

46. He supported the Spanish suggestion for the insertion of two additional preambular paragraphs.

47. Mr. ŠAHOVIĆ (Yugoslavia), Chairman of the Drafting Committee, reiterated that the text still had to have the finishing touches added. The Drafting Committee would take due account of the suggestions made at the current meeting. It had discussed at length the wording of the second preambular paragraph; it had taken the initial text referred to it by the Sixth Committee and made some changes in it; and it felt that the text as at present worded reflected accurately all the general trends which had emerged in the debate in the Sixth Committee. He felt that it would be better not to change the wording of the second preambular paragraph at the present stage. He understood the Thai representative's reasons for making his suggestion but felt that the explanations given by the Guatemalan representative were very pertinent arguments in favour of the text adopted by the Drafting Committee.

48. He agreed with the representative of Spain that the Irish suggestion was fully consonant with that made by Spain at the 1423rd meeting. Although the substance of the Spanish suggestion had been incorporated in article 2, paragraph 3, he could understand the Spanish

representative's reasons for desiring the insertion of a general clause concerning the rules of international law to be observed in cases covered by the convention. The Spanish representative might perhaps submit a formula to serve as a basis for more detailed discussion in the Sixth Committee.

49. Mr. KASEMSRI (Thailand) said that having heard the Chairman of the Drafting Committee explain the wording of the second preambular paragraph, he would not insist on his suggestions concerning that paragraph.

50. Mr. CASTILLO ARRIOLA (Guatemala) asked the Chairman of the Drafting Committee to consider whether it might not be more suitable, in the Spanish text, to replace the words "*al poner*" by the words "*que ponen*". In the Spanish text at least, that should cover the point raised by the representative of Thailand.

51. Mr. SIEV (Ireland), replying to a question asked by the Chairman said that he would submit his proposal in writing² the same afternoon.

The meeting rose at 1 p.m.

² Subsequently circulated as document A/C.6/L.947.

1433rd meeting

Thursday, 8 November 1973, at 3.30 p.m.

Chairman: Mr. Sergio GONZÁLEZ GÁLVEZ (Mexico).

A/C.6/SR.1433

In the absence of the Chairman, Mr. Shitta-Bey (Nigeria), Vice-Chairman, took the Chair.

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, A/C.6/L.903, A/C.6/L.905-910/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/Rev.1, A/C.6/L.920-930, A/C.6/L.932-940, A/C.6/L.943, A/C.6/L.944 and Add.1, A/C.6/L.945-947)

Preamble (concluded)

1. Mr. YAÑEZ-BARNUEVO (Spain), introducing document A/C.6/L.946, containing the two preambular paragraphs which his delegation proposed for addition to the draft articles in document A/8710/Rev.1, chapter III, recalled that at the previous meeting several delegations, including those of Ireland, Greece, USSR and Guatemala, had supported the idea of completing the draft preamble approved by the Drafting Committee (see A/C.6/L.944). Despite their similarity, the two proposed paragraphs related to separate, complementary concepts. The first was designed to provide legal justification for the draft convention, by basing it on existing rules of international law such as those contained in article 29 of the Vienna Convention on

Diplomatic Relations,¹ which related to the protection of diplomatic agents. Although the draft convention did not cover all possible attacks on a diplomatic agent but only serious attacks on his physical integrity and freedom, the general obligation to prevent attacks on his person, freedom and dignity remained. With regard to the second paragraph, the other rules of international law that might be applicable would not be affected in any way by the new convention. He had intentionally not called international law "general" or "customary", since his delegation did not favour either qualification.

2. Mr. SIEV (Ireland), introducing document A/C.6/L.947, which contained the paragraph that his delegation would like to see added to the draft preamble approved by the Drafting Committee, recalled that he had already given his reasons at the previous meeting. He thanked the delegations that had supported his proposal and expressed the hope that the amendment would be submitted to the Drafting Committee for its consideration.

3. Mr. SARACHO (Argentina), referring to the second paragraph of the draft preamble, suggested that the words "because of the representation vested in them" should be inserted between the words "persons" and "create" in order to emphasize the fact that the protection to which such persons were entitled was due to the representation vested in them. In that

¹ United Nations, *Treaty Series*, vol. 500, No. 7310, p. 95.

connexion it should be noted that the fourth preambular paragraph of the Vienna Convention on Diplomatic Relations stated that the purpose of the privileges and immunities of diplomatic agents was not to benefit them but to ensure the efficient performance of the functions of diplomatic missions as representing States.

4. Mr. SCOTT (Jamaica) drew the attention of the representative of Argentina to article 2A, paragraph 1 (c), which contained the same idea.

5. Mr. SARACHO (Argentina) felt that in view of the general nature of the idea it would be better to express it in the preamble rather than in article 2A.

6. Mr. BROMS (Finland) said that he doubted whether the addition proposed by the representative of Argentina could alter the convention in any way from the legal viewpoint.

7. Mr. YANAI (Japan) felt that there was no point in mentioning representation in the second preambular paragraph since the term "internationally protected person" was duly defined in article 1. Moreover, the proposed addition would appreciably limit the scope of the second preambular paragraph, whereas a broad definition was given in article 1, paragraph 1, particularly in subparagraph (b), which included any official or other agent of an international organization.

8. Mr. SARACHO (Argentina) agreed with the Chairman's suggestion that his proposal should be referred to the Drafting Committee and reserved his right to resubmit it to the Sixth Committee.

9. Mr. KOLESNIK (Union of Soviet Socialist Republics) felt that the paragraphs proposed by the Spanish delegation did not fit into the preamble, since it replaced a provision of article 2 in the Drafting Committee's version (A/C.6/L.944/Add.1). The balance which the Drafting Committee had taken great pains to introduce into article 2 should not be upset. At the previous meeting the Irish and Spanish delegations had seemed merely to want to refer in the preamble to the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations; the scope of the Spanish amendment was entirely different.

10. Nor could his delegation support the suggestion of the representative of Argentina. As the representative of Japan had pointed out, the addition of the words he proposed would contradict article 1 and the result would be that officials and other agents of international organizations would not be covered by the convention.

11. The Committee had already spent much time considering the Commission's draft articles, and the Drafting Committee had reached compromise solutions which should be respected. Often, trying to improve things only made them worse. Generally speaking, his delegation considered that the text of the preamble as proposed by the Drafting Committee was satisfactory.

12. Mr. ROSENSTOCK (United States of America) thanked the representative of Argentina for not pressing his proposal. However, if the Committee adopted the preamble now it would not have occasion to reconsider it later.

13. The CHAIRMAN said that if there was no objection to the substance of the preamble and the Committee adopted it, it might still have to be referred to the Drafting Committee to be improved in form. The Committee would then have an opportunity to glance at it one last time.

14. The Chairman then invited the Committee to continue consideration of the amendments to the preamble proposed respectively by Spain (A/C.6/L.946) and Ireland (A/C.6/L.947).

15. Mr. DALTON (United States of America) expressed the hope that the Spanish and Irish delegations would not press their amendments. The first paragraph proposed by the Spanish delegation was not necessary since it duplicated article 2, paragraph 3, in the text proposed by the Drafting Committee (A/C.6/L.944/Add.1). The second paragraph proposed by the Spanish delegation and that proposed by the Irish delegation were likewise unnecessary, since the convention being drafted was not concerned with codification. Besides, the Irish amendment might lead to complications. The Committee could simply indicate in its report to the General Assembly that the new convention would not affect the other applicable rules of international law.

16. Mr. SCOTT (Jamaica) asked the representative of Spain how, within the context of the convention under consideration, a State could guarantee the dignity of a diplomatic agent or other person entitled to international protection.

17. Mr. VEROSTA (Austria) said that his delegation could not accept the second paragraph proposed by the Spanish delegation; it was too general in view of the compromise text proposed by Bolivia (A/C.6/L.943) for the article relating to asylum and adopted by the Sixth Committee at its previous meeting.

18. Mr. YAÑEZ-BARNUEVO (Spain), replying to the representative of Jamaica, recalled that the first paragraph proposed by his delegation was intended to reaffirm the content of article 29 of the Vienna Convention on Diplomatic Relations. The provision crystallized a very old principle of international law which was the basis for the convention under consideration. Since the latter did not cover all aspects of protection referred to in article 29 of the Vienna Convention, care should be taken not to give the impression that it was based on a restrictive interpretation of that article.

19. Referring to the observation by the Soviet representative that the idea contained in the first paragraph proposed by the Spanish delegation was in article 2 of the Drafting Committee's text, he recalled that at the 1423rd meeting his delegation had expressed the hope that the idea would be reflected in the preamble. The Drafting Committee had decided to place it in its article 2. His delegation felt it was essential to reserve the application of the other rules of international law, either in the preamble or in a separate article in order that the reservation should apply to the whole of the convention and not to a specific provision.

20. With regard to the second paragraph proposed in document A/C.6/L.946, he would be prepared to change the wording but urged that the idea contained therein should be reflected in the preamble.

21. The CHAIRMAN put to the vote the first paragraph proposed by Spain in document A/C.6/L.946.

The paragraph was rejected by 28 votes to 22, with 43 abstentions.

22. The CHAIRMAN put to the vote the substance of the second paragraph proposed by Spain in the same document.

23. Mr. GODOY (Paraguay), speaking on a point of order, said that it might first be appropriate to ascertain whether or not the Committee was prepared to make article 2, paragraph 3, as formulated by the Drafting Committee, into a new article.

24. The CHAIRMAN observed that the vote on the second paragraph proposed by Spain had already begun.

That paragraph was rejected by 34 votes to 8, with 53 abstentions.

25. Mr. SIEV (Ireland) pressed for a vote on the paragraph proposed by his delegation, since its scope differed somewhat from that of the second paragraph proposed by Spain.

26. The CHAIRMAN put to the vote the paragraph proposed by Ireland (A/C.6/L.947).

The paragraph was rejected by 32 votes to 16, with 53 abstentions.

27. Mr. KIBRET (Ethiopia) said that his delegation had voted in favour of the amendment of Ireland. It was obvious that, in preparing its draft, the Commission had ignored a number of matters because it considered them to be regulated by customary international law. That was true, for example, of the question of the status of refugees and their right under the rules of customary international law and international treaty law not to be returned to a country from which they had fled out of fear or as a result of threats. In his opinion, the amendment of Ireland could have covered cases of that kind.

28. The CHAIRMAN said that if he heard no objection he would assume that the Committee adopted the text of the preamble suggested by the Drafting Committee (see A/C.6/L.944) as a whole.

It was so decided.

Article 1

29. Mr. ŠAHOVIĆ (Yugoslavia), Chairman of the Drafting Committee, recalled that the Sixth Committee had referred to the Drafting Committee the text of article 1 of the Commission's draft, together with all the amendments thereto. Those amendments included the French amendment to paragraph 1 (b) (A/C.6/L.911), which proposed that the concept of special protection on which the Commission's draft was founded should be replaced by that of the immunity of an internationally protected person from jurisdiction for acts carried out in the performance of his functions. The Drafting Committee had felt that to be a question of substance which lay beyond its competence and had therefore taken no decision on the amendment, while the French delegation had reserved its position on that point.

30. The Drafting Committee had felt that, in order to avoid any ambiguity, it should be made clear that the expression "Head of State" in paragraph 1 (a)

applied to any member of a collegial body performing the functions of a head of State. It had therefore adopted a slightly modified version of the amendments submitted by the Soviet Union and Cyprus (A/C.6/L.905 and A/C.6/L.907). It had also considered that, in accordance with the first of the Spanish amendments (A/C.6/L.903), specific mention in that category of persons should be made in paragraph 1 (a) of the minister for foreign affairs, since he possessed a special status under international law. The Drafting Committee had also inserted the words "or other agent" in the first part of paragraph 1 (b). That addition was needed mainly for the purpose of the English text, since the words "*fonctionnaire*" and "*personnalité officielle*" were rendered in English by the single word "official", as given in article V of the Convention on the Privileges and Immunities of the United Nations.² However, under General Assembly resolution 76 (I), adopted on 7 December 1946, the term "official"—"*fonctionnaire*" in French—referred only to "members of the staff of the United Nations". It had been pointed out to the Drafting Committee that a number of persons had performed high functions for the United Nations without being members of the staff of the Organization. The Drafting Committee had felt it necessary to add the term "agent" so that such persons could still be covered by the future convention. It would also be noted that the International Court of Justice had itself used that expression in its advisory opinion on compensation for damage sustained in the service of the United Nations³ delivered on 11 April 1949.

31. On the other hand, and still on the subject of paragraph 1 (b), the Drafting Committee had adopted the first of the United Kingdom amendments (A/C.6/L.902), and the suggestion by the representative of Iraq (1409th meeting), that the words "general international law or an international agreement" should be replaced by the words "international law".

32. In that connexion, the Drafting Committee pointed out that the expression "international law" should be interpreted in accordance with the meaning given to it in Article 38 of the Statute of the International Court of Justice and that, consequently, it covered international agreements as well as general international law. The Drafting Committee had also adopted the third of the United Kingdom amendments designed to include in the text of subparagraph (b) the words "to special protection from any attack on his person, freedom or dignity". The latter expression was based on article 29 of the Vienna Convention on Diplomatic Relations and on the provisions of other instruments such as the Convention on Special Missions.⁴ It had the advantage of defining the legal nature of the concept of special protection.

33. In accordance with the second of the Spanish amendments, the Drafting Committee had replaced the words "as well as members of his family who are likewise entitled to special protection" at the end of paragraph 1 (b) by the words "as well as members of his

² General Assembly resolution 22A(I).

³ See *Reparation for injuries suffered in the service of the United Nations, Advisory Opinion: I.C.J. Reports 1949, p. 174.*

⁴ General Assembly resolution 2530 (XXIV), annex.

family forming part of his household". The latter formula was to be found in the Vienna Convention on Diplomatic Relations, and in the Vienna Convention on Consular Relations,⁵ the French text of which was admittedly worded slightly differently (*"membre de [sa] famille vivant a son foyer"*). During the discussion on paragraph 1 (b) the question had arisen of the protection, under the convention, of stateless persons or persons performing functions on behalf of a State other than that of which they were nationals. One delegation had expressed reservations on that matter, and the Drafting Committee had felt that it should be referred back to the Sixth Committee.

34. With regard to the definition of the expression "alleged offender", which was dealt with in paragraph 2, the Drafting Committee had been of the opinion that a formula was required that was sufficiently flexible to be applicable under the various systems of national law. For that reason it had preferred the version drawn up by the International Law Commission and had discarded the Argentine amendment (A/C.6/L.909), which was based on legal concepts peculiar to particular systems of national law. One delegation had made reservations on that point.

35. With regard to the style and presentation, the Drafting Committee, following established practice, had replaced the expression "of the present articles" at the beginning of the article by the words "of the present Convention" and had removed the capital letter at the start of each paragraph in the Commission's draft, since the new version of article 1 constituted only a single sentence.

36. After having considered the pertinent amendments the Drafting Committee had adopted the text of article 1 as shown in document A/C.6/L.944.

37. Mr. BESSOU (France), introducing his delegation's amendments (A/C.6/L.945) to document A/C.6/L.944, said that, as regards paragraph 1 (b), the notion of personal inviolability embodied in that provision was not satisfactory to his delegation. That concept was expressly referred to only in articles 37 and 39 of the Vienna Convention on Diplomatic Relations, where it covered the members of the family of a diplomatic agent forming part of his household and administrative staff. By analogy, that principle was applicable to officials of international organizations which had been able to obtain diplomatic treatment for some of their agents. It was doubtful whether it could also be applied to officials on "special missions", whose status in that regard was not clearly regulated by international law, since the Convention on Special Missions had not entered into force. It should also be pointed out that the person of a consul was not inviolable.

38. The proposed criterion was, therefore, arbitrary, since it depended on the goodwill of the States granting the privilege in question. That criterion might prove to be too broad in some States and too restrictive in others, particularly if its effect was that the convention would not apply to persons who should normally have been protected by reason of their functions, but for whom the State or organization in question had not

seen fit to request that privilege. If one of the elements of inviolability of the person, such as immunity from arrest, was taken as the criterion, it would be equally lacking in objectivity; and, indeed, not all agreements provided for that immunity and its extent was variable.

39. The only criterion which was reliable and recognized in all cases that the convention was to cover was that of immunity from prosecution for acts performed in the exercise of official duties. That criterion implied that the individual in question was acting in the name and on behalf of a State or international organization entitled to special status for its agents.

40. Mr. SIEV (Ireland) proposed to replace the expression "international organization" in paragraph 1 (b) by "intergovernmental organization"; paragraph 3 could then be deleted.

41. Mr. KASEMSRI (Thailand) suggested that the words "or his means of transport" should be added after the words "his premises" in paragraph 1 (b) and that a comma should be inserted after the word "him" and the word "or" deleted. It would also be advisable, in order to clarify the text of paragraph 2, to add the adjective "reasonable" before the word "grounds".

42. Mr. ABADA (Algeria) observed that the text of article 1 as contained in document A/C.6/L.944 showed signs of the compromises of which it was a result. His delegation found the wording of paragraph 1, subparagraphs (a) and (b), acceptable. However, it had hoped that the Drafting Committee would base its version of paragraph 2 on the text submitted by Argentina (A/C.6/L.909). In the French version, at least, the definition of an offender given in that paragraph was too vague. The expression "grounds to believe" employed two words unknown in legal language and open to highly subjective interpretation. There was a risk that "grounds to believe" that a person had committed a crime would be found in his ethnic or racial origin, his nationality or the colour of his skin, or in the opinions he had expressed or demonstrated. His delegation was firmly opposed to the wording used in document A/C.6/L.944. It was therefore necessary to find a compromise formula, for which the text proposed by Argentina could serve as a basis. If a compromise proved impossible, his delegation would propose the deletion pure and simple of that paragraph, since there was no obligation to give such a definition of an "alleged offender", a concept which, moreover, was not defined in the Conventions of The Hague or Montreal,⁶ to which many delegations had seen fit to refer.

43. Mr. ABDALLAH (Tunisia) recalled that Tunisia had expressed serious reservations about paragraph 2, which had been sent back to the Drafting Committee together with an amendment by the Argentine delegation (A/C.6/L.909) containing more suitable wording than that proposed by the Commission. Although not all members of the Drafting Committee had approved the Argentine definition, they did all agree that the definition of an alleged offender depended on

⁵ United Nations, *Treaty Series*, vol. 596, No. 8638, p. 261.

⁶ See International Civil Aviation Organization, documents 8920 and 8966, respectively.

the internal law of each country. It was for that reason that the Drafting Committee had decided to retain the Commission's wording, which was vague, imprecise and open to numerous interpretations.

44. He hoped the Committee would not retain the definition contained in article 1, paragraph 2, in document A/C.6/L.944 as it was neither acceptable in law nor sufficiently strict. He firmly supported the position of the Algerian delegation.

45. Mr. HAMMAD (United Arab Emirates) said that it was his delegation which had expressed a reservation in the Drafting Committee concerning article 1 of the draft convention. There did seem to be a need for the future convention to take into account the situation of persons acting on behalf of a State other than that of which they were nationals. That was why his delegation had submitted an oral amendment to article 1, paragraph 1 (b), to the Drafting Committee. In order not to delay the work of the Committee, the amendment had not been a formal one and he had not insisted that the Committee take a decision on it but had reserved his right to raise the question in the Sixth Committee. Many members of the Drafting Committee had expressed their support for the amendment and encouraged his delegation to submit it to the Sixth Committee.

46. The purpose of the proposed amendment had been to insert after the word "State" in subparagraph (b) the words: "Whether he is a national or not of the sending State, provided that he is not a national of either the receiving or the host State".

47. In suggesting that the term "internationally protected person" should include a person acting on behalf of a State of which he was not a national, his delegation was not introducing an anomalous concept, for the suggestion reflected a real situation which was frequently encountered in international relations. There was an undeniable trend among States to employ nationals of third States to represent them. There were many reasons for that, including the lack of trained and highly specialized personnel, the need of the sending State to take advantage of the expertise of certain individuals who were nationals of third States, the lack of financial resources in some developing countries and the existence of special relationships, whether political or economic, between two or more States which resulted in their agreeing to have their interests represented by one person.

48. Two categories of persons would be involved in the application of the term "internationally protected person" to a national of a third State. Firstly, there was the non-national of a sending State accredited to a receiving State. The status of such a person was governed by article 8 of the Vienna Convention on Diplomatic Relations, paragraph 3 of which stated that the receiving State might reserve for itself the right to give its consent, revocable at its discretion, to such an appointment. There did not seem to be any problem about the application of article 1, paragraph 1, of the convention now being drafted to that category of person. However, in view of the growing trend towards such appointments, his delegation felt the discretionary

power conferred on the receiving State left the safety of such a person in some doubt.

49. The second category was that of a non-national of a sending State accredited to an international organization. Generally speaking, it seemed that the term "internationally protected person" was applicable to a representative of a State to an international organization. If that was indeed so, his delegation believed that a national of a third State appointed by a sending State as a diplomatic agent to an international organization, and accepted as such by that organization, should be considered as an "internationally protected person" and, accordingly, enjoy the protection to be provided under the future convention.

50. It was, however, possible that the host State of an international organization might refuse, intentionally or otherwise, to grant diplomatic status to such a person. His delegation believed that the host State did not have the discretion to agree or refuse to grant diplomatic status to such a representative and that that situation was not covered by article 8, paragraph 3, of the Vienna Convention on Diplomatic Relations. However, the question arose of how the future convention could be applied to a person in that category who was the victim of a crime if the host State did not grant him diplomatic status. It was in order to avoid the difficulties to which such a situation could give rise that his delegation had submitted its amendment, which had made it clear that a representative of a sending State who was a national of a third State other than the host State of the international organization in question should be covered by the provisions of the draft convention.

51. Some members of the Sixth Committee had suggested to the delegation of the United Arab Emirates that its aim in submitting its amendment could be equally well attained by the inclusion in the summary record of the meeting at which that question was to be discussed of a statement that such was the Committee's interpretation, which would also be reaffirmed in its report on that particular item.

52. In a spirit of compromise, his delegation had accepted that suggestion, on the understanding that the Sixth Committee would have considered that the term "internationally protected person" appearing in article 1, paragraph 1, concerned a national of a third State appointed by a sending State to an international organization if such a representative or official was accepted by the international organization to which he was appointed, provided that he was not a national of the host State where such an international organization was located. Such a person would therefore be covered by the provisions of the proposed convention.

53. If the Sixth Committee did not accept that solution, his delegation would submit a formal amendment and request that it should be put to the vote.

54. The CHAIRMAN said that, in the absence of any objection, he would take it that the suggestion of the delegation of the United Arab Emirates was accepted.

It was so decided.

55. Mr. SARACHO (Argentina) said that many objections raised with regard to paragraph 2 had not

been taken into consideration and he was unable to endorse the Drafting Committee's decision to keep to the Commission's draft, which was reproduced almost unchanged in document A/C.6/L.944.

56. The word "grounds" was much too vague and might even prove dangerous. In its amendment (A/C.6/L.909) his delegation used the words "sufficient evidence" which seemed much more satisfactory. The legislation of many countries could hardly accommodate the wording of paragraph 2 as it appeared in document A/C.6/L.944, because of its vagueness.

57. If the Committee decided to vote on article 1, his delegation would request a separate vote on paragraph 2, unless the wording was changed. If on the other hand, the Committee decided to send the text of paragraph 2 back to the Drafting Committee and it proved to be impossible to agree on a different wording, his delegation would prefer the omission of any definition of the "alleged offender".

58. Mr. SCOTT (Jamaica) drew attention to the use of capitals in paragraph 1 (a) of the text of document A/C.6/L.944 for the expression "Minister for Foreign Affairs", which therefore seemed to refer to a person with a very precise title. His delegation would prefer the expression "Minister responsible for foreign affairs", without seeming to refer to a specific official title.

59. Mr. SAM (Ghana) reserved his delegation's position on paragraph 2. He wished to revert to the question of terminology when the Committee discussed the title to be given to the convention.

60. Sir Vincent EVANS (United Kingdom) said that a majority of members of the Drafting Committee had been unable to accept the French amendment to paragraph 1 (b) (see A/C.6/L.945), as it would extend the field of application of the convention to several categories of persons to which it was not intended to apply. For example, the convention would then apply to members of visiting foreign armed forces, to technical assistance personnel and to all the staff of international organizations. It could therefore be estimated that at Brussels alone, about 30,000 persons would be covered by the convention. Moreover, as the French amendment did not refer to international law, the convention could also apply to other persons benefiting from immunity under their national law.

61. The expression "Minister for Foreign Affairs", which the representative of Jamaica had suggested should be modified, was already used in codification instruments such as in article 21, paragraph 2, of the Convention on Special Missions, and its interpretation should not give rise to any difficulty, whatever the title of the person exercising the functions in question.

62. Referring to the Thai suggestion that the means of transport should be mentioned in paragraph 1 (b), he explained that the Drafting Committee had completed its work on article 1 before it had dealt with article 2, which was the article where the proposal to add "means of transport" had originally been made.

63. With regard to paragraph 2, most of the members of the Drafting Committee had agreed with the Commission that a definition of the expression "alleged

offender" should appear in the convention. It was important to exclude cases where there were mere allegations against a person. The expression "alleged offender" was used in various parts of the convention in different contexts, depending on how far the investigation following the crime had advanced and it was thus not possible to give a precise definition which would exactly fit all those contexts. Moreover, the Drafting Committee had considered the definition proposed by the Commission to be the one most appropriate to affect beneficially the diversity of national penal systems.

64. Mr. BAILEY (Australia) endorsed the United Kingdom representative's comments on the French amendment. On the other hand, his delegation supported the Irish representative's suggestion that in paragraph 1 (b) "international organization" should be replaced by "intergovernmental organization" and endorsed the comments of the representative of the United Arab Emirates concerning persons working for a State of which they were not nationals. His delegation also supported the suggestion by the representative of Thailand that means of transport should be mentioned in the same subparagraph.

65. Mr. OKOGWU (Nigeria) also supported the Thai suggestion. His delegation did not consider it necessary to add the adjective "reasonable" before the word "grounds". It thought that the French amendment would give rise to additional difficulties.

66. Mr. DALTON (United States of America) was grateful to the representative of the United Arab Emirates for having drawn attention to the situation of officials working for a State of which they were not nationals. On the other hand, the other amendments under consideration did not appear to make appreciable improvements in the Drafting Committee's text.

67. Mr. YANAI (Japan) agreed with the United Kingdom delegation concerning the French amendment. The reference in the text to international law and the idea of special protection based on article 29 of the Vienna Convention on Diplomatic Relations should be maintained. The idea of immunity above all concerned the relations between a person entitled to international protection and the host State, as could be seen in article 31 of the Vienna Convention, and had nothing to do with the essential objective of the proposed convention.

68. His delegation thought that the Drafting Committee should give consideration to the Irish suggestion that the term "international organization" should be replaced by "intergovernmental organization".

69. His delegation considered the Thai suggestion that means of transport should be mentioned in paragraph 1 (b) to be very pertinent.

70. Mr. KRISPIS (Greece) said that he understood the expression "Minister for Foreign Affairs" in paragraph 1 (a) to mean any person exercising such functions, e.g. a Vice-Minister for Foreign Affairs, an Under-Secretary of State for Foreign Affairs, etc.

71. His delegation supported the Irish suggestion that the term "intergovernmental organization" in paragraph 1 (b) should be substituted for "international organization" and that of Thailand that means of

transport should be mentioned in the same subparagraph.

72. The Greek delegation endorsed the views of the United Kingdom delegation concerning the French amendment.

73. Mr. YAÑEZ-BARNUEVO (Spain) considered that the expression "Minister for Foreign Affairs" would give rise to no difficulties of interpretation because it was a general term intended to apply to a person with well-defined functions. The expressions "Head of State" and "Head of Government", which had given rise to no difficulties, referred to persons whose official title also varied in different countries.

74. With regard to the French amendment, his delegation associated itself with the arguments put forward by the representative of the United Kingdom.

75. Turning to the suggestion of Thailand to the effect that means of transport should be mentioned in paragraph 1 (b), he said that, while his delegation agreed with the substance of the proposal, it would prefer, for considerations of form, that that subparagraph refer to the crimes mentioned in article 2, which covered means of transport (see A/C.6/L.944/Add.1).

76. Referring to the Spanish text of paragraph 1 (b), his delegation pointed out for the information of the Drafting Committee that the words "*conforme al derecho internacional*" could be placed after the words "*tenga derecho*" in order to bring the Spanish version into line with the English and French versions.

77. In paragraph 2, in connexion with the question of whether the adjective "reasonable" should be added before the word "grounds", as proposed by the representative of Thailand, he pointed out that that nuance could not be expressed precisely in the French and Spanish versions. That paragraph, which had no equivalent either in the Convention of The Hague or in the Convention of Montreal, might also be deleted as had been suggested by the representative of Algeria.

78. He said that his delegation would have no difficulty in accepting the suggestion of Ireland to the effect that the words "international organization" should be replaced by "intergovernmental organization".

79. Mr. MAÏGA (Mali) said that paragraph 2 was too imprecise and, because of its subjective nature, it could lead to abuse of authority. It would be preferable to adopt the Argentine formula (A/C.6/L.909), or else to delete the paragraph.

80. He associated himself with the remarks made by the representative of the United Arab Emirates concerning persons in the service of a State of which they were not nationals.

81. Mr. OULARÉ (Guinea) said that he fully supported the suggestion of the representative of Algeria for the deletion of paragraph 2, which his delegation thought vague and dangerous.

82. Mr. ALVAREZ TABIO (Cuba) said that he found the wording of paragraph 2, which was imprecise and subjective in nature, particularly unfortunate. In such matters, facts should be the primary considerations. Extradition treaties signed by Cuba required a precise enumeration of the facts of the case as evidence

supporting any request for extradition. The formula proposed by Argentina, which referred to "sufficient evidence", also did not appear to remove all possibility of practical difficulties. On the other hand, deleting the paragraph would only complicate the problem. His delegation wished to suggest that the words "there are grounds to believe" should be replaced by the words "there is evidence for reasonable belief".

83. Mr. POLANCO (Colombia) recalled that presumption of guilt was a restrictive concept in criminal law which implied specific links of causality. In that connexion, the Argentine amendment (A/C.6/L.909) was unquestionably an improvement over paragraph 2 as prepared by the Drafting Committee. If the Argentine amendment was not adopted, the text should be referred back to the Drafting Committee.

84. Mr. ROSENNE (Israel) supported the French amendment and endorsed the comments made by the representative of the United Arab Emirates concerning persons in the service of a State of which they were not nationals. He also agreed with the suggestion of Ireland to the effect that the phrase "international organization" should be replaced by "intergovernmental organization".

85. Mr. ŠAHOVIĆ (Yugoslavia), Chairman of the Drafting Committee, stressed that the Drafting Committee had already studied with the greatest care the problems which had been raised in connexion with article 1, and that it had done its best to draw up a text in the light of all the amendments and comments which had been submitted. The Drafting Committee would hardly be in a better position to reconsider the text if the text was referred back to it without specific guidelines designed to help achieve a compromise solution.

86. Mr. CHEIKH (Tunisia) said that, while he understood the arguments of the United Kingdom representative in support of paragraph 2, he still believed that the wording did not solve the problem, and stressed that his Government would have difficulty in ratifying the convention if that paragraph was retained.

87. The CHAIRMAN put to the vote the various amendments and suggestions relating to article 1 as drafted by the Drafting Committee.

The French amendment (see A/C.6/L.945) was rejected by 73 votes to 5, with 10 abstentions.

The oral amendment of Ireland (see para. 40 above) was adopted by 77 votes to 7, with 11 abstentions.

88. The CHAIRMAN said that, if there was no objection, he would take it that the Committee agreed to adopt the suggestion of the representative of Thailand to the effect that, in paragraph 1 (b), the words "or his means of transport" should be added after the words "his premises", and the word "or" replaced by a comma.

It was so decided.

The oral amendment of Algeria and Tunisia (see paras. 42 and 44 above) was rejected by 52 votes to 28, with 18 abstentions.

The Argentine amendment (A/C.6/L.909) was adopted by 44 votes to 35, with 17 abstentions.

Article 1 of the draft of the Drafting Committee (see A/C.6/L.944) was adopted as amended by 88 votes to none, with 11 abstentions.

89. The CHAIRMAN said he felt that the deadline for the submission of amendments to articles 2-12, as adopted by the Drafting Committee, should be

set at 1 p.m. on Friday, 9 November.

90. Mr. WEHRY (Netherlands), supported by Mr. SIEV (Ireland), suggested that the deadline should be set at 1 p.m. on Monday, 12 November.

It was so decided.

The meeting rose at 6.45 p.m.

1434th meeting

Friday, 9 November 1973, at 11 a.m.

Chairman: Mr. Sergio GONZÁLEZ GÁLVEZ (Mexico).

A/C.6/SR.1434

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, A/C.6/L.903, A/C.6/L.905-910/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/Rev.1, A/C.6/L.928-930, A/C.6/L.932-940, A/C.6/L.943, A/C.6/L.944 and Add.1, A/C.6/L.945-948)

Article 2

1. Mr. ŠAHOVIĆ (Yugoslavia), Chairman of the Drafting Committee, introducing document A/C.6/L.944/Add.1, which contained the text of article 2 adopted by the Drafting Committee, said that that Committee had considered all the amendments to the text of article 2 of the draft articles in document A/8710/Rev.1, chapter III, referred to it by the Sixth Committee and the oral suggestions made in the course of the debate. The results were embodied in the document. The first part of paragraph 1 reproduced without any change the corresponding provision of article 2 of the International Law Commission. Several members of the Drafting Committee had expressed reservations concerning the words "regardless of motive", but the deletion of those words had not been endorsed and the question was referred back to the Sixth Committee.

2. With regard to paragraph 1 (*a*), the Drafting Committee had felt that it would be preferable to delete the word "violent", which might be interpreted as excluding from the scope of article 2 offences such as poisoning, which could be committed without any act of violence. It had also seemed advisable to refer expressly in that subparagraph to the more serious crimes, namely, murder and kidnapping. The Drafting Committee had reworded the text accordingly, taking as a basis the amendments of Argentina (A/C.6/L.919/Rev.1) and of Belgium, Spain and Thailand (A/C.6/L.937). In view of the first of the amendments of the Soviet Union (A/C.6/L.906), some members of the Drafting Committee had felt that paragraph 1 (*a*) should also make reference to attacks upon the dignity of internationally protected persons and had therefore proposed the insertion of the words "or dignity" after the word "liberty". That proposal had met with opposition from other members, and it had therefore been agreed

by way of compromise that the new paragraph 3 contained in document A/C.6/L.944/Add.1 should be added to article 2. The last part of that text was based on article 29 of the Vienna Convention on Diplomatic Relations.¹ The adoption of the new paragraph 3 had made redundant the Spanish amendment (A/C.6/L.946) to insert two new paragraphs at the end of the preamble.

3. In paragraph 1 (*b*), the Drafting Committee had added to the Commission's text a reference to means of transport, as proposed by Argentina (A/C.6/L.919/Rev.1) and by Belgium, Spain and Thailand (A/C.6/L.937). It had made no change to subparagraphs (*c*), (*d*) and (*e*) or to the final part of paragraph 1. The words "whether the commission of the crime occurs within or outside of its territory" in the Commission's text had already been deleted by the Sixth Committee (1424th meeting) when it adopted the amendments proposed by Japan, the Netherlands and the Philippines (A/C.6/L.912/Rev.1).

4. Some reservations had been expressed concerning paragraph 1 as a whole, and several members of the Drafting Committee had supported the Sudanese suggestion to add at the end of the introductory part of paragraph 1 the words "unless the offence is committed for reasons which are not related to the status of the internationally protected person". The Committee had reworded paragraph 2 so as to take account of the Argentine amendment involving that paragraph (see A/C.6/L.919/Rev.1). He recalled that the Sixth Committee, when adopting article 2A, had deleted paragraph 3 of the Commission's text. Finally, two delegations had expressed reservations concerning the drafting of article 2 as a whole.

5. Mr. GODOY (Paraguay) said that in principle his delegation supported the third of the Spanish amendments (see A/C.6/L.913) that article 2, paragraph 3, with some drafting changes, should constitute a separate article. Since the Spanish representative had not insisted on that amendment, Paraguay would not request separate consideration of that question.

6. The Drafting Committee might make some improvements in the wording of the article. He suggested informally that in paragraph 3 the words "those and" might be inserted before the word "other" and that the word "person" before "freedom or dignity" might

¹ United Nations, *Treaty Series*, vol. 500, No.7310, p.95.