attack from mighty national armies from abroad and, in the following centuries, the practice of using mercenaries had also declined, parallel to the growth of the concepts of national army and defence. However, foreigners had still from time to time joined a country's army to fight for a cause in which they had believed and not, like mercenaries, in order to earn a living. Byron, and many others in Greece, and Garibaldi and his associates in France, were glorious examples of that kind of soldier.

35. It was impossible to rule out the possibility of similar situations in the present day and for that reason a clear distinction must be drawn between those who took up arms for idealistic reasons and those who devoted their efforts to the profession of war with personal wealth as their main goal. What should be eradicated was the phenomenon of groups of individuals, not members of the armed forces of the parties to a conflict, involved in war for their own private gain. That phenomenon had recently reappeared, particularly in Africa, where some such groups had even tried to overthrow legitimate Governments. It was therefore most appropriate that the delegation of Nigeria, which had suffered from mercenary activity in its own territory, had taken the initiative of submitting a draft convention on mercenaries (A/AC.207/L.3).

36. Article 47 of Additional Protocol I, adopted in 1977, in addition to defining the concept of mercenaries, proclaimed that a mercenary should not have the right

(Mr. Ferrari-Bravo, Italy)

to be a combatant or a prisoner of war. But that article should be read in conjunction with article 75 of the same Protocol, which mentioned the fundamental guarantees to be granted to all persons, including criminals. Although the draft convention submitted by Nigeria contained a definition of a mercenary which closely followed the definition in the Protocol, the Italian delegation believed that it would be extremely hazardous to try to amend the latter definition and that the existence of two contemporary definitions would also be undesirable. In addition, the future convention should include the essential features of article 75 of the Protocol because, while mercenaries should clearly be punished for being mercenaries and for the offences which they had committed, they should also be accorded the same guarantees as were granted to every human being involved in armed conflict.

37. With regard to the meaning of the word "mercenarism" and the usefulness of including it in the draft convention, it should be pointed out that there was nothing extraordinary about an international convention defining a new crime; that had been done on several occasions, for example, in the Convention on International Civil Aviation and in the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. In such instances, the State which ratified the convention incorporated into its national legal system a new norm of criminal law whose origin was international but which was enforced like other national laws. In other words, the national system of criminal law of the State concerned provided the means necessary to ensure repression of the offence and international co-operation in criminal matters. Nevertheless, when an international convention defined a new offence, that did not necessarily imply the creation of an international criminal jurisdiction for that offence.

38. Criminal prosecution could only be undertaken in the case of acts committed by individuals. International responsibility was another matter, since it concerned the relationship among States as sovereign entities which were mutually independent. Government officials who determined the international action of the State had rarely been subject to international criminal prosecution for acts committed in the exercise of their functions. In practice, the only non-controversial example seemed to be the criminal responsibility of State organs for war crimes, crimes against peace and crimes against humanity as defined in the London Act of 1945 and the Nuremburg and Tokyo judgements.

39. It was obvious that situations might occur which should be considered from the angle of State responsibility. If a State organized bands of mercenaries, consented to their training or financed their activities, it violated international rules which provided that States should not allow their territory to be used as a base for attacks against the sovereignty and international integrity of other States. Nevertheless, the problem of the treatment of mercenaries and that of State responsibility were of a different legal nature, although in practice they might have to be faced at the same time. Consequently, although it was necessary to draft a new legal instrument prohibiting the recruitment, use, financing and training of mercenaries, the aspects of State responsibility he had mentioned did not require either new norms or a reformulation of existing norms. The confusion between State responsibility and the criminal responsibility of

(Mr. Ferrari-Bravo, Italy)

individuals, which had impeded the work of the Ad Hoc Committee, probably derived from the unclear wording of one of the preambular paragraphs of resolution 35/48. However, a clear distinction should be drawn between the two issues. His delegation had serious doubts about the advisability of inserting clauses on State responsibility in the new convention and urged delegations not to insist on an approach which could indefinitely prolong the Ad Hoc Committee's work.

40. Over-ambitious goals should not be set if a universally-accepted international convention was to be prepared. Criminal law needed simple, clear and precise rules that could be applied at the national level and would not be incompatible with the basic principles on which national legal systems were founded. Furthermore, it was impossible to draft a universal convention with a degree of normative and procedural intensity similar to that which could be achieved at the regional level, where legal systems were more closely related. It was therefore necessary to seek a universal common denominator so as to create a climate of trust which, with the help of the new international convention but also within the framework of the practical measures adopted by each State, would make it possible to eradicate mercenarism.

41. Mrs. RODRIGUEZ (Venezuela) said that the duty of every State to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State was one of the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations. The recruitment, use, financing and training of mercenaries was a violation of that principle and the use of mercenaries involved interference in the internal affairs of States.

42. Her delegation strongly condemned the activities of mercenaries and considered that they should be regarded as serious crimes, the perpetrators of which should bear criminal responsibility and be punished as criminals.

43. Venezuela supported the peoples who had been victims of mercenarism, a phenomenon which had afflicted small third world countries and particularly the African countries. The resurgence of mercenarism had helped to sensitize world public opinion and had led to the adoption of legal and political measures at the regional and international levels. In that connexion, mention should be made, on the one hand, of the 1977 Convention for the Elimination of Mercenarism in Africa, the declarations and recommendations of the International Commission of Enquiry on Mercenarism (Luanda, 1976) and the resolutions and declarations on the non-aligned countries and, on the other, of the resolutions of the General Assembly and the Security Council.

44. Venezuela reaffirmed its support for the drafting of a binding international convention that could be universally applied to mercenaries and to the States which recruited, used, financed and trained mercenaries. With regard to the content of the convention, the definition of the term "mercenary" should be broad enough to cover all situations but should exclude the activities of international volunteers and members of liberation movements assisting peoples struggling against colonialism and for their independence. The definition in article 1 of the Nigerian working paper should not be confined to the nationals of a State but

(Mrs. Rodriguez, Venezuela)

should cover all persons committing the acts mentioned in the article. The definition in article 47, paragraph 2, of Additional Protocol I to the 1949 Geneva Conventions was vague and imprecise; it was necessary to cover the possibility that a mercenary might be an agent of a country or group of interests.

45. Furthermore, the convention should include clear provisions stating that mercenaries were criminals who bore personal responsibility for their acts and establishing the responsibility of States which did not take the necessary legislative, judicial and administrative measures to put an end to the activities of mercenaries or which contributed in any way to the carrying out of such activities.

46. The Nigerian draft constituted an excellent basis for the future work of the Ad Hoc Committee, which should also take into account the principles of the Charter and other relevant legal instruments. The mandate of the Ad Hoc Committee should be renewed, so that it could complete its work successfully.

47. Mr. KOTEVSKI (Yugoslavia) observed that as the forces of independence and emancipation became stronger, increasing use was being made of mercenaries in order to suppress those forces and maintain or re-establish the old relations of domination and exploitation. The non-aligned movement, in accordance with its own principles and those of the Charter, had from the outset sought to combat all forms of intervention and interference in the internal affairs of States and to guarantee the right of all countries and peoples to decide their destiny freely. The non-aligned countries were therefore particularly interested in the elimination of the problem of mercenaries and the elaboration of an effective and comprehensive convention on the subject. In that connexion, he drew attention to paragraph 59 of the Declaration of the Conference of Ministers for Foreign Affairs of Non-Aligned Countries held in New Delhi early in 1981, contained in document A/36/116.

48. His delegation shared the position of the non-aligned countries, since it regarded the activities of mercenaries as a direct form of intervention and interference in internal affairs, a crime against the peace and security of mankind and a dangerous manifestation of international terrorism. Yugoslavia was a full member of the Ad Hoc Committee and as such had participated in the work of that body's first session. That work had been criticized during the debate in the Sixth Committee, and his delegation shared the feeling of dissatisfaction, but it must also be acknowledged that the session had made it possible to identify crucial issues relating to the future convention which provoked differences of opinion among delegations. Those issues concerned the definition of the terms "mercenary" and "mercenarism" (articles 1 and 2 of the Nigerian draft) and the responsibility of States.

49. Yugoslavia favoured the concept embodied in article 47 of Additional Protocol I, but considered it insufficient, for it believed that a comprehensive convention should cover the activities of mercenaries both in armed conflicts and in the case of absence of hostilities and should refer to activities directed against States and liberation movements in the struggle against colonialism and

(Mr. Kotevski, Yugoslavia)

foreign domination. The convention should also include a definition of the concept of mercenarism, since it outlined the framework for the comprehensive treatment of the activities of mercenaries.

50. With regard to the responsibility of States that participated in or supported the recruitment or training of mercenaries, it was necessary to stipulate clearly the duty of States to prevent in their territories the activities of individuals, groups or organizations engaged in the recruiting or training of mercenaries for the purpose of overthrowing Governments or political systems. In addition, it was necessary to draw a clear distinction between, on the one hand, mercenaries, who according to article 47 of Additional Protocol I to the Geneva Conventions were not entitled to the status of combatants and prisoners of war and were therefore professional assassins and did not enjoy international legal protection, and on the other, the combatants of national liberation movements.

51. The complexity of those issues and the fact that the Ad Hoc Committee had not made much progress confirmed his delegation's belief that the task of elaborating the convention would be neither easy nor simple. However, better results could be hoped for if more political will was exerted by all members of the Committee.

52. His delegation agreed with the assessment that too much time had been lost in the general debate and in the consideration of procedural questions; it hoped that a constructive atmosphere would prevail in the future work of the Ad Hoc Committee and that a more flexible and realistic approach would be taken.

53. He supported the extension of the mandate of the Committee and considered that its next session should begin with negotiations in the Working Group on the basis of the Nigerian draft, together with the compilation of national legislation and international documents prepared by the Secretariat.

54. Mr. BANHAWY (Egypt) said he would like to state, in view of the proliferation of mercenary activities, that his country had always opposed intervention of any kind as well as any form of colonialism, racism and exploitation. That national commitment was based on the Egyptian Constitution itself and paralleled the African commitment based on the 1977 OAU Convention for the Elimination of Mercenarism in Africa, which was evidence of the region-wide dimension of the problem and the need to eliminate it.

55. His delegation welcomed Nigeria's initiative in raising the question of mercenaries at the world level, since the drafting of an international convention was essential if the international co-operation that was needed in order to deal with mercenary activities was to be achieved. The positive reaction of the international community to that initiative had been reflected in the adoption by consensus of General Assembly resolutions 34/140 and 35/48.

56. His delegation agreed with other delegations and with the conclusions in the Ad Hoc Committee's report concerning the meagreness of the results achieved at the first session of the Committee. The African delegations could have expected nothing else, in view of the inadequate representation of African countries in the

(Mr. El Banhawy, Egypt)

Ad Hoc Committee as compared with the number of African States Members of the United Nations. For that reason, Egypt, together with other African countries and other non-aligned countries, had asked to be allowed to participate in the Ad Hoc Committee in an observer capacity, with the intention of collaborating objectively and effectively in its work; however, that request had encountered obstacles in the form of an attempt to limit such participation to merely attending plenary meetings and not to allow active participation in the Working Group of the Whole, despite the fact that the latter was an open-ended group.

57. The meagre results achieved by the Ad Hoc Committee and the fact that it would not be able to complete its work at its next session provided no reason for referring the question to the International Law Commission, since that would mean postponing a solution of the problem indefinitely, until the Commission was able to dispose of its heavy work programme. It was therefore essential that the States members of the Ad Hoc Committee should show the necessary political will to draft suitable texts for achieving the desired objective, namely, the outlawing of mercenary activities.

58. In the view of his delegation, the differences on the most important aspects of the question had been due to the deliberate approach adopted by some delegations of obstructing the work of the Ad Hoc Committee. Article 47, paragraph 2, of Additional Protocol I to the Geneva Conventions was a suitable basis for attempting a definition of the term "mercenary", and those who had opposed the use of that precedent had been unable to suggest any practical alternatives. The point was not to distinguish between "good" mercenaries and "bad" ones, in order to extol the former and condemn the latter depending on whom they fought for. That was not a serious approach, because they were no good mercenaries. Combatants and international volunteers fighting for the realization of the principles of justice and freedom could not be called mercenaries. They were heroes who risked their lives for just causes and for the incontrovertible principles of international law. His delegation also agreed with the statement, in paragraph 37 of the Ad Hoc Committee's report, that the elements of the definition in article 47 were not to be taken in isolation but that that definition must be interpreted in a cumulative way.

59. With regard to the treatment to be given to mercenaries, his delegation considered that they should benefit from the provisions contained in international instruments for the protection of human rights, although that did not mean that persons taking part in acts of military aggression should enjoy the same rights as were accorded to combatants fighting to defend their country.

60. As an African State, Egypt was fully aware of the sufferings which had befallen its continent as a result of acts of aggression and crimes by mercenaries. It therefore considered it essential that there should exist a climate of international solidarity in which it would be possible to give effect to the provisions of the future convention. That very point was dealt with in articles 7, 8, 9, 10, 13 and 14 of the Nigerian working paper, which related to concurrent jurisdiction, preventive measures, mutual assistance, taking into custody of mercenaries and extradition.

(Mr. El Banhawy, Egypt)

61. On the question of terminology, Egypt considered the word "mercenarism" as used in the Arabic text unclear and would like it to be replaced by "operations of mercenaries", in order to avoid any ambiguity.

62. From reading the Ad Hoc Committee's report he could see the efforts that had been made at the first session, but he felt that a more detailed account should have been given of the subjects dealt with in paragraphs 72, 73 and 74.

63. He also felt, however, that the foundations of the future convention had been laid and that what was needed now was serious work and goodwill. The mandate of the Committee must therefore be extended so that it could complete its task.

ORGANIZATION OF WORK (A/C.6/36/1; A/C.6/36/L.1, L.2)

64. Mr. ROSENSTOCK (United States of America) requested that, as at the preceding session, the debate on item 121, relating to the report of the International Law Commission on the work of its thirty-third session (A/36/10), should be divided into three parts: succession of States in respect of matters other than treaties; treaties concluded between States and international organizations or between two or more international organizations; and other topics. However, delegations wishing to do so should also be allowed to make a general statement on the report or to limit their comments to one or two parts of the report.

65. The CHAIRMAN confirmed that the same procedure would be followed as in 1980. He announced that the next item to be taken up would be item 124 (Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives).

The meeting rose at 1 p.m.