

United Nations

GENERAL  
ASSEMBLY

THIRTY-SECOND SESSION

Official Records\*



DEC 12 1977

SIXTH COMMITTEE

60th meeting

held on

Thursday, 1 December 1977

at 10.30 a.m.

New York

SUMMARY RECORD OF THE 60th MEETING

Chairman: Mr. GAVIRIA (Colombia)

CONTENTS

AGENDA ITEM 119: 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.6/32/SR.60

6 December 1977

ENGLISH

ORIGINAL: SPANISH

The meeting was called to order at 11.10 a.m.

AGENDA ITEM 119: 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/32/39; A/C.6/32/L.10)

1. Mr. ONDA (Japan) noted that the Ad Hoc Committee on the Drafting of an International Convention against the Taking of Hostages, which had been established by the General Assembly in resolution 31/103, had not been able to submit a draft convention to the Assembly at the thirty-second session in accordance with the request made in paragraph 5 of that resolution. His delegation hoped that the Committee would make an effort to submit a draft at the next session, and, as a member of the Committee, it was determined to continue its active participation in the latter's work.

2. Japan, which had more than once been the victim of the international crime now under discussion, had sought to take effective domestic measures to prevent a recurrence of the taking of hostages, hijacking and other inhumane activities of that nature. Those measures included the establishment of a ministerial body to take preventive measures against hijacking and other inhumane violence, increased security measures at airports, modification of the Passport Act, and amendment of the relevant laws so as to increase the penalties for aircraft hijackings and other acts likely to endanger aviation. However, efforts by individual countries were not sufficient. There was an urgent need for the international community to take concerted, effective action to prevent the taking of hostages, including co-operative action in suppressing, investigating and punishing such crimes. Since his country had set forth its views on several occasions in the United Nations concerning the specific forms such action should take, he would merely emphasize that the denial of asylum to offenders on the basis of the principle of "prosecute or extradite" was an essential step.

3. Draft resolution A/C.6/32/L.10 which his delegation had joined in sponsoring, merely renewed, in accordance with the recommendation made by the Ad Hoc Committee, the latter's mandate under paragraph 3 of resolution 31/103, which had been adopted by consensus by the General Assembly. His delegation hoped that the draft resolution would also be adopted by consensus, thus preserving for the Ad Hoc Committee the atmosphere of international co-operation which was required for the purpose of combating such abhorrent and inhumane acts.

4. Mr. LARSSON (Sweden) said that, at the first session of the Ad Hoc Committee on the Drafting of an International Convention against the Taking of Hostages, his delegation had had occasion to express its views on the matter, which were reflected in the relevant records (A/32/39, annex I). He would therefore confine himself to reiterating his Government's concern at the repeated acts of violence that had occurred and its support for any initiative aimed at suppressing them. One possible approach was to identify various acts of violence that deserved condemnation and to draft separate international instruments to deal with each of

/...

(Mr. Larsson, Sweden)

them, as had been done successfully with regard to the safety of international civil aviation. His delegation had therefore welcomed the establishment of the Ad Hoc Committee in 1976.

5. It should come as a surprise to no one that the Ad Hoc Committee had been unable to carry out fully at its first session the mandate entrusted to it by the General Assembly in resolution 31/103 with the request that it should make every effort to submit a draft convention at the thirty-second session. His delegation felt, however, that the Committee had made progress in its difficult task and had made it possible for a fruitful exchange of views on the basic issues to be conducted in a spirit of co-operation and goodwill. It was true that, both in the general debate and in the discussion of the various proposals that had been submitted, substantial differences of opinion had emerged regarding the scope and definition of the convention. However, his delegation trusted that they would not prove insuperable, since proposals had also been made for helping the Committee to reconcile the opposing views. His delegation hoped and sincerely believed that in-depth consideration of those proposals would enable the Ad Hoc Committee to make further progress at its second session and, perhaps, complete its work.

6. It was essential for States to provide themselves with effective means of thwarting those persons who resorted to the taking of hostages in order to further their own goals. Only in that way would it be possible to ensure for all persons the right to life, liberty and security proclaimed by the United Nations Charter and the Universal Declaration of Human Rights. Recognizing that the growing number of cases of the taking of hostages highlighted the urgency of the problem confronting the international community, his delegation fully supported the Ad Hoc Committee's recommendation that its mandate should be extended in 1978, and it had accordingly joined in sponsoring draft resolution A/C.6/32/L.10

7. Mr. EL GHARBI (Morocco) said that the taking of hostages was the most odious of all illegitimate forms of violence, since it made use of human beings in the most degrading manner, i.e. as bargaining counters, or in the cruelest manner, i.e. as living shields. It was therefore not surprising that international humanitarian law had taken a vigorous stand on the matter nearly 30 years ago, so that its present discussion by the international community lay exclusively in the sphere of international penal law. Thus, the General Assembly, in deciding in resolution 31/103 to establish an Ad Hoc Committee on the Drafting of an International Convention against the Taking of Hostages, had rightly taken the position that the matter was of sufficiently limited scope from a legal standpoint within the broad problem of international terrorism, whose complex content was not yet the subject of general agreement.

8. It was, of course, no easy matter to draft any instrument of international penal law, as was evidenced by the long, painstaking negotiations concerning the many bilateral conventions on legal co-operation and exequatur. Those difficulties became even more numerous in a multilateral context, where an effort had to be made to reconcile different legal systems. Nevertheless, the Ad Hoc Committee was not

/...

(Mr. El Gharbi, Morocco)

doomed to fail in its work, since the issues to be dealt with had already been identified by international law and the practice in question had been condemned by positive law at the national level and was now being subjected to condemnation at the regional level. All that remained was to complete that process of condemnation at the world-wide multilateral level.

9. While he did not wish to commit his delegation for the moment on any of the provisions of the draft convention submitted by the Federal Republic of Germany (A/AC.188/L.3), he regarded it as a serious working paper which could provide a basis for discussion. He was pleased to note the nearly universal condemnation of the criminal practice of taking hostages, in which his country had joined by acceding to all the international conventions relating to the safety of civil aviation and by making provision in its penal code since 21 May 1974 for the punishment of that crime - a punishment which varied with the extent of the injury caused to the hostage and was less severe in cases where the hostage was voluntarily set free.

10. His delegation hoped that the Ad Hoc Committee would soon be able to complete its mandate, and it had therefore joined in sponsoring draft resolution A/C.6/32/L.10. That would, however, be difficult to achieve unless the Ad Hoc Committee adopted a more efficient working procedure than the existing one, which had been rightly criticized in the Ad Hoc Committee itself and in the Sixth Committee. Another obstacle encountered by the Ad Hoc Committee had to do with the sphere of application of the proposed convention, although that question should not present difficulties from a legal standpoint since the conventions referred to in the preamble of resolution 31/103 provided a solid foundation in positive law for the future convention. Articles 3 and 34 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War prohibited the taking of hostages, and that prohibition was strongly reaffirmed in the two Additional Protocols to the Geneva Conventions.

11. As to the position of the national liberation movements recognized by the competent intergovernmental organizations, those movements, which were so few in number that they could be cited by name, would not evade their duty to comply with the rules of international humanitarian law to which they had subscribed, as the PLO had done with regard to the 1949 Conventions. Indeed, the PLO had repeatedly condemned the taking of hostages, and the Federal Republic of Germany had expressed appreciation to Yasir Arafat for his actions during the recent crisis. Much the same could be said of the southern African national liberation movements, which benefited from the guarantees already accorded to them by international humanitarian law and would soon formally assume their obligations. The national liberation movements, far from engaging in the inhuman practice of taking hostages, which was contrary to their ideals of human emancipation, were, like all their peoples, the victims of large-scale hostage-taking by their oppressors. His delegation emphasized that the future convention must apply not only to the taking of hostages by individuals but also - and with even greater justification within the legal context of that new branch of international law - to hostage-taking perpetrated and organized by States.

(Mr. El Gharbi, Morocco)

12. His delegation hoped that the Sixth Committee would decide unanimously to extend the mandate of the Ad Hoc Committee and that the latter would be able to continue its work with the clarity of vision characteristic of the soundest legal concepts. It hoped that a demonstration of goodwill by all concerned would enable the Ad Hoc Committee to find a solution that would eliminate from international affairs the anguish caused by the vile practice of taking hostages.

13. Mr. SETTE CÂMARA (Brazil) said that several interesting and stimulating proposals, which appeared in annex II of the Ad Hoc Committee's report (A/32/39), had been presented during the Committee's session. Moreover, the summary records of the Ad Hoc Committee's meetings, which were reproduced in annex I of the report, showed the importance and comprehensive nature of its debates. Because of time limitations, the Committee had not been able to complete the task entrusted to it by the General Assembly in resolution 31/103. His delegation felt that the Committee should be kept in operation as long as it seemed to be going in the right direction, and it had therefore joined in sponsoring draft resolution A/C.6/32/L.10, whose only purpose was to ensure the continuation of the Committee's work.

14. His delegation had always felt that action to combat terrorism and related problems should be taken within the broad framework of international co-operation and not in a fragmentary manner, dealing only with certain kinds of terrorist acts. His country had therefore taken an active part in the drafting of the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft and the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons. With regard to the taking of hostages, his delegation was prepared to support efforts looking to the future elaboration of a convention on the subject, and it was following the Ad Hoc Committee's work with the utmost interest.

15. In earlier times hostages had been exchanged as a guarantee of the fulfilment of international obligations assumed by monarchs, but that archaic custom had disappeared with the recognition of the principle that no one should be punished for the deeds of another. Moreover, article 34 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War expressly prohibited the taking of hostages. If the international community had condemned the taking of hostages in time of war, there was even more reason to condemn such criminal acts in time of peace.

16. Mr. VERENIKIN (Union of Soviet Socialist Republics) said that in the debates of the Ad Hoc Committee differences of opinion had arisen among the various delegations with regard to the preamble of the draft convention contained in annex II of that Committee's report (A/32/39), the scope of the draft convention and the definition of the terms used in it. Many delegations, including his own, had maintained that the question of combating the taking of hostages could not be examined separately from the general problem of international terrorism and the causes motivating that phenomenon, which are colonialism, racism, foreign domination and the suppression of

/...

(Mr. Verenikin, USSR)

the right of peoples to independence. Those delegations had emphasized the need to reach agreement on including in the draft convention provisions intended to guarantee that the struggle of the national liberation movements would not be hampered. They had also proposed that the draft convention should include adequate provisions to ensure that the pretext of freeing hostages was not used for any actions that disregarded the sovereignty, independence or territorial integrity of States. In the view of those delegations, attention must be given first and foremost to the questions of principle involved in the substance, scope and terminology of the Convention, and only when agreement had been reached on those questions should the various provisions be examined in detail. However, some delegations had opposed that approach and insisted on taking as the sole basis for work the draft convention submitted by the Federal Republic of Germany. The lack of agreement on the procedure to be followed had prevented the Ad Hoc Committee from carrying out the mandate entrusted to it by the General Assembly. The Ad Hoc Committee had approved by consensus a resolution recommending that the General Assembly should extend its mandate. But, as his delegation had already stated in the Ad Hoc Committee, such a recommendation was beyond the competence of the Ad Hoc Committee and prejudged the consideration of the question in the General Assembly.

17. The taking of hostages and aerial piracy should be examined in close relationship with the problem of international terrorism. His delegation's position on that subject had already been stated during the Sixth Committee's consideration of the item on international terrorism. The Soviet Union rejected all acts of terrorism, including the taking of hostages and the use of mercenaries to combat national liberation movements or to violate the sovereignty of newly independent States. At the same time, the measures adopted to combat terrorism should not interfere with the activities of national liberation movements.

18. With regard to specific measures for the suppression of the taking of hostages, it was necessary, first of all, that the greatest possible number of States should accede to the existing international instruments on the taking of hostages, the unlawful seizure of aircraft and the protection of diplomatic agents and should observe their provisions. The Soviet Union had taken an active part in the preparation of those instruments and was a party to them.

19. Secondly, bilateral and multilateral agreements should be included for the extradition of persons guilty of the unlawful seizure of aircraft. The Soviet Union had already concluded such agreements with a number of countries, and at its initiative, an item on the strengthening of measures for the suppression of illegal acts against civil aviation had been included in the programme of the twenty-second session of ICAO. In the resolution adopted on that item, States were asked to extradite the guilty persons to the country of registry of the aircraft as one of the most effective ways of combating such crimes. Resolution 32/8, recently adopted by the General Assembly, would also make a useful contribution to that struggle.

(Mr. Verenikin, USSR)

20. The measures adopted at the international level should, in turn, be supplemented at the national level by the promulgation of laws to punish those guilty of such acts. The legislation of the Soviet Union included provisions of that kind, and if all States adopted similar measures, that would help to bring about conditions that would make the commission of such crimes impossible.
21. Lastly, with regard to draft resolution A/C.6/32/L.10, his delegation would not oppose extending the mandate of the Ad Hoc Committee if that was the wish of the majority of Sixth Committee members, but since the progress of the Ad Hoc Committee's work depended on the establishment of mutual understanding and since the question of the taking of hostages was part of the problem of international terrorism, he wondered whether it would not be preferable to entrust the drafting of a convention on the taking of hostages to the Ad Hoc Committee on International Terrorism.
22. Mr. BOSCO (Italy) fully supported draft resolution A/C.6/32/L.10, of which his delegation was a sponsor, and hoped that it would be adopted by consensus.
23. His Government was concerned at the growing number of acts of taking of hostages, which undermined the foundations of civilized life. The phenomenon was, unfortunately, a widespread one, not restricted to cases of aircraft hijacking, although those cases were the most spectacular instances of the taking of hostages and were related to the problem of the safety of international civil aviation. The taking of hostages could occur in all kinds of circumstances, and it must be borne in mind that such a practice was clearly prohibited by article 34 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and that article 3 of each of the four Geneva Conventions extended the prohibition of that practice to conflicts not of an international character.
24. In conclusion, he trusted that the Ad Hoc Committee would be able to submit to the General Assembly at its thirty-third session a draft international convention against the taking of hostages.
25. Mr. PEDAUYÉ (Spain) said that acts of taking of hostages posed a grave threat to persons, since they affected the fundamental legal values of liberty, life and security, and to States, since they affected sovereignty, a basic structural principle of the international community; they had the serious effect of causing tensions in relations between States and endangering international peace and security. For all those reasons, they were particularly odious acts repugnant to the conscience of mankind.
26. The law of war has always condemned acts of taking of hostages. Examples of that could be found in the Geneva Conventions of 12 August 1949, in particular articles 34, 146 and 147 of the Fourth Convention, as well as article 75 of Protocol I adopted at Geneva on 8 June 1977, which reaffirmed the prohibition of acts of taking of hostages at any time or any place. In time of war the principle of extradition or trial applied to any taking of hostages, irrespective of the nature of the armed conflict. It was then possible to apply the arguments advanced

(Mr. Pedauyé, Spain)

in the Ad Hoc Committee on the Drafting of an International Convention against the Taking of Hostages, in a statement made by the Under-Secretary-General, the Legal Counsel, speaking as the representative of the Secretary-General: the laws of war severely condemned the taking of hostages; why should that practice be tolerated in the laws of peace and of the friendly relations among States?  
(A/AC.188/SR.1, para. 3).

27. In time of peace the internal legislation of every country characterized the taking of hostages as a serious crime, either explicitly or, as in Spain, under generic terms such as threat, coercion, kidnapping or abduction with extortion. From that legislative unanimity it could be concluded that, in accordance with article 38, paragraph 1 c, of the Statute of the International Court of Justice, relating to the sources of international law, there had arisen a general principle of law recognized by civilized nations that no one should be punished for acts committed by others. Similarly, international conventions declaring that the taking of hostages was punishable had been concluded in various regional domains.

28. Now the General Assembly, in implementation of Article 13, paragraph 1 a, of the Charter, must carry out the technical task of the progressive development of international criminal law in that connexion. Since Spain was not a member of the Ad Hoc Committee, it wished to take advantage of the consideration of the item in the Sixth Committee in order to congratulate the Federal Republic of Germany on the draft convention it had submitted (A/AC.188/L.3), which constituted a very good basis for debate. His delegation believed that the convention that would be adopted should characterize very clearly the crime of taking of hostages and should be based on models such as the Hague Convention for the Suppression of Unlawful Seizure of Aircraft, of 16 December 1970, the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, of 23 September 1971, and the New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 14 December 1973. The future convention must be based on respect for the purposes and principles of the United Nations, and in particular for the sovereignty and territorial integrity of all States. Its scope should be limited to cases of genuine international significance and to the law of peace, since precise rules already existed for armed conflicts.

29. Formulating a preliminary opinion on the other working papers submitted in the Ad Hoc Committee, his delegation expressed support for the amendments submitted by Algeria and the United Republic of Tanzania (A/AC.188/L.7), France (A/AC.188/L.8), Nicaragua (A/AC.188/L.12) and the Philippines (A/AC.188/L.16). It also felt that the amendments to articles 7 and 10 proposed by France (A/AC.188/L.13) were extremely interesting.

30. The debate in the Ad Hoc Committee had revealed the great importance of the question of the struggle of the national liberation movements. Without calling into question the legitimacy of that struggle, recognized by the General Assembly on various occasions, in particular by resolution 2625 (XXV), which contained the Declaration on Principles of International Law concerning Friendly Relations and



(Mr. Pedauyé, Spain)

Co-operation among States in accordance with the Charter of the United Nations, his delegation considered it necessary to determine the legitimate methods that might be used by such movements. It would not be logical to permit them to commit acts which were prohibited to States participating in armed conflicts. In connexion with that subject, there had been in the Ad Hoc Committee some very constructive suggestions that might make it possible to arrive at a solution at a future session, such as the Mexican proposal concerning the scope of application (A/AC.188/L.6).

31. Spain believed that the Ad Hoc Committee should continue its work, and it had consequently joined in sponsoring draft resolution A/C.6/32/L.10.

32. Mr. LOURENÇO (Portugal) said that when the present item had been placed on the agenda of the thirty-first session of the General Assembly, his delegation had unequivocally supported in the Sixth Committee the proposal contained in the request by the Federal Republic of Germany for the inclusion of the item in the agenda, and it wished to repeat all the arguments it had advanced at that time. Although the Ad Hoc Committee had been unable to complete its work, particularly because of lack of time, its report (A/32/39) gave the impression that important progress had been made and that continuation of its work would enable it to fulfil its mandate. Accordingly, the Ad Hoc Committee should be invited to continue its work in 1978, without making a detailed analysis at present of the views expressed in that Committee. For those reasons, Portugal had joined in sponsoring draft resolution A/C.6/32/L.10.

The meeting rose at 12.30 p.m.