



UNITED NATIONS
GENERAL
ASSEMBLY



Distr.
GENERAL

A/33/194
21 September 1978
ENGLISH
ORIGINAL: ENGLISH/FRENCH

Thirty-third session
Item 122 of the provisional agenda*

DRAFTING OF AN INTERNATIONAL CONVENTION
AGAINST THE TAKING OF HOSTAGES

Report of the Secretary-General

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* A/33/150.

I. INTRODUCTION

1. On 16 December 1977, the General Assembly adopted resolution 32/148, entitled "Drafting of an international convention against the taking of hostages". By that resolution, the General Assembly, inter alia, decided that the Ad Hoc Committee on the Drafting of an International Convention against the Taking of Hostages, as constituted, should continue, in accordance with paragraph 3 of Assembly resolution 31/103, to draft at the earliest possible date an international convention against the taking of hostages and, in the fulfilment of its mandate, to consider suggestions and proposals from any State, bearing in mind the views expressed during the debate on this item at the thirty-second session of the Assembly. The Ad Hoc Committee, pursuant to Assembly resolution 32/148, held its session from 6 to 24 February 1978. 1/

2. Paragraph 3 of General Assembly resolution 32/148 reads as follows:

"The General Assembly,

...

"3. Invites Governments to submit, or to bring up to date, suggestions and proposals for consideration by the Ad Hoc Committee;"

3. By a circular note dated 28 December 1977, the Secretary-General invited Governments to communicate to him the suggestions and proposals referred to in paragraph 3 of resolution 32/148.

4. As at 20 September 1978, suggestions and proposals in response to the Secretary-General's note had been received from the Holy See, Indonesia and the Lao People's Democratic Republic. The replies are set forth in section II below. Any further suggestions and proposals will be published as an addendum to the present report.

1/ For the report of the Ad Hoc Committee covering its work at that session, see Official Records of the General Assembly, Thirty-third Session, Supplement No. 39 (A/33/39).

II. SUGGESTIONS AND PROPOSALS SUBMITTED BY GOVERNMENTS

HOLY SEE

/Original: French//17 February 1978/I. Meaning and context of the draft

1. Since this is a text which will be substantially modified and since it is not the task of the Holy See to provide solutions of a technical legal nature, it seems preferable at this stage for the Holy See to confine itself to the principles of social morality which have been formulated by the Pontifical Magisterium on various occasions during recent years.

II. Opinions of the Pontifical Magisterium

2. The taking of hostages has on various occasions been included by the Pontifical Magisterium among "acts directed against life ... or against human dignity".

A. The Council

3. The Council has not so far made specific mention of hostage-taking as such, at least not in so many words, but the Constitution "Gaudium et Spes" covers them in a general manner under "arbitrary imprisonment" and other "infamous practices" which "corrupt civilization and dishonour those who engage in them ...", 2/ and also under "international conventions ... relating to the fate of wounded soldiers, ... prisoners, and various commitments of that nature". 3/

4. Such acts may be common law offences: "The kidnapping of persons, held hostage for the purpose of extracting a ransom or satisfying a desire for vengeance, appears to us degrading in a civilized society". 4/

5. They may also, however, fall into "another category of misdeeds which the Christian view of the life of society cannot accept as legitimate", that of terrorism and political violence.

2/ Pastoral Constitution on the Church in the Modern World "Gaudium et Spes" of 7 December 1965, sect. 27, para. 2.

3/ Ibid., sect. 79, para. 3.

4/ General audience of 25 March 1970.

B. The Holy Father

6. Paul VI has on several occasions publicly expressed his "condemnation and moral censure" of "these criminal acts", at both the national and the international level. 5/ He has described the "kidnapping of innocent people" as "ignoble blackmail and intolerable in a civilized society". 4/

7. However, it is in connexion with the hijacking of aircraft that the Holy Father has dealt directly with the problem. The essence of his thinking on this subject and his programme of action are to be found in the following two statements:

(a) In the first, of 13 September 1970, speaking "of the tragedy of civil aircraft hijacked and held, with hundreds of people on board who are regarded as hostages for the release of people imprisoned for acts of terrorism", the Pope described such behaviour as "an act of piracy and inadmissible blackmail ... which should never be repeated". The reasons he gave were that "whoever the perpetrators might be, such acts are abuses, the victims of which are people who have nothing to do with the conflict, particularly women and children". They "build up hatred and resentment to the greater detriment also of those who cause them. They set back the cause of peace ...". Such resort to terrorism as "legitimate political or social self-assertion" is immoral and thus also ineffective and harmful to the cause it was intended to promote.

(b) Three years later, on 19 September 1973, at Castelgandolfo, when receiving the leaders of the International Civil Aviation Organization (ICAO), together with representatives of 107 States and eight international organizations, Paul VI again referred to the fact that the illegal seizure of aircraft constitutes a crime "which the civilized world as a whole today condemns"; because "the end does not justify the means, in this sphere as in all others".

8. The Pope went on to advocate and encourage the taking of action commensurate with the scale of the problem, which jeopardizes "not only the rights of innocent people ... but also ... the common international good": not only safe passage, but also the possibility of achieving peace through non-violent means".

9. The first objective of this joint action is "the search for the most appropriate legal instruments, that is to say, the most just and the most effective ... We express the hope that all members of the international community will eventually ratify such agreements". An enterprise of this scale must "mobilize international solidarity, taking "reason and love as its golden rule". Without this moral basis, even the most perfect legal instruments risk becoming stale and ineffectual at some time or another.

III. Guidelines and suggestions regarding the
draft convention

A. A double risk

10. A double risk indeed exists, and this risk must be ever present in the minds of the drafters and signatories of this legal instrument.
11. The first - to which various voices have already drawn attention - would be to treat acts of hostage-taking in isolation, as criminal acts, making no distinction; in short, to treat them as effects, while overlooking the causes.
12. Paul VI (like the Council) is not unmindful of the causes. These attempts, the Pope has noted, "may also be motivated by the poverty, frustration and despair which result from intolerable social, economic and political conditions" (19 October 1973). Hence the Pope's solemn recommendation: "All the countries of the world must eventually acknowledge those causes in order to remedy them before they degenerate into violence".
13. This last comment by Paul VI represents a warning with respect to the text of the proposed convention and, above all, its implementation.
14. Indeed, while it is true, as the Pope has said with regard to kidnapers, that "such causes cannot justify the use of violence ... (because) the end does not justify the means", the same principle must also hold true with regard to any judicial or political authorities which may forget to apply it to themselves. If that were to happen, there would be a danger that the anti-terrorist convention might provide an opportunity for, and become the chosen instrument of, blind partisan repression. All "those opposed to the régime in power or to the prevailing ideology" would soon find themselves treated as "terrorists". The door would then officially be open for all kinds of arbitrary action.

B. The method

15. Paul VI has made it clear that "the Church, for its part, will not rest until it has shaped the conscience of all its sons and called upon all men of goodwill to promote that security, to protect universal human rights, to defend them courageously, and to achieve justice for all, for innocent victims and unjustly oppressed peoples alike".
16. Finally, Paul VI has not hesitated to recommend persuasion in addition to legal and juridical dissuasion. On 17 October 1977, in the telegram which he sent to Cardinal Höffner, Chairman of the German Bishops' Conference, on the occasion of the seizure of an aircraft at Mogadiscio, the Pope appealed "to the conscience of those responsible for the hijacking to abandon their cruel enterprise".

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17. In conclusion, it would seem that the reiteration of the various positions and actions taken by the Holy See could bring universal principles to bear on the preparation of the draft convention and the discussions to which it will give rise, and will offer timely suggestions regarding the interpretation and practical implementation of such a convention, should it be adopted.

INDONESIA

/Original: English/

/1 February 1978/

1. The term "territories" in the draft Convention should be clearly defined.

Article 2, paragraph (a)

2. Between the words "respective territories" and "for the commission of", insert the words "as defined in accordance with international law".
3. On the settlement of disputes, Indonesia in principle agrees that resort to arbitration or to the International Court of Justice, agreement by all parties to the dispute is required.

Article 11

4. Replace the words "any party to the dispute by means of a written notification to any other party to the dispute" by the words "agreement of all parties to the dispute by means of notification by one party to another". Replace the words "any party to the dispute may submit the dispute to the International Court of Justice for decision in accordance with the Statute of the Court" by the words "the dispute may be submitted, by agreement of all parties, to the International Court of Justice for decision in accordance with the Statute of the Court".

LAO PEOPLE'S DEMOCRATIC REPUBLIC

/Original: French/

/17 February 1978/

The Government of the Lao People's Democratic Republic commends the Federal Republic of Germany for draft International Convention against Taking of Hostages. The Government of the Lao People's Democratic Republic considers hostage-taking as inhuman act endangering innocent human lives. Despite earlier conventions we recognize necessity for elaboration of new and more appropriate convention to prevent and combat hostage-taking. We nevertheless reject article condemning or impeding movement of struggle for national liberation and independence.

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