

United Nations

**GENERAL
ASSEMBLY**

THIRTY-FOURTH SESSION

Official Records *



SIXTH COMMITTEE
12th meeting
held on
Monday, 8 October 1979
at 3 p.m.
New York

SUMMARY RECORD OF THE 12th MEETING

UN LIBRARY

Chairman: Mr. GUNA-KASEM (Thailand)

OCT 16 1979

UN/SA COLLECTION

CONTENTS

AGENDA ITEM 113: DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE TAKING OF
HOSTAGES: REPORT OF THE AD HOC COMMITTEE ON THE DRAFTING OF AN INTERNATIONAL
CONVENTION AGAINST THE TAKING OF HOSTAGES (continued)

* This record is subject to correction. Corrections should be incorporated in a copy of
the record and should be sent *within one week of the date of publication* to the Chief,
Official Records Editing Section, room A-3550.

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

Distr. **GENERAL**
A/C.6/34/SR.12
11 October 1979

ORIGINAL: ENGLISH

79-57354 W-4942E (E)

/...

The meeting was called to order at 3.05 p.m.

AGENDA ITEM 113: DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE TAKING OF HOSTAGES: REPORT OF THE AD HOC COMMITTEE ON THE DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE TAKING OF HOSTAGES (continued) (A/34/39)

1. Mr. ANDERSON (United Kingdom) welcomed the progress made by the Ad Hoc Committee, as reflected in the draft Convention against the Taking of Hostages currently before the Sixth Committee. That draft followed the structure of earlier conventions on related issues, in particular in that it contained the principle that Governments should either extradite or prosecute offenders.
2. His delegation hoped that the outstanding issues dealt with in articles 9 and 14 of the draft Convention could be resolved satisfactorily so that a consensus could be reached on the Convention as a whole and the latter adopted and opened for signature before the end of 1979. The adoption of such a convention would show that the international community disapproved of the taking of hostages and would intensify international co-operation to eliminate that particular form of terrorism. It also seemed that it might be possible to reach a consensus on a more general statement regarding terrorism as a whole at the current session of the General Assembly.
3. His delegation welcomed the establishment of a Working Group to consider the draft Convention in greater depth and find solutions to the outstanding issues. It believed that the preamble should be kept short and was generally satisfied with the other articles, several of which, particularly articles 12 and 13, were the result of compromises reached in the Working Group. Accordingly, his delegation believed that the Committee should proceed to consider, finalize and adopt the draft Convention.
4. Mr. YAMADA (Japan) expressed satisfaction at the fact that the Ad Hoc Committee had succeeded in formulating a great majority of the articles of the draft Convention. There was already common recognition that the taking of hostages was an abominable act and that it was not sufficient for individual countries to take unilateral steps, however rigorous, to prevent it. The recent increase in the taking of hostages had in fact contributed to a common awareness of the urgent need to strengthen international co-operation to deal with that problem, which had led to the fundamental recognition at the 1978 session of the Ad Hoc Committee that no one should be granted an open licence for taking hostages (A/33/39, para. 16). His delegation was firmly convinced that a draft convention based on the recognition of that fact could provide a framework for effective international co-operation in eliminating the taking of hostages and in ensuring that perpetrators were denied safe haven anywhere under the principle of prosecute or extradite.
5. His delegation hoped that, at the current session, the General Assembly would focus its attention on those provisions of the draft Convention on which agreement had still to be reached, namely the preamble, article 9 and article 14, so that they could be finalized and a Convention which was acceptable to all countries

(Mr. Yamada, Japan)

could be adopted as soon as possible. Accordingly, his delegation welcomed the decision to establish a Working Group to expedite the resolution of outstanding issues and would do all it could to help that Working Group achieve general agreement on the proposed Convention as a whole.

6. Mr. CALERO-RODRIGUES (Brazil) said that, although his delegation would have preferred a comprehensive approach to all aspects of terrorism including the taking of hostages, it acknowledged that the partial approach adopted, focusing on the taking of hostages, had borne fruit and that a more ambitious approach might have proved less successful.

7. His delegation was fully satisfied with the draft Convention and hoped that it would be finalized at the current session. Accordingly, it hoped that the Working Group would take care to preserve the balance and the compromise solutions on main issues achieved by the Ad Hoc Committee, rather than reopening the debate on those issues. The Working Group should in fact focus more on drafting problems, as the language of the draft Convention fell somewhat short of what was required of an international legal instrument.

8. His delegation was in total agreement with the definitions contained in the draft Convention and with the obligations which it imposed on States. It took article 2 to mean that severe penalties should be envisaged for the offences mentioned in article 1. It was most satisfied with articles 3 and 11 and welcomed the obligation imposed on States to ease the situation of hostages and also to return objects illegally obtained by the offender as a result of the taking of hostages (art. 4).

9. His delegation believed that the draft Convention established jurisdiction satisfactorily in territorial and personal terms, but that further consideration should be given to the establishment of jurisdiction where the third party as referred to in article 1 was neither a State nor a person but an entity dependent on a State. In such cases, the jurisdiction of the State on which that entity was dependent would have to be established. His delegation believed that article 12, by linking the Convention to the Geneva Conventions and Additional Protocol I, provided a very ingenious and universally satisfactory solution. His delegation could also accept article 13 and article 9, although the latter required further work.

10. Although it did not wish to embark on a lengthy explanation of its position with regard to the right of asylum, his delegation hoped that an acceptable compromise would be reached in the sense that no specific provision was required on that subject. It also hoped that the Committee would be able to establish compulsory settlement in such a way that it was applicable in practice. If the provisions regarding compulsory settlement were too strict, countries might opt not to sign the Convention.

11. Mr. RAZAFINDRALAMBO (Madagascar) expressed great satisfaction at the fact that the Ad Hoc Committee had succeeded in preparing a draft international instrument

/...

(Mr. Razafindralambo, Madagascar)

which would probably become a new multilateral convention on an issue of burning contemporary importance. Its success was all the more commendable when one considered that, when such a convention had first been suggested, the positions of Member States on the issue had differed radically. The impasse had been resolved when, as a result of well-chosen working methods and a spirit of compromise and co-operation, a consensus had been reached on the implementation of two principles which the third world as a whole regarded as inviolable.

12. Those principles involved firstly the national liberation movements and the requirements of the struggle for the right to self-determination and secondly attacks on the national independence and territorial integrity of newly independent States perpetrated on the pretext of prosecuting those guilty of taking hostages. His delegation was gratified that the great Powers' acceptance of those two principles had opened the way for the elaboration of the draft Convention currently before the Committee.

13. His delegation attached particular importance to articles 12 and 13 and therefore welcomed the Ad Hoc Committee's rejection of the proposal to delete article 13 as superfluous. Clearly, the existence of Articles 1 and 2 of the Charter had not provided adequate legal guarantees against the perpetration of certain crimes.

14. His delegation wished to make a number of comments on the wording of the French text of the draft Convention which might affect its substance. In article 10, paragraph 1, the use of the words "de plein droit" surely meant that each of the offences set forth in article 1 would automatically be included as extraditable offences in any extradition treaty. In that case, it was difficult to see the need for the second sentence of that paragraph. It was especially difficult to understand why the undertaking mentioned in that sentence was required if the extradition treaty in question was concluded between two signatories to the proposed Convention. His delegation therefore suggested that the words "de plein droit" should be replaced by the words "de droit", so that it would be clear that inclusion of such offences was obligatory and not automatic.

15. Article 14 as currently drafted could be misleading. His delegation assumed that the word "provision" at the beginning of the second sentence of that article referred to the rule set forth in the first sentence. If that was so, the second sentence would be clearer if the word "provision" was simply deleted. His delegation also wished to suggest that the preamble should be much fuller than certain delegations had proposed, so that it reflected the link between the taking of hostages and terrorism and included a reference to problems which were specific to the national liberation movements and to respect for the national sovereignty and territorial integrity of States.

16. Mr. FLATLA (Norway) welcomed the progress made by the Ad Hoc Committee since the previous session of the General Assembly. His country had frequently stressed the need for greater co-operation among States in combating the various forms of international terrorism, and had from the outset advocated the drafting of a

(Mr. Flatla, Norway)

convention against the taking of hostages. Its position was motivated by purely humanitarian reasons and by its abhorrence of actions which endangered or took the lives of innocent people.

17. Given the complexity of that issue, his country had for some time recognized the need to adopt a step-by-step approach to combating international terrorism. Such an approach had been vindicated by the success of the Ad Hoc Committee in producing a draft Convention against the Taking of Hostages.

18. The draft Convention did of course have its short-comings, but on the whole it was balanced and provided a valuable complement to existing public international law in that field. The Ad Hoc Committee had been able to resolve the most controversial political issues and it was for the Sixth Committee to settle the outstanding, relatively minor issues in a spirit of goodwill, mutual respect and understanding. His delegation hoped that the text of the draft Convention would be finalized and the Convention adopted at the current session of the General Assembly.

19. Mr. AL-KHASAWNEH (Jordan) said that, when the item under consideration had first been debated in the Sixth Committee, his delegation among others had had doubts as to the usefulness of adopting a convention against the taking of hostages. It had feared that the future convention, and particularly the provisions relating to the principle of "extradite or prosecute", would be abused. Although his delegation was aware of the importance of good faith in international negotiations, it was also aware of the need for express built-in safeguards in that field of international law, where State practice might depend on extra-legal factors. Nevertheless, his delegation had joined in the consensus by which the Ad Hoc Committee had been established. It might be appropriate to recall that the principle "extradite or prosecute" had been intentionally omitted from General Assembly resolution 31/103 and subsequent resolutions renewing the mandate of the Ad Hoc Committee. Thus, although it was not bound by the terms of the aforementioned resolution to accept that principle, his delegation had felt that, in order to make the Convention effective, it would do so, provided enough safeguards could be incorporated into the draft Convention to prevent potential abuse. To that end, during the third session of the Ad Hoc Committee, his delegation had proposed the inclusion of a new article, currently article 9 of the draft Convention, to regulate the option of extradition.

20. Although the Working Group would be able to examine article 9 in detail, he wished to clarify some points relating to it. In the first place, the obligation not to extradite under article 9 was without prejudice to the obligation to prosecute. In that way the effectiveness of the Convention was guaranteed and the "no safe haven" principle, so dear to some delegations, sometimes to the point of exclusivity, would also remain intact. Moreover, the discretion left to a State in deciding whether or not to extradite was more than marginal: that State had to have substantial grounds for believing that a set of conditions existed before it was obligated to refuse extradition. In that way, flexibility was assured.

(Mr. Al-Khasawneh, Jordan)

21. As to subparagraphs (a) and (b) of article 9, the grounds for refusing extradition were common to many bilateral and regional extradition treaties and were so well established that few delegations should find them difficult to accept subparagraph (c), on the other hand, seemed to cause some difficulty to some delegations, yet the idea behind it was not as novel as would seem at first sight. Article 6, paragraph 4 gave the alleged offender the right to communicate with and to be visited by the authorities of the State of which was a national or, if he was a stateless person, by the authorities of a State which he requested and which was willing to establish such communication. The reason behind that was to ensure that he got a fair trial and that if there was a miscarriage of justice, his Government could perform its duties of legal and diplomatic protection under international law. It would not be right for the alleged offender to be given those rights in the State in which he was apprehended and yet be extradited to a State where the same rights were unenforceable. The provisions relating to settlement of disputes would be of no avail to the State of which the extradited person was a national and certainly not to the person himself.

22. He realized that the Committee was not negotiating an extradition treaty as such, but to the extent that the extradition option was concerned and to the extent that the future Convention could under article 10 be invoked as the basis of extradition, it was a multilateral extradition treaty limited, however, to the offence of the taking of hostages and a few other offences. In a bilateral extradition treaty between neighbouring friendly States, there would normally be provisions to safeguard the rights of persons claimed. A convention that might have the effect of exposing persons to different legal systems should have similar if not more safeguards.

23. With reference to the argument that his delegation's amendment went beyond the scope of the Convention, he pointed out that the scope of the Convention was a very elastic concept. Surely a convention based on extradition or prosecution would touch on extradition treaties and would also, for example, affect the right of asylum. As to the possible conflict with existing treaty relations, he suggested that if it existed at all, such conflict was minimal and perhaps inevitable because of the very nature of contracts at the international level. He fully appreciated the importance to a State of harmonizing its external legal obligations, but felt that it should be ready, if it wished to participate in regulating a new phenomenon, to accept some conflict of obligation. Moreover, it would be difficult to think of situations where there was an absolute obligation to extradite even in a bilateral treaty. What the Jordanian amendment did was provide uniformity.

24. Mr. AL-QAYSI (Iraq) said that his delegation took a great interest in the efforts of the United Nations to prepare an international convention against the taking of hostages. For various political and humanitarian reasons, the regulation of conduct at the international level required harmonization of the interests of countries and equality between them. Such harmony and equality could only be achieved if there was a balance between conflicting interests and if questions of a humanitarian nature were taken into account. If certain kinds of conduct at the international level were to be defined as offences under a multilateral convention,

(Mr. Al-Qaysi, Iraq)

especially one that was being considered for the first time by the Committee, those considerations must be borne in mind in order to ensure acceptance of the Convention by all Member States. In studying the report of the Ad Hoc Committee (A/34/39), his delegation had noted with satisfaction that the Ad Hoc Committee had indeed tried to take all those considerations into account.

25. He hoped it would be possible to adopt the draft Convention during the current session of the General Assembly. His delegation would play an active part in the Working Group established to undertake the final reading of the draft Convention. His delegation felt there was still room for improvement in the text, with regard to both form and substance. For example, the definition of the taking of hostages in article 1 should be simplified. Also, certain rules governing jurisdiction in article 5 seemed to be more in the nature of elements for definition of the offence. Article 6 required some rewording and additions in order to bring it into line with other provisions, especially since it was unclear and could give rise to misinterpretation. Article 13 was out of place from the legal point of view. With regard to article 14, his delegation wondered whether the sole purpose of the second sentence was not to make the first sentence devoid of legal substance. Article 9, introduced by Jordan, contained some very important legal provisions. He did not think it would create a problem regarding conflict between the obligations of contracting States. The draft Convention was confined to a specific field of application and provided not only for extradition but also for prosecution and sentencing. The Committee must also take into account the scope of bilateral extradition conventions. He saw no problem, first because the specific rule took precedence over the general rule and second because the country concerned could prosecute the offender under the terms of the Convention against the Taking of Hostages. He appealed to all delegations to demonstrate flexibility and adopt a constructive approach to the discussions of the Working Group on the matter.

26. He noted that it had been decided that the Working Group should study the draft Convention article by article. That was the best way to proceed, given the limited time available, but members should still be able to refer back to other articles in order to clarify their position regarding the article under consideration. He hoped that in drafting the preamble, the Working Group would take into account all factors - political, legal and humanitarian - in order that to the extent possible, the preamble would refer to legal provisions to be found in the body of the Convention. Furthermore, it was important to draft a preliminary paragraph, acceptable to all, regarding the activities of national liberation movements, which should be governed by article 12. Finally, he expressed the hope that the Working Group would adopt a text by consensus.

27. Mr. RIOS (Chile) said that his delegation had co-sponsored the resolutions setting up the Ad Hoc Committee and extending its mandate. His delegation noted with satisfaction that at its latest session, the Ad Hoc Committee had succeeded in preparing a draft Convention that had been possible thanks to the co-operation and dedication of its members, who had made every effort to reach a consensus despite their differences, which stemmed in most cases from the fact that they represented different legal systems. The draft articles dealing with the various problems that

(Mr. Rios, Chile)

had remained unsolved at previous sessions seemed adequate to his delegation. As noted in the report of the Ad Hoc Committee (A/34/39), only articles 9 and 14 had not received unanimous approval and had been left in square brackets.

28. His delegation had no objection to article 9; it would not weaken the Convention, since the obligation to prosecute would be retained in article 8.

29. His delegation did, however, have certain reservations regarding article 14, which was not clear. He understood that it represented a compromise between delegations which held different positions regarding the need to include a provision on asylum. If there was a consensus in favour of the article, however, his delegation would not object to its approval. His country had traditionally respected the right of asylum, both territorial and diplomatic, which under the 1 and the conventions entered into by Latin American countries could only be granted for political offences. His delegation therefore felt that the draft Convention against the Taking of Hostages would not affect the right of asylum even if that was not expressly stated, since under the draft Convention the taking of hostages would not be a political offence. Nevertheless, in view of the concern expressed by various delegations, and even though the solution might not be entirely satisfactory to everyone, his delegation felt that compromise might be possible if article 14 of the draft was replaced by a clause similar to that contained in article 12 of the New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. The latter article merely reaffirmed the principle of inviolability and respect for treaties.

30. His delegation hoped that, once agreement was reached on articles 9 and 14 and on the preamble, the text proposed by the Ad Hoc Committee could be adopted as a convention at the current session.

31. In conclusion, he wished to thank the other members of the Ad Hoc Committee for their spirit of co-operation. His delegation particularly appreciated the efforts of the delegation of the Federal Republic of Germany, whose working paper had greatly facilitated the work of the Ad Hoc Committee.

32. Mr. ALMODOVAR Y SALAS (Cuba) said it was quite proper to be concerned about illegal attempts against the physical integrity, liberty or dignity of persons. It was also quite proper to translate such concern into international rules aimed at eliminating or reducing such social phenomena. It was in that context that the efforts to draft a convention to prevent, rather than a convention against, the taking of hostages might be viewed. That phenomenon had occurred in the context of the class struggle resulting from the exploitation of man by man and had been a constant feature of régimes which exploited the people, from slavery to capitalism. But the problem was not confined to isolated acts of an individual nature, which had received notoriety thanks to the mass communications media, nor was it confined to simple demands for money or for action or non-action in exchange for hostages.

(Mr. Almodovar Y Salas, Cuba)

33. Parallel to such individual illegal acts, which in principle seemed to be the target of the General Assembly's efforts, and which were usually covered by the internal criminal legislation of States, other equally or more serious acts were committed in the name of legal systems manipulated for the exclusive benefit of tyrannical fascist régimes. In order to thwart the aspiration to justice of the dispossessed masses whose natural resources were plundered to satisfy the voracious appetites of rulers, monopolies and colonial Powers and who were subjected to discrimination and repression, those régimes took hostage the best of their peoples or of peoples under colonial domination, keeping them in gaols and concentration camps where they suffered all kinds of deprivation and torture, and even death. On many occasions, the international community had taken action to obtain the freedom not only of fighting revolutionaries, but also of working men and women, students, politicians, and intellectuals struggling against social injustice. In some cases, the task had taken only a short time, and in others it had taken years. In other cases, valuable human beings had died in captivity. Some might argue that technically such people were not hostages but prisoners. However, technically, many of the cases which under the draft Convention would be described as the taking of hostages would in fact involve kidnapping. There were cases when the acts had been perpetrated by true delinquents and deserved to be condemned by all civilized people. Such acts originated in the social degeneration of the systems of exploitation. There were other cases which were obviously manifestations of the class struggle.

34. The foregoing consideration explained why the Ad Hoc Committee had met with so many technical and substantive difficulties. His delegation commended its members for their hard work, but felt that it would not be possible to overcome the obstacles facing it in such an effort. The fact that many delegations had not been too anxious to speak and the brevity of the statements made showed that many were still not sure that all the necessary conditions had been met or that a convention to prevent the taking of hostages was appropriate.

35. It had been necessary to take into account many different factors, such as the Geneva Conventions of 1949 or the Additional Protocols to those conventions; the armed conflicts in which peoples were struggling against colonial domination and foreign occupation, apartheid and racial régimes; the exercise of the right of peoples to self-determination; respect for the principles of sovereignty and territorial integrity of States with respect to the freeing of hostages; the right of asylum; extradition and extradition treaties concluded between Contracting States; the New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft, the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation; bilateral and multilateral treaties in force relating to the struggle against international terrorism, and so forth.

(Mr. Almodovar y Salas, Cuba)

35. The members of the Ad Hoc Committee had made a commendable effort, but his delegation felt that too narrow a framework had been chosen to debate the phenomenon of the taking of hostages, which was as old as the injustices that led to it. His delegation held to the view that the phenomenon was a manifestation of international terrorism and should be discussed in that context, but that the idea of drafting a convention for adoption by the General Assembly should be abandoned. He had no specific proposals to make but invited delegations to reflect on the need for allowing more time and finding an appropriate framework for a study of the problem.

The meeting rose at 4.30 p.m.