

1436th meeting

Monday, 12 November 1973, at 3.30 p.m.

Chairman: Mr. Sergio GONZALEZ GALVEZ (Mexico)

A/C.6/SR.1436

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.944/Add.1, A/C.6/L.945-951, A/C.6/L.953-955).

1. The CHAIRMAN announced that Democratic Yemen, Mauritania, the Syrian Arab Republic, Togo and the Upper Volta should be added to the list of sponsors of document A/C.6/L.951.

Article 2A (continued)

2. The CHAIRMAN reminded members of the Committee that they had decided at the 1433rd meeting that the time-limit for the submission of amendments to articles 2-12 of the draft articles in document A/8710/Rev.1, chapter III, in the form recommended by the Drafting Committee (A/C.6/L.944 and Add.1) should be 1 p.m. on 12 November.

3. The Committee had before it in particular a proposal of the delegation of Argentina made at the 1435th meeting, as orally modified by the delegation of Paraguay at the same meeting, reproduced in document A/C.6/L.955. The Argentine delegation had agreed, in a spirit of conciliation, that the text proposed by it should merely replace article 2A, paragraph 1, recommended by the Drafting Committee, so that subparagraphs (a), (b) and (c) of the text proposed by the Drafting Committee would remain as they stood. If the Committee adopted that amendment, the Drafting Committee would have to prepare a final text of the article so as to link that amendment to subparagraphs (a), (b) and (c), using a formula similar to that of "in the following cases:" which appeared in document A/C.6/L.944.

4. Mr. KRISPIS (Greece) said he would like the words "its procedural law" in the Argentine amendment to be replaced with the words "its national law" because it was often difficult to decide whether a rule was really procedural.

5. The CHAIRMAN put to the vote the Argentine amendment proposed at the 1435th meeting (para.16).

The amendment was rejected by 41 votes to 29, with 30 abstentions.

6. The CHAIRMAN then put to the vote the first amendment of the Netherlands and the amendment of Tunisia, proposed at the 1435th meeting (paras. 26 and 20, respectively), both reproduced in document A/C.6/L.955.

The first amendment of the Netherlands was rejected by 25 votes to 18, with 57 abstentions.

The amendment of Tunisia was adopted by 50 votes to 20, with 35 abstentions.

7. Mr. KOLESNIK (Union of Soviet Socialist Republics) said that he would like to know the exact scope of the amendment just adopted by the Committee, because it appeared that no connexion was made between the person who committed the crime and the person to be punished. Furthermore, the amendment adopted did not use the expression "on behalf of that State" which appeared in the text of the Drafting Committee. It appeared that its wording could be improved.

8. The CHAIRMAN recalled that the Tunisian delegation had stated that it had no objection to adding the words "on behalf of that State" to its amendment. Furthermore, it was understood that the Drafting Committee would have to revise paragraph 1 as amended in order to bring the text into line.

9. Mr. STEEL (United Kingdom), Mr. APRIL (Canada) and Mr. BESSOU (France) explained that their delegations had voted against the Tunisian amendment because the expression "on behalf of that State" did not appear therein. If the Drafting Committee decided to add those words to the text just adopted, their delegations would reconsider their position regarding the amendment.

10. Mr. KOLESNIK (Union of Soviet Socialist Republics) explained that his delegation had not voted for the Tunisian amendment because it did not understand the meaning of the paragraph without the words "on behalf of that State". If those words were added to the text adopted, his delegation could accept it.

11. Mr. REDONDO (Costa Rica) withdrew the amendment proposed at the 1435th meeting, reproduced in document (A/C.6/L.955).

12. The CHAIRMAN invited members of the Committee to consider the second amendment of the Netherlands, proposed at the 1435th meeting.

13. Following an exchange of views in which Mr. REDONDO (Costa Rica), Mr. YANEZ-BARNUEVO (Spain), Mr. ALVAREZ TABIO (Cuba), Mr. VAN BRUSSELEN (Belgium), Mr. BONDIOLI OSIO (Italy) and the CHAIRMAN took part, Mr. WEHRY (Netherlands) stated that his delegation's amendment meant that a State would not have jurisdiction, and would therefore not be obliged to take legal action, unless it received a request for extradition from any one of the States referred to in article 2A, paragraph 1. His delegation had, moreover, submitted an amendment to article 6 (A/C.6/L.954) to bring it into line with article 2A, if its second amendment was adopted by the Committee. However, his delegation would like other delegations to have sufficient time to study that proposal

and felt that it would be useful, if other delegations agreed, to postpone a decision on the matter.

It was so decided.

Article 3

14. Mr. ŠAHOVIĆ (Yugoslavia), Chairman of the Drafting Committee, said that the Drafting Committee had inserted the word "particularly" before the word "by" at the end of the first part of article 3 in order to stress, as proposed by Czechoslovakia (see A/C.6/L.910/Rev.1), that subparagraphs (a) and (b) of that article were not restrictive.

15. During the discussion in the Drafting Committee, the Federal Republic of Germany had withdrawn its proposal to add after "States Party shall" the words, "in accordance with international and national law," (see A/C.6/L.917) and the Committee had not therefore had to take a decision thereon. However, it had adopted another proposal by the Federal Republic of Germany to insert in subparagraph (a) the words "all practicable" after the word "taking" (*ibid.*).

16. The Drafting Committee had been informed of the difficulty arising from the fact that the expression "in other territories" in the text of subparagraph (a) of the Commission's draft had been rendered in Russian by the words "in the territory of other States" and in Spanish by the phrase "in [the territory] of others". The Drafting Committee had chosen the following formula in order to bring the various versions into line: "within or outside of their territories".

17. In subparagraph (b), the Drafting Committee had replaced the words "the taking of administrative measures" with the phrase "the taking of administrative and other measures as appropriate", in accordance with the amendments submitted by the USSR (see A/C.6/L.906) and the Federal Republic of Germany (see A/C.6/L.917). One delegation had expressed reservations concerning the words "and other".

18. The Drafting Committee had also considered another amendment proposed by the Federal Republic of Germany (*ibid.*), to add a further paragraph to article 3. That amendment had been accompanied by suggestions from the Romanian and Guatemalan delegations. After a long discussion, and with reservations on the part of some members, the Drafting Committee had adopted a revised version of the amendment proposed by the Federal Republic of Germany which extended the scope of the information to be provided. Further, since article 3 was devoted entirely to the prevention of crimes, the Drafting Committee had felt that the new paragraph was out of place in article 3, and had made it article 4, paragraph 2. Two delegations had expressed reservations on the new paragraph in article 4.

19. Mr. BESSOU (France) said that he would like the Committee to take a decision on the amendment to article 3 proposed by his delegation in document A/C.6/L.945, so that the French version of the text could be brought into line with the other versions. It appeared that the Drafting Committee would have before it in the future texts which the Committee had adopted and which it could not therefore alter.

20. The CHAIRMAN put to the vote the French amendment to article 3 (see A/C.6/L.945).

The amendment was rejected by 20 votes to 12, with 72 abstentions.

21. Mr. KASEMSRI (Thailand) noted that the Drafting Committee had altered the Commission's text by adding the word "particularly" at the end of the introductory part and inserting the words "all practicable" after the word "taking", in subparagraph (a). Those changes appeared to be detrimental to the meaning that the Commission had intended to give to the text. According to paragraph (2) of the Commission's commentary on article 3 (see A/8710/Rev.1, p.96) subparagraph (a) "expressly refers to the obligation of every State party to take preventive measures when the crimes in preparation are intended to be committed in its own territory". He feared that the Drafting Committee's text might open the door to possible interference in the internal affairs of a State. He therefore suggested that the Drafting Committee replace the words "in their respective territories" in subparagraph (a) with the words "in their own territories".

22. Mr. ABADA (Algeria) stressed that his delegation had serious reservations regarding article 3, because Algeria was not in a position to accept the obligations provided for therein. However, his delegation would abstain in the voting on that article and would wait until a decision was taken on the amendment of his and other countries (A/C.6/L.951). If the latter was adopted, it could reconsider its position.

23. The CHAIRMAN put to the vote article 3 as adopted by the Drafting Committee.

Article 3 was adopted by 73 votes to none, with 35 abstentions.

24. Mr. REDONDO (Costa Rica) said that, in his view, article 3 appeared to impose a legal obligation on States and that was why he had voted in favour of it after opposing the French amendment.

25. Mr. FALL (Senegal) said that he had not participated in the vote. He was waiting to see what decision the Committee would take on amendment A/C.6/L.951.

26. Mr. CASTILLO ARRIOLA (Guatemala) said that he had voted in favour of article 3, on the understanding that the co-operation provided for therein must be carried out in accordance with the principle of the sovereign equality of States, which excluded any interference in their internal affairs.

Article 4

27. Mr. ŠAHOVIĆ (Yugoslavia), Chairman of the Drafting Committee, pointed out that article 4, paragraph 1, as adopted by the Drafting Committee used the text of the Commission's draft article 4, replacing the words "States Party" with the words "States concerned", in referring to the States to which information should be communicated. In so doing, the Drafting Committee had taken into account the United Kingdom amendment (A/C.6/L.929) and several oral suggestions. Moreover, it had felt that only a limited number of States parties could effectively take part in the search for the alleged offender, and that consequently it was useless to provide that information should be communicated to all States parties. Furthermore, the pos-

sibility that a State which was not a party to the convention might participate in the search for the alleged offender should not be excluded. In that case, such a State should receive the relevant information. The Committee had not accepted a Brazilian suggestion that information should be communicated to international organizations because the article, according to paragraph (1) of the Commission's commentary on it, was to serve as a means for "effectively implementing the obligations established therein", but an international organization had no means of ensuring that they were implemented.

28. Article 4, paragraph 2, was based on an amendment by the Federal Republic of Germany (see A/C.6/L.917) which the Drafting Committee had adopted with some changes.

29. Mr. BESSOU (France), introduced an amendment to article 4, paragraph 2, (see A/C.6/L.945) and said that it was intended to take account of the fact that many States which observed the principles of the independence of the judiciary and the secrecy of the preliminary examination would find it impossible to communicate the information requested "without delay". It would, moreover, be a mistake to suppose that the problem could be solved by the use of the word "possible" in the Drafting Committee's text to qualify the words "the fullest information".

30. Mr. SCOTT (Jamaica) recalled that, in document A/C.6/L.949, he had proposed the deletion of the word "other" in the last part of paragraph 2 on the grounds that it was superfluous.

31. Mr. KAN (Singapore), introducing his delegation's amendment to article 4, paragraph 1, (see A/C.6/L.950), said that it was designed to overcome three types of difficulty. Where paragraph 1 provided that a State party was to communicate information to "all other States concerned", consideration should be given in the first place to the problem which arose where the State in question did not have diplomatic relations with one of the States concerned, which might cause it not to communicate the information in question. Secondly, the obligation to communicate the information to a number of States would unquestionably place too heavy a burden on small countries which did not have the material means of implementing it, and that would compromise the speed called for in that connexion. That was the reason why his delegation had proposed the replacement of the obligation to communicate the information to all other States concerned by the obligation to transmit it to the Secretary-General of the United Nations, who would thereupon inform the States concerned.

32. Mr. RESTREPO PIEDRAHITA (Colombia), introducing his delegation's amendment to article 4, paragraph 2, (A/C.6/L.953), recalled that the representative of the Federal Republic of Germany had submitted to the Drafting Committee an amendment which allowed a choice of two possible solutions. Only after a lengthy debate had the Drafting Committee adopted the first alternative as paragraph 2 of its text—despite reservations expressed by France and Colombia. Within the Drafting Committee, however, the Mexican representative had pointed out the difficulties which the

wording of the paragraph would present for States exposed to political, economic or social conflicts, for which requests for information from other States might represent interference in their internal affairs—a situation which would run counter to the efforts to make the convention effective. The Colombian delegation had therefore decided to submit its amendment reproducing the second alternative originally proposed by the representative of the Federal Republic of Germany, tempering the obligations of the State providing the information.

33. Mr. BRACKLO (Federal Republic of Germany) said that he was aware of the difficulties caused for a number of delegations by the amendment proposed by his own delegation in the Drafting Committee. The latter, however, had made the original amendment more flexible by adding, in the text of paragraph 2 which it had adopted, the adjective "possible" to the words "the fullest information". Some of the objections raised, therefore, were scarcely convincing and he could not agree that the text should refer to the internal legislation of States. On the other hand, he would have no difficulty in supporting the Colombian amendment if it attracted majority support.

34. Mr. SANCHEZ GAVITO (Mexico) said that he had been most impressed by the reasons given by the Singaporean representative for supporting the amendment to article 4, paragraph 1, which he had submitted. However, to render it more readily acceptable he suggested inserting in the text, in place of the phrase proposed by Singapore, the words "directly or through the Secretary-General of the United Nations".

35. He would willingly support the Colombian amendment if the remaining members of the Drafting Committee, which had reached a consensus in favour of the paragraph 2 proposed, were not opposed to it. He nevertheless suggested that, in that amendment, the words "shall transmit it" should be replaced by "shall endeavour to transmit it".

36. Mr. SAM (Ghana) supported the Singaporean amendment as modified by the suggestion of the Mexican representative.

37. He felt that the Colombian amendment would improve paragraph 2 as proposed by the Drafting Committee. The modification suggested by the representative of Mexico to the Colombian amendment was acceptable.

38. His delegation could not, however, support the French amendment which would certainly give rise to difficulties of interpretation.

39. Mr. KAN (Singapore) thanked the Mexican and Ghanaian representatives for their support of his amendment. He did not feel that the modification proposed orally by Mexico overcame the difficulty which could arise where a State which was to transmit information had no diplomatic relations with one of the States concerned because it could then choose not to transmit the information to the Secretary-General and to transmit it directly to all the other States concerned with the exception of the State with which it did not have diplomatic relations.

40. Mr. RESTREPO PIEDRAHITA (Colombia) thanked the Mexican representative for his support of the Colombian amendment. He agreed to the incorporation of the Mexican oral modification in the Colombian amendment.

41. Mr. REDONDO (Costa Rica) supported the Mexican suggestion to modify the Singaporean amendment to paragraph 1. Without that modification his delegation could not support the Singaporean amendment, which excluded the possibility of communicating facts and pertinent information directly to the States concerned.

42. With regard to paragraph 2, he felt that an effective legal obligation should be imposed on States. The Colombian amendment in that connexion was satisfactory because it changed the choice offered in the Drafting Committee's text into an obligation. The Mexican suggestion would weaken that obligation excessively.

43. Mr. CASTILLO ARRIOLA (Guatemala) supported the Mexican suggestion for the provision of an alternative in paragraph 1. The possibility of transmitting information to the Secretary-General would afford a solution in cases where there were no diplomatic relations.

44. With regard to paragraph 2, he recalled that his delegation at the 1417th meeting had suggested a modification to the amendment of the Federal Republic of Germany, which had probably been transmitted to the Drafting Committee. His delegation was ready to support the Colombian amendment, as modified by Mexico although if the delegations which had achieved a compromise in the Drafting Committee felt that the Colombian amendment was unacceptable, his delegation would agree to the text of paragraph 2 proposed by the Drafting Committee.

45. Mr. BESSOU (France) said that the new paragraph 2 proposed by Colombia did not overcome all the misgivings of his delegation, which was anxious to bind administrative authorities by a strict obligation, subject to the limits of their competence. From the standpoint of substance, the Colombian amendment was nevertheless closer to the views of his delegation than the text proposed by the Drafting Committee. The French amendment to that paragraph (see A/C.6/L.945) was therefore applicable to the text proposed for paragraph 2 by the Colombian delegation. The French amendment involved adding after the words "transmit it" in the Colombian text the words "in the conditions provided for in its legislation".

46. Mr. FALL (Senegal) unreservedly supported the French amendment, which safeguarded two principles considered essential in Senegal, namely the separation of powers and the secrecy of the preliminary examination.

47. He supported the Singaporean amendment to paragraph 1, which was advantageous in that it involved recourse to the Secretary-General, a course which could be useful in cases where agents of international organizations were victims of the crimes covered by the draft convention.

48. He could not support the Colombian amendment unless it took account of the misgivings expressed by other delegations, notably that of France.

49. Mr. KOLESNIK (Union of Soviet Socialist Republics) pointed out that, according to paragraph 2 as prepared by the Drafting Committee, the initiative for the collection of information lay with the State on whose behalf the victim of the crime had been exercising his functions. The Colombian amendment, on the other hand, approached the question from a different angle by imposing obligations on all States parties, which he considered pointless.

50. The Singaporean amendment to paragraph 1 provided for a system whereby the Secretary-General would circulate information. Such a system would entail considerable bureaucratic complications and his delegation preferred the text proposed by the Drafting Committee.

51. Mr. BAILEY (Australia) supported the Singaporean amendment, as modified by the Mexican delegation. He also supported the Colombian amendment to paragraph 2 and the Mexican suggestion concerning that paragraph. On the other hand, he could not accept the French amendment, which he considered inappropriate.

52. Mr. MONTENEGRO (Nicaragua) said that his delegation would vote in favour of the Colombian amendment to paragraph 2 and the Singaporean amendment to paragraph 1, provided that the latter was modified as proposed by the Mexican delegation.

53. Mr. SANCHEZ GAVITO (Mexico) said that his delegation wished to press for the adoption of his proposal to modify the Singaporean amendment to paragraph 1.

54. With regard to paragraph 2, although his delegation preferred the Colombian amendment, it would vote in favour of the text proposed by the Drafting Committee since it represented a consensus of that Committee.

55. The CHAIRMAN invited the Mexican and Singaporean delegations to consult each other with a view to agreeing on a single text for the amendment.

56. Mr. KAN (Singapore) said he believed that it should be possible to reconcile his delegation's amendment with the Mexican suggestion; however, the latter left a loop-hole open, and the matter could be settled by the Drafting Committee.

57. The CHAIRMAN put to the vote the Singaporean amendment to article 4, paragraph 1 (A/C.6/L.950), with the understanding that the Drafting Committee would take into account the Mexican representative's oral suggestion of a modification to that amendment.

The amendment was adopted by 66 votes to 13, with 25 abstentions.

58. The CHAIRMAN put to the vote the Colombian amendment to article 4, paragraph 2 (A/C.6/L.953), as orally modified by the representative of Mexico.

The amendment was adopted by 35 votes to 17, with 55 abstentions.

59. The CHAIRMAN put to the vote the French amendment to article 4, paragraph 2 (A/C.6/L.945),

as orally modified by the representative of France to apply to the Colombian amendment.

The amendment was adopted by 64 votes to 13, with 32 abstentions.

60. The CHAIRMAN pointed out that the Jamaican amendment to paragraph 2 (A/C.6/L.949) had become inapplicable. He put article 4 as a whole, as amended, to the vote.

Article 4 as a whole, as amended, was adopted by 60 votes to none, with 49 abstentions.

Article 5

61. Mr. ŠAHOVIĆ (Yugoslavia), Chairman of the Drafting Committee, said that in using the phrase "Upon being satisfied that the circumstances so warrant" at the beginning of article 5, paragraph 1, the Drafting Committee had followed the texts of the Conventions of The Hague and Montreal. Most members of the Drafting Committee had believed that without that specification, the obligation imposed on the State party concerned would be too absolute and would not permit that State to take into consideration certain factors of the utmost importance, such as the threat posed by the alleged offender to the lives of his victims. That provision had prompted some reservations.

62. In accordance with the amendment of the Soviet Union (see A/C.6/L.906), the Drafting Committee had decided to add to paragraph 1 (b) a reference to the State in whose territory the alleged offender, if he was a stateless person, permanently resided. It had also considered it necessary to include the State on whose behalf the victim exercised his functions among the States to which the measures referred to in the first sentence of paragraph 1 were notified.

63. Both in paragraph 1 and in paragraph 2, the Drafting Committee had thought it preferable to use the expression "without delay", which was used in article 36 of the Vienna Convention on Consular Relations.¹ It had divided the second sentence of paragraph 1 into four subparagraphs in order to make the article easier to read.

64. Paragraph 2 had been modified in such a way as to enable the alleged offender, if he was a stateless person, to communicate with any State which was willing to protect his rights. Lastly, the Drafting Committee had inserted the adjective "*competente*" after the word "*representante*" in the Spanish text, since an equivalent adjective appeared in the French, English and Russian texts.

65. Mr. SCOTT (Jamaica), introducing his delegation's amendment to article 5 (see A/C.6/L.949), said that, in view of the Sixth Committee's decision (1433rd meeting) to replace the expression "international organization" with the expression "intergovernmental organization" in article 1, paragraph 1 (b), his amendment should read as follows: "(e) the intergovernmental organization of which the internationally protected person concerned is an agent". That amendment was justified by the need to notify intergovernmental organizations too of the measures in question, since

staff members or agents of intergovernmental organizations might be victims of the crimes referred to in the convention.

66. Mr. KAN (Singapore), after introducing his delegation's amendment to article 5, paragraph 1 (see A/C.6/L.950), said that he agreed to the Drafting Committee's envisaging the possibility of taking into account the Mexican suggestion concerning the amendment of Singapore to article 4, paragraph 1, in the drafting of that provision. His delegation had no intention of denying any State the option of notifying direct to the States concerned the measures it took.

67. Mr. YAÑEZ-BARNUEVO (Spain) recalled that when the Sixth Committee had considered articles 5 and 8, several delegations had pointed out that those provisions were the only ones conferring rights on individuals and not on States. In particular, article 5, paragraph 2, stipulated that "Any person ... shall be entitled ...". Since the draft convention under consideration related primarily to the rights and obligations of States, it would have been desirable to modify article 5, paragraph 2, and article 8 accordingly.

68. Mr. CHAILA (Zambia) endorsed the comments of the representative of Spain. He observed, furthermore, that it would be very difficult for some developing countries, such as his own, to ensure the implementation of article 5 in its current form. Unless the wording of that provision was changed, his delegation would have to vote against it or abstain in the voting.

69. Mr. ŠAHOVIĆ (Yugoslavia), Chairman of the Drafting Committee, said that the Drafting Committee had discussed at length the question raised by the representative of Spain, with a view to finding an acceptable solution. In view of the draft article of the Commission and the relevant commentary, the Drafting Committee had felt that the draft convention should contain provisions for safeguarding the rights of alleged offenders. It had considered it necessary to take account of that aspect of human rights; it had not attempted to change the wording of articles 5 and 8 so as to emphasize the obligations of States. The Drafting Committee had also considered the possibility of combining into a single provision the rights conferred on individuals in articles 5 and 8, but it had concluded that those articles related to different cases which should be settled separately. Article 5 related only to the right of communication, whereas article 8 was much broader in scope.

70. Mr. CHAILA (Zambia) emphasized the need to take account of different legal systems. The aim of the draft convention was not to protect alleged offenders but to combat crimes.

71. Mr. ALVAREZ TABIO (Cuba) pointed out that article 5, paragraph 1, contained the words "the State Party ... shall take the appropriate measures ..."; it would therefore be logical to have paragraph 2 as well refer to the State as the one which "shall take the appropriate measures... to guarantee to any person" the right to communicate with the nearest appropriate representative.

72. The CHAIRMAN put to the vote the Jamaican amendment to article 5 (see A/C.6/L.949).

¹ United Nations, *Treaty Series*, vol. 596, No. 8638, p. 261.

73. Mrs. ULYANOVA (Ukrainian Soviet Socialist Republic) said that, in her view, it was not desirable to adopt the Jamaican amendment to add a subparagraph.

The amendment was adopted by 58 votes to 8, with 34 abstentions.

74. The CHAIRMAN reminded the Committee that it had before it an amendment of Singapore to article 5 (see A/C.6/L.950) and a suggestion of the Mexican delegation concerning that amendment.

75. If he heard no objection, he would take it that the Sixth Committee adopted the Singaporean amendment,

with the understanding that the Drafting Committee would take into account the suggestion expressed by the Mexican delegation.

It was so decided.

76. The CHAIRMAN put to the vote article 5 as a whole, as amended.

Article 5 as a whole, as amended, was adopted by 60 votes to none, with 44 abstentions.

The meeting rose at 6.30 p.m.

1437th meeting

Tuesday, 13 November 1973, at 11 a.m.

Chairman: Mr. Sergio GONZALEZ GALVEZ (Mexico)

A/C.6/SR.1437

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.6/912/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.944 and Add.1, A/C.6/L.945-951, A/C.6/L.953-955]

Article 2A (concluded)

1. The CHAIRMAN reminded the Committee that a decision was still pending on the second amendment submitted by the Netherlands at the 1435th meeting (para.28) to article 2A recommended by the Drafting Committee (see A/C.6/L.944), for inclusion in the draft articles in document A/8710/Rev.1, chapter III, which amendment was reproduced in document A/C.6/L.955. After putting the Netherlands amendment to the vote, the Committee would proceed to article 6.

2. Mr. WEHRY (Netherlands) said he wished to explain further his country's position on its second amendment to article 2A. In every event of the type covered by the draft convention, a primary responsibility rested with the three categories of States most directly concerned, namely the State where the crime was committed; the State of which the alleged offender was a national; and the sending State of the victim. It was the responsibility of the State primarily concerned to request extradition if it had sufficient evidence. If the State where the alleged offender was found should decide not to grant extradition, the convention would then require it to proceed with prosecution. However, if that State did not receive a request for extradition from any State in the three aforementioned categories, there was no immediate reason for it to proceed with prosecution. The amendment was designed to provide for such cases.

3. His delegation had also submitted an amendment to article 6 (A/C.6/L.954) which dealt with the matter

in even more precise terms. It would be willing to consider leaving article 2A unchanged, since the amendment to article 6 would make it quite clear that if the State where the alleged offender was found did not receive a request for extradition within three months following the dispatch of notifications, it would not be required to keep the alleged offender in custody unless it knew that a request for extradition would be forthcoming.

4. He would not press for a vote on his delegation's amendment to article 2A, provided that its amendment to article 6 was put to the vote.

5. The CHAIRMAN thanked the representative of the Netherlands for his spirit of co-operation. He then called for a vote on article 2A, as amended at the 1436th meeting.

At the request of the representative of France, a separate vote was taken on each paragraph.

Paragraph 1, as amended, was adopted by 59 votes to none, with 26 abstentions.

Paragraph 2 was adopted by 53 votes to none, with 33 abstentions.

Paragraph 3 was adopted by 62 votes to none, with 29 abstentions.

Article 2A as a whole, as amended, was adopted by 58 votes to none, with 34 abstentions.

Article 6

6. Mr. ŠAHOVIC (Yugoslavia), Chairman of the Drafting Committee, said that the Drafting Committee had considered one amendment to article 6, as well as the suggestions that had been made during the general debate. It had then approved the Commission's article 6 without change.

7. Mr. SCOTT (Jamaica) said that his delegation's amendment to article 6 (see A/C.6/L.949) proposed that the words "without exception whatsoever" be deleted as being too rigid. For example, the case might arise where the alleged offender was also an internationally protected person. In such a case, it would be very difficult for a State to take proceedings against