1422nd meeting

Wednesday, 24 October 1973, at 11 a.m.

Chairman: Mr. Sergio GONZÁLEZ GÁLVEZ (Mexico).

A/C.6/SR.1422

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.902-910/Rev.1, A/C.6/L.911, A/C.6/L.912/Rev.1, A/C.6/L.913 A/C.6/L.917 A/C.6/L.919, A/C.6/L.928-938)

1. Mr. SANCHEZ GAVITO (Mexico) referred to the statements made at the previous meeting by several representatives on the proposal in document A/C.6/L.928 and on behalf of the sponsors of that document replied to the question asked by the representative of Austria. He said that, in the view of the sponsors, the proposed new article to be added to the draft articles in document A/8710/Rev.1, chapter III, would only have an effect in regard to the States parties to treaties relating to asylum. He recalled, incidentally, that when the representative of Colombia had spoken of the situation of the sponsors parties to treaties on the right of asylum who could not surrender the right to determine the nature of the act charged against the alleged offender, he had used the expression "in the context of their mutual relations", thus clearly referring to the relations between the States parties to treaties on the right of asylum. He had also said that the decision to make such a proposal had not been due to any desire to evade the convention now being prepared. No doubt must be left on that point.

2. Consultations between the sponsors made it clear that they were mainly concerned with the argument put forward by the representative of Sweden to the effect that the introduction of the new article might sow doubts as to the intention of States which were not parties to treaties on the right of asylum. Actually, the proposed text did not mention the case of such States, and it might be deduced on the contrary that States which like Sweden had traditionally adopted a liberal attitude on that point would agree by acceding to the convention to limit their freedom in that direction. The Swedish representative had pointed out that there was no safeguard clause either in the Convention of The Hague or in the Convention of Montreal. The Governments of the sponsoring countries were fully aware of those difficulties. However, the absence from the above-mentioned Conventions of provisions parallel to those proposed in document A/C.6/L.928 was due simply and solely to the fact that when those instruments were drawn up, the delegations of the Latin American States had considered that the peculiar nature of the acts in question and the particular structure of the Conventions made it unnecessary to introduce a clause providing that States parties to treaties on the right of asylum would retain the option of determining the nature of those acts in the event of a request for asylum. The institution of the right of asylum and its corollary, namely the right to determine the nature of the acts, were deeply rooted in Latin American history and in the law governing international relations among the countries of that part of the world.

3. The observer for Switzerland had pointed out that while it was justified to vindicate a regional institution within the regional organ concerned, for example the Organization of American States, the same was not true within an organization of universal character. It should be pointed out that the opinion in question came from a country which for well-known reasons adopted a position *sui generis* in regard to international bodies. A universal organization functioned precisely by the support it had from the regional groups comprising it. It was therefore essential to bear in mind the difficulties and peculiarities of the States members of those different groups and to try to settle problems in a spirit of conciliation such as the Latin American States had certainly always shown.

4. The representative of Brazil had given a clear account of the position of his Government, which differed from that of the sponsors. The latter were fully prepared to study the proposal he had formulated with a view to producing a text acceptable to the Brazilian delegation. In the same spirit, they welcomed the statements made by the representatives of Austria, Zaire, Cuba, India, Sweden and Iraq.

5. The main obstacle to the proposed new article seemed to be the opinion expressed by the representative of the United Kingdom and echoed by the delegations of Italy and Greece. The sponsors hoped to be able to convince those delegations that their amendment would not impair the effectiveness of the convention. They were particularly alive to the fact that the United Kingdom had recognized that the countries in question had never invoked the right of asylum as a means of protecting offenders charged under ordinary law.

6. The sponsors felt above all that there must be a spirit of conciliation, and they asked the Chairman to make arrangements for contacts with the representatives of the regional groups with a view to a solution acceptable to all.

7. Mr. GOERNER (German Democratic Republic) said that the various amendments proposed to article 12 showed that opinions were very much divided as to the ways and means of settling disputes arising out of the application and interpretation of the convention. That was due essentially to the different situations that might give rise to possible disputes, and it might be useful to fix one or more forms of settlement.

8. The amendment submitted by the United States in document A/C.6/L.938 combined alternatives A and B as proposed by the Commission and would include in the new convention both those procedures, which incidentally appeared in the list in Article 33 of the Charter of the United Nations. However, his delegation was doubtful whether it would be useful to restrict the free choice of the parties to a dispute because of the various situations which could arise from the application of the convention under consideration.

9. He would like to know whether the proposed structure of articles 12, 13 and 14, as given in document A/C.6/L.938, meant that the possibility of submitting a "written declaration" provided for in article 13—which was patterned after alternative B of the Commission's draft—would be confined to arbitration procedure, in other words whether the possibility of making a reservation would be excluded in respect of conciliation as provided for in article 12 of the United States amendment.

10. It did not seem in any way necessary that the convention should provide for a special procedure for dispute settlement. Some delegations had pointed out that the Conventions of The Hague and Montreal envisaged certain forms of dispute settlement, but it must not be forgotten that those Conventions dealt exclusively with offences against one special means of transport, whereas the present articles were much wider and envisaged offences of various types. It would therefore be better to leave the parties to a particular dispute free to choose whatever means they considered appropriate to resolve their conflict as rapidly as possible. For that reason his delegation was in favour of the amendments of the Soviet Union (see A/C.6/L.906) and Czechoslovakia (see A/C.6/L.910/Rev.1) which would delete article 12 of the draft.

11. Mr. TSUTSUMI (Japan) said that his delegation was basically in favour of introducing into the convention some guidance in concrete form on the means of dispute settlement, but its position was flexible as to the actual content of the provisions. The basic aim should be to achieve a form of dispute settlement acceptable to the majority.

12. His delegation was ready to accept the compulsory jurisdiction of the International Court of Justice for disputes arising out of the application of the convention under consideration. But considering present circumstances, its own preference was for alternative B of the Commission's draft, which should satisfy the needs of States which could not accept compulsory arrangements.

13. The convention under consideration was a phase of counter-measures against terrorism which endangered international relations, and hence its purpose was very close to that of the Conventions of The Hague and Montreal, which should be taken as precedent rather than the Vienna Conventions on diplomatic relations and on consular relations whose object was different.

14. At first sight, the United States amendment appeared to be basically in line with alternative B of the Commission's article 12. But his delegation feared that article 13 as proposed by the United States might have the effect of weakening the provisions of that version. It was prepared to support the United States amendment if it proved to reflect the wishes of the majority.

15. Mr. CASTRÉN (Finland) said that his country had always sought to promote the settlement of disputes by peaceful means. Because of its importance, it was essential that the convention now being prepared should embody appropriate provisions for the settlement of any problems of application and interpretation which the articles might create. The Commission's draft proposed a choice between a conciliation procedure and an arbitration procedure. The Finnish delegation preferred the second; however, the option of making a reservation as laid down in the text might reduce its practical value.

16. The amendment of the United States neatly combined the two alternatives drawn up by the Commission and provided both for a conciliation procedure and for an arbitration procedure. If a vote were taken on that amendment, his delegation would vote in favour.

17. Mr. JOUANNEAU (France) said it would be desirable to include in the draft convention a clause concerning the settlement of disputes.

18. His delegation preferred the first of the two alternatives proposed by the Commission. A conciliation procedure was preferable to a judicial or arbitration procedure in cases where circumstantial elements played a decisive role. The procedure should be as simple as possible and it therefore seemed that it would be rendered unnecessarily cumbersome by providing that the conciliation commission should be competent to ask any organ that was authorized by or in accordance with the Charter of the United Nations to request an advisory opinion from the International Court of Justice to make such a request. Furthermore, he thought it would be inadvisable to state that the conciliation commission could extend the six months' time-limit available to it to obtain an agreement among the parties; it should at least do so with the agreement of those parties. Lastly, his delegation was not sure that paragraph 7 of alternative A was useful. It would seem better to adopt a special system for the settlement of disputes in connexion with the application of the convention, in view of the very special character of the cases involved.

19. Mr. ABRAHAMSON (Denmark) said that his delegation, too, considered it desirable to include in the convention a provision relating to procedures for the settlement of disputes. His delegation would even be prepared to accept the compulsory jurisdiction of the International Court of Justice. It was, however, aware that such a position would not be acceptable to all the countries that would wish to accede to the future instrument.

20. The arbitration clause included in alternative B of the Commission's draft was almost identical with the corresponding articles of the Conventions of The Hague and Montreal and would seem to serve the desired purpose perfectly. Consequently, his delegation could vote in favour of that text.

21. The United States amendment (A/C.6/L.938) offered two procedural alternatives for the settlement of disputes. The proposed text could probably be simplified to a certain extent, but might correspond to the wishes of a wider group of countries. Consequently, if the United States amendment was preferred by a majority of members of the Committee, his delegation would like it to be referred to the Drafting Committee for study in detail.

22. Mr. BHATTY (Pakistan) said that the Commission had been right to include in its draft provisions relating to the settlement of disputes. His delegation preferred the optional arbitration solution set out in alternative B of the Commission's draft, paragraph 2 of which should eliminate all difficulties since it provided for a reservation clause.

23. His delegation would have no difficulty in accepting the United States amendment although it did not seem likely to overcome the opposition of delegations which wished to delete article 12. That amendment should perhaps be sent to the Drafting Committee with a view to preparing a formulation that would command the widest possible support.

24. Mr. BUTOW (Federal Republic of Germany) said that like the representatives of Japan, Denmark and Pakistan he favoured alternative B of the Commission's text. He could, however, accept the United States amendment if it were supported by a majority.

25. Mr. THEODORAKOPOULOS (Greece) welcomed the choice between two alternatives for the settlement of disputes offered by the Commission and said that he preferred alternative B, although the two alternatives could, perhaps, be combined, as in the United States amendment. With regard to paragraph 3 of alternative B, he wondered whether the Commission should not have designated the Secretary-General as depositary of the envisaged Convention, a course which it seemed to have excluded by using the words "depositary Governments".

26. Mr. SANCHEZ GAVITO (Mexico) said he favoured alternative B for reasons similar to those outlined by the Japanese delegation. It would, however, be advantageous to consider the possibility of providing for conciliation efforts prior to arbitration, and his delegation would certainly study the United States amendment carefully in the hope that it would be able to support them.

27. Mr. RESTREPO PIEDRAHITA (Colombia) said that in order to reduce the elements of legal uncertainty it was important to provide for a procedure for the settlement of the disputes which would inevitably arise from the interpretation and application of the envisaged convention. The Commission had been right to offer a choice between two possible solutions, but in the final analysis his delegation would support the United States amendment, which in its view best served the desired purpose.

28. Mr. MIRAS (Turkey) said that provision should be made for the settlement of disputes arising from the envisaged convention, and he preferred alternative B of the Commission's draft. However, the United States amendment constituted a compromise solution which his delegation could support if it was favoured by a majority.

29. Mr. MONNIER (Observer for Switzerland) recalled his country's traditional position of supporting the compulsory settlement of any disputes to which the application of international conventions might give rise. However, the international community was divided on that point. Efforts should therefore be directed towards finding a solution which would be acceptable to the greatest possible number of States. That was what the Commission, in a realistic spirit, had done by proposing two draft articles as alternatives. Switzerland preferred alternative B, although it regretted the inclusion of the reservation clause in paragraph 2. The United States amendment nevertheless offered an attractive compromise and deserved to be supported in that it filled a gap by making the intervention of a third party mandatory, should a dispute arise. Whatever solution was finally adopted, he felt it should form an integral part of the text of the convention, as in the Conventions of The Hague and Montreal.

30. Mr. VAN BRUSSELEN (Belgium) shared the view expressed by the Japanese delegation. It nevertheless felt that the United States amendment, which could be regarded as a compromise text, was worthy of consideration and would have no difficulty in supporting it if it were favoured by a majority.

31. Mrs. ULYANOVA (Ukrainian Soviet Socialist Republic) stressed the importance of the principle of State sovereignty, which was one of the fundamental bases of international law. Article 12 disregarded the fact that in international law there were already procedures for the settlement of disputes between States, both in application of the Charter and by virtue of agreements between the parties concerned. Furthermore, several of the draft articles referred to the internal law of States. The principle of sovereignty and respect for the different legal systems made it necessary for States to be free to choose the manner in which agreement would be reached in the case of a dispute. Her delegation therefore supported the amendments submitted by the Soviet Union (see A/C.6/L.906) and Czechoslovakia (see A/C.6/L.910/Rev.1).

32. Mr. YASSEEN (Iraq) observed that the question of the settlement of disputes arising from the interpretation or application of conventions was a very general one. Some felt that States should be left free to choose one of the peaceful means of settlement mentioned in Article 33 of the Charter, but there had been a tendency to include a specific provision on that subject in conventions. Almost all the codification conventions contained such a provision, either in the form of an article or in the form of an optional protocol of signature. The alternative versions of article 12 proposed by the Commission involved respectively compulsory recourse to conciliation, whose results were nevertheless optional, and recourse to arbitration or the International Court of Justice.

33. The conciliation procedure did not lend itself to the solution of the highly juridical disputes liable to arise from the application or interpretation of the convention under consideration. Indeed, it was not a

matter of conciliation in the true sense of the word, but rather a matter of legal expertise. The conciliation procedure had been included in the Vienna Convention on the Law of Treaties simply as a compromise. There was no doubt that arbitration and judicial settlement were the best ways of settling legal disputes. It was questionable, however, whether the international community would be ready to accept them if they were included in the draft convention; they might even impede its adoption. The solution of preparing an optional protocol of signature was a wise one. For example, Iraq, which had not accepted the general clause concerning the compulsory jurisdiction of the International Court of Justice, had nevertheless ratified the Optional Protocol to the Vienna Convention on Diplomatic Relations.

34. The system provided for in alternative B of article 12 was quite acceptable: recourse to arbitration or the jurisdiction of the International Court of Justice was combined, in paragraph 2, with the possibility for each State to declare that it did not consider itself bound by that article. That solution should satisfy both those who supported a progressive solution and those who wished to safeguard the freedom of States. For that reason his delegation favoured alternative B.

35. With regard to paragraph 3 of alternative A, he suggested that the Chairman of the conciliation commission should be appointed by the President of the International Court of Justice and not by the Secretary-General. The President of the International Court of Justice seemed to be in a better position to appoint a jurist qualified to study highly juridical questions.

36. Mr. ŠAHOVIĆ (Yugoslavia) considered that in view of the nature of the convention under consideration some provision should be made in that instrument for the settlement of any disputes arising from its application or interpretation. Article 2 and a number of other provisions might give rise to such disputes.

37. His delegation favoured alternative B of the Commission's draft, for it offered certain means of settling disputes, while preserving the freedom of States.

38. The United States amendment had the merit of offering a broader range of solutions; his delegation would adopt a flexible attitude towards it.

39. Mr. BAILEY (Australia) believed it was essential that the convention should include a provision on the peaceful settlement of disputes. Consequently, he could not subscribe to the USSR or the Czechoslovak amendment, both of which would delete article 12 entirely. Of the two alternatives proposed for that provision by the Commission, he preferred alternative B but would be prepared to support the United States amendment if it won majority support.

40. Mr. ABDALLAH (Tunisia) saw a shortcoming in alternative B of the draft in that it provided for direct recourse to arbitration, where negotiation had failed, without any prior conciliation procedure. The general trend in modern times was towards the settlement of disputes by recourse of law rather than force. Consequently, every means of peaceful settlement, ranging from negotiations through conciliation and arbitration to judicial settlement, should be made available to States. In that regard the United States amendment was more complete and should facilitate the adoption of a solution by the Committee. However, he suggested that the reference to the Secretary-General should be replaced by a reference to the President of the International Court of Justice, in paragraph 3 of the article 12 proposed by the United States, as the representative of Iraq proposed for alternative A.

41. Likewise, he suggested that the words "or conciliation" should be added after "negotiation" in paragraph 1 of the article 13 proposed by that delegation.

42. Mr. NYAMDO (Mongolia) was in favour of deleting article 12, as it was too detailed and complicated. The procedure it proposed for the settlement of disputes would require a great deal of time, whereas the crimes covered by the draft convention required immediate action by States. He therefore supported the USSR and the Czechoslovak amendments. He could not support the United States amendment as it did not differ in substance from the two alternatives proposed by the Commission.

43. Mr. CEAUSU (Romania) said that his delegation preferred alternative A of the draft, since conciliation was a procedure which required the parties to a dispute to reach an agreement, while recourse to arbitration or judicial settlement would have the effect of exacerbating their dispute. It was clear that direct negotiation was the main—and the normal—way of settling international disputes. It was only where negotiation failed that the conciliation procedure should come into play. An advantage of that procedure was that it gave the States concerned full latitude to accept or reject the solutions offered by the conciliation commission.

44. The conciliation procedure should be organized along lines that reflected its ultimate purpose, which was to promote agreement between the parties to the dispute. Paragraph 3 of alternative A empowered the Secretary-General to appoint as members of the conciliation commission persons who had not received the express approval of one or the other of the parties to the dispute, and that provision might jeopardize the operation of the conciliation procedure. It was for that reason that his delegation proposed the deletion of that paragraph.

45. The agreement of the parties, which was indispensable for successful conciliation, must be manifest both at the conclusion of the conciliation commission's work, by the acceptance of its proposals, and during the debates. If a party refused to co-operate with that commission, the conciliation was certainly bound to fail. In that event its work would have to be suspended. The refusal of a State to co-operate might take the form, for example, of the withdrawal of the member of the commission whom it had appointed. Consequently, his delegation proposed the addition of the words "with all its members present" at the end of the first sentence of paragraph 5 in alternative A.

46. Paragraph 6 of alternative A provided that where the effort at conciliation failed the commission should prepare a report including not only its conclusions upon the facts and questions of law but also the

recommendations it had submitted to the parties. In his opinion, the prospect of the publication of such a report might lead the parties to harden their positions during the conciliation proceedings. He therefore suggested that the provisions concerning the content of the commission's report in paragraph 6 of alternative A should be deleted. In any case the commission could give the parties general recommendations and opinions on how the dispute could be settled.

47. Mr. KARASSIMEONOV (Bulgaria) observed that the present discussion merely reflected the debates of the Commission. Some delegations were hostile to any provision on the settlement of disputes while some advocated conciliation procedure and others, arbitration or judicial settlement. The Iraqi representative had rightly cited the example of the Vienna Convention on Diplomatic Relations, which had been supplemented by an optional protocol. The objection by the States which had taken part in the drafting of that Convention to the incorporation in it of machinery for the settlement of disputes was due to the fact that such machinery was not acceptable in respect of questions directly concerning the sovereignty and the domestic legislation of States. His delegation's attitude regarding the article under consideration had been dictated by that precedent.

48. With regard to alternative A, he considered that States should be left free to seek the best means of settling their disputes, in accordance with Article 33 of the Charter. Alternative A combined, in a complicated way, the concepts of compulsory conciliation and optional results. With regard to alternative B, there was no need to recall the position of principle which his delegation had long held concerning compulsory jurisdiction, including that of the International Court of Justice. If a common denominator between Governments had to be found with regard to the settlement of disputes, it could not be supplied either by alternative A or by alternative B. He therefore supported the USSR and the Czechoslovak amendments, for he considered that no provisions dealing with the settlement of disputes should be included in the body of the convention.

49. The United States amendment was, in the last analysis, only an amalgam of the two versions of the Commission and did not seem to be acceptable to the majority of the States.

50. The Iraqi representative had referred to the solution adopted at the time of the drafting of the Vienna Convention on Diplomatic Relations, namely the addition of an optional protocol. While he would not take a definite stand on that solution, he considered that it deserved study by the members of the Committee.

51. Mr. ROSENSTOCK (United States of America), taking account of the suggestions made by the representatives of Iraq and Tunisia, orally revised his delegation's amendment to article 12 (A/C.6/L.938) by substituting the words "President of the International Court of Justice" for the word "Secretary-General" wherever it occurred in paragraph 3 of the new article 12 which it proposed.

52. As to the words "or conciliation" which the Tunisian representative had suggested adding to article 13, paragraph 1, proposed by the United States in the same document, he said that he would take a decision on that point after hearing the views of other delegations.

The meeting rose at 1 p.m.

1423rd meeting

Thursday, 25 October 1973, at 11 a.m.

Chairman : Mr. Sergio GONZÁLEZ GÁLVEZ (Mexico).

A/C.6/SR.1423

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.902-910/Rev.1, A/C.6/L.911, A/C.6/L.912/Rev.1, A/C.6/L.913, A/C.6/L.917, A/C.6/L.919, A/C.6/L.928-939)

1. Mr. WEHRY (Netherlands) said that the United States amendment (A/C.6/L.938) to article 12 of the draft articles in document A/8710/Rev.1, chapter III, were of great interest, although the wording could be improved considerably. His delegation endorsed the basic idea underlying them, namely, to provide four possible channels for the settlement of disputes: negotiation, conciliation, arbitration and submission to the International Court of Justice.

2. His delegation was inclined to favour the suggestion of Tunisia (1422nd meeting), which would provide for the possibility of employing conciliation before resorting to arbitration. In that regard the text would be clearer if the word "subject" in the English version of new article 12, paragraph 1, proposed by the United States was replaced by the word "subjected" and if, in the proposed article 13, paragraph 1, after the words "by negotiation" the following was added: "or, at their option, by conciliation in accordance with the provisions of article 12".

3. On the other hand, his delegation could not support the suggestion of Romania (*ibid.*) concerning paragraph 6 of alternative A of the Commission's draft—reproduced in paragraph 6 of new article 12 proposed by the United States—on deletion of the second sentence of that paragraph relating to the contents of the conciliation commission's report.