

suggested that, to accelerate the Committee's work, items 91, 92 and 93 should be regarded as having been officially introduced.

4. Mr. ZEMANEK (Austria) asked whether the Chairman was proposing to convene two meetings of the Committee each day. If so, smaller delegations would find it difficult to keep pace with work on several items simultaneously.

5. The CHAIRMAN said that such was not his intention; informal consultations often yielded better results than meetings of the Committee.

6. Mr. KOLESNIK (Union of Soviet Socialist Republics) felt that it would facilitate the work of the Committee if deadlines were established for the submission of amendments, without, of course, precluding the submission of amendments arising from discussion of an article.

7. The CHAIRMAN agreed, though at the same time

he felt that the Committee's procedures must be flexible, and he was not prepared to suggest specific deadlines for the submission of amendments until he had consulted all delegations.

8. Mr. SETTE CÂMARA (Brazil) said that as article 1 of the draft articles on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons dealt with definitions, the Committee should be prepared to return to it after the examination of the remaining articles. Views regarding definitions might change as a result.

9. The CHAIRMAN agreed; the initial consideration of article 1 would in any case take the form of a first reading. If there was no objection, he would take it that the Committee agreed to begin consideration of that article at its next meeting.

It was so decided.

The meeting rose at 4.20 p.m.

1409th meeting

Friday, 5 October 1973, at 11 a.m.

Chairman: Mr. Sergio GONZÁLEZ GÁLVEZ (Mexico).

A/C.6/SR.1409

AGENDA ITEM 90

Draft convention on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons (*continued*) (A/8710/Rev.1, chap. III; A/9127 and Add.1; A/C.6/421, A/C.6/L.898, A/C.6/L.902)

1. The CHAIRMAN said that as a result of consultations between the various regional groups, the request by Switzerland (A/C.6/421) to take part without the right to vote in the work of the Committee when it considered agenda item 90 had been accepted unanimously, it being understood that Switzerland was not entitled to submit formal proposals or amendments during the discussion of the item. In the absence of any objection, he would consider the Swiss request as accepted subject to the conditions mentioned.

It was so decided.

2. Mr. MONNIER (Observer for Switzerland), speaking at the Chairman's invitation, thanked the Committee for permitting Switzerland to take part in its discussions on agenda item 90. The question was of concern not merely to individual States, but to the entire international community. As an accrediting State, Switzerland maintained a network of diplomatic and consular representatives all over the world. As a host State housing the headquarters of many international organizations, including the United Nations office at Geneva, Switzerland received on its territory large numbers of people entitled to the international protection envisaged in the convention under discussion. It was therefore of concern both to Switzerland and to all the other countries that the Swiss Government should make its voice heard in the debate and contribute sincerely and constructively to it.

3. Mr. ESSONGUE (Gabon) said he had asked for the floor in support of the Swiss request, but it was no longer necessary for him to speak.

4. Mr. SANDERS (Guyana), supported by Mr. SAM (Ghana) and Mr. ABDUL-AZIZ (Libyan Arab Republic) proposed that the meeting be suspended to enable the representatives to listen to the address which General Gowon, Head of the Federal Military Government of Nigeria, was to make in the General Assembly.

It was so decided.

The meeting was suspended at 11.10 a.m., and resumed at 11.50 a.m.

5. The CHAIRMAN said that he was now in a position to inform the Committee of the composition of the Drafting Committee set up to deal with the draft convention under consideration. It would consist of the following 15 countries: Bulgaria, Colombia, France, Germany (Federal Republic of), India, Japan, Kenya, Mali, Mexico, Sweden, Tunisia, the Union of Soviet Socialist Republics, the United Arab Emirates, the United Kingdom and the United States of America. He suggested that in order to take advantage of the experience of the present officers of the Committee, Mr. Šahović (Yugoslavia) might act as Chairman of the Drafting Committee.

6. In the absence of any objection, he would consider that the Sixth Committee agreed that the Drafting Committee should consist of the above-mentioned 15 delegations, with Mr. Šahović as Chairman.

It was so decided.

7. The CHAIRMAN next invited the members of the Sixth Committee to examine article by article the draft articles on the prevention and punishment of crimes against diplomatic agents and other internationally

protected persons, as given in chapter III of document A/8710/Rev.1. He thought it might be useful if the Secretariat were to make available to delegations the text of the Convention to Prevent and Punish the Acts of Terrorism taking the Form of Crimes against Persons and related Extortion that are of International Significance adopted by the Organization of American States in February 1971¹ and used by the International Law Commission in its work. He also mentioned the existence of a draft produced by the Uruguayan delegation.²

8. Sir Vincent EVANS (United Kingdom) commended the speed and efficiency with which the Commission had responded to the request made by the General Assembly in resolution 2780 (XXVI). Article 1 of the draft defined a number of terms used in the text. It was not a mere definition, however, since the article actually determined the scope, *ratione personae*, of the draft. It was particularly desirable to delimit the scope with precision, since once they were adopted, the provisions of the draft would affect the penal law of the States parties to the final instrument.

9. The United Kingdom delegation had therefore proposed three amendments, reproduced in document A/C.6/L.902 and affecting paragraph 1 (b) of that article. His delegation agreed with the scope of the draft as indicated in article 1 and paragraphs 66 and 67 of the Commission's report on the work of its twenty-fourth session (A/8710/Rev.1). But as several Governments had already pointed out in their written observations (see A/9127 and Add.1), subparagraph (b) was not altogether free from ambiguity. The three amendments proposed were aimed at greater clarity. They were independent of one another.

10. First, to make the text more explicit, it was proposed to add after the word "entitled" the following words: "at the time when and in the place where a crime against him or his premises is committed". That was merely a matter of drafting, and the actual words it was proposed to insert were taken from paragraph (6) of the Commission's commentary on article 1.

11. In paragraph (8) of the commentary, the Commission explained that the expression "general international law" was designed to take into account developments of international law, and it cited as examples the questions of special missions and representation of States in their relations with international organizations. It seemed to his delegation, however, that the international legal obligations of States towards internationally protected persons derived either from customary international law or from international agreement. Hence the words "general international law" might be replaced by "customary international law". There were in fact a number of precedents for that. For example, Article 38 (1) b of the Statute of the International Court of Justice mentioned "international custom", and the preamble to the Vienna Convention on Diplomatic Relations³ and that of the Vienna Convention on Consular Relations⁴ referred to "customary

international law". It would be preferable for the International Law Commission's draft to use that expression also.

12. The phrase "to special protection for or because of the performance of functions on behalf of his State or international organization" appeared to be somewhat imprecise. The notion of special protection might be clarified by substituting for that phrase the words "to special protection from any attack on his person, freedom or dignity". This formula was to be found in the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, the Convention on Special Missions,⁵ and the draft articles on the representation of States in their relations with international organizations.⁶ That wording seemed the most appropriate to achieve the end in view.

13. Adoption of the three amendments would make it possible to delimit the scope of the draft, *ratione personae*, clearly and precisely.

14. Mr. JOUANNEAU (France) said that while his Government deplored attacks against diplomatic agents and was prepared to co-operate in the study of means of putting an end to them, it was hesitant regarding the organization of specific international co-operation in the punishment of crimes committed against a particular category of persons. France was nevertheless resolved to collaborate fully in the work of the Sixth Committee on the item under consideration, and in the deliberations of the drafting committee, of which it was a member.

15. With regard to article 1 of the draft, there were two very important elements to be clarified. The first was to specify from what point onwards a person could be regarded as enjoying special protection. The question might be asked whether the aim was to establish personal inviolability, and if so whether it should be total or confined to acts inherent in the person's functions, or again whether it should be recognized that a person came within the proposed definition from the moment he or she enjoyed any kind of immunity. With regard to the time and place of effective enjoyment of special protection, it should be pointed out that the protection was relative. In the case of a diplomatic agent, for example, the question arose whether it was sufficient that the person concerned had a privileged status vis-à-vis the accrediting State or a particular group of States for all the other States parties to the convention to be obliged to apply its provisions to him if he was a victim of an attack against his person or property. There was also the case of international officials only enjoying privileges and immunities vis-à-vis the States parties to the conventions instituting those privileges. The idea that for certain agents of States and international organizations protection *erga omnes* existed introduced into international law a new idea to which it was difficult to subscribe without more detailed study.

16. Mr. YASSEEN (Iraq) said that regardless of the basic attitude of the Iraqi delegation towards the draft articles, he would certainly give it his close attention, especially on the technical side. The amendments

¹ Organization of American States, *Official Records*, OEA/Ser. A/17.

² A/C.6/L.822.

³ United Nations, *Treaty Series*, vol. 500, No. 7310, p. 95.

⁴ *Ibid.*, vol. 596, No. 8368, p. 261.

⁵ General Assembly resolution 2530 (XXIV), annex.

⁶ See *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 10*, chap. II, sect. D.

submitted by the United Kingdom delegation and designed to clarify the text called for some comments. He too felt that it would be desirable to specify the time and place where protection applied, but he did not feel that it was a matter that should be spelt out in the article on definitions, which in itself was not a detailed provision. With regard to the second amendment, the Commission's text itself struck him as unhappily worded. Instead of the phrase "pursuant to general international law or an international agreement", it would be preferable to say "pursuant to international law", since the term "international law" embraced agreements as well. Furthermore, the word "general" excluded regional international law, which in the case in point should be taken into consideration. The United Kingdom amendment only partly solved the problem, since reference to customary international law and agreements left aside the general principles of international law. It would be better to state quite simply "who is entitled to special protection pursuant to international law". That would cover all aspects, including regional international law. With regard to the third amendment, he felt that the details proposed in explanation of the expression "special protection" were out of place in the article. The International Law Commission was right to speak of "special" protection, since every foreigner had the right to protection, and the question in the present instance was the special protection granted in the light of the person's functions. By going into detail, there was a danger of distorting the article.

17. Mr. YAÑEZ-BARNUEVO (Spain) said that his Government considered it essential to put an end to crimes committed against internationally protected persons, which was the very basis of the draft under consideration. However, the proposed convention would be robbed of any real effectiveness unless it mustered wide support. Hence the Spanish delegation felt that use should be made of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague in 1970, and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal in 1971, which had been generally accepted.

18. With regard to article 1 of the draft, his delegation had proposed three amendments, the text of which,

although not yet distributed,⁷ already appeared in the observations communicated by Spain and reproduced in the report of the Secretary-General (A/9127).

19. The first of the amendments would add to subparagraph (a) the words "or a Minister for Foreign Affairs" after the words "Head of Government". The purpose of that provision was to cater for the case of a Foreign Minister, who had a quite specific status in international relations, one recognized by general international law, as was confirmed by the Vienna Convention on the Law of Treaties of 1969⁸ and the Convention on Special Missions. The second amendment would replace subparagraph (b) by the following two subparagraphs:

"(b) Any official of a State who is entitled, pursuant to international law, to special protection, as well as members of his family forming part of his household.

"(c) Any official of an international organization who is entitled, pursuant to international law, to special protection for the performance of his functions, as well as members of his family forming part of his household."

20. The new subparagraphs properly distinguished between the situation of national officials and that of officials of international organizations, since in the case of the former there was no point in mentioning the performance of their functions. Furthermore, the expression "international law" was sufficient, as the representative of Iraq had just pointed out, since it included international agreements. Finally, the words "forming part of his household" were the words used in the Vienna Convention on Diplomatic Relations.

21. The third amendment consisted in replacing the word "*culpable*" by the word "*delincuente*" in the Spanish text of paragraph 2, to conform to the wording of the Conventions of The Hague and Montreal.

22. The Spanish delegation pointed out that the amendments it had just submitted were not incompatible with those of the United Kingdom, and it might be desirable for the Committee to examine them at the same time.

The meeting rose at 1.05 p.m.

⁷ Subsequently circulated as document A/C.6/L.903.

⁸ See United Nations Conference on the Law of Treaties, 1968 and 1969, *Official Records* (United Nations publication, Sales No.: E.70.V.5), document A/CONF 39/27, p. 287.

1410th meeting

Monday, 8 October 1973, at 10.55 a.m.

Chairman: Mr. Sergio GONZÁLEZ GÁLVEZ (Mexico).

A/C.6/SR.1410

AGENDA ITEM 90

Draft convention on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons (*continued*) (A/8710/Rev.1, Chap. III; A/9127 and Add.1, A/C.6/421, A/C.6/L.898, A/C.6/L.902-905)

1. Mr. ŠAHOVIĆ (Yugoslavia) said that his Government attached great importance to the adoption of the draft articles on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons as set forth in document A/8710/Rev.1, chapter III. Its general views on the draft were well known, having been stated during the