



**REPORT**  
**OF THE *AD HOC* COMMITTEE**  
**ON THE DRAFTING**  
**OF AN INTERNATIONAL CONVENTION**  
**AGAINST THE TAKING OF HOSTAGES**

**GENERAL ASSEMBLY**

OFFICIAL RECORDS: THIRTY-SECOND SESSION

SUPPLEMENT No. 39 (A/32/39)

**UNITED NATIONS**





**REPORT**  
**OF THE *AD HOC* COMMITTEE**  
**ON THE DRAFTING**  
**OF AN INTERNATIONAL CONVENTION**  
**AGAINST THE TAKING OF HOSTAGES**

**GENERAL ASSEMBLY**

OFFICIAL RECORDS: THIRTY-SECOND SESSION

SUPPLEMENT No. 39 (A/32/39)

**UNITED NATIONS**

New York, 1977

CONTENTS (continued)

|   | <u>Page</u> |
|---|-------------|
| J. Working paper submitted by Nicaragua (A/AC.188/L.12) concerning article 4 of the working paper submitted by the Federal Republic of Germany (A/AC.188/L.3) . . . . .                     | 112         |
| K. Working paper submitted by France (A/AC.188/L.13) concerning the working paper submitted by the Federal Republic of Germany (A/AC.188/L.3) . . . . .                                     | 113         |
| L. Working paper submitted by the Netherlands (A/AC.188/L.14) concerning the working paper submitted by the Federal Republic of Germany (A/AC.188/L.3) . . . . .                            | 114         |
| M. Working paper submitted by the Philippines (A/AC.188/L.16) concerning article 3, paragraph 3, of the working paper submitted by the Federal Republic of Germany (A/AC.188/L.3) . . . . . | 114         |



REPORT OF THE AD HOC COMMITTEE ON THE DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE TAKING OF HOSTAGES

1. At its 99th plenary meeting, on 15 December 1976, the General Assembly, on the recommendation of the Sixth Committee, 1/ adopted resolution 31/103, which reads as follows:

"The General Assembly,

"Considering that the progressive development of international law and its codification contribute to the implementation of the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations,

"Considering that, in accordance with the principles proclaimed in the Charter, freedom, justice and peace in the world are inseparable from the recognition of the inherent dignity and the equal and inalienable rights of all members of the human family,

"Having regard to the Universal Declaration of Human Rights 2/ and the International Covenant on Civil and Political Rights, 3/ which provide that everyone has the right to life, liberty and security,

"Recognizing that the taking of hostages is an act which endangers innocent human lives and violates human dignity,

"Gravely concerned at the increase of such acts,

"Recalling the prohibition of the taking of hostages in articles 3 and 34 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, 4/ the Hague Convention of 1970 for the Suppression of Unlawful Seizure of Aircraft, 5/ the Montreal Convention of 1971 for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 6/ the Convention of 1973 on the Prevention and Punishment of

---

1/ Official Records of the General Assembly, Thirty-first Session, Annexes, agenda item 123, document A/31/430.

2/ General Assembly resolution 217 A (III).

3/ General Assembly resolution 2200 A (XXI), annex.

4/ United Nations, Treaty Series, vol. 75, No. 973, p. 287.

5/ United States Treaties and Other International Agreements, vol. 22, part 2 (1971), p. 1644.

6/ Ibid., vol. 24, part 1 (1973), p. 568.

respectively working papers A/AC.188/L.8 and A/AC.188/L.12 concerning article 4 of the draft convention contained in the working paper submitted by the Federal Republic of Germany (A/AC.188/L.3). The Syrian Arab Republic submitted working papers A/AC.188/L.10 and A/AC.188/L.11 amending respectively the working paper sponsored by Algeria, Egypt, Guinea, Lesotho, the Libyan Arab Jamahiriya, Nigeria and the United Republic of Tanzania (A/AC.188/L.5) and the working paper sponsored by Algeria, Egypt, Guinea, Kenya, Lesotho, the Libyan Arab Jamahiriya, Nigeria and the United Republic of Tanzania (A/AC.188/L.7). France and the Netherlands submitted respectively working papers A/AC.188/L.13 and A/AC.188/L.14 concerning the draft convention contained in the working paper submitted by the Federal Republic of Germany (A/AC.188/L.3). The Philippines submitted a working paper (A/AC.188/L.16) concerning article 3 of the draft convention contained in the working paper submitted by the Federal Republic of Germany (A/AC.188/L.3).

9. At its 3rd meeting, on 4 August, the Ad Hoc Committee decided to start its work with a general debate, in which the following States took part: Algeria, Canada, Chile, Egypt, France, Germany, Federal Republic of, Guinea, Iran, Italy, Japan, Jordan, Lesotho, Libyan Arab Jamahiriya, Mexico, Nicaragua, Philippines, Poland, Surinam, Sweden, Syrian Arab Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Venezuela and Yugoslavia.

10. Pursuant to a decision adopted by the Ad Hoc Committee at its 9th meeting, on 11 August, the Secretariat submitted an analytical summary of the general debate held at the 3rd to 9th meetings, from 3 to 11 August.

11. At its 10th to 17th meetings, held between 11 and 17 August, the Ad Hoc Committee considered the various working papers enumerated in paragraph 8 above.

12. Most delegations expressed their gratification at the initiative of the Federal Republic of Germany, which was followed up by a set of draft articles submitted by the Federal Republic of Germany (A/AC.188/L.3) as well as other proposals submitted by other delegations (A/AC.188/L.4-14 and 16). The general debate as well as the discussion of the various proposals revealed, however, considerable differences of views concerning the scope and/or definition in the convention, issues which, some delegations argued, should be resolved at an early stage of the Committee's work. Nevertheless there was a useful exchange of views on a number of issues. During the debate in the Committee, members expressed the view that some progress had been made and that the spirit of the discussions had shown a genuine willingness of the members of the Committee to continue the work.

13. All the opinions expressed by the members of the Ad Hoc Committee during the discussion are reflected in the summary records (A/AC.188/SR.3-17) of the Committee's proceedings (see annex I below).

RECOMMENDATION OF THE AD HOC COMMITTEE

14. At its 19th meeting, on 19 August, the Ad Hoc Committee adopted by consensus the following draft resolution submitted by the Federal Republic of Germany (A/AC.188/L.17):

The Ad Hoc Committee on the Drafting of an International Convention against the Taking of Hostages,

Recalling General Assembly resolution 31/103 of 15 December 1976,

Having considered suggestions and proposals from some States but having been unable to complete its mandate within the allocated time,

Mindful of the need to conclude under the auspices of the United Nations at the earliest possible date an international convention against the taking of hostages,

Recommends that the General Assembly at its thirty-second session should invite the Ad Hoc Committee to continue its work in 1978.

ANNEX I

Summary records of the 1st to 19th meetings of the Committee

CONTENTS

|  | <u>Page</u> |
|--|-------------|
| 1st meeting . . . . .  | 10          |
| <u>Monday, 1 August 1977, at 3.20 p.m.</u>   |             |
| Opening of the session   |             |
| 2nd meeting . . . . .  | 12          |
| <u>Tuesday, 2 August 1977, at 3.30 p.m.</u>  |             |
| Election of officers   |             |
| 3rd meeting . . . . .  | 13          |
| <u>Wednesday, 3 August 1977, at 3.25 p.m.</u>  |             |
| Election of officers ( <u>continued</u> )  |             |
| Adoption of the agenda   |             |
| Tribute to the memory of His Beatitude Archbishop Makarios, President<br>of the Republic of Cyprus |             |
| Organization of work   |             |
| General debate   |             |
| 4th meeting . . . . .  | 17          |
| <u>Thursday, 4 August 1977, at 11.10 a.m.</u>  |             |
| Election of officers ( <u>continued</u> )  |             |
| General debate ( <u>continued</u> )  |             |
| 5th meeting . . . . .  | 19          |
| <u>Friday, 5 August 1977, at 10.50 a.m.</u>  |             |
| General debate ( <u>continued</u> )  |             |

CONTENTS (continued)

|   | <u>Page</u> |
|---|-------------|
| 6th meeting . . . . .   | 25          |
| <u>Monday, 8 August 1977, at 11.05 a.m.</u>   |             |
| General debate ( <u>continued</u> )   |             |
| Organization of work  |             |
| 7th meeting . . . . .   | 26          |
| <u>Tuesday, 9 August 1977, at 11 a.m.</u>   |             |
| General debate ( <u>continued</u> )   |             |
| Other matters   |             |
| 8th meeting . . . . .   | 30          |
| <u>Wednesday, 10 August 1977, at 11 a.m.</u>  |             |
| General debate ( <u>continued</u> )   |             |
| Organization of work  |             |
| 9th meeting . . . . .   | 38          |
| <u>Thursday, 11 August 1977, at 11.05 a.m.</u>  |             |
| Election of officers ( <u>concluded</u> )   |             |
| General debate ( <u>concluded</u> )   |             |
| Organization of work  |             |
| 10th meeting . . . . .  | 46          |
| <u>Thursday, 11 August 1977, at 4.35 p.m.</u>   |             |
| Drafting of an international convention against the taking of<br>hostages pursuant to paragraph 3 of General Assembly resolution<br>31/103                      |             |
| 11th meeting . . . . .  | 51          |
| <u>Friday, 12 August 1977, at 11.20 a.m.</u>  |             |
| Drafting of an international convention against the taking of<br>hostages pursuant to paragraph 3 of General Assembly resolution<br>31/103 ( <u>continued</u> ) |             |

CONTENTS (continued)

|  | <u>Page</u> |
|--|-------------|
| 12th meeting . . . . .   | 60          |
| <u>Friday, 12 August 1977, at 4.15 p.m.</u>  |             |
| Drafting of an international convention against the taking of hostages pursuant to paragraph 3 of General Assembly resolution 31/103<br><u>(continued)</u> |             |
| 13th meeting . . . . .   | 68          |
| <u>Monday, 15 August 1977, at 11.15 a.m.</u>   |             |
| Drafting of an international convention against the taking of hostages pursuant to paragraph 3 of General Assembly resolution 31/103<br><u>(continued)</u> |             |
| 14th meeting . . . . .   | 74          |
| <u>Monday, 15 August 1977, at 4 p.m.</u>   |             |
| Drafting of an international convention against the taking of hostages pursuant to paragraph 3 of General Assembly resolution 31/103<br><u>(continued)</u> |             |
| 15th meeting . . . . .   | 83          |
| <u>Tuesday, 16 August 1977, at 11.30 a.m.</u>  |             |
| Drafting of an international convention against the taking of hostages pursuant to paragraph 3 of General Assembly resolution 31/103<br><u>(continued)</u> |             |
| 16th meeting . . . . .   | 88          |
| <u>Tuesday, 16 August 1977, at 4 p.m.</u>  |             |
| Organization of work   |             |
| Drafting of an international convention against the taking of hostages pursuant to paragraph 3 of General Assembly resolution 31/103<br><u>(continued)</u> |             |
| 17th meeting . . . . .   | 92          |
| <u>Wednesday, 17 August 1977, at 11.15 a.m.</u>  |             |
| Drafting of an international convention against the taking of hostages pursuant to paragraph 3 of General Assembly resolution 31/103<br><u>(concluded)</u> |             |

CONTENTS (continued)

|   | <u>Page</u> |
|---|-------------|
| 18th meeting . . . . .                        | 96          |
| <u>Thursday, 18 August 1977, at 4.25 p.m.</u> |             |
| Adoption of the report                        |             |
| 19th meeting . . . . .                        | 104         |
| <u>Friday, 19 August 1977, at 4.15 p.m.</u>   |             |
| Adoption of the report ( <u>concluded</u> )   |             |
| Closure of the session                        |             |

1st meeting

Monday, 1 August 1977, at 3.20 p.m.

Temporary Chairman: Mr. Erik SUY (Under-Secretary-General for Legal Affairs, The Legal Counsel, representing the Secretary-General)

A/AC.188/SR.1

Opening of the session

1. The TEMPORARY CHAIRMAN, speaking as the representative of the Secretary-General, recalled that, at its thirty-first session, the General Assembly had established the Ad Hoc Committee with the mandate to draft an international convention against the taking of hostages. As the debates of that session on that subject had demonstrated, the problem of the taking of hostages had been of great international concern and continued to be so. The past year had been marred by a series of shocking and tragic incidents where the lives of innocent human beings had been jeopardized or lost when they had been seized as hostages.
2. In 1973, the General Assembly had adopted a Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. The creation of the Ad Hoc Committee marked another important step. The Secretary-General had spoken out consistently against indiscriminate violence, and events had shown that no single human being could be said to be safe from seizure and abduction. Thus, the Ad Hoc Committee's concern was both global and humanitarian.
3. The Secretary-General was very well aware of the complexities of international relations and sensitive to the aspirations and frustrations of peoples and nations. But surely the fragility of human life should not be further endangered by extortion in whatever form. The laws of war severely condemned the taking of hostages. Why should that practice be tolerated in the laws of peace and of the friendly relations between States?
4. The Charter of the United Nations was based on a clear set of legal and moral principles governing and guiding the conduct of international relations. Furthermore, the General Assembly, by virtue of Article 13 of the Charter, had the responsibility, inter alia, of encouraging the progressive development of international law and its codification. The mandate of the Ad Hoc Committee to prepare a draft convention clearly fell within the scope of that purpose. Accordingly, the Secretary-General sincerely hoped that the Ad Hoc Committee, having taken into consideration all aspects of the problem before it, would ultimately be able to draw up a convention, acceptable to all States, which outlawed the taking of hostages and made adequate provision for the punishment of those responsible.
5. The Secretary-General was committed to help ensure that the moral and legal principles enshrined in the Charter were applied as fully and as universally as possible. Through its efforts to eliminate the threat to human life and peaceful international relations so often involved in the taking of hostages, the Ad Hoc Committee could make an important contribution to the attainment of that goal.

6. Speaking as the Temporary Chairman, he drew attention to document A/AC.188/L.2, which had been prepared by the Secretariat in pursuance of paragraph 4 of General Assembly resolution 31/103.

7. Mr. BOUAYAD-AGHA (Algeria) said that his delegation considered document A/AC.188/L.2 to be incomplete and requested that it be supplemented to include General Assembly resolution 3314 (XXIX) containing the Definition of Aggression and General Assembly resolution 2625 (XXV) containing the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. Both resolutions would give a fuller idea of what measures had been taken so far in connexion with the taking of hostages. Resolution 2625 (XXV) was extremely important for countries and peoples under colonial domination and the national liberation movements could not be excluded from the Ad Hoc Committee's discussions.

8. Mr. FIFOOT (United Kingdom) said that his delegation considered document A/AC.188/L.2 to be perfectly acceptable in its existing form. Of course, several other documents were marginally relevant to the work of the Ad Hoc Committee and there would be a case for including any one of them in document A/AC.188/L.2. However, all those documents were readily available to delegations and there was no need to waste time and money on reproducing them yet again.

The meeting rose at 3.35 p.m.

2nd meeting

Tuesday, 2 August 1977, at 3.30 p.m.

Temporary Chairman: Mr. Erik SUY (Under-Secretary-General  
for Legal Affairs, The Legal Counsel)

A/AC.188/SR.2

Election of officers

1. The TEMPORARY CHAIRMAN inquired about the progress of the consultations concerning the election of officers.
2. Mr. BOUAYAD-AGHA (Algeria) requested that the elections be postponed so that the African group could complete its discussions concerning its choice of candidate for the office of Chairman. He suggested that the next meeting might take place the following afternoon.
3. Mr. ROSENSTOCK (United States of America) observed that the Committee had much work to do, and little time in which to do it. It would be unable to complete its work if it did not meet twice a day regularly. He therefore proposed that the third meeting should be held the following morning.
4. Mr. BOUAYAD-AGHA (Algeria) said he agreed with the representative of the United States that time was short, but the choice of a Chairman was a serious matter. He reminded the Committee that earlier in the year the Ad Hoc Committee on International Terrorism had taken several days to elect its Chairman.
5. The TEMPORARY CHAIRMAN said that the Committee had a clear mandate, and any delay in its work was regrettable. But if further consultations were really necessary, he hoped that by the following afternoon the various regional groups would have agreed on their nominations, not only for the office of Chairman but also for the offices of the Vice-Chairmen and Rapporteur. He also hoped that the third meeting, to be held the following afternoon, would begin promptly.
6. Acting on a suggestion by the United States representative, he invited the representatives of the various regional groups to meet him informally in the latter part of the following morning, with a view to making it possible for the substantive work of the Committee to get under way.

The meeting rose at 3.45 p.m.

3rd meeting

Wednesday, 3 August 1977, at 3.25 p.m.

Temporary Chairman: Mr. Erik SUY (Under-Secretary-General  
for Legal Affairs, The Legal Counsel)

Chairman: Mr. Leslie O. Harriman (Nigeria)

A/AC.188/SR.3

Election of officers (continued)

1. The TEMPORARY CHAIRMAN announced that all the regional groups had held consultations concerning the election of officers and a consensus had been reached with regard to all officers of the Committee except the Rapporteur. He noted that under rule 103 of the rules of procedure the Committee was required to have a Rapporteur and he urged the regional groups to continue their consultations so that the post could be filled as soon as possible.
2. Mr. Lesslie O. Harriman (Nigeria) was elected Chairman by acclamation.
3. Mr. Harriman (Nigeria) took the Chair.
4. Mr. Hermidas Bavand (Iran), Mr. Eike Bracklo (Federal Republic of Germany) and Mr. José Antonio Alvarado Correa (Nicaragua) were elected Vice-Chairmen by acclamation.

Adoption of the agenda (A/AC.188/L.1)

5. The agenda was adopted.

Tribute to the memory of His Beatitude Archbishop Makarios,  
President of the Republic of Cyprus

6. On the proposal of the Chairman, the members of the Committee observed a minute of silence in tribute to the memory of His Beatitude Archbishop Makarios, President of the Republic of Cyprus.

Organization of work

7. Mr. KATEKA (United Republic of Tanzania) observed that the discussion in the Sixth Committee at the thirty-first session of the General Assembly on the question of the drafting of an international convention against the taking of hostages had not been completed. He suggested that the Committee should now hold a general debate so that delegations could present the position of their Governments on that important topic, which involved many principles that should be spelt out. Later, if time allowed, the Committee could take up specific proposals regarding the drafting of a convention.

8. Mr. FIFOOT (United Kingdom) said that, although he agreed with much of what the representative of the United Republic of Tanzania had said, he felt that there was no need to repeat the previous discussion of the topic in the Sixth Committee, which had already allowed many delegations to present their views. He did recognize, however, that a number of delegations held considered positions and would wish at the outset of the Committee's work to develop the principles involved. Noting the tendency of many United Nations bodies to make a slow start on their work and subsequently to find themselves very short of time, he suggested that the Committee should devise a procedure which would allow for a general debate without inhibiting the progress of work on more specific matters. It was not unusual, in his view, for committees to have parallel procedures allowing work to proceed simultaneously on several aspects of the matters before them.

9. Mr. OMAR (Libyan Arab Jamahiriya) said that the discussion in the Sixth Committee at the thirty-first session of the General Assembly had involved only procedural matters, namely the question of establishing the Committee. It was now time to deal with the substance of the matter through a general debate, which would allow the Committee to clarify various aspects of the subject, provide guidance for further work and assist the Committee in drafting a convention. He therefore supported the Tanzanian suggestion.

10. Mr. ROSENSTOCK (United States of America) said there had been a sufficient exchange of views on the subject of the taking of hostages during the Sixth Committee discussion and the positions of Governments were well known. Consequently, there was no need for a general debate. Of course, his delegation would not oppose the making of general statements, but did feel that it was necessary to heed the mandate of the Committee, which requested it to draft at the earliest possible date an international convention against the taking of hostages. His delegation would favour a procedure under which the Committee would consider specific proposals at the earliest possible time.

11. Mr. BOUAYAD-AGHA (Algeria) said that his delegation wished to participate in a general debate and would oppose the setting of any time-limits to that debate. The previous discussion in the Sixth Committee had not dealt with the question fully, as it had focused on the question of establishing a committee. It was clearly necessary for the Committee to hold a general debate before dealing with the specific provisions of a convention. The experience of the Ad Hoc Committee on International Terrorism, which had failed to agree even on a definition of terrorism, was very relevant. It was obvious that an effort was being made to find a way out of that impasse through the drafting of a convention against the taking of hostages. There were very many serious matters of principle involved which needed to be discussed fully. He noted in that connexion that his country had had bitter experience with the problems of terrorism and the taking of hostages during its long war of independence.

12. With regard to the working paper submitted by the Federal Republic of Germany (A/AC.188/L.3), it was significant that no other State had chosen to become a sponsor of the document. Given that fact, his delegation did not feel that the Committee could devote serious attention to the document.

13. Mr. ASHTAL (Democratic Yemen) said that the Committee should begin a general debate on the subject immediately, with the possibility of considering drafts later. The previous discussion in the Sixth Committee had been very general and had stressed mainly the question of whether there should be a convention dealing with

the taking of hostages. It was true that the Committee's mandate called for the drafting of a convention but it was not clear what kind of convention was required. It was therefore necessary to hear the views of all delegations in the context of an extensive general debate uninterrupted by the consideration of any draft.

14. Mr. CAMARA (Guinea) felt that the Committee should adopt the suggestion by the representative of the United Republic of Tanzania.

15. Mr. WANG (Canada) said that, while his delegation would respect the wishes of delegations wanting to elaborate on the views they had expressed in the Sixth Committee at the thirty-first session, it was anxious to avoid a mere repetition of those views. The Ad Hoc Committee had a clear mandate to draft an international convention against the taking of hostages at the earliest possible date, considering suggestions and proposals from any State. His delegation therefore supported the proposal that the Committee should conduct a general debate for a limited period, and then proceed immediately to the drafting of a convention.

16. Mr. BYKOV (Union of Soviet Socialist Republics) observed that there seemed to be a consensus regarding the need for a general debate. His delegation agreed with that consensus, since there had to be a certain amount of background work upon which to base the drafting of a convention.

17. The CHAIRMAN said that if all representatives spoke for 10 minutes each, a general debate could be satisfactorily concluded within a week. He therefore suggested that the Committee should hold a general debate, and terminate it after seven days.

18. Mr. SIMANI (Kenya) said he agreed that some time should be spent on a general debate, but there was a danger that such a debate could take too long. He proposed that, after a period devoted to a general debate, the Committee should consider whether to move on to drafting a convention.

19. Mr. de ICAZA (Mexico) pointed out that many members of the Committee had not taken part in the debate in the Sixth Committee, or had only made procedural points. There was therefore a need for a general debate, but, since the subject had been discussed before and the opinions of most States were well known, that debate need not be protracted. He supported the suggestion that the debate should be limited to seven days. He did not, however, believe it was practical to restrict speakers to 10 minutes each: the Committee would inevitably have to discuss such technical matters as extradition and reciprocal legal assistance for which 10 minutes would be far from adequate.

20. The CHAIRMAN supported by Mr. YANGO (Philippines), said that the proposed period of seven days should be adequate. He hoped that the debate could be concluded before the end of that period and that the Committee would immediately move on to drafting a convention.

21. Mr. MUSSA (Somalia) said that his delegation felt the debate should not be restricted in any way.

22. The CHAIRMAN suggested that the Committee should agree in principle to close the general debate on Wednesday, 10 August; at that time, however, it could consider whether a prolongation of the debate would be desirable.

23. It was so decided.

General debate

24. Baron von WECHMAR (Federal Republic of Germany) said that the crime of taking hostages presented a twofold threat. First, human lives were endangered. Secondly, the lives involved were usually those of helpless and defenceless persons - often women and children - and in most cases there was no logical link whatever between the victims and the aims of the acts of violence.

25. The 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War a/ had banned the taking of hostages even in time of war. Surely, therefore, such a ban should be respected and enforced even more in times of peace. In the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, the community of nations had pledged itself to the right of the individual to life, freedom and security of person. In the face of the insupportable spreading of criminal seizure of hostages the United Nations could not remain inactive. All human beings risked possible seizure as hostages, and all had a right to protection against that threat.

26. The taking of hostages also interfered intolerably with the responsibility and sovereignty of States, since criminals could impose on Governments the choice of either endangering the life and health of hostages or giving in to the offenders' unlawful demands. Experience had shown that such acts of violence could also put a heavy strain on political relations between States, so that international peace, co-operation and friendship were apt to be jeopardized by individuals and groups.

27. The basic principles of the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft, b/ the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, c/ and the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, d/ all appeared effective and adequate.

28. Recent events, however, had shown that those Conventions left gaps, and it was imperative to fill them by a convention against the taking of hostages. His country had presented a draft convention which was patterned upon the aforementioned Conventions and relied on the principle of prosecution or extradition. Its scope had been limited to cases of taking of hostages which had international implications.

29. Experience had proved that only a convention accepted by a true consensus had a chance of being ratified by the community of States. The duty of the Committee to protect and defend the values and principles of the United Nations obliged it to make every effort to reach such a consensus.

The meeting rose at 4.25 p.m.

---

a/ United Nations, Treaty Series, vol. 75, No. 973, p. 287.

b/ United States Treaties and Other International Agreements, vol. 22, part 2 (1971), p. 1644.

c/ Ibid., vol. 24, part 1 (1973), p. 568.

d/ General Assembly resolution 3166 (XXVIII), annex.

4th meeting

Thursday, 4 August 1977, at 11.10 a.m.

Chairman: Mr. Leslie O. Harriman (Nigeria)

A/AC.168/SR.4

In the absence of the Chairman, Mr. Bavand (Iran), Vice-Chairman, took the Chair.

Election of officers (continued)

1. The CHAIRMAN said that consultations concerning candidates for the office of Rapporteur were continuing and the election would be held as soon as the consultations had been completed.

General debate (continued)

2. Mr. DAMILANO (Chile) said it was nearly a century earlier, in 1883, that the question of the punishment of persons who systematically engaged in terrorist acts which alarmed the international community had been taken up for the first time, by the Institute of International Law in Munich. One hundred years later, at the United Nations, an Ad Hoc Committee was meeting to prepare a legal instrument aimed at preventing and punishing the most odious and reprehensible of terrorist acts, namely the taking of hostages. Such acts, which were an attack on the fundamental values of life, liberty and security of the human person, could not but evoke the censure of all civilized peoples.

3. The primary right of all, the right to life, was recognized and protected by the legislation of all countries and was also embodied in and guaranteed by article 3 of the Universal Declaration of Human Rights and article 6 of the International Covenant on Civil and Political Rights, which were instruments drawn up by the United Nations. The freedom of the individual should also be guaranteed at the international level, as it was a value no less sacred than life, was universally recognized and embodied in the constitutions of States and in international instruments prepared by the United Nations and was protected by all national legislations which, without exception, considered any act infringing on the liberty of another person as a punishable offence. The same applied to the security of the individual - another well-established legal idea - since no one would be able to live in peace any longer if the practice of taking hostages did not cease to spread.

4. It was clear that the dangers were increasing and that it was not only diplomats - who enjoyed international protection - or airline passengers who were threatened. The current level of terrorism made it clear that henceforth no one was safe. In guaranteeing the safety of their citizens, which would mean curbing the crime of taking hostages, States would merely be strengthening the principle set forth in article 3 of the Universal Declaration of Human Rights and article 9 of the Covenant on Civil and Political Rights.

5. It was perhaps somewhat astonishing that it had taken a century for work to begin on the drafting of an international law to curb the taking of hostages.

However, it would be incorrect to say that all the intervening years had been fruitless, since a consensus on certain points had gradually been emerging in legal circles. No one any longer denied that the taking of hostages was an abominable and barbarous act. It was also agreed that such an act, whatever its motives, could in no case be considered a political crime, which meant that the principle of extradition could be applied. In that connexion, it could be seen that even the most ardent defenders of the subjective theory, who held that motivation alone could be used to determine whether an illegal act should be considered a political crime, regarded the taking of hostages not as a political crime but as a common crime.

6. The United Nations was quite justified in concerning itself at the current stage with that question, which went far beyond the scope of national concerns. It could be seen that, in the majority of cases involving the taking of hostages, several countries were involved. The operation might be organized in one country, carried out in another and completed in a third. The supranational character of such acts required agreement on a common legal instrument with the necessary machinery to ensure the repression of the acts in question and the appropriate punishment of their perpetrators. It was difficult to understand how the United Nations, which had agreed - as could be seen from the relevant instruments adopted to that end - to suppress the unlawful seizure of aircraft, unlawful acts against the safety of aircraft and crimes against internationally protected persons, could not agree on the question of the taking of hostages.

7. Consequently, it was important to condemn such illegal and base acts without delay and to ensure that those who committed such international crimes would be punished. Kidnapping was severely punished in all countries and there was no reason why the perpetrators of such crimes should be able to act with impunity when their crime was international in character. It was therefore necessary to establish machinery without delay, either in the form of agreements between national police forces or through a procedure for the extradition or refoulement of those who had committed such crimes in other countries. A minimum requirement would be that the country in whose territory the offender was present should be obliged to prosecute him in its courts.

8. In any event, the taking of hostages should in no case be tolerated. That would amount to legitimizing a crime which was repugnant to the conscience of mankind or would maintain a climate of tension between the States concerned - whether the hostages had been taken in their territory or the perpetrators had sought refuge there - which an organization whose main purpose was the maintenance of peace between peoples should avoid at any cost.

9. The Chilean Government therefore supported without reservation the initiative of the Federal Republic of Germany, as the adoption of an instrument to protect the precious values of life, liberty and the security of the individual would provide the international community with a means of attaining its common purpose, which was to make peace prevail among peoples.

The meeting rose at 11.25 a.m.

5th meeting

Friday, 5 August 1977, at 10.50 a.m.

Chairman: Mr. Leslie O. Harriman (Nigeria)

A/AC.188/SR.5

General debate (continued)

1. Mr. DELEAU (France) recalled that his country had co-sponsored General Assembly resolution 31/103, which had established the Committee. France attached great importance to the drafting of an international convention against the taking of hostages and most forcefully condemned that inhuman practice, which could not be justified on any grounds.
2. The absolute prohibition of any taking of hostages was currently one of the most firmly established rules of the law governing armed conflicts, both internal and international. e/ According to article 3 which was common to the four 1949 Geneva Conventions and which was applicable in the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict - in other words, both the rebel party and the established authorities - was bound to observe minimum rules, including the rule that the taking of hostages was and should remain prohibited at any time and in any place whatsoever with respect to persons taking no active part in the hostilities. In the case of international conflict, the same prohibition, applicable to the territories of the parties to the conflict and to occupied territories, was contained in article 34 of the fourth Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of War. Moreover, that prohibition had been recalled by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts. The French Government therefore protested indignantly at the fact that on 1 May 1977 in Mauritania an insurrectional movement which considered itself to be involved in a conflict with States had kidnapped six French nationals, who had been held hostage since that time, with no information given regarding their fate. Yet the persons in question were civilians engaged in peaceful tasks promoting the development of a particularly disadvantaged country.
3. In areas other than the law governing conflicts, the United Nations had also taken a clear stand against the taking of hostages, as was demonstrated by General Assembly resolution 2645 (XXV), which declared that "the exploitation of unlawful seizure of aircraft for the purpose of taking hostages is to be condemned". With regard to the treatment of persons, that had also been the spirit underlying the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft, the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation and the 1973 New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. The Security Council had also expressed itself along the same lines, in particular in its resolution 286 (1970). That showed that the international community had

---

e/ United Nations, Treaty Series, vol. 75, Nos. 970-973.

adopted a clear stand against practices which were repugnant to human conscience and which constituted acts of odious barbarity that were inexcusable in any circumstances, however noble the cause for which they were committed.

4. The Committee's task was therefore clear: to reflect in texts that general condemnation and its consequences. The punishment of the taking of hostages was a technical problem which should be dealt with in international penal law. The French delegation therefore favoured a draft convention which, like the one submitted by the Federal Republic of Germany (A/AC.188/L.3), would be based on the principle "extradite or punish" already reflected in various instruments, including the Conventions of The Hague and Montreal. His delegation would endeavour to make an active contribution to the Committee's work, in order to promote its successful outcome.

5. Mr. de ICAZA (Mexico), after reviewing the background of the concept of hostages, emphasized that at present the law applicable to armed conflicts prohibited the taking of hostages. In that connexion, he mentioned article 3, which was common to the four 1949 Geneva Conventions and was applicable in the case of armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties, which prohibited the taking of hostages "at any time and in any place", and article 34 of the fourth Convention relative to the Protection of Civilian Persons in Time of War, which prohibited the taking of hostages. Article 147 of that Convention regarded the taking of hostages as a grave breach, and article 146 provided that the High Contracting Parties were under the obligation to search for persons who had committed such grave breaches and to bring such persons before its own courts or to hand such persons over for trial to another High Contracting Party concerned. In addition, the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts had in June 1977 adopted two additional protocols to the Geneva Conventions, f/ which reiterated the prohibition of the taking of hostages. The first of those protocols broadened the scope of application of the Geneva Conventions to cover the struggles of peoples for their independence and against colonial or foreign domination. Article 75 of that protocol reaffirmed the prohibition, at any time and in any place, of the taking of hostages. Grave breaches of the Conventions were grave breaches of the first protocol under the provisions of the latter instrument. It could be stated on the basis of those texts, taken in conjunction with the text of the Geneva Conventions, that the principle "aut dedere, aut judicare" applied to all cases of the taking of hostages during armed conflicts, whatever the nature of the conflicts, at any time and in any place.

6. He deduced from those considerations that the task entrusted to the Committee by General Assembly resolution 31/103 did not concern the taking of hostages as already governed by international law, or offences committed on board aircraft, which were covered by the Hague Convention of 1970, or acts against the safety of civil aviation, to which the 1971 Montreal Convention applied, or acts against internationally protected persons, which were the subject of a Convention adopted in New York in 1973. It appeared from the debate in the Sixth Committee at the thirty-first session of the General Assembly that the Committee's task was to draft a convention which would fill the gaps in the existing international law, without

---

f/ See A/32/144, annexes I and II.

reverting to aspects of the question already covered in other conventions. Little progress would be made if the Ad Hoc Committee were to embark on discussions of questions already resolved in other instruments regarding the legitimacy of certain tactics of struggle, without regard to the causes cited by the antagonists.

7. The kidnapping of persons for political ends endangered the lives of innocent people, undermined public order, tended to diminish the authority of the State and obliged it sometimes to act in a manner contrary to the law for humanitarian reasons. In all legislations, such acts were considered as offences. In Mexican legislation, as in the legislation of many other countries, they were equated with illegal deprivation of liberty. The European Convention on the Suppression of Terrorism mentioned in article 1 (d) both the taking of a hostage and serious unlawful detention, including in the same provision attacks against the safety of persons committed both by individuals and by agents of authority.

8. In international law, the right of the individual to personal safety, on which were based the prohibition of the taking of hostages and the right to judicial guarantees recognized by civilized peoples, was common to human rights and to the law of war. Within the framework of the law of war, the right to personal safety was derived from the Geneva principle that persons placed hors de combat and persons taking no active part in the hostilities should be respected, protected and treated humanely. Kidnapping of persons which had international repercussions involved both humanitarian law and human rights, and jeopardized the harmony of relations between States. It therefore required the urgent attention of the United Nations. In drafting a convention to prohibit and punish acts of that kind, however, the Committee should bear in mind, first and foremost, the safety of the innocent victims.

9. Even if nothing could justify, in peace time or in war time, attacks against the safety of innocent persons, it should not be forgotten that the motives of those who committed such deplorable acts were very many and varied. In order to take into account that aspect of the problem, it would be sufficient to follow the model of the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, and of the 1971 Inter-American Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance. Those two instruments stipulated that their provisions were without prejudice to the right of asylum - a humanitarian tradition which was deeply rooted in Mexico.

10. His delegation was prepared to co-operate in the drafting of a new convention against kidnapping of persons that was of international significance. The new convention should not duplicate existing instruments and should be without prejudice to the right of asylum; in addition, it should clearly define the offences covered.

11. Mr. WANG (Canada) said that the establishment of the Committee by the General Assembly in resolution 31/103 was a reflection of the grave concern of Member States over the question of hostage-taking. Since the adoption of that resolution, there had been several tragic reminders of the urgent need for international action against those who perpetrated those brutal acts. Not only human lives, but also the orderly conduct of international relations, were endangered. Acts of hostage-taking flagrantly violated the moral and legal

foundations of the United Nations, and it was fitting that a committee responsible for drafting an international convention should have been established to combat that peril. However, the Committee's task should be viewed in the perspective of previous measures taken by States, both at the domestic and the international level. Under the domestic legislation of each country murder, abduction, kidnapping, false imprisonment and extortion were crimes of the most serious nature and were subject to severe penalties. Hostage-taking should be equally intolerable and punishable under international law, since it was clear that in many cases criminal laws of individual countries were not adequate to deal with the perpetrator who seized or killed hostages in one country and sought refuge in another.

12. The Committee should also take into account a number of existing international legal instruments on hostage-taking, which had been set out in document A/AC.188/L.2. His delegation wished to comment briefly on some of the precedents and principles of particular importance to the work of the Committee. Articles 3 and 34 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, prohibited the taking of hostages. If that practice constituted an offence against the law of nations in time of war, was it not evident that hostage-taking should similarly be prohibited in time of peace? The principles embodied in General Assembly resolution 2645 (XXV), which condemned all acts of aerial hijacking, had been translated into several conventions adopted by the United Nations and, in particular, the 1970 Hague Convention, the 1971 Montreal Convention and the 1973 New York Convention. The fundamental legal principle underlying those three Conventions was, in essence, "prosecute or extradite", and that principle should provide the basis for the work of the Committee particularly in view of the fact that those Conventions had been widely accepted by States with differing political orientations, in all regions of the world. However, there were still some gaps and the Committee would have to fill them within the context of the proposed new convention, which should build upon those precedents without disturbing the existing and accepted international legal framework. His delegation agreed with the comments made by the representative of Mexico in that regard.

13. In order to complete its task, the Committee should focus on a detailed consideration of specific texts which could form the basis for a widely accepted international convention, such as the working paper submitted by the delegation of the Federal Republic of Germany, which reflected a number of suggestions made by delegations in the General Assembly.

14. Mr. LARSSON (Sweden) noted that the Geneva Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of War had banned the taking of hostages even in time of war. The time had come to take world-wide measures to prohibit the taking of hostages in time of peace if an effort was to be made to ensure the right of everyone to life, liberty and security of person as proclaimed in the Universal Declaration of Human Rights. The taking of hostages, which had become increasingly frequent, was an act from which no State was safe and which endangered innocent human lives.

15. The General Assembly had acknowledged the urgency of the problem in deciding, in its resolution 31/103 to establish the Ad Hoc Committee which it had requested to draft "at the earliest possible date" an international convention against the taking of hostages. It had also asked it to submit its report and to make every effort to submit a draft convention to the General Assembly at its thirty-second session and had authorized it, in the fulfilment of its mandate, to

consider suggestions and proposals from any State, bearing in mind the views expressed during the debate on that item at the thirty-first session of the General Assembly.

16. The Swedish Government was grateful to the Government of the Federal Republic of Germany for having responded to that invitation by submitting the draft convention in document A/AC.188/L.3. The Swedish delegation fully supported the principles on which that draft convention was based. Some were to be found in other conventions, such as the principle that contracting States should either prosecute the offender or extradite him, or that contracting States should afford each other judicial assistance in connexion with the prosecution of the offender. His delegation was also satisfied that the draft made allowance for the views expressed in the debate held at the thirty-first session of the General Assembly.

17. Commenting on the argument that the future convention should not prevent the activities carried on by people struggling to liberate themselves from foreign oppression, he stated that on the part of his delegation there was no cause for questioning the legitimate interests of those who struggled for the inalienable right to self-determination and independence in accordance with the purposes and principles of the Charter of the United Nations. It was true that a better understanding of the reasons underlying acts such as the taking of hostages might reduce the risk of a recurrence of such acts. It would, of course, be impossible to solve that difficult problem in the near future, but in the meantime States must find the most effective means possible of counteracting the workings of groups or organizations using the taking of hostages as a means of furthering their goals.

18. Mr. DANОВI (Italy) assured the Committee of the fullest possible co-operation of his delegation in the performance of the important and delicate task entrusted to it. The taking of hostages was one of the most dangerous - and, unfortunately, increasingly frequent - criminal acts which threatened modern society. It was a particularly dangerous crime in that it was all too easy to commit and impossible to prevent. Since no State or individual was safe from the potential actions of criminals motivated by the most varied reasons, it was hard to devise general protective systems. Consequently the only effective means of reducing, if not eliminating, that kind of criminal activity was to ensure that the perpetrators from the outset fully understood that they could not escape without severe punishment. That had been proved by the agreements between the United States and Cuba on hijacking. The Committee's task, which consisted precisely in establishing such a system on a world-wide scale, was therefore of extreme importance if the United Nations was to combat that increasingly serious threat to the sovereignty of States, to the physical integrity of a growing number of their citizens and to peace, security and international co-operation.

19. The Italian delegation therefore welcomed the proposal made by the Federal Republic of Germany at the thirty-first session of the General Assembly, which had provided the starting-point for resolution 31/103, calling for the establishment of the Committee. The working paper submitted by the delegation of the Federal Republic of Germany was a balanced and acceptable document, whose provisions very largely derived from international instruments already in force and ratified by many States Members of the United Nations.

20. The Italian delegation did not think it advisable to begin by defining the notion of a hostage, since the definition of the crime would automatically lead to

the definition of the victim, and not the reverse. It was ready, however, to consider in a spirit of co-operation any constructive proposal submitted to the Committee, in the hope that the Committee could formulate concrete recommendations to the General Assembly at its thirty-second session.

21. The CHAIRMAN suggested that consultations should be held between the groups most directly involved in the question of hostage-taking, and he felt that specific consideration should be given to the question of the hostage peoples of Zimbabwe and Rhodesia. He invited representatives wishing to take the floor to enter their names on the list of speakers as soon as possible, so as to accelerate the Committee's proceedings.

22. Mr. WANG (Canada) supported the Chairman's suggestion. He hoped that the delegations of countries belonging to the various regional groups would see fit to hold a series of informal consultations on the question.

The meeting rose at 11.45 a.m.

6th meeting

Monday, 8 August 1977, at 11.05 a.m.

Chairman: Mr. Leslie O. Harriman (Nigeria)

A/AC.188/SR.6

In the absence of the Chairman, Mr. Bracklo (Federal Republic of Germany), Vice-Chairman, took the Chair.

General debate (continued)

1. Mr. YANGO (Philippines) said that the purpose of drafting an international convention against the taking of hostages was to create an effective deterrent against the crime of taking hostages and to establish proper and adequate arrangements between nations with a view to penalizing that crime. The international convention would thus seek to establish jurisdiction over offenders wherever they might be found. The task of drafting the convention was extremely complex and sensitive, but the Committee must surmount the difficulties and fulfil its responsibilities as set out in General Assembly resolution 31/103.

2. The Committee would be in a position to begin its deliberations on the draft of the convention after the completion of the general debate. The conventions and the resolution referred to in the document prepared by the Secretariat (A/AC.188/L.2) represented the international community's collective condemnation of the taking of hostages and would serve as a basis for a comprehensive convention covering all instances of the taking of hostages, while the draft convention submitted by the Federal Republic of Germany (A/AC.188/L.3) represented a most useful working paper for the Committee. In that connexion, it should be noted that existing conventions were based on the concept of "prosecute or extradite". The taking of hostages represented a serious offence against the freedom, dignity and safety of the victims, and it was therefore to be hoped that the Committee would be able to draft an international convention against the taking of hostages which would command the widest support and which would be approved by consensus.

Organization of work

3. Mr. FIFOOT (United Kingdom), supported by Mr. KRECZKO (United States of America), suggested that the list of speakers in the general debate should be closed.

4. Mr. KATEKA (United Republic of Tanzania) said he would not object to the list of speakers being closed, on the understanding that delegations wishing to raise questions of a general nature at a later stage in the proceedings would be able to do so.

5. The CHAIRMAN suggested that the list of speakers should be closed at 5.30 p.m. on Tuesday, 9 August, on the understanding that delegations would be able to raise issues of a general nature at a later stage in the proceedings if they so desired.

6. It was so decided.

The meeting rose at 11.20 a.m.

7th meeting

Tuesday, 9 August 1977, at 11 a.m.

Chairman: Mr. Leslie O. Harriman (Nigeria)

A/AC.188/SR.7

In the absence of the Chairman, Mr. Bavand (Iran), Vice-Chairman, took the Chair.

, General debate (continued)

1. Mr. ALVARADO CORREA (Nicaragua) recalled that his country had been a sponsor of General Assembly resolution 31/103, which reflected the growing concern of the whole world over the taking of hostages, from which no country, region or community was safe. Hostage-taking, which offended the dignity of the human person, was a flagrant violation of fundamental human rights.
2. At the twenty-seventh session of the General Assembly, in introducing the agenda item on measures to prevent international terrorism, the Secretary-General had already pointed out that unless the United Nations tried to resolve the problems posed by international terrorism, the climate of terror prevailing in the world would inevitably worsen. Unfortunately, an increase in acts of terrorism had been witnessed each year. Only recently Nicaragua had been the scene of an incident of that kind. The Minister for Foreign Affairs, the Ambassador of Nicaragua to the United States and the Ambassador of Nicaragua to the United Nations, as well as 15 other prominent persons had been taken hostage and had been freed only after payment of a ransom of \$5 million and the release of 15 terrorists who had been sentenced for common crimes. Several perpetrators of the crime, who had enjoyed impunity at the time, had been arrested later on, in some cases while holding up banks. Such acts had been condemned in numerous international instruments, and particularly in articles 3 and 34 of the fourth Geneva Convention of 12 August 1949, the Hague Convention for the Suppression of the Unlawful Seizure of Aircraft of 16 December 1970, the Montreal Convention of 23 September 1971, the New York Convention of 14 December 1973 and, at the regional level, the European Convention on the Suppression of Terrorism, signed at Strasbourg on 27 January 1977 and the Convention signed by member States of the Organization of American States at Washington on 2 February 1971, which provided for measures for the prevention and punishment of terrorist acts, and particularly kidnapping.
3. The Nicaraguan Government called upon all States to join in an intensified effort to stop those terrorist acts which threatened not only the lives of the victims but also international peace and security, and caused people to lose faith in justice and despair of ever being able to live in peace in a truly free world. It requested the Secretary-General to make an appeal to all Governments that had not yet ratified those Conventions, because it was primarily through co-operation in international justice that human values in relations among the peoples of the world could be safeguarded.
4. The Nicaraguan delegation considered that the draft submitted by the Federal

Republic of Germany in document A/AC.188/L.3 was very clear and provided a sound working basis that should enable the Committee successfully to accomplish the task entrusted to it. The campaign against hostage-taking called for international co-operation since it would be necessary to adopt jurisdictional criteria and provide for the severe punishment of offenders in order to prevent such terrorist acts. His delegation was sure that the convention to be prepared by the Committee, in providing a solution to a pressing problem, would at the same time satisfactorily meet the legitimate aspirations of mankind.

5. Mr. AL-KHASAWNEH (Jordan) noted that General Assembly resolution 31/103, instituting the Committee, made no mention of the principle that terrorists must be prosecuted or extradited. Similarly, there was no reference to the qualifying condition of innocence of the hostages. The Committee's mandate was to decide whether those principles should appear in the convention it was required to draft. It was not its mandate to devise as quickly as possible a system for an international manhunt. A concern for respect for human dignity must always be a primary consideration. And, like other human beings, the wrongdoers also had a right to human dignity. There was no real guarantee that such persons would even be tried, let alone tried fairly. For example, there had been the recent case of five persons arrested in Kenya for hijacking and extradited to Israel, where they had spent 18 months in prison without being brought to trial.

6. The Committee must also consider the question of motive. The distinction between politically motivated criminal acts and acts motivated by ordinary criminal intention was established in the municipal laws relating to extradition. That did not mean that the ends justified the means; nor did it mean that the doctrine of political crime had some mythical quality that placed it above rational discussion. Neither the anarchist crimes committed in the nineteenth century nor the crime of genocide had ever been considered political crimes. In the case of terrorist activities it was harder to make a judgement, and there caution must be exercised, for it must be borne in mind that some notorious terrorists had become heads of Government and thus won some degree of international respectability.

7. The Committee must solve the problem of the definition of hostage-taking. That was based, in article 1 of the working paper submitted by the Federal Republic of Germany, on the constituent elements of the crime. It had been argued by some that any such definition should stem from the act committed, and not from the hostage. Others contended that the personality of the hostage should also be taken into consideration. His delegation felt that the question was open to discussion. It wished to point out, however, that if the second of those criteria was adopted, any civilian population denied its human rights, including the right to travel, and held part of a bargaining process for political gain, was in the position of a hostage.

8. Mr. ONDA (Japan) said that the establishment of the Committee was a reflection of the growing concern of the international community over the need for international co-operation to combat the taking of hostages. Under the domestic legislation of an individual country, hostage-taking was considered, together with murder and abduction, a crime of the most serious nature and was subject to severe penalties. That criminal act had latterly taken on an international character. Japan had been a victim of that crime more than once. There was thus an urgent need for the international community to take positive measures as promptly as possible to prevent its recurrence.

9. The efforts made by the international community had thus far taken the form of the adoption of a number of international instruments, such as the Hague Convention of 1970, the Montreal Convention of 1971, the New York Convention of 1973 and the fourth Geneva Convention of 12 August 1949. However, those measures were not sufficient, for they did not necessarily apply to all categories of hostage-taking. Since 1973, the Ad Hoc Committee on International Terrorism had also been considering ways and means of preventing international terrorism through international co-operation, but it had not yet made substantial progress in that area. The Japanese delegation hoped that the work of the Ad Hoc Committee on the Drafting of an International Convention against the Taking of Hostages would make a positive contribution to the establishment of an international mechanism for the prevention of international terrorism in general.

10. It appreciated the initiative taken by the Federal Republic of Germany in submitting a draft convention which contained some basic elements founded on the principle of judicial assistance and international co-operation which were already embodied in a number of internationally accepted legal instruments. Among them, the most important was, as indicated by other delegations, the principle of "prosecute or extradite". The Japanese delegation shared the opinion of the other delegations which considered that the document would be a sound basis for deliberation in the Committee and supported in principle the draft convention.

11. Mr. JELIĆ (Yugoslavia) noted that the international community had recently adopted several conventions relating to various aspects of international terrorism, which provided for legal machinery designed to combat the more frequent manifestations. One such manifestation was the taking of hostages, which not only endangered the lives of innocent victims but sometimes also jeopardized the freedom of decision of States, whose very sovereignty was threatened, as well as their mutual relations. Consequently, the Yugoslav delegation was pleased that the General Assembly had decided to establish the Ad Hoc Committee and give it the task of drafting an international convention against the taking of hostages.

12. The draft convention submitted by the delegation of the Federal Republic of Germany in document A/AC.188/L.3 was based on the principle of prosecution or extradition of offenders and provided an excellent basis for the Committee's work. However, it was not enough to prosecute the perpetrators of crimes that had already been committed. It was both necessary and possible to prevent those crimes, and he therefore suggested that the convention should stipulate that States had the duty not to tolerate on their territory terrorists and criminal associations that premeditated such acts, even if their activities were directed against other States. Moreover, the convention should not cast the slightest doubt on the legitimacy of the liberation struggle being waged by the peoples oppressed by colonialist and racist régimes. On the contrary, it should clearly emphasize that the struggle against colonialism and racism could not be regarded as an act of terrorism. It must also take account of the fact that hostage-taking was not always exclusively the work of small terrorist groups but sometimes the work of actual States, using their armed forces or information services, and it must unequivocally condemn such practices. Lastly, since the convention must be an effective legal instrument against hostage-taking, it must explicitly rule out any possibility of arbitrary action that could compromise the territorial sovereignty and integrity guaranteed to all States by the Charter of the United Nations.

13. The drafting of the convention was certainly a difficult task which would

make considerable demands on the Committee. Thus, while awaiting its completion, it would be useful and highly desirable for every State to begin immediately taking effective action in its territory to prevent and prosecute all terrorist acts, including the taking of hostages. That would pave the way for the general adoption of a convention that could be effectively applied.

#### Other matters

14. The CHAIRMAN announced that the Byelorussian Soviet Socialist Republic had been appointed by the President of the General Assembly as the thirty-fourth member of the Committee. g/ He very much hoped that the thirty-fifth member would soon be appointed.

15. He also asked the members of the various regional groups to accelerate their negotiations for the election of a Rapporteur for the Committee.

The meeting rose at 11.30 a.m.

---

g/ See A/31/479/Add.1.

8th meeting

Wednesday, 10 August 1977, at 11 a.m.

Chairman: Mr. Leslie O. Harriman (Nigeria)

A/AC.188/SR.8

General debate (continued)

1. Mr. BOUAYAD-AGHA (Algeria) said that the position taken by his delegation during the discussion in the Sixth Committee remained unchanged: the problem of the taking of hostages must be viewed within the over-all context of the question of terrorism, the causes of which should be studied. Indeed, it was the whole problem of violence that must be taken up in its entirety. Like international terrorism, the taking of hostages was merely a reflection of far more serious problems: the disparity between the rich and poor countries; colonialism, which was engaging in mass terrorism in Rhodesia and Namibia; the struggle of the Palestinian people to regain their rights; the very serious situation in the occupied Arab territories; and, finally, the inhuman policy of apartheid.
2. His delegation felt that there had been too quick a surrender to the emotion aroused by the renewed outburst of violence when the request had been made to include in the agenda of the General Assembly the question of the taking of hostages and of the adoption of prompt measures to punish certain acts which undeniably constituted a threat to international order. That initiative related to only one aspect of violence and might well delay consideration of an over-all solution to a problem which affected the sacred rights of human beings, their lives and their freedom. However, it had the merit of reopening the discussion which had begun in the Ad Hoc Committee on International Terrorism and had been broken off because of the bad faith of certain delegations, which were unwilling to begin by drawing up a definition of the causes of that phenomenon.
3. His delegation shared the concern felt at the danger to human lives posed by the taking of hostages, even though it had different ideas about how to approach a problem which had always existed. Despite the fact that the taking of hostages was prohibited by article 34 of the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War, certain States did not hesitate to resort to it as a preventive measure, for example, to prevent a population from engaging in hostile acts against an army of occupation - more specifically, a racist, colonial army.
4. He wished to emphasize that a draft convention against the taking of hostages must above all protect the rights of a people which engaged in violent action against colonialist, racist, alien régimes in order to regain its legitimate rights or redress an injustice which it had suffered; those were objectives whose validity had been recognized by the international community.
5. Noting the many different types of hostages - hostages taken by criminals, hostages taken for the purpose of ensuring the safety of trains or convoys, hostages taken at random among the population of an occupied territory after an attack on the occupation forces and, finally, voluntary hostages who offered

themselves in exchange for the release of other hostages - he emphasized how difficult it would be to draw up a convention against the taking of hostages. Before embarking on the preparation of such a convention, it was therefore essential to define first of all what a hostage was and also the nature of what were commonly referred to as reprisals, for there was a close connexion between reprisals and the taking of hostages. It was thus important to determine the extent to which the taking of hostages could be considered legitimate as an act of reprisal. A thorough, painstaking discussion of the problem of the taking of hostages was necessary so that the convention could be ratified by the largest possible number of Member States. The Committee could begin by undertaking the fullest possible exchange of views at the current session and asking Member States to transmit their views in writing to the Secretariat. In a second stage, it could also request the Secretary-General to draw up, with expert assistance, a draft convention accompanied by a commentary, which would receive careful, unhurried consideration.

6. Finally, an effort must be made to understand the point of view of those who had been hostages of a colonial system during much of their history. The countries of the third world were not opposed to the preparation of a convention against the taking of hostages; they were simply more aware of the fact that very complex political and legal questions were involved in the preparation of such a convention. They also wished to have the assurance that a convention against the taking of hostages would not be used against liberation movements.

7. Mr. BYKOV (Union of Soviet Socialist Republics) said that, as a number of representatives had pointed out, there was already a set of important provisions in various international legal instruments - the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War, the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft, the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, and the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents - which made it possible to punish the taking of hostages. The Soviet Union, which was a party to those conventions, felt that it would help to combat the taking of hostages if a greater number of States acceded to existing conventions and ensured that the obligations arising from them were strictly carried out. Such measures would, he noted, be completely in keeping with the mandate entrusted to the Committee under General Assembly resolution 31/103. He welcomed the efforts of the delegation of the Federal Republic of Germany, which had set out its views on the content of the draft convention (A/AC.188/L.3) and also the contributions of the other delegations that had made observations in the course of the general debate.

8. It was obvious that, posing as it did a threat to the lives of innocent people, the taking of hostages was intolerable, but it remained a fact that the preparation of a truly effective draft convention against that evil was a complex and difficult task. A number of delegations had observed that the taking of hostages was only one aspect of the broader problem of international terrorism, and it was therefore clear that, if the problem was to be approached in the proper manner and in all its aspects, including the preparation of a draft convention, account must not fail to be taken of relevant objective factors connected with international terrorism and of the causes of that phenomenon. Otherwise, the measures adopted would prove illusory.

9. As the Minister for Foreign Affairs of the Soviet Union had stated at a plenary meeting of the General Assembly in 1972, the Soviet Union was opposed as a matter of principle to all manifestations of international terrorism, including the taking of hostages, which interfered with the diplomatic activities of States and of their representatives, with communications and with the normal course of international meetings and contacts. It was opposed to acts of violence which served no constructive purpose and resulted in the loss of human life, and it vigorously condemned terrorist methods, regardless of the nationality of the victims. It felt that States must take effective action at the national level to ensure the security of foreigners in their territory, including that of diplomatic missions and their personnel, as was stated in numerous General Assembly resolutions and as had been pointed out in the Committee on Relations with the Host Country. At the international level, existing international conventions should be scrupulously observed by all the parties.

10. The Soviet Union favoured the preparation of a draft convention imposing certain obligations on States for the purpose of putting an end to acts of terrorism, whatever form they assumed. However, it rejected any attempt to give a direct or indirect interpretation to the notion of international terrorism which would make it cover the struggle of peoples for national liberation, acts of resistance to the aggressor in occupied territories and the struggle of oppressed workers to regain their rights. The Committee must be mindful of the fact that in numerous resolutions the General Assembly had recognized the right of peoples to fight against racism, colonialism and foreign domination. At the time of the adoption of General Assembly resolution 31/103, the representative of the Soviet Union in the Sixth Committee had observed that the work of the Committee must not run counter to the interests of struggles for freedom and independence. In addition, the draft that was prepared would have to take account of the principle of the sovereignty and territorial integrity of States.

11. It would be helpful to prepare a summary of the extremely useful proposals which had been made regarding the concepts, principles, key provisions and possible framework of the draft convention and regarding the future organization of work; extensive use could be made of such a summary as the Committee's work proceeded.

12. The Soviet Union would continue to spare no effort to help formulate a draft acceptable to all, providing effective measures to put an end to the taking of hostages and to other forms of international terrorism.

13. Mr. Alvarado Correa (Nicaragua), Vice-Chairman, took the Chair.

14. Mrs. MARQUEZ de PEREYRA (Venezuela) recalled that at the thirty-first session of the General Assembly the Venezuelan delegation had expressed its full support of the establishment of the Committee, especially since in December 1975 the Presidents of Venezuela and Colombia had deemed it necessary that the United Nations should hold a special meeting to deal with the problem of terrorism, of which the taking of hostages was an element. Venezuela sincerely hoped that the Committee would make sufficient progress to be able to submit to the General Assembly at its thirty-second session a document setting forth the views of all its members.

15. Venezuela repudiated all acts which endangered the lives of innocent persons,

including the taking of hostages. However, in the case of people fighting for their freedom and independence recourse to force was justified. The text of the convention to be adopted should therefore provide that account would be taken of political motives and the circumstances in which acts of violence were committed before extradition was sought or judicial proceedings were instituted. Furthermore, the right of asylum should be preserved and none of the provisions of the draft should be interpreted as impairing that right or, as indicated by article 10 of the draft convention submitted by the Federal Republic of Germany, the provisions of the Geneva Conventions of 1949 for the protection of war victims and of the Conventions signed at The Hague in 1970, Montreal in 1971 and New York in 1973 respectively.

16. Even if States could act effectively in adopting appropriate measures at the national level, concerted action by all States was essential to put an end to violence. At the current stage of the proceedings the draft convention before the Committee must be studied as a first phase of such action.

17. Mr. BIALY (Poland) said that the General Assembly, when entrusting the Committee with the task of formulating a draft convention on the taking of hostages, had given no indication as to the solutions to be sought or the methods to be applied. It had limited itself to indicating that the Committee should take account of the suggestions and proposals made by States. The debate on the subject at the thirty-first session of the General Assembly had been of a very general character and had related mainly to the draft resolution. At the current stage of the debate, which likewise related to rather general aspects of the question, his delegation wished to make certain preliminary observations.

18. There was no question that the taking of hostages continued to be a part of the problem of international terrorism which had been on the agenda of the United Nations for several years and the same type of difficulties which had emerged in connexion with terrorism would probably arise during consideration of the drafting of a convention against the taking of hostages. In that task the Committee could have reference to a number of generally accepted instruments of international law such as the Hague Convention of 1970, the Montreal Convention of 1971, the New York Convention of 1973, several legal instruments of a regional character and a useful document submitted by the Federal Republic of Germany. The Committee must now decide if it was going to copy the existing solutions or submit to the General Assembly a more far-reaching draft. The national legislation of most countries, including Poland, provided penalties for the taking of hostages and it was clear that the Committee could direct its attention only to acts of that type which had international implications.

19. First of all, a definition of the crime of taking hostages would have to be formulated and that would entail defining the very term "hostage" for the purposes of the proposed convention. As had been observed during the debate, in international law the term "hostage" had been used theretofore only in the context of the law of war. It had also been observed that international law did not contain any general prohibition against taking hostages in time of peace. In that connexion he said that consideration might be given to following the formula adopted in article 34 of the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War, including in the future convention a general prohibition against the taking of hostages. It would also be necessary to determine who was criminally responsible for the crime of taking hostages and give very careful consideration to the question of motives. One of the most important

problems was that of international co-operation in the prevention and punishment of that crime, including the exchange of information and the regulation of extradition.

20. In any case, it must not be forgotten that in many cases the taking of hostages was directly connected with specific political and social circumstances and States as well as the international community must take the necessary measures to solve those problems. No provision of the convention should impair the rights of peoples to struggle for their freedom and independence, against colonialism and foreign domination.

21. Mr. FIFOOT (United Kingdom) said that he would not repeat the arguments which he had set forth at length in the Sixth Committee. At the current stage the Committee's task, which was to formulate a convention at the earliest possible date, was facilitated by the draft submitted by the Federal Republic of Germany, which had won the approval of the majority of delegations that had taken part in the debate and provided a useful basis for work. Reservations had, it was true, been expressed and it had been proposed, inter alia, that the draft should include a reaffirmation of the principle of territorial integrity. His delegation had no objection to reaffirming in the text of the convention principles of international law that were deemed to be particularly relevant. With regard to national liberation movements, it felt that the existing instruments, including the two additional Protocols of 1977 to the Geneva Conventions of 1949, covered the matter adequately.

22. He also wished to reject the defeatist attitude that the United Nations could solve one aspect of the problem of violence only in the framework of a solution of the problem as a whole. In the case at hand, the Committee's mandate was limited in scope and was clearly capable of being implemented. Work could continue, even at the level of working groups if necessary, which would make it possible during the next stage to identify the difficulties and define the area of agreement. He hoped that time would not be lost between the conclusion of the general debate and the beginning of the work of formulating the draft, it being understood that any delegation which had not taken part in the general debate could speak during the following stage of the Committee's work.

23. Mr. MAKEKA (Lesotho) said that the draft submitted by the Federal Republic of Germany provided the Committee with a good basis for its work. At the national level, the taking of hostages was a crime punishable under the legislation of all the countries represented in the Committee and kidnapping was an extraditable offence under many bilateral and multilateral treaties on the subject. As indicated in document A/AC.188/L.2, prepared by the Secretariat, that was not the first time that the question of the taking of hostages was being debated by an international forum. As far back as 1949 the international community had prohibited the taking of certain persons as hostages in time of war. Article 3 (1) of the Geneva Convention relative to the Protection of Civilian Persons in Time of War had introduced the notion of innocent hostages - a term which some, for political reasons, wished to avoid using. However, persons actively engaged in hostilities could be taken as hostages. It was on that understanding that Lesotho had acceded to that Convention immediately after it had attained its independence. Even though the list prepared by the Secretariat did not so indicate, Lesotho was a party to the Hague Convention of 1970 - a convention which did not apply to aircraft used by military, customs or police services - and to the Montreal

Convention of 1971; in addition, it had signed the New York Convention of 1973 and would ratify it in due course.

24. While his delegation was in favour of a convention which would fill the gaps left by the instruments currently in force, it felt that the new text must not duplicate existing instruments. It had no objection to the adoption of the "prosecute or extradite" principle, provided account was taken of the legislation in force concerning extradition. The contemplated convention would include measures directed against those who threatened the right to life, liberty and security of persons by kidnapping or detaining such persons. But what of those who resorted to such measures by way of retaliation because they had been refused that right? If the United Nations had condemned slavery, genocide, and apartheid, it could not tie the hands of the victims of those practices in their attempt to recover their freedom. The international community had recognized the right of all oppressed peoples to self-determination and independence, but many who belonged to those peoples were themselves hostages. The Committee should find a formulation that would not protect the racist régimes of southern Africa but would safeguard the right of oppressed peoples to fight for freedom. Therefore, it was essential, in the context of the proposed convention, to define very clearly the term "hostages".

25. Mr. WERNERS (Surinam) said that the fact that his delegation had been a sponsor of General Assembly resolution 31/103 was a clear indication of its interest in the matter. The draft submitted by the Federal Republic of Germany provided a useful basis for the Committee's work. It was logical that it had been prepared in accordance with provisions contained in other legal instruments that were a part of contemporary international life and which were reproduced in document A/AC.188/L.2.

26. He recalled that the previous year in the Sixth Committee his delegation had not only explored procedural issues but also substantive issues relating to the sensitive problem of the taking of hostages. At the current stage, his delegation supported the Chairman's proposal that consultations should be held between the interested groups and the Federal Republic of Germany, in order that a draft convention could be submitted in due time to the General Assembly, as had been the wish of all States Members of the Organization.

27. Mr. KATEKA (United Republic of Tanzania) said that, in order to resolve the problem of the taking of hostages, it must be viewed within the framework of international terrorism. He recalled, in that connexion, that five members of the Ad Hoc Committee belonging to various groups were among the nine who had voted against General Assembly resolution 31/102 on international terrorism, on the pretext that "extraneous" considerations had been introduced into the resolution. The fact was that they did not want to face the truth and sought to place national liberation movements and freedom fighters on the same level with terrorists and anarchists. It was clear that, if that unrealistic approach continued, the problem would never be resolved.

28. His delegation considered that any international convention against the taking of hostages should take account of certain important considerations. First, it should recognize the legitimacy of the struggle of national liberation movements and the inalienable right of freedom fighters to take up arms to fight their oppressors. The oppressed peoples and colonial peoples who were held in perpetual bondage could not be stopped from taking oppressors hostage, if that became

inevitable. Secondly, respect for the sovereignty, independence and territorial integrity of States should form a cardinal principle of the convention; no State should resort to the use of force or the threat of force against other States in order to rescue hostages. Thirdly, automatic or mandatory extradition should not be imposed on parties. The legal action undertaken by the parties against the alleged offender under their jurisdiction should be considered as sufficing for the purposes of the convention. Fourthly, his delegation was opposed to the establishment of any compulsory dispute settlement mechanism. It sufficed to recall in that connexion the flagrant abuses to which the clause on optional recognition of the compulsory jurisdiction of the International Court of Justice contained in its Statute gave rise.

29. The Ad Hoc Committee was duty bound to find a lasting remedy to the problem of the taking of hostages, which posed a threat to human lives. However, if it wished to succeed in its work and wanted the convention that was drafted to be subsequently ratified, it should not be satisfied with a simplistic and self-serving solution. For example, the United Republic of Tanzania had not acceded to the 1970 Hague Convention and the 1971 Montreal Convention because they did not take into account the first of the considerations he had mentioned. In order to avoid any misunderstanding, the Ad Hoc Committee should define the concept of "hostage" clearly and precisely, taking account also of the concept of an innocent hostage that had been advanced at the thirty-first session of the General Assembly. Whether they were called non-innocent hostages, international delinquents or prisoners, there were some individuals or groups of individuals who could not invoke immunity under an international instrument. That was a fundamental element which must not be overlooked.

30. Mr. SIAGE (Syrian Arab Republic) said that the Ad Hoc Committee's task was certainly very important and very difficult, because it had to reaffirm in the convention which it was to draft the principles of human dignity, freedom, justice and peace enshrined in the Charter of the United Nations, without losing sight of the political, legal and humanitarian realities of the contemporary world. The convention should take account, for example, of the legitimacy of the struggle of the national liberation movements of peoples oppressed by colonialist and racist régimes and deprived by them of their inalienable right to self-determination and independence and other human rights and fundamental freedoms.

31. Being fully aware of the urgent necessity of putting an end to the taking of hostages, his delegation was grateful to the Government of the Federal Republic of Germany for submitting the draft convention issued under symbol A/AC.188/L.3. It wished, however, to draw the Ad Hoc Committee's attention, first, to the fact that acts perpetrated by criminals under ordinary law could not be placed on an equal footing with the struggle of the national liberation movements which, by their very nature and their objectives, were entirely different. Secondly, acts committed by certain States against the sovereignty and territorial integrity of another State under the pretext of freeing hostages could not be justified under any circumstances. Thirdly, the convention might establish an international mechanism to assume sole responsibility for international concerted action to free hostages and to ensure that the extradited or prosecuted offenders were given a fair trial. Fourthly, the convention should take up the question of State terrorism where State or organs of State committed acts of terrorism and hostage-taking, including such acts against peoples under colonial or foreign domination. Fifthly, the fact should not be overlooked that the taking of hostages was an aspect of a more general problem, namely, international terrorism, and that any

international legal instrument should take primarily into consideration the political realities of the contemporary world. Lastly, the Committee should give careful consideration to establishing a link between the convention it drew up and the Protocols to the 1949 Geneva Conventions recently adopted by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts.

#### Organization of work

32. After a brief exchange of views in which Mr. ACHACHE (Algeria), Mr. BYKOV (Union of Soviet Socialist Republics), Mr. EL-HENDAWI (Egypt) and Mr. FIFOOT (United Kingdom) took part, the CHAIRMAN announced that the Committee would begin consideration of the draft convention submitted by the Federal Republic of Germany as soon as the general debate was concluded.

The meeting rose at 12.30 p.m.

9th meeting

Thursday, 11 August 1977, at 11.05 a.m.

Chairman: Mr. Leslie O. Harriman (Nigeria)

A/AC.188/SR.9

Election of officers (concluded)

1. The CHAIRMAN informed the Committee that, as a result of consultations held between the various regional groups, the groups had agreed to appoint Mr. Belyaev, representative of the Byelorussian Soviet Socialist Republic, as Rapporteur. Mr. Belyaev would therefore assume the functions of that office.
2. Mr. BELYAEV (Byelorussian Soviet Socialist Republic), on his own behalf and on behalf of his delegation, thanked the members of the Committee and the Chairman for the confidence they had shown in him by appointing him Rapporteur.

General debate (concluded)

3. Mr. BADAWI (Egypt) said that his delegation had been among those that had welcomed the initiative by the Federal Republic of Germany which had resulted in the inclusion of the question of the taking of hostages in the agenda of the thirty-first session of the General Assembly and the establishment of the Ad Hoc Committee.
4. The taking of hostages was a reprehensible act because it was an affront to the dignity of human beings and the lofty principles of the Charter of the United Nations and the Universal Declaration of Human Rights, and because it was a negation of all the rules of international law. Concerted action should therefore be undertaken at all levels to combat such conduct, and universally accepted international instruments should be adopted for that purpose.
5. International co-operation in that endeavour was imperative. The Committee should carry out its complex task without losing sight of the various social and political factors that were of crucial importance in contemporary international society. It should not automatically examine the problem from the standpoint of the victim alone but should also take into account the specific circumstances which might have prompted the act. It must also take into account all resolutions adopted by various United Nations bodies, in particular, by those concerned with self-determination and the recognized rights of liberation movements, as the work of the Committee must be consistent with the long-term objectives of the Organization.
6. The question of the definition of both the concept of hostage and the act of taking hostages was equally important. In the view of his delegation, the kind of hostage who should be protected was the innocent person who had no direct responsibility for the episode that had occasioned his seizure. That point must be made clear if controversy was to be avoided. The safety of individuals must be protected against all sources from which threats emanated and, hence, against acts of terrorism and violence which might also be committed by States.

7. While it was not the Committee's task to solve the problems of the contemporary world - injustice, flagrant inequality, colonial domination, foreign occupation, apartheid, racial discrimination and poverty - it could, nevertheless, by drafting a convention, provide a measure of assistance to those affected by them. While the taking of hostages was intolerable, it was also intolerable that some people should be made to live in conditions which forced them into desperate acts.

8. Mr. OMAR (Libyan Arab Jamahiriya) said that the mandate assigned to the Ad Hoc Committee by the General Assembly in its resolution 31/103, which was of great importance to the international community, concerned a question of great complexity. His delegation was confident, however, that with co-operation and goodwill on the part of all its members the Committee would be able to complete its task successfully.

9. The taking of hostages was only one aspect of the phenomenon of international terrorism which the General Assembly had included in its agenda. His delegation hoped that the members of the Ad Hoc Committee on International Terrorism would, for their part, endeavour to overcome their differences and reach agreement on the measures to be taken to eradicate that scourge.

10. During the discussion in the Sixth Committee on the item entitled "Drafting of an international convention against the taking of hostages", his delegation had emphasized the necessity of providing protection in any such convention for those who were the victims of injustices perpetrated by imperialist and racist régimes and for those struggling for independence and self-determination. For that reason, his delegation had wished the word "innocent" to be included before the word "hostage" in the resolution adopted on that item. It was absolutely necessary to ensure that the convention which the Committee was required to draft could not be used against those who were still suffering under imperialism and racism.

11. His delegation therefore believed that the convention must first precisely define the act of taking hostages so as to avoid ambiguity and confusion with other acts that were already punishable, such as the unlawful seizure of aircraft. Secondly, it should exclude from its purview acts involving the taking of hostages committed by a State's own nationals within the territory of that State. Thirdly, it must contain no provisions that might have adverse effects on people struggling for independence and self-determination. Those people who were subjected to injustice and oppression by imperialist and racist régimes were themselves hostages who should be protected. Fourthly, the convention should reaffirm the principles enshrined in the Charter of the United Nations concerning the sovereignty and territorial integrity of each State. Fifthly, it should, for humanitarian reasons, give priority to the speedy freeing of hostages. The country in whose territory the taking of hostages occurred should adopt the necessary measures, within its potential and as it deemed appropriate.

12. Mr. CAMARA (Guinea) said that the establishment of the Ad Hoc Committee reflected the concern of States Members of the United Nations over the problem of the taking of hostages, that modern evil which no system of morality could tolerate. As Guinea had twice been the victim in 1967 of such acts of banditry, committed against one of its delegations, it attached great importance to the drafting of an international convention on the subject. It most strongly condemned that monstrous practice, which was unfortunately becoming increasingly frequent.

13. Terrorism was condemned by all sensible persons who cared for peace and freedom. In order to put an end to that scourge, it was necessary to go to the source of the evil and thoroughly uproot it from society. The Committee must know that, in order to do that, the law must be made to serve mankind. It was man who made the law. In States suffering under the colonial yoke, where the colonial people, burdened by oppression, had nothing but duties, the concept of law did not have the same meaning as it had elsewhere. The peoples of southern Africa in their occupied countries, which for them had become concentration camps, had no means of struggling against the occupiers except seeking to do them such harm as they could. The nationalists of Zimbabwe or the revolutionary peoples of Mozambique, who were the victims of constant aggression, could not be blamed if one day they took someone like Ian Smith or Vorster hostage.

14. In criminal law, before a criminal act was judged, the circumstances in which it had been committed were considered. Why should an exception from that rule be made in the case of the crime of terrorism? The taking of hostages and other related acts should certainly be promptly condemned; but it was also necessary to look for the underlying causes which gave rise to them. Like international terrorism, hostage-taking was only one of the unavoidable consequences of such major problems as colonialism, neo-colonialism and apartheid. When one went further into the question, one considered who were the hostages and who were the captors. Therefore, while his delegation condemned the taking of hostages, it realized that for some countries such condemnation could serve as a pretext for impeding the struggle of the peoples seeking to free themselves from foreign oppression and exercise their inalienable right to self-determination and independence, in accordance with the purposes and principles of the Charter of the United Nations.

15. Since the adoption of resolution 31/103 the world had witnessed some tragic events which called for the adoption of effective measures to prevent a recurrence of acts which endangered not only the lives of innocent persons but also harmonious relations between States. It was therefore as well that a committee had been given the task of drafting an international convention. But the Committee would perform a useful service only if it prepared a text which was clear, precise and unambiguous and could meet with general approval, which alone could guarantee its effectiveness. The Committee should therefore take account of the international legal documents which had already been adopted, in particular, articles 3 and 34 of the fourth Geneva Convention of 12 August 1949, the Hague Convention of 1970, the Montreal Convention of 1971 and the New York Convention of 1973, which were based essentially on the principle that the perpetrators of such acts should be extradited or prosecuted. States should also set aside ideological considerations and give each other assistance and support in that area.

16. His delegation once again assured the Committee of its co-operation provided that the latter did not, in the course of its work, lose sight of the fact that oppressed peoples had an inalienable right to freedom and independence.

17. Mr. BAVAND (Iran) said that his country attached special importance to the drafting of an international convention against the taking of hostages. The taking of hostages was an intolerable violation of human rights which disregarded the innocent victims and constituted an unacceptable infringement of their fundamental rights as guaranteed by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

18. The development of humanitarian law guaranteeing the protection of innocent and helpless persons had begun long ago. For even in the early seventeenth century that concern had been reflected in such documents as the Code of King Gustavus Adolphus of Sweden and the writings of such internationally renowned jurists as Grotius of the Netherlands. More recently, the fourth Geneva Convention of 1949, particularly in articles 3 and 34, made express and detailed provision for the international prohibition of any form of violence against civilians and, in particular, the taking of hostages. That Convention had been followed by a number of other instruments, such as the Hague Convention of 1970 and the Montreal Convention of 1971, which dealt with various categories of acts of violence. However, those conventions did not encompass all the aspects of the question of hostage-taking. There was therefore a need for a more comprehensive international instrument for the protection of innocent victims. That was the task that had been entrusted to the Ad Hoc Committee. After consultations with a large number of interested States, and in particular with the sponsors of General Assembly resolution 31/103, which included Iran, the Government of the Federal Republic of Germany had prepared a draft convention which the Committee could take as a starting point for its work.

19. The convention must, of course, be drafted in such a way as to avoid any possibility of misinterpretation and ensure that its application would not give rise to any undesirable side effects in other areas of human rights. Accordingly, it must guarantee due process of law and fair treatment of alleged offenders at all stages of the proceedings. In other words, all judicial safeguards should be provided to avoid reprisals. His delegation fully understood the concern expressed on that point by a number of delegations.

20. Secondly, the convention must not in any way impair the exercise of the legitimate right to self-determination and independence of all peoples, and especially those struggling against colonialism, alien domination, racial discrimination and apartheid. Safeguards, in a form to be determined by the Ad Hoc Committee, should be devised for that purpose. His delegation was sure that a compromise formula could be worked out.

21. Thirdly, his delegation shared the view of the Mexican and Venezuelan delegations that the Committee should avoid excessive curtailment of the scope of the noble institution of political asylum, which was an outstanding achievement in the annals of the progressive development of humanitarian law.

22. Finally, the Convention should reaffirm the fundamental principle of sovereignty, which was universally proclaimed and recognized and from which there could be no derogation.

23. His delegation was confident that the problems which had been raised during the general debate could be solved in a spirit of understanding and good faith through negotiation. For its part, it would make every effort to promote that aim.

24. Mr. ROSENSTOCK (United States of America) said that the taking of hostages was a problem whose importance had been acknowledged and whose consequences had been deplored by all previous speakers. The Committee must therefore proceed to consider the substance of the question and concentrate on the drafting of a convention against the taking of hostages. It had been repeatedly stated that ambiguity must be avoided. His delegation shared that view but was sure that the Committee, which was not lacking in experience, would be able to perform the task entrusted to it to

the satisfaction of all. The taking of hostages was a special source of concern to the international community, which did not permit it in any circumstances even in time of war, as was clear from the fourth Geneva Convention of 1949. There was all the more reason for not tolerating it in time of peace. The Protocol to that Convention, which dealt specifically with the rights and obligations of national liberation movements, clearly prohibited the taking of hostages by anyone, including liberation movements. That was not surprising since the international community prohibited States from committing certain acts, even in self-defence, when their national security might be at stake.

25. It was possible, as some had said, that currently there were other problems besides hostage-taking that had to do precisely with the conduct of States and that the international community should condemn acts that were just as intolerable. But that was not a sufficient reason for the Committee to abandon the task which had been specifically entrusted to it, namely, to study the question of hostage-taking and, as expressly requested in paragraph 3 of General Assembly resolution 31/103, to draft a convention on the subject. That was the mandate which the Committee had to carry out and that was the task it must now deal with, and consequently it should organize its future work accordingly, without further delay.

#### Organization of work

26. The CHAIRMAN said that it might be as well, at the current stage, to clarify the Committee's mandate. The Committee's task was to draft a convention. In order to do that it needed to consider the various proposals that might be submitted to it. It now had before it a draft text prepared by the Federal Republic of Germany. But since various delegations had stated their positions during the debate, the Committee should now consider the suggestions which would most faithfully reflect the positions of the various regional groups. To enable them to prepare agreed formulas, he proposed that the meeting should be suspended.

27. Mr. FIFOOT (United Kingdom) said that it had been his understanding that the Committee supported the proposal made by the representative of the United Republic of Tanzania, who had suggested at the beginning of the proceedings that, after a general debate in which delegations wishing to do so could state their positions, the Committee should proceed to consider the proposals before it. Since the Committee had already used up half of the meeting-time allotted to it, he hoped that no further time would be lost. He therefore felt that if the Committee wished to suspend the meeting, the suspension should be a short one so that the proceedings could be resumed as soon as possible.

28. Mr. de ICAZA (Mexico) also felt that the Committee had thus far spent half of the time available to it in a somewhat unproductive general debate. Under its mandate it was required to consider the proposals before it. It so happened that the number of those proposals was limited to one. If the regional groups thought it necessary to hold an exchange of views, they should do so as quickly as possible in order to avoid a prolonged suspension of the meeting. He thought it would be regrettable if the Committee proceeded no further and felt that it was high time for it to embark on a discussion of the substance of the question.

29. Mr. BOUAYAD-AGHA (Algeria), supported by Mr. ADEYEMI (Nigeria), said that he fully supported the Chairman's proposal. The African group would like to meet to consider the organization of future work. Some delegations other than the Federal

Republic of Germany had formulated proposals which it would like to consider, so as to produce a formula that would be duly submitted to the Committee.

The meeting was suspended at 11.50 a.m. and resumed at 12.45 p.m.

30. Mr. BOUAYAD-AGHA (Algeria) said the African group noted that, at the current stage of the proceedings, various proposals had been submitted by various delegations, and it considered the Secretariat should prepare a document summarizing the various suggestions and comments made by delegations, including the draft submitted by the Federal Republic of Germany.

31. The African group would be ready to undertake the drafting of a convention on the basis of those various proposals, but it thought that the Committee should begin, at its next meeting, to consider the question of defining the term "hostage".

32. Mr. FIFOOT (United Kingdom) said that the preparation of such a document by the Secretariat - whose competence he did not question - seemed unwarranted. The Committee, which had very little time, should, in his opinion, now embark on a structured debate. Delegations which had proposals to submit could do so as the work proceeded. The Committee now had only six working days left, and it hardly seemed likely that the preparation of the proposed document could contribute in any way to the better organization of the work that remained to be done.

33. Like some other delegations, the United Kingdom delegation had thought that, after the general debate, the Committee would hold a structured debate in the course of which delegations would have every opportunity to state their views. It had also been under the impression that it was understood that the starting-point for the debate would be the formal proposal made by the Federal Republic of Germany.

34. Mr. BOUAYAD-AGHA (Algeria) thought that in requesting the Secretariat to prepare a document listing and summarizing various views expressed by delegations, the African group had made a constructive proposal that would facilitate the work of the Committee and would thus result in a saving of time. General Assembly resolution 31/103, defining the mandate of the Committee, did not require it to give special study to the draft submitted by the Federal Republic of Germany. That was merely one proposal among others. Consequently the Committee should have the necessary documentation to enable it to give serious study to all proposals. Therefore it was the delegations that opposed the preparation of such a document and not the African group, which was trying to further the work of the Committee, that should be blamed for any delay that resulted.

35. Mr. BYKOV (Union of Soviet Socialist Republics) said that his delegation was in favour of the proposal made by the African group as it was in keeping with the spirit and the letter of General Assembly resolution 31/103 and also took account of the decision taken by the Committee at its 3rd meeting concerning the organization of work. The United Kingdom representative had insisted on the need for a structured debate. That was precisely the purpose of the proposal made by the African group. A summary of the proposals made in the course of the general debate would not delay the proceedings but, on the contrary, would spare the sponsors of those proposals the necessity of repeating them. The Committee should not normally work solely on the basis of a text submitted by one State, since its task was to reconcile all views.

36. Mr. ROSENSTOCK (United States of America) said that the Committee's task was to consider proposals. Everyone knew what was meant by proposals and there was no need to explain it. Confusing the issue by blurring distinctions merely made a mockery of United Nations procedures. If delegations had proposals to make they should do so, as it was the Committee's task to examine them; the fact that it only had one proposal before it made no difference whatsoever. As for definitions, those were usually dealt with at the end of the discussion, when members knew what terms had been used in the instrument under consideration. In the proposal of the Federal Republic of Germany there was no section dealing with definitions, but it contained an analysis of the scope of the instrument and that aspect would probably give rise to several proposals. The discussion should help to make it clear whether or not the Committee felt that definitions should be included in the convention.

37. Mr. KATEKA (United Republic of Tanzania) explained that the African group was not refusing to consider the proposal by the Federal Republic of Germany; it also wished to consider other proposals, which would be summarized in the document requested of the Secretariat. Thus, all States that had submitted suggestions would be treated on an equal footing. That method of work had already been employed at Vienna during the United Nations Conference on Succession of States in Respect of Treaties. He also considered that the Committee should come to an understanding, at the outset, on a definition of the term "hostage" if it wished to determine the scope of the convention. Therefore, if it was to proceed in a "structured" manner, to use the words of the United Kingdom representative, the Committee would have everything to gain by following the procedure proposed by the African group, which certainly would not delay the proceedings since the discussion on the substance of the issue could begin immediately.

38. Mr. CAMARA (Guinea) said that the drafting of a convention could not be done in a hurry. The African group was merely asking that the Committee should be sufficiently well-documented. The time allotted to the Committee should not, in his opinion, have been limited to three weeks, in view of the extent of its task, but there was nothing to prevent the Committee's mandate from being extended.

39. Baron von WECHMAR (Federal Republic of Germany) said that his delegation was glad to see that the African group had confirmed, through the representative of the United Republic of Tanzania, that the draft submitted by the Federal Republic of Germany would serve as the basis for discussion and that the Committee could begin the substantive discussion at the afternoon meeting. However, it was not desirable that the debate should be confined exclusively to the question of the definition of the term "hostage". Delegations wishing to do so should have an opportunity to discuss other questions and refer to the documents which the Committee now had, or would then have, at its disposal.

40. In reply to a question from Mr. SIMANI (Kenya), the CHAIRMAN explained that the document requested by the African group would be prepared on the basis of the summary records of meetings, and would include the draft submitted by the Federal Republic of Germany. That would ensure that priority was not given to a proposal submitted by one State at the expense of others. The debate that was to begin at the next meeting would not be confined to questions of definition.

41. Mr. ROSENSTOCK (United States of America) said that his delegation had certainly not meant to suggest that priority should be given to a single proposal, but it objected to the Secretariat drawing up the document to replace proposals which would normally be clearly formulated by their sponsors. Naturally, such

proposals could be submitted either together in a single document or separately, but the Committee could continue its work only on the basis of perfectly specific written or oral proposals.

42. Mr. KATEKA (United Republic of Tanzania) wished to explain that the African group had not accepted the document of the Federal Republic of Germany as a basis for discussion and considered it merely as one of the documents to be discussed in the debate.

43. The CHAIRMAN proposed that the Committee should request the Secretariat to prepare an informal document summarizing the various proposals made by delegations during the general debate.

44. It was so decided.

The meeting rose at 1.25 p.m.

10th meeting

Thursday, 11 August 1977, at 4.35 p.m.

Chairman: Mr. Leslie O. Harriman (Nigeria)

A/AC.188/SR.10

In the absence of the Chairman, Mr. Bracklo (Federal Republic of Germany), Vice-Chairman, took the Chair.

Drafting of an international convention against the taking of hostages pursuant to paragraph 3 of General Assembly resolution 31/103 (A/AC.188/L.2-5)

1. The CHAIRMAN reported that the Secretariat had begun work on the analytical report of the general debate in accordance with the consensus reached at the previous meeting. Copies of that report would be made available as soon as possible. The Committee would now proceed to consider proposals from Governments on the drafting of the international convention.
2. Baron von WECHMAR (Federal Republic of Germany) said that his delegation was gratified at the number of comments made during the general debate on its draft contained in working paper A/AC.188/L.3, which seemed to have met with the general approval of many delegations. He felt that it would be useful at the current stage to provide more detailed explanation of the draft and try to clear up a few misunderstandings that had become apparent during the debate.
3. Article 1 of the draft, in accordance with treaty practice in the field of international criminal law, defined the offence to be dealt with by the convention and in structure closely corresponded to article 1 of the 1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation. The definition of the offence of taking hostages, as set out in article 1, paragraph 1, of the draft was based on the concept prevailing in current literature on international law, with special regard to the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War. In the opinion of his delegation, the occupation of foreign territory and the refusal to withdraw from it except upon the fulfilment of certain conditions would not be covered, since occupation as such could not be regarded as "seizure" or "detention" of the population. It would only amount to "seizure" or "detention" if individual members of that population were placed or kept under immediate and permanent custody at a confined locality. That, at least, appeared to be the view taken in the fourth Geneva Convention. Indeed, article 34 of that Convention, which prohibited the taking of hostages from among the population of an occupied territory, would make no sense if all the people living in such a territory were to be considered hostages. The scope of the draft was therefore limited to individual cases, where, if only on humanitarian grounds, a solution seemed practical and feasible.
4. Within the meaning of article 1, paragraph 2, of the draft, it was understood that an accomplice to the offence was a person who either incited the hostage-taker to commit the offence or assisted him in its commission.

5. Article 2 of the draft was identical with article 4 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. Article 10 of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation also placed an obligation on States to endeavour to prevent the offences covered by that Convention in so far as possible.

6. Article 3 of the draft was similar to article 9 of the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft. However, in contrast to article 9, paragraph 1, of that Convention, article 3, paragraph 1, of the draft did not indiscriminately impose the obligation to ease the situation of the hostage on all Contracting States but only on the one in whose territory the offender was holding the hostage. That State would be in the best position to take appropriate measures, although that did not exclude the acceptance of technical assistance from another State concerned with the plight of the hostage, such as that person's State of origin. Moreover, article 3 of the draft, in contrast to article 9, paragraph 1, of the Hague Convention, left it to the State concerned to decide what measures were appropriate. If the State in which the hostage was being held was also the State which the offender was attempting to place under compulsion, it could not, under article 3 of the draft, be required to submit to such compulsion. While submission might be a means of securing the hostage's release, it would be tantamount to guaranteeing the success of the very crime the convention was intended to prevent.

7. Articles 4 to 9 of the draft, which included provisions on criminal sanctions, criminal jurisdiction, provisional detention, prosecution, extradition and judicial assistance, were identical or largely consistent with corresponding provisions in the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation and the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. The wording of those articles was consistent with well-established international criminal law, and when the articles were discussed individually his delegation would point out in greater detail their relation to previous conventions.

8. Article 10, paragraph 1, of the draft was a collision clause such as could be found in several major international treaties, for example, in article 73 of the Vienna Convention on Consular Relations of 1963. Since any future convention against the taking of hostages was not intended to replace the international instruments mentioned in article 10, paragraph 1, of the draft, but rather to deal with cases of hostage-taking not covered by them, his delegation had not thought it necessary to deal with hostage-taking by liberation movements in the course of their liberation struggle. Such a struggle would be an armed conflict but would not be of an international character within the meaning of article 3 of the fourth Geneva Convention. The taking of hostages in violation of that article obliged the Contracting States of the fourth Geneva Convention to prosecute or extradite the hostage-taker in accordance with articles 146 and 147. When the additional Protocols to the Geneva Conventions entered into force, liberation struggles would be regarded as international conflicts; however, that would not affect the prohibition of hostage-taking under article 75, paragraph 2, of additional Protocol I.

9. In line with article 3 of the Hague Convention for the Suppression of Unlawful Seizure of Aircraft, article 4 of the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, article 10, paragraph 2, of the draft excluded cases of a purely domestic character.

10. The arbitration clause contained in article 11 of the draft was largely consistent with the first paragraphs of article 12 of the Hague Convention, article 14 of the Montreal Convention, and article 13 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. Articles 12 to 14 of the draft were identical with articles 14 to 18 of the last of those Conventions, the final provisions of which, having originated in the United Nations, were a better model for a United Nations convention against the taking of hostages than the final provisions of the Red Cross Conventions of August 1949 or the International Civil Aviation Organization Conventions of December 1970 and September 1971.

11. He hoped that those brief explanations would help to make the draft more acceptable to some delegations and would facilitate more detailed discussion. As he had stated during the general debate, his delegation was open-minded and would continue to do its best to help the Committee fulfil its task.

12. Mr. BOUAYAD-AGHA (Algeria) noted that at that morning's meeting some delegations had questioned the request for an analytical report of the general debate which he had made on behalf of the African Group, on the grounds that it was not in accordance with normal United Nations practice. In that connexion, he would like to refer members of the Committee to the 1972 Yearbook of the International Law Commission, which referred to the fact that the discussions of the working group on the protection and inviolability of diplomatic agents had been based on an analytical report and list of discussion documents prepared by the Secretariat.

13. He thanked the representative of the Federal Republic of Germany for the explanations he had given on the draft. It was gratifying to be able to verify that the document really belonged to the Federal Republic of Germany and not to the United Kingdom or the United States of America and also that it was merely one document among many others. He was grateful that the document had been distributed so far in advance of the Committee's discussion of the item. However, he wished to point out that his delegation had some hesitation in accepting certain provisions contained in the draft, since it had not signed some of the other similar conventions. He hoped that the representative of the Federal Republic of Germany would not misunderstand the position his delegation was taking, which was in the interests of his country and of Africa in general. His delegation would be submitting a proposed text for the preamble to the draft convention (A/AC.188/L.4), which he proceeded to read out.

14. Mr. MAKEKA (Lesotho) said that he had found the remarks of the representative of the Federal Republic of Germany both interesting and instructive and had listened with interest to the Algerian proposal for the preambular paragraphs of the draft convention. He would be commenting on the various points involved in due course, but some comments needed to be made immediately on article 1 of the draft convention submitted by the Federal Republic of Germany (A/AC.188/L.3). He felt that the definition of the act of taking hostages could be improved by

including a reference not only to the act as such but also to its motivation. The common-law concept of mens rea, which took account of the mental state of the offender, would perhaps be applicable. The idea of intention seemed to be entirely missing from the definition contained in article 1. He could envisage cases where a person would be seized, for example, by freedom fighters belonging to liberation movements recognized by the United Nations and held hostage with a view to achieving some political concession. He asked the representative of the Federal Republic of Germany to clarify whether or not the draft was intended to cover such cases. While condemning the act of taking hostages under certain circumstances, his country would have difficulties if the motivation was political rather than criminal. Even under multilateral or bilateral agreements, when it came to extradition many States had reservations if political issues were involved and reserved the right to decide whether or not to extradite the culprits. If the convention was only intended to apply to the act of taking hostages as such, without mentioning the political aspect of the question, some States would be in fear of losing their right to decide not to extradite or prosecute in certain cases. A further explanation from the representative of the Federal Republic of Germany regarding the scope of the convention would facilitate the Committee's work.

15. Mr. KATEKA (United Republic of Tanzania) expressed full support for the views of the representative of Lesotho and read out the text of a proposed definition of hostage-taking:

"For the purposes of this Convention, the term 'taking of hostages' shall not include any act or acts carried out in the process of national liberation against colonial rule, racist and foreign régimes, by liberation movements recognized by the United Nations or regional organizations."  
(A/AC.188/L.5.)

He would elaborate on that proposal at a later stage.

16. Mr. de ICAZA (Mexico) supported the Tanzanian proposal and suggested an amendment to the effect that the convention should not apply to any situation involving a people's struggle for national liberation or to armed conflicts. There were adequate instruments setting forth the rules of war, and the convention should not try to regulate what was already regulated. He drew the attention of the members of the Committee to the successful initiatives of the Peruvian, Venezuelan and Mexican Governments to extend the scope of the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War to cover conflicts in which peoples were fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right to self-determination. Those important revisions, set forth in the new Protocols to the Geneva Conventions, should not be ignored.

17. Mr. MAKEKA (Lesotho) said that he supported the Tanzanian proposal, which coincided closely with his own. He requested the Secretariat to provide members of the Committee with copies of the revisions introduced by the new Protocols to the 1949 Geneva Conventions.

18. Mr. de ICAZA (Mexico) supported the request made by the representative of Lesotho and suggested that the relevant provisions included the preamble, article 1 - especially paragraph 4 - article 75 and article 85 of Protocol I. He agreed with the representative of Lesotho in attaching importance to the

question of motivation in judging acts such as the taking of hostages. He stressed that nothing in the convention should affect the right of asylum and the right of States to grant asylum.

19. Mr. CAMARA (Guinea) supported the request made by the representative of Lesotho and the proposals and suggestions made by the representatives of Tanzania, Mexico and Algeria.

20. Mr. MOK (Netherlands) said that, in drafting a treaty, it was always wise to follow precedents and make only the necessary changes. In that regard, the experience acquired in connexion with the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft should be instructive. He noted that his Government had had experience with situations involving the taking of hostages and felt that the primary responsibility of a Government in such situations was to save the lives of the hostages.

21. Some areas of agreement seemed to be emerging in the Committee. Great care should, however, be taken in limiting the scope of the convention, since exceptions constituted a retreat from the essential general principle that the end did not justify the means. The Committee should proceed by defining those means which were regarded by all as intolerable under all circumstances. It should also be remembered that the prosecution of persons who resorted to intolerable methods was not an attack on their aims but rather a rejection of their choice of methods.

22. Mr. FIFOOT (United Kingdom) said, with regard to the point raised by the representative of Lesotho concerning the need to consider criminal acts in terms not only of their physical aspect but also of the mental state of the perpetrator, that article 1 of the draft convention submitted by the Federal Republic of Germany contained both elements. Seizing and threatening corresponded to the factual or physical aspect of the crime, and the aspect of intent was covered by the words "in order to compel". That aspect was known in common-law jurisdictions as mens rea.

23. Mr. MAKEKA (Lesotho) said that, while he was not an expert on common law, he did not feel that the mens rea aspect was covered in article 1 of the draft convention. The physical act of taking a person hostage and demanding that something should be done constituted a single act and did not fulfil the technical requirements for what he had been referring to previously. The making of a demand showed the nature of the act and not the mental state of the perpetrator. He felt that the article should take more explicit account of the latter's state of mind.

The meeting rose at 5.35 p.m.

11th meeting

Friday, 12 August 1977, at 11.20 a.m.

Chairman: Mr. Leslie O. Harriman (Nigeria)

A/AC.188/SR.11

In the absence of the Chairman, Mr. Bavand (Iran), Vice-Chairman, took the Chair.

Drafting of an international convention against the taking of  
hostages pursuant to paragraph 3 of General Assembly  
resolution 31/103 (continued) (A/AC.188/L.2-5)

1. The CHAIRMAN said that the Committee had before it two working papers, submitted by Algeria (A/AC.188/L.4) and by Lesotho and the United Republic of Tanzania (A/AC.188/L.5). He invited the members of the Committee to comment on the working papers.
2. Mr. BYKOV (Union of Soviet Socialist Republics) recalled that the preceding day the Committee had decided to prepare a summary of all proposals and comments made by the representatives during the general debate; it might therefore be useful not to limit the work to consideration of written documents and to admit general comments by delegations that might wish to make them.
3. Mr. DICKSON (Canada) said that he would like to continue the discussion begun the preceding day concerning the definition of the act of taking hostages, with comments on article 1 of the draft convention submitted by the Federal Republic of Germany (A/AC.188/L.3). That document took account of two essential conditions: the proposed convention should not duplicate other international legal documents relating to the taking of hostages, and it should be aimed at acts committed by private persons, not by States.
4. In article 1 of the draft, the taking of hostages was defined both as an act - that of seizing or detaining other persons - accompanied by threats and as the intention of compelling a third person. Such an act, when it was intentional, constituted a crime under Canadian law, irrespective of the identity of the perpetrator or the victim, irrespective of motive and irrespective of the cause which that act was intended to defend. The working paper submitted by Lesotho and the United Republic of Tanzania was therefore incompatible with the principles of Canadian criminal law. However, his delegation recognized the importance of that question to certain delegations and was prepared to seek some means of resolving the problem.
5. Mr. de ICAZA (Mexico) said that he would be prepared to accept and support the proposal submitted by Lesotho and the United Republic of Tanzania in a slightly modified form. As had been stated during the general debate, the convention should not reproduce the texts of instruments already in existence or about to enter into force with regard to the question of the taking of hostages, such as additional Protocol I to the Geneva Conventions of 12 August 1949. While document A/AC.188/L.5 was entirely compatible with other provisions adopted within the framework of humanitarian law, it was restrictive in nature, since it stated that the term

"taking of hostages" should not include any act or acts carried out in the process of national liberation against colonial rule, racist and foreign régimes, nor any acts carried out in the course of armed conflicts. The wording was also restrictive in that the acts referred to were solely those carried out by liberation movements recognized by the United Nations or regional organizations.

6. He therefore proposed that the basic idea of the document should be retained and the following text should be included in the convention:

"For the purposes of this Convention, the term 'taking of hostages' shall not include any act or acts covered by the rules of international law applicable to armed conflicts, including conflicts in which peoples are fighting against colonial domination and foreign occupation and against racist régimes, in the exercise of the right of peoples to self-determination, embodied in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations."

That text supplemented article 1, paragraph 4, of additional Protocol I to the Geneva Conventions of 12 August 1949 and would apply to all liberation movements, whether or not they had been recognized by the United Nations or regional organizations. Moreover, it was in keeping with the idea expressed in article 10 of the draft submitted by the Federal Republic of Germany.

7. He introduced a second proposal with the following wording:

"None of the provisions of this Convention shall be interpreted as impairing the right of asylum."

That wording was essentially the same as that of article 6 of the Convention to prevent and punish acts of terrorism, signed in 1971 by the States members of the Organization of American States; moreover, a similar clause (article 12) was contained in the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. He requested that the two texts he had read out should be circulated as a Committee working paper. h/

8. Mr. ROSENSTOCK (United States of America) said that, in his view, article 1 of the document submitted by the Federal Republic of Germany was completely consistent with what should be expected of a convention relating to the taking of hostages, since it defined the act itself without taking account of the motives that might have prompted its commission.

9. In fact, a definition of the act of taking of hostages that would take account of the motives or causes prompting the commission of the act would set the international community back several decades, to a time before the drafting of the Charter of the United Nations and even before the drafting of the Covenant of the League of Nations; it would bring the international community straight back to the barbarous age when there had still been talk of just and unjust wars, although even at that time some acts had already been considered inadmissible. It was

---

h/ Subsequently circulated as document A/AC.188/L.6.

indeed impossible, even in the name of the noblest causes, in the name of the struggle for the most sacred rights, to admit certain acts such as the hijacking of aircraft, the commission of crimes against diplomatic agents or the use of poison gas or explosive bullets, and one must consider precisely the question whether the taking of hostages was not an equally repugnant act. Article 1 of the proposed draft stated the problem perfectly, and his delegation could not agree to amending it in the manner proposed by Lesotho and the United Republic of Tanzania. It could not accept that way of thinking, for no goal or cause was so noble that it could justify all possible means.

10. In the view of the United States, the introduction into the convention of a provision concerning the right of asylum was unnecessary and would in fact be harmful. There was no clause to that effect in the Hague and Montreal Conventions, which the United States, like many other States, had ratified while vigorously defending the right of asylum. In the current state of international law, no State had the obligation to extradite, but States always had the right to choose between extradition of the culprit and his prosecution in their own territory. By affirming the principle of "extradite or prosecute", the Convention upheld that choice and enabled States to continue to have the option of granting or not granting asylum. It had been asserted that the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, contained a similar clause. However, that Convention related to an entirely different problem; moreover, its application was limited to a single category of persons and was aimed at certain clearly defined circumstances. It could not, therefore, constitute a precedent in the matter.

11. His delegation believed that article 1 of the draft convention submitted by the Federal Republic of Germany should not be amended in any way.

12. Count SCHIRNDING (Federal Republic of Germany) said that he reserved the right of his delegation to comment at a later time on the working papers submitted by Algeria (A/AC.188/L.4) and by Lesotho and the United Republic of Tanzania (A/AC.188/L.5). He wished, however, to clarify an important question which had been raised by Lesotho, namely, that the draft submitted by the Federal Republic of Germany did not take account of the mental state or motives of the person committing the act of taking of hostages. Under the law of the Federal Republic of Germany, only a person in full possession of his mental faculties could be considered guilty of a crime. As for motives, they must be taken into account at the time of determination of the sentence, which was at least three years of detention for that type of crime but could be longer if the motive was of a manifestly criminal nature. On the other hand, no subjective factor could diminish the magnitude of the crime; such diminution could result only from the objective circumstances in which the act was committed - for example, in self-defence or in the course of an armed conflict, as provided in article 3 of the Geneva Conventions of 12 August 1949.

13. Like the Conventions of The Hague (1970), Montreal (1971) and New York (1973), the working paper submitted by the Federal Republic of Germany made no reference to the mental state or motives of the person committing the act of taking of hostages, since such matters should be governed by the penal code of each State.

14. The additional Protocol to the Geneva Conventions of 12 August 1949, mentioned by the representative of Mexico, was also of great importance, and his delegation would comment further on it at a later time.

15. Mr. MAKEKA (Lesotho) said that in speaking of the mental state of an offender he had meant that it was necessary to determine not whether he was of sound mind but whether he had criminal intentions at the time the act was committed.

16. With regard to the question of motives, and more specifically the question of self-defence mentioned by the representative of the Federal Republic of Germany, it should be stressed that self-defence was not a mitigating circumstance but was a defence pure and simple. The right of self-defence of States which were the object of armed aggression was recognized in Article 51 of the Charter of the United Nations. No one could disregard the fact that there were cases in which an individual or a State had the right of self-defence. When national liberation movements were involved, the notion of a just or unjust cause was irrelevant, at least in the sense in which it had been interpreted in the past. The right of self-determination was clearly established in numerous international conventions and United Nations resolutions. One of the fundamental principles of the United States Declaration of Independence was the right of everyone to life, liberty and the pursuit of happiness. Why should peoples oppressed by racist and colonialist régimes be denied the rights granted to others before them, including the right to defend themselves with the means available to them? If the principle that such peoples had the right to self-determination was accepted and if it was desired to act in conformity with the resolutions adopted by the General Assembly on that subject, a definition of the act of taking hostages which did not take the motive for the act into account would not be valid.

17. His delegation welcomed the proposals formulated by Mexico. The first proposal specified the situations to which the expression "taking of hostages" did not apply: the convention should not deal with questions which had already been covered by other international instruments. As to the second proposal, on the question of the right of asylum, his delegation felt that it gave sovereign States full latitude in cases where - for political reasons, for example - they could not extradite or prosecute a person who had committed an act of taking hostages in their territory. It should be understood that what was involved was not the right of diplomatic asylum but the right of asylum in general.

18. Mr. DELEAU (France) said that the draft convention submitted by the Federal Republic of Germany appeared to meet the concern of the international community. That draft had been modelled after the Conventions of Geneva, The Hague and Montreal and its purpose was to fill the gaps in those texts.

19. Article 1 clearly defined the act of taking hostages. However, his delegation reserved the right to propose subsequently a new formulation for certain provisions of the article which were perhaps a little vague. The provision that the taking of hostages should be made punishable by severe penalties (article 4) should appear earlier in the text; also, it might be expanded to include an indication that the penalty could be mitigated in cases where hostages were freed voluntarily.

20. Articles 2 and 3 setting forth measures to be taken by Contracting States to prevent the offences set forth in article 1 and to ease the situation of hostages were fully satisfactory. Article 5, concerning the establishment of the jurisdiction of States by those States themselves, envisaged a number of wisely chosen cases. However, it might be useful to add the case in which the victim was a national of the State in question.

21. With regard to article 6, it should be specified in paragraph 1 (f) that the

international organizations referred to were intergovernmental. Article 7 specified the conditions in which the Contracting State should consider the penalty to be imposed on the alleged offender if he was found in its territory. The article should introduce the idea that the State should respond to a request for extradition, which should be expressly formulated.

22. His delegation fully approved of articles 8, 9 and 10. It suggested that in the last sentence of paragraph 2 of article 10 it should be specified that the convention was applicable when a foreign State was subjected to demands, so as to establish clearly the international character of the case.

23. It reserved the right to revert to the question and in particular to article 11 concerning the settlement of disputes. However, it felt that the draft submitted by the Federal Republic of Germany provided a very useful basis for discussion. On the other hand, it wished to set forth express reservations concerning the documents submitted by Algeria (A/AC.188/L.4) and by Lesotho and the United Republic of Tanzania (A/AC.188/L.5) because of the notions which they would introduce into the text of the convention.

24. Mrs. MARQUEZ de PEREYRA (Venezuela) supported the paragraph on the right of asylum proposed by Mexico and expressed her disagreement with the delegation of the United States on that point. The adoption of an international rule making it obligatory to prosecute, without any exception, an offender who had not been extradited would be contrary to a humanitarian principle, that of the right of asylum, which had always been respected by Venezuela. Accordingly, her delegation felt that any draft convention against the taking of hostages should include a provision corresponding to that set forth in article 6 of the Convention, signed at Washington in 1971, to prevent and punish acts of terrorism. She reserved the right to revert to that point when she deemed it appropriate.

25. Mr. ROSENSTOCK (United States of America) said it was his impression that there was no difference of opinion among the American States concerning the notion of the right of asylum as such; where opinions differed, it was on the legal consequences which the inclusion in the convention of a paragraph such as that proposed by the Mexican delegation would have.

26. It had been suggested that his observation concerning the inadmissibility of certain acts or certain wars, however just their cause, was incompatible with the right of self-defence recognized by Article 51 of the Charter of the United Nations. However, the instruments relating to the admissible use of force, for example, that concerning the use of poisonous gases, applied both to aggressors and to States exercising their right to self-defence against armed aggression under Article 51 of the Charter. Moreover, the question of whether there were circumstances in which oppressed peoples could resort to force in order to be able to enjoy their fundamental rights, including the right to self-determination, was not at issue. Just as certain forms of violence, such as acts committed against protected persons, including diplomatic agents, were inadmissible regardless of the circumstances, so the act of taking hostages which endangered human lives was inadmissible in all cases.

27. Furthermore, the notion of self-defence should be interpreted judiciously. The exercise of the right of self-defence did not mean that one could resort to force in all cases to defend oneself; it was a limited right which could be exercised only in clearly defined situations. What was at issue was not the motive

for an act but the act itself, and violence was always inadmissible, whether the cause was just or unjust.

28. Mr. DAMILANO (Chile) said that the Mexican delegation's proposal to introduce in the convention a rule establishing that none of the provisions of the convention should be interpreted as impairing the right of asylum might lead to confusion. The right of asylum was recognized in the legal systems of all the countries of Latin America. However, the right of asylum was generally accorded to persons committing political offences, whereas kidnapping was, under the terms of the Washington Convention of 2 February 1971, an offence under ordinary law. Accordingly, persons committing the offence of taking hostages could not invoke the right of asylum and, consequently, they were liable to extradition.

29. Mr. ALVARADO CORREA (Nicaragua) said that if he had correctly understood the representative of Lesotho, the provision relating to the right of asylum submitted by the Mexican delegation meant that in certain cases States would not be obliged to extradite persons committing an offence such as the taking of hostages.

30. By "right of asylum" his delegation understood the right of diplomatic asylum. That right did not apply in the case of taking hostages, for under the terms of article 2 of the Washington Convention of 2 February 1971 kidnapping was considered a common crime of international significance, regardless of motive. The convention which the Committee must draft would deal with a common crime and none of its provisions should lend itself to an interpretation which could impair the right of asylum, since the right of asylum was accorded only in the case of political offences. His delegation therefore thought that the right of asylum should not be mentioned in the future international convention against the taking of hostages.

31. Mr. VELESKO (Byelorussian Soviet Socialist Republic) thanked Algeria as well as Lesotho and the United Republic of Tanzania for taking the initiative in submitting constructive proposals which would undoubtedly be an important contribution to the formulation of the convention. He recalled in that connexion that, at the thirty-first session of the General Assembly, the Byelorussian delegation had said that the notion of international terrorism should not be given too broad an interpretation which would make it possible for that notion to cover activities of national liberation movements and of peoples fighting against their oppressors or acts of workers against those who exploited them.

32. Mr. de ICAZA (Mexico) said that there could be no just or unjust causes in humanitarian law. Accordingly, article 2 common to the four Geneva Conventions embodied the concept that the norms of humanitarian law, which were designed to protect innocent victims - namely, individuals not participating directly in hostilities - applied in all circumstances, regardless of the nature of the conflict or the causes invoked by the opposing parties.

33. The first paragraph of the proposal submitted by Mexico was intended simply to define the scope of the proposed convention. Moreover, it was drafted in the same spirit as article 10 of the draft convention proposed by the Federal Republic of Germany. The convention should not cover crimes committed in times of armed conflict, which were already the subject of other international instruments. The current trend in international law was to regard wars of national liberation as armed conflicts of an international character. Furthermore, it would be illusory to think that the Committee could fill the gaps in the law relating to war. As the representative of Chile had rightly pointed out, the object was to draft a

convention designed to suppress crimes under ordinary law. Consequently, the proposed draft convention should exclude specifically acts committed in wartime, in accordance with the wording proposed by Lesotho and the United Republic of Tanzania, or that proposed by Mexico.

34. Furthermore, his delegation would have no difficulty in adopting a wording similar to that contained in the New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.

35. The right of asylum was granted not only in cases of crime, but also in cases of persecution. In many instances, a country which had granted the right of asylum refused to extradite an accused individual, not because he had committed an offence - be it an offence under ordinary law or a political offence - but because it believed that, if the individual was expelled, he or she might not receive a fair trial in the country requesting extradition. There was nothing in the norms relating to the right of asylum to prevent the country granting asylum to an individual and declining to extradite him from instituting proceedings against him. Indeed, there was no lack of examples of such cases.

36. Mr. MOK (Netherlands) noted that many interesting points had been raised in the course of the Committee's debate and suggested that, in order to save time, the Chairman might, for example, draw up a list of those questions which could be considered during subsequent discussions.

37. Mr. MAKEKA (Lesotho) said that there seemed to be some confusion since the representatives of a number of Latin American countries seemed to interpret the Mexican proposal concerning the right of asylum as referring to diplomatic asylum, whereas he considered it as referring to political asylum. Naturally, when a political crime had been committed, any country was free to grant asylum or not. However, he believed that, under the proposed convention, countries should have the freedom in certain - very rare - cases not to extradite or even prosecute the perpetrator of an act covered by the convention.

38. The representative of Chile had made an interesting observation which coincided with what he himself had said during the general debate, namely that the draft convention would relate to offences under ordinary law, in other words, extraditable. However, a political crime was not necessarily an act of a political nature, as was the case with assassinations of statesmen. It was not the act itself which gave the offence a political character, but the motive or intent of the perpetrator. It would be difficult to include in the convention political offences which, in most cases, came under the sovereign jurisdiction of States.

39. The United States representative had put his finger on the bone of contention when he had stated that acts such as the taking of hostages could in no circumstances be justified. For its part, his delegation did not think that the taking of hostages could be condemned in itself, without taking account of the circumstances surrounding it, namely the state of mind and motives of the perpetrator. In that connexion, his delegation did not consider the acts covered in the Convention for the Suppression of Unlawful Seizure of Aircraft and in the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation as falling in the same category as the taking of hostages.

40. His delegation had proposed an amendment which took account of the importance to be attached to the intent and motives of the presumed perpetrator of the act of hostage-taking. He was convinced that the compromise amendment submitted by Mexico with a view to defining the taking of hostages would be acceptable.

41. Mr. BRACKLO (Federal Republic of Germany) observed that the Committee was conducting a very useful discussion of the relationship between the draft convention and existing instruments. The first paragraph proposed by Mexico was indeed prompted by the same considerations as article 10 of the draft convention submitted by his own delegation. The latter would prefer to see the application of the convention set out in an article on the scope of the convention rather than in a definition.

42. Mr. KATEKA (United Republic of Tanzania) said that he wished first of all to make it clear that the text appearing in document A/AC.188/L.5 was not based on any of the working papers before the Committee. His delegation reserved its position on the text proposed by Mexico, for it wondered just what "the rules of international law applicable to armed conflicts" were in the context of liberation struggles. It had already explained during the general debate what it wished to see included in a convention against the taking of hostages, which must under no circumstances be capable of being invoked against national liberation movements which took their oppressors hostage in the course of a struggle against a colonial Government or a racist foreign régime.

43. He introduced the following text:

"States shall not resort to the threat or use of force against the territorial integrity and independence of other States as a means of rescuing hostages."

He requested that the text should be issued as a working paper of the Committee.

44. Mr. MACAULAY (Nigeria) expressed appreciation to the Secretariat for the document prepared in pursuance of paragraph 4 of General Assembly resolution 31/103 (A/AC.188/L.2) and to the Federal Republic of Germany for the very useful draft convention which it had submitted (A/AC.188/L.3). He was surprised that more emphasis had not been placed on the Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance and on the European Convention on the Suppression of Terrorism, which corresponded rather closely to what he would have liked to see in the draft submitted by the Federal Republic of Germany. However, the draft convention which the Committee was called upon to prepare was not supposed to fill the gaps found in existing instruments.

45. The Hague and Montreal Conventions were concerned with crimes against property as a result of which persons might be injured or killed. On the other hand, the acts covered by the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, were more in the nature of infringements of basic human rights. His delegation felt that the taking of hostages was a human rights problem and that the rights of both parties must accordingly be taken into account, for the hostage-taker had basic rights just as the hostages themselves did. Consideration must therefore be given not only to the act itself but also to the considerations which had prompted the person

concerned to commit that act. Furthermore, as the representative of the Federal Republic of Germany had noted, the author of the act could invoke the right of self-defence. His delegation did not agree with the representative of the United States in contending that the right of self-defence was limited and that certain acts were unjustifiable regardless of their motives.

46. With regard to the definition of the act of taking hostages, if article 1 of the draft submitted by the Federal Republic of Germany was not amended along the lines suggested by Lesotho and the United Republic of Tanzania it might be possible to borrow from the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents - which, in his delegation's opinion, better reflected the Committee's intentions - and word article 1 as follows:

"For the purposes of this Convention, 'the taking of hostages' means ..."

That definition was a very important element which should be included in any draft convention. The amendment proposed by Mexico was very useful and deserved thorough consideration.

47. It was rather rash to say that the question of the right of asylum had no place in the draft convention. The ultimate decision on whether to prosecute and/or extradite was governed by the criminal law of the country in question, and there was nothing to prevent the country in which the hostage-taker was apprehended from prosecuting him. If a given act of hostage-taking was political in nature, the country in question was free to prosecute the individual concerned if it did not extradite him, and that was perfectly acceptable under international law. The question of the right of asylum was an important one and should be thoroughly discussed by the Committee.

48. Finally, his delegation had no difficulty in supporting the text just proposed by the Tanzanian delegation since it was not permissible under any circumstances for one country to take it upon itself to violate the territorial integrity of another.

The meeting rose at 1.10 p.m.

12th meeting

Friday, 12 August 1977, at 4.15 p.m.

Chairman: Mr. Leslie O. Harriman (Nigeria)

A/AC.188/SR.12

In the absence of the Chairman, Mr. Alvarado Correa (Nicaragua),  
Vice-Chairman, took the Chair.

Drafting of an international convention against the taking  
of hostages pursuant to paragraph 3 of General Assembly  
resolution 31/103 (continued) (A/AC.188/L.2-7)

1. Mr. BOUAYAD-AGHA (Algeria) said that the Mexican proposal (A/AC.188/L.6) was undeniably interesting, but the reference to rules of international law applicable to armed conflicts caused some difficulties for his delegation. There was a problem of vagueness, as international law was still being developed under the stimulus of various United Nations resolutions. The issue related not so much to armed conflicts as to the struggle of peoples dominated by colonial régimes and endeavouring to regain their rights, a struggle which had arisen in the 1950s and had been carried on mainly in times of peace. His delegation would therefore favour the elimination of the reference to the rules of international law applicable in armed conflicts; reference should rather be made to the struggle of oppressed peoples or directly to the relevant United Nations resolutions.
2. Mr. de ICAZA (Mexico) said that an important advance in international law had been made at the Conference on international humanitarian law in Geneva with the adoption on 8 June 1977 of two new Protocols to the 1949 Geneva Conventions for the protection of war victims, especially article 1 of Protocol I, which included under the term "armed conflict" the struggles of peoples fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination. There were not many rules of international law which applied to armed conflicts; those that existed, mainly the Conventions signed at The Hague and Geneva, should be fully applied.
3. The question before the Committee was one of establishing the scope of the proposed convention, which should concern itself primarily with law applicable, in time of peace, since situations governed by law applicable in time of war were already covered. There might, therefore, be some difficulties if the reference to exclusion of acts covered by the rules of international law applicable to armed conflicts was deleted. It might not be understood why an exception was being made for the struggles of peoples acting in exercise of their right of self-determination, which were already covered by other international instruments. His delegation was not opposed to deleting the reference but felt that such a deletion might lead to some difficulties in interpretation.
4. Mr. FIFOOT (United Kingdom) said that, with regard to the proposal submitted by the representatives of Lesotho and the United Republic of Tanzania (A/AC.188/L.5), that which seemed to be a definition of the taking of hostages did not actually constitute a definition but rather established an exception, namely, that certain acts involving the taking of hostages were not to be considered as

such and that while they were impermissible they were not a matter which fell within the scope of the convention. Such a provision was, in the view of his delegation, quite astonishing, given the genesis of the item, the Geneva Conventions and the new Protocols, and could give rise to numerous difficulties. It would appear from the proposal that national liberation movements were different from parties to armed conflicts, a finding which was not in agreement with Protocol I to the 1949 Geneva Conventions.

5. Furthermore, liberation movements were not confined to southern Africa; there were other movements in Africa which described themselves as liberation movements and were supported by certain States on the continent. There were, in fact, such movements in many parts of the world. The reference in the proposal to recognition by the United Nations and regional organizations was also curious, as it restricted the designation "national liberation movement" to only certain movements. What would happen in the future? When the United Nations came to consider whether to recognize a national liberation movement, it would in effect be deciding whether that movement should be exempted from the proposed convention.

6. His delegation found it very difficult to accept any exception to the convention; there was no precedent for such action and the trend in international law culminating in June 1977 was in the other direction.

7. Mr. BOUAYAD-AGHA (Algeria) announced that his delegation wished to join the sponsors of the proposals in documents A/AC.188/L.5 and A/AC.188/L.7.

8. The statement by the representative of the United Kingdom raised the question whether national liberation movements recognized by the United Nations and regional organizations would wish to have a convention on the taking of hostages if the Committee found that the matter did not concern them. His delegation felt strongly that the proposal submitted by the delegations of the United Republic of Tanzania and Lesotho would provide a very necessary safeguard of the interests of the national liberation movements. He noted that some delegations claimed that the decolonization process was coming to an end and that all peoples, even the Palestinian people, would soon be able to exercise freely their right to self-determination, which would make it unnecessary to include a safeguard clause such as the one envisaged in the proposal submitted by the United Republic of Tanzania and Lesotho. His delegation would, of course, welcome such a development and hoped that the Governments which had some responsibility for the situation in southern Africa, in particular the Government of the United Kingdom, would contribute to the speedy elimination of the illegal régimes prevailing there. If the representative of the United Kingdom was concerned about the reference to recognition by the United Nations and regional organizations, the movements - of which there were not many - could be listed by name.

9. Mr. MACAULAY (Nigeria) shared the concern of the representative of Algeria with regard to the reference in the Mexican proposal to the rules of international law applicable in armed conflicts. He noted that lawyers always disagreed as to what was applicable in a given case. He agreed that a reservation in respect of national liberation movements was necessary and hoped that a text combining the best elements of the Mexican proposal and that submitted by the United Republic of Tanzania and Lesotho could be arrived at.

10. He was somewhat puzzled by the reference made by the United Kingdom representative to the trend in international law which had culminated in June 1977. He took it that the representative of the United Kingdom was referring to the

European Convention on the Suppression of Terrorism. He questioned the status of that agreement, which most States Members of the United Nations had not signed; he was not sure that the agreement was even intended to be registered under Article 102 of the Charter. It was important that the convention to be drafted by the Committee should be independent of all other documents and should state clearly who was covered by its provisions.

11. Mr. ROSENSTOCK (United States of America) agreed that it was not possible for a United Nations text to draw on the provisions of legal instruments not registered under Article 102 of the Charter. That was one of the problems which his delegation had with the working paper submitted by Mexico. Such a reference to the rules of international law would make sense in purely domestic legislation, but it was doubtful whether it was applicable to the international situation where there was no coherent code of laws. However, additional Protocol I to the Geneva Conventions adopted at Geneva in June was relevant to the problem. The text of the working paper submitted by Lesotho and the United Republic of Tanzania suggested, in language which itself raised problems, that under article 1 of the draft convention hostage-taking would not be prohibited if it was carried out by a liberation movement. While recognizing the strong support that existed for those movements, he had to point out that those same Governments, when negotiating the additional Protocol in Geneva, had accepted precisely the idea that the liberation movements should not take hostages. Since the views which had been expressed by some representatives appeared to be at variance with what their Governments had decided at Geneva, he proposed that the Committee should move on to discuss some other point, to allow delegations, including his own, to check on that matter. It would not be wise to pursue the discussion further until every delegation was sure that it had been correctly informed about what had transpired at Geneva.

12. Mr. de ICAZA (Mexico) said that for once he found himself in full agreement with the representative of the United States. Nothing would be gained from continuing the discussion on the working paper submitted by Lesotho and the United Republic of Tanzania at that stage. As he had already stated in the general debate, he intended to leave aside problems dealt with in other forums. The main problem was the use of the word "hostage", which was a term taken from instruments referring to war crimes. It would perhaps be clearer if the term "kidnapping with international repercussions" was used.

13. Mr. KATEKA (United Republic of Tanzania) said that the representative of Mexico had drawn his attention to the omission of the word "sovereignty" in the text he had read out at the previous meeting. The text should read: "States shall not resort to the threat or use of force against the sovereignty, territorial integrity or independence of other States as a means of rescuing hostages." (A/AC.188/L.7.) That would bring it closer into line with the wording of the Charter of the United Nations. He could not agree with any argument that it would be unnecessary to reaffirm the principles of the Charter in the convention. There were many precedents for such a reaffirmation. He wished to reiterate his delegation's concern at the repeated objections to the exemption of the national liberation movements from the scope of the draft convention. It had been said that there were many liberation movements in Africa, but the sponsors of working paper A/AC.188/L.5 had been careful to define which movements they meant. As he had already stated at the previous meeting, he believed that the whole exercise would come to naught if there was no accommodation of the special position of the liberation movements, a matter on which his delegation felt very strongly.

14. Mr. ROSENSTOCK (United States of America) said that where working paper A/AC.188/L.7 was concerned there could be no objection to including, as it did, terminology taken from the Charter of the United Nations, but he wondered whether it would serve any useful purpose to do so in that context and particularly to select only certain terms from the Charter. He thought that when the Committee arrived at the drafting stage some better wording could perhaps be found. When viewed in isolation, the wording appeared to raise certain problems and he proposed that the Committee should keep an open mind on it and return to the matter at an appropriate time. He did not feel that it need raise any fundamental difficulty.

15. Mr. BRACKLO (Federal Republic of Germany) said he found the Mexican proposal with regard to the use of the word "hostage" interesting and he agreed that sometimes the use of another term could facilitate discussion. However, he had doubts as to whether it would be possible to abandon the term already introduced. His Government had been responsible for the original proposal and he felt obliged to defend the original title of the draft convention. He saw merit in the Mexican proposal to the extent that it helped the Committee to see that it was dealing with a field not previously covered by other conventions. The Committee had to discuss the collision between different norms in its search for rules applicable in times of peace and he thought that some private talks on the whole concept might prove fruitful. As far as the proposal submitted by the United Republic of Tanzania (A/AC.188/L.7) was concerned, he would like to make some remarks which were necessarily of a preliminary nature, since he had not had time to study the paper. His delegation did not see any major difficulty with that text. It was useful in reminding the Committee of the aim of its endeavours, namely to prevent unlawful acts by Governments which endangered international peace. That might be an acceptable way of defining the Committee's purposes in the draft convention, but he had reservations as to whether such wording was comprehensive and whether it was wise to include such a definition in a document which, in his opinion, should be self-explanatory.

16. The CHAIRMAN, commenting on the Mexican suggestion to replace the word "hostage" by the words "kidnapping with international repercussions", said that the essence of hostage-taking was that the hostage was placed under threat and third parties were obliged to fulfil certain conditions to secure the hostage's release. If a person was taken hostage merely for publicity purposes and no demands were made, that would constitute the criminal offence of kidnapping and not hostage-taking.

17. Mr. de ICAZA (Mexico) said that although he agreed with the representative of the Federal Republic of Germany that it was perhaps not opportune to change the terminology since the Committee's terms of reference included the word "hostage", he thought that further discussion could take place on that subject at a later stage. Meanwhile, he wished to make certain comments on other aspects of the draft convention in the working paper submitted by the Federal Republic of Germany.

18. With reference to article 1, paragraph 2, he thought that the Committee should discuss the possibility of making the threat to take someone hostage a crime under the terms of the draft convention. In paragraph 1 of that article, it was implicit that individuals acting as agents of an authority were also prohibited from taking hostages. In the general debate he had explained that responsibility for hostage-taking in many cases rested with an authority for which the individual was merely acting as agent. Although he did not consider it essential to make reference to such cases, he thought it might be useful. In article 3, paragraph 2, the

assumption was that the hostage was a foreigner. If he had been taken hostage in his own country, he would not wish the Government to facilitate his prompt departure. Some amendment to that paragraph was needed to remove that anomaly. Article 10, paragraph 2, raised a major problem for his delegation. The last sentence of that paragraph was unacceptable. Even if a third State was involved, an international convention could not apply to an act committed by and solely involving nationals of the State where the act was committed. If the offender took the hostage in his own country, he must be brought to trial in his own country in accordance with national legislation. If the hostage was taken from an international organization or international conference, the offender would have to be brought to trial by the State where the crime was committed. Lastly, his delegation requested that a few lines be included in the draft to cover the question of asylum.

19. The CHAIRMAN said that, in his opinion, the inclusion of a reference to the threat to take hostages as proposed by the Mexican representative would introduce a very subjective concept into the draft convention, since it would be difficult to determine what constituted a threat.

20. Count SCHIRNDING (Federal Republic of Germany) said that the draft convention submitted by his Government did not cover the threat of taking someone hostage. If delegations had no objections, however, the Committee could consider whether to include in the convention a reference to the threat to take someone hostage and it would certainly not be going beyond its mandate in doing so.

21. He believed that article 1 of the draft convention covered the case of a person who, acting on behalf of a public institution or a State, committed an offence within the terms of the convention.

22. With regard to the comment on article 3 of the draft, he said that it had been understood that the hostage would not be a citizen of the State in which he found himself. To "facilitate" meant that any action taken would depend upon the will of the hostage himself. The article had been drafted with the possibility in mind that the hostage could not afford the travel expenses involved in returning to the place to which he wished to go. In such circumstances, it was intended that the State he had been taken to would provide him with assistance in returning home.

23. With regard to the objection raised to article 10, he felt that where a State was subjected to demands, as mentioned in the second sentence of paragraph 2, that would always be a matter of international concern. Since reservations had been expressed, however, his delegation would have no objection to redrafting the article.

24. Mr. BYKOV (Union of Soviet Socialist Republics) said that he found the Committee's work unsystematic and rather unproductive. He would like to see proposals discussed and decided upon in order, one at a time. Also, he hoped that the analytical resumé of the Committee's work, which the Secretariat had promised to produce, would help to achieve that purpose.

25. The proposal sponsored by Algeria, Lesotho and the United Republic of Tanzania (A/AC.188/L.5) raised an interesting and important point which deserved the Committee's attention. Many representatives had already said that the convention to be adopted should not hamper national liberation movements in their struggle for self-determination and freedom from colonialism and racism. That point of view had

met with no objection. The question was therefore whether the problem lay in the idea expressed in the proposal or in its formulation. Those delegations which objected to the proposal had clearly not fully understood it, for there had even been attempts to deny the justice of the struggle for national liberation. In formulating and agreeing upon a convention, the Committee must consider existing conventions and decisions taken by the organs of the United Nations.

26. He felt that the Committee should be able to find an appropriate formulation of that principle or at least make specific proposals which would form an integral part of the eventual convention and would be conducive to more productive work by the Committee.

27. The CHAIRMAN said he shared the views of the representative of the Soviet Union in the sense that all views and proposals presented to the Committee were of equal importance and should be discussed fully. They should be discussed in the order in which they had been submitted, but if any point either provoked no discussion or required informal talks in order to enable the interested parties to reach agreement, the Committee should, of course, move on to other topics.

28. Mr. MOK (Netherlands) said that he thought the Mexican proposal in document A/AC.188/L.6 required some time for consideration. If, however, the Committee could accept that proposal, then the proposal contained in document A/AC.188/L.5 would become redundant. The use of threats was a well-known concept in criminal law, but it had not been included in other international conventions. It was easy to imagine cases of threatened hostage-taking in which it would be very difficult to apply the other rules of the proposed convention. He therefore believed the Committee would be well advised not to include a reference to the use of threats in the proposed convention.

29. Regarding the objections raised to article 3, paragraph 2, of the draft convention, he agreed that the intention was not clear and the drafting should therefore be improved.

30. Mr. MACAULAY (Nigeria) asked whether the Committee was now considering the taking of hostages, or kidnapping, as had been suggested by Mexico: if it was discussing kidnapping, it was exceeding its mandate.

31. The Committee should discuss all proposals put before it. The United States representative had appeared to be making value judgements on proposals which had never been discussed in the Committee. The suggestion that discussion of the taking of hostages had been rendered superfluous by the adoption of previous international agreements was incorrect: article 3 of the Protocol Additional to the Geneva Conventions covered only situations which were not of an international character; as to the Strasbourg Convention, since it was not a United Nations document it could not be invoked before the Committee.

32. If the Committee was no longer talking about the taking of hostages and the role of freedom fighters, but about kidnapping, then there was no need for a convention. The subject of freedom fighters was a sensitive one which the African States did not wish to see swept under the rug. He hoped that the Committee would be able to continue its work on the draft convention submitted by the Federal Republic of Germany.

33. The CHAIRMAN said it could be inferred from the wording of the Mexican

statement that the mandate of the Committee was to draw up a convention against the taking of hostages. The Committee would continue to work within the provisions of that mandate, using the terminology it had hitherto employed.

34. Mr. ROSENSTOCK (United States of America) assured the Nigerian representative that his delegation did not wish to sweep the question of freedom fighters under the rug. Some delegations, however, believed it had been accepted that the taking of hostages by any person or group was impermissible. Other delegations were suggesting that national liberation movements should not be included in such a condemnation. One of the two parties was obviously wrong, and since an error of fact was involved, he proposed that the question should be set aside. The taking of hostages was too important a subject to permit the formulation of an international convention based upon a mistake. Pending a satisfactory resolution of the disagreement, the Committee should turn its attention to some of the other matters before it.

35. He noted in passing that the title of the Geneva Protocol specifically used the phrase "armed conflicts" as the only term which could legitimately be applied to a modern struggle between combatants. The provisions of that text were, of course, intended to apply to aggressor and victim alike.

36. His delegation considered that the definition in article 1 of the draft convention submitted by the Federal Republic of Germany was clear and unobjectionable. The Committee should reflect on the possibility of including the use of threats before the second reading; however, while his delegation did not wish simply to dismiss the issue, it felt that it might be wiser to follow the model of other international conventions, which had avoided the inclusion of references to the use of threats.

37. The CHAIRMAN said that he expected the work of the Committee to continue with a discussion of the draft convention submitted by the Federal Republic of Germany, as well as the suggestions made by various representatives, which provided a broad base for discussion. The Committee should analyse those suggestions separately and systematically. He expected that the analytical resumé which the Secretariat was to provide would help the Committee to conduct its work more effectively.

38. Mr. BYKOV (Union of Soviet Socialist Republics) said that the Committee must view every proposal and view placed before it, oral and written alike, on an equal basis, and he expected the Secretariat document to be of assistance in that task.

39. Mr. ACHACHE (Algeria) agreed that discussions should be conducted on the basis of the analytical résumé to be prepared by the Secretariat.

40. Mr. de ICAZA (Mexico) informed the Committee that the proposal his delegation had made had been intended for consideration as a working paper and did not have the same standing as the draft convention submitted by the Federal Republic of Germany.

41. Mr. FIFOOT (United Kingdom) observed that the Committee, having dispensed with concern for procedural exactitude, had managed to do a considerable amount of useful work. He hoped that subsequent meetings could be conducted according to the same successful formula.

42. Mr. ACHACHE (Algeria) said that his delegation expected the work of the

Committee to continue, with the help of the document to be provided by the Secretariat, in the order in which proposals and statements had been made.

43. The CHAIRMAN said he had not wished to imply that discussions would be conducted on the basis of a strict order of priority. All statements and proposals made to the Committee were of equal importance, but it should be borne in mind that the joint proposal of the delegations of Algeria, the United Republic of Tanzania, and Lesotho, and the proposal of the representative of Mexico dealt with one part of the problem before the Committee, while the draft document submitted by the Federal Republic of Germany was broader in scope.

The meeting rose at 6.10 p.m.

13th meeting

Monday, 15 August 1977, at 11.15 a.m.

Chairman: Mr. Leslie O. Harriman (Nigeria)

A/AC.188/SR.13

In the absence of the Chairman, Mr. Bracklo (Federal Republic of Germany), Vice Chairman, took the Chair.

Drafting of an international convention against the taking of hostages pursuant to paragraph 3 of General Assembly resolution 31/103

(continued) (A/AC.188/L.2-7)

1. The CHAIRMAN announced that the Secretariat had prepared a document summarizing the general debate held at the 3rd to 9th meetings (Conference Room Paper No. 1) and that the document would be distributed during the meeting. He suggested that the Committee should continue to discuss the substantive issues relating to the proposals that had been made but that members should be free to make other proposals if they wished.
2. Mr. (Japan) said that his delegation was pleased to note that at its last few meetings the Committee had begun more concrete work on substantive matters relating to its mandate. The draft convention submitted by the Federal Republic of Germany (A/AC.188/L.3) was an excellent piece of work, and other useful proposals had been made. In the discussion of the past few weeks, it had become clear that all shared a sincere concern to devise an international scheme to prevent the taking of hostages; however, different opinions had been expressed on the problematical aspects of the question. In view of the different opinions and of the short time remaining, he suggested that the problems should be discussed in the sequence followed in the draft convention, which adhered to the normal pattern of international agreements on related subjects.
3. The primary problem was that of deciding what constituted an offence within the meaning of the proposed convention. His delegation generally supported the definition of an offender contained in article 1 of the draft convention. However, the enumerative approach used in that article was not necessarily appropriate for use in the definition clause of a convention against the taking of hostages, since cases might exist which would not be covered by that listing. His delegation therefore proposed that article 1 (a) to (d) should be replaced by the wording "a third person such as (a) a natural person, (b) a body corporate under national law, (c) a State, (d) an international organization or international conference". That wording would be more general and therefore more appropriate.
4. Mr. ROSENSTOCK (United States of America) said that article 2 of the draft convention was a correct statement of a principle which was important for any treaty. It was virtually axiomatic that once agreement was reached on a convention, further agreement between States was required to ensure their co-operation not only in defining but also in preventing the offences in question so that the need for extradition could be avoided. Article 2 of the draft convention correctly stated the need for co-operation, while highlighting specific areas in which co-operation

was required. The words "Taking all practicable measures" (article 2 (a)) reflected the differences prevailing between legal systems in various countries, while stressing the need for co-operation. The provisions of article 2 (b) were a clear requirement of any convention. The article corresponded precisely to article 4 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, but in the case being discussed the article appeared earlier in the convention. The change of position was appropriate and in fact an improvement over the earlier convention, since the most important thing was to prevent the occurrence of such offences.

5. Mr. BIALY (Poland) observed that interesting proposals had been submitted by the representatives of Algeria, Lesotho, Mexico and the United Republic of Tanzania and that a number of delegations had given their views on various issues of varying importance. Although none of the problems before the Committee had been solved, the exchange of views had been useful and would result in bringing the respective positions closer together. His delegation agreed with those who had spoken in favour of making the debate more orderly by limiting each proposal to one subject.

6. He wished to refer in particular to the subject covered by the proposals submitted by the four countries just mentioned, which, despite their different wording, all dealt with the most difficult question before the Committee, namely, the scope of the proposed convention. During the general debate, his delegation had stated that in drafting the convention the Committee must make certain that nothing contained in it was directed against the inviolable right of peoples to struggle for their freedom and independence against colonialism and foreign domination. For that reason, his delegation wished to express its full understanding and support for the ideas contained in the aforementioned proposals. Some representatives had expressed the view that it was not necessary to include such ideas in the convention. It had also been suggested that definitions should be debated at the end of the Committee's work. His delegation disagreed with that view and felt that definitions were of vital importance at the current stage of drafting the convention, since they would determine the latter's scope and all the remaining provisions would depend on the substantive framework.

7. All members of the Committee had been fully aware at the beginning of its work of the difficult and sensitive nature of the task before them. It was clear to all that the convention would have many implications, including certain highly political aspects, and that their work could not be regarded as a purely juridical exercise. Surely none of those present were opposed to recognition of the right of peoples to self-determination and independence, since that was one of the basic principles of the United Nations. The difference of opinion probably lay in the question of whether a provision to that effect should be included in the convention. It had been argued that no similar provisions were contained in the Hague and Montreal Conventions. However, those conventions had been concluded in 1970 and 1971. Since that time, not only had certain political factors assumed a new dimension but the General Assembly had adopted in 1973 a convention similar to the one now being drafted, namely, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.

8. The General Assembly had stated inter alia in its resolution 3166 (XXVIII) of 14 December 1973 that it "recognizes also that the provisions of the annexed Convention could not in any way prejudice the exercise of the legitimate right to

self-determination and independence, in accordance with the purposes and principles of the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, by peoples struggling against colonialism, alien domination, foreign occupation, racial discrimination and apartheid". That resolution had been adopted by consensus, and the Committee therefore had good reason to pursue further the development of the just and progressive formula which it contained. The inclusion of that formula in the current convention would represent a step forward in the progressive development and codification of international law in accordance with Article 13, paragraph 1 (a), of the Charter. His delegation was confident that a satisfactory solution of the problem was possible, especially in view of the spirit of goodwill and co-operation which had so far prevailed in the Committee's deliberations.

9. Count SCHIRNDING (Federal Republic of Germany) said that his Government was aware of the preoccupation of a number of Governments with the effect the future convention would have on the activities of liberation movements. That preoccupation had been clearly expressed in the debate on draft resolution A/C.6/31/L.10 and Rev.1, sponsored by his Government and 33 others at the thirty-first session of the General Assembly. His Government's initiative for the elaboration of a convention, which had begun in 1976, had never been directed against the liberation movements. Liberation struggles would be regarded as international armed conflicts when the first additional Protocol to the Fourth Geneva Convention entered into force, and hostages taken in the course of such struggles would be covered by the provisions of international law on armed conflicts. That sector of international law was well developed in relation to the phenomenon of hostage-taking, and article 10, paragraph 1, of the draft convention was not concerned with it. It was the international law of peace which was unsatisfactory in relation to hostage-taking. International co-operation in preventing and punishing the offence was provided for only in the case of crews and passengers of civil aircraft or internationally protected persons. The draft submitted by his delegation sought to fill those gaps.

10. He was, however, afraid that if the Committee adopted the proposal submitted by Lesotho and the United Republic of Tanzania (A/AC.188/L.5) the convention would be interpreted as relieving liberation movements of their obligations under international law and would prove a setback to the efforts to humanize conflict. While he did not believe that that was the intention of the delegations which had put forward the proposal, and he respected their fears, the provisions of article 10, paragraph 1, of the draft convention should enable them to overcome those fears and therefore refrain from pressing their proposal. The Committee should not, without good reason, deviate from the Hague and Montreal Conventions and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, which contained no clause comparable to that contained in document A/AC.188/L.5. He was willing to explain his position in further detail in direct talks with the representatives concerned with a view to overcoming any misunderstandings.

11. He found the proposal submitted by the United Republic of Tanzania (A/AC.188/L.7) generally acceptable and had sought to achieve the same end in article 3, paragraph 1, of the draft convention, which left it to the Contracting State in which the hostage was detained to decide on the appropriate measures to be taken. The article could be further studied and modified if necessary.

12. Mr. LARSSON (Sweden), referring to the scope of the convention, said that he

was satisfied with the definition given in article 1 of the draft. The definition was clear and straightforward and was modelled on the corresponding provisions of the 1971 Montreal Convention, which had already won wide acceptance. It correctly referred to acts committed by individuals, since the conduct of States was covered by other international agreements. Working paper A/AC.188/L.5 contained an exception to the general rule of applicability of the convention. He could not agree with that provision, since it might be interpreted as providing a licence to take hostages in certain circumstances and would be contrary to the legislation of many countries. Paragraph 1 of working paper A/AC.188/L.6 introduced a variant of L.5 but was superfluous, since the same provision appeared in article 10 of the draft convention. He doubted that it was useful or legally necessary to include a provision concerning the right of asylum, as in paragraph 2 of document A/AC.188/L.6, since each State had a sovereign right to decide the matter of asylum under international law and each State had to take a decision as to the prosecution or extradition of the offender. If the provision on asylum was included in the convention, it could be interpreted to mean that the principle did not apply to other conventions where the right of asylum was not specifically referred to. With regard to working paper A/AC.188/L.7, its underlying principle was already embodied in the Charter of the United Nations and a special provision in the convention would be superfluous. However, as several representatives favoured including a reference to the principle of territorial integrity, he was prepared to consider the matter further.

13. Mr. KATEKA (United Republic of Tanzania) said that he wished to thank the representative of the Federal Republic of Germany for indicating his general acceptance of the idea contained in document A/AC.188/L.7. The major difficulty, however, was over working paper A/AC.188/L.5. It had been said that the inclusion of that provision could be misinterpreted as a licence for liberation movements to take hostages. If such a misinterpretation arose in the future, he would not be surprised, since liberation movements have in the past been labelled terroristic and their actions would continue to be misinterpreted whether or not the provision was included in the convention. His delegation and the other sponsors insisted on maintaining, if not the wording, at least the general idea contained in document A/AC.188/L.5. He would like an explanation of how the 1949 Geneva Conventions and the 1977 Protocols covered the situation he had in mind. He had not been able to find any relevant provision in them.

14. Mr. VALDERRAMA (Philippines) said that his delegation had carefully followed the proposals and discussion of the previous few days and had been impressed by the decorum maintained during the debate. His Government supported the national liberation movements recognized by the Organization of African Unity and the League of Arab States. The delegation of the Federal Republic of Germany had shown flexibility in seeking to allay any fears which might have been aroused by the draft convention and in offering to consult with other delegations. He hoped that such talks would take place and would reconcile the positions taken by the two sides in the debate, and that the two sides could reach a compromise.

15. Mr. FIFOOT (United Kingdom) said that articles 2 and 3 of the draft convention submitted by the Federal Republic of Germany were necessary parts of the text. Article 2 was a standard type of provision, but article 3 was more complex and was similar in content to article 9 of the Hague Convention. However, the latter article referred only to the seizure of aircraft, while the scope of article 3 of the draft convention was wider and its wording more novel. It was important that the principles laid down in article 3 should be followed. The first paragraph

contained a cardinal principle: each State was the best judge of the measures it should take. Paragraph 2 was also appropriate, although the word "facilitate" was somewhat ambiguous. Similarly, the wording of paragraph 3 should perhaps be reconsidered, although its content was appropriate. The United Kingdom thus endorsed article 2 and the principles laid down in article 3.

16. Mr. BAVAND (Iran) said that he had no objection to the scope of the convention as defined in article 1 of the draft but that the convention should not prejudice the right of peoples to self-determination and independence. He expressed satisfaction with the willingness expressed by the Federal Republic of Germany to accommodate that principle and suggested that the formulation of it contained in the working paper submitted by Mexico (A/AC.188/L.6) should be incorporated into the draft.

17. With regard to article 4 of the draft convention, he felt that the words "severe penalties" could give rise to certain problems, leading to misuse of the convention to infringe upon human rights. Perhaps the words "appropriate penalties" would give article 4 the guarantee of legal fairness which could be seen in article 7.

18. Mr. MOK (Netherlands) said that he concurred with the United Kingdom's endorsement of articles 2 and 3, although he felt that article 3 should be more explicitly related to the rest of the convention and especially to article 7. Otherwise, some tension might arise from the fact that the State where the offence occurred was called upon both to take measures to secure the release of the hostage (article 3) and to prosecute the alleged offender (article 7). Experience had shown that one means of obtaining the release of a hostage was to promise the offender that he would not be prosecuted. Although it was important to prosecute the offender, preference should be given in the convention to easing the situation of the hostage when such difficult situations arose. In other words, article 3, paragraph 1, should take precedence over the criminal-law provisions of the convention. The State where the offence was committed should be left broad latitude in obtaining the release of the hostage, and the convention should be quite explicit in that respect.

19. Mr. DELEAU (France) concurred with the endorsement by the United States and the United Kingdom of articles 2 and 3. He felt that article 4 was sufficiently important to be placed immediately after article 1 in the convention. It should be made clear that the taking of hostages was an offence punishable by severe penalties. Then the rest of the convention would fall into place more clearly. The convention should establish that the taking of hostages was a highly reprehensible act subject to severe punishment, but provision should be made for mitigating the penalty if the kidnapper voluntarily freed his hostage. He therefore proposed that a second paragraph, reading as follows, should be included in article 4:

"The Contracting States shall provide for mitigation of the penalties in the event of the voluntary release of hostages." i/

20. The CHAIRMAN said that some progress had been made with regard to the main question at issue, thanks to the detailed remarks of the delegates and the

---

i/ Subsequently circulated as document A/AC.188/L.8.

willingness to compromise shown, in particular, by the Federal Republic of Germany and the United Republic of Tanzania. In order to narrow further the gap between the two positions, he called upon representatives to hold consultations at the conclusion of the meeting.

The meeting rose at 12.30 p.m.

14th meeting

Monday, 15 August 1977, at 4 p.m.

Chairman: Mr. Leslie O. Harriman (Nigeria)

A/AC.188/SR.14

In the absence of the Chairman, Mr. Bavand (Iran), Vice-Chairman, took the Chair.

Drafting of an international convention against the taking of hostages pursuant to paragraph 3 of General Assembly resolution 31/103 (continued)  
(A/AC.188/L.2-8, Conference Room Paper No. 1)

1. The CHAIRMAN stated that the French delegation had submitted a working paper to the Committee, which had been issued as document A/AC.188/L.8.
2. Mr. DICKSON (Canada) said that the language used to define the crime of the taking of hostages in the draft convention submitted by the Federal Republic of Germany was clear, and no State should find it difficult to translate into the language of its own legal system. He did not, however, believe that the word "severe" was needed to qualify the word "injury" in article 1 of the draft (A/AC.188/L.3). Since the threat of continued detention was considered sufficient to involve criminal liability, there was no reason why the threat of injury should have to be qualified. The seriousness of the injury should be for the courts to decide in passing sentence.
3. With regard to article 2 of the draft, he considered that any convention against the taking of hostages should contain provisions for the prevention of the offence. It was important to note that the wording of article 2 gave States some latitude regarding the preventive measures they could adopt.
4. The representative of the Netherlands had earlier foreseen difficulties concerning the interpretation of articles 3 and 7, which might contain conflicting provisions. The Canadian delegation saw no difficulty, since article 3 would apply while the hostages were being held, while article 7 would take effect from the moment of their release. The obligation to prosecute or extradite, laid down in article 7, should not be affected by any condition the offender might have sought to impose while hostages were being held.
5. It could be difficult for a State having custody of an object illegally acquired by the offender to determine who in another State had the right to that object. For that reason, the Canadian delegation suggested that the phrase "shall return it promptly to the person entitled to possession" in article 3, paragraph 3, might be modified. The words "the person entitled to possession" could be replaced by some such words as "the person from whom the object was illegally obtained".
6. Concerning the word "severe" used in article 4, in connexion with penalties, he noted that the word "severe" had been used in comparable articles in the Hague Convention of 1970 and the Montreal Convention of 1971, while the words "appropriate penalties which take into account their grave nature" appeared in the

text of the New York Convention of 1973. Canada was prepared to accept the New York wording if delegations had difficulties with the word "severe". The representative of France had proposed the inclusion in the article of a paragraph providing for mitigation of penalties in the case of the voluntary release of hostages. Canada was prepared to consider the inclusion of that principle in the text of a convention on the taking of hostages, but the language used must leave courts the freedom to decide upon the weight to be given to the voluntary release of the hostages as an extenuating circumstance within the framework of the maximum penalty provided for the offence.

7. Mr. DAMILANO (Chile) said that his delegation fully supported the amendment proposed by France in document A/AC.188/L.8. It was logical that the severity of the penalty should correspond to the gravity of the offence. Clearly, the punishment must fit the crime. In that spirit, his delegation could also support the proposal made by Iran (A/AC.188/SR.13, para. 17) with regard to article 4 of the draft convention in document A/AC.188/L.3.

8. His delegation could not, however, agree to the procedure described in article 5 of the draft. In his view, rather than authorize each Contracting State to take such measures as might be necessary to establish its jurisdiction over any of the offences set forth in article 1, the convention should itself establish that jurisdiction. Of course, several international conventions gave Contracting Parties the authority to establish their own jurisdiction, but there were other international instruments which themselves established such jurisdiction. For instance, the "Bustamante" Code of Private International Law stated that the courts of the country in which an international offence was committed had jurisdiction over that offence. Accordingly, his delegation wished to suggest that article 5 should instead stipulate that the courts with jurisdiction to try persons accused of hostage-taking should be: (a) of the State in whose territory the offence was committed or of the State of registration of the ship or aircraft, if the offence was committed on board one of those vehicles; (b) of the State which had been coerced into providing or compelled to provide money or something in lieu of money or to take or refrain from taking certain action; (c) of the State in whose territory the alleged offender was held, in the event that it did not agree to extradite him.

9. Mr. OMAR (Libyan Arab Jamahiriya) said that it was necessary for the Committee to define the term "hostage". In its working paper, the Federal Republic of Germany had attempted to specify certain acts constituting an act of taking hostages. There had, however, been no consensus in accepting such specification. His delegation regarded the taking of hostages as an act which threatened the life of innocent people, and jeopardized their fundamental freedoms whenever and wherever it occurred. Its principal aim in drafting a convention against the taking of hostages was the protection of the lives and freedom of the people. It therefore proposed the following definition of the word "hostage":

"For the purposes of this convention the term 'taking of hostages' is the seizure or detention not only of a person or persons, but also of masses under colonial, racist, or foreign domination, in a way that threatens him or them with death or severe injury or deprives him or them of their fundamental freedoms." <sup>1/</sup>

---

<sup>1/</sup> Subsequently circulated as document A/AC.188/L.9.

10. If it was felt that the above definition could be improved, the Libyan delegation would be open to suggestions.

11. The Libyan delegation whole-heartedly supported the working paper submitted by Algeria in document A/AC.188/L.4, and the Tanzanian proposal concerning territorial integrity contained in document A/AC.188/L.7. The proposal made by Mexico in document A/AC.188/L.6 was in general acceptable; but it needed to be modified in the light of the observations made by Algeria.

12. The working paper submitted by Lesotho and the United Republic of Tanzania in document A/AC.188/L.5 contained a general idea without which the convention could not be acceptable to the Libyan delegation. The Libyan delegation was deeply concerned about those peoples still under colonial, racist and foreign domination, and it could not accept any convention which could be construed as an obstacle to national liberation movements in their struggle for self-determination as recognized by the United Nations and by regional organizations.

13. The delegation of the Libyan Arab Jamahiriya had become a sponsor of documents A/AC.188/L.4, A/AC.188/L.5 and A/AC.188/L.7.

14. Mr. MACAULAY (Nigeria) said that the term "taking of hostages" needed to be precisely defined. Some representatives had apparently gained the mistaken impression that the African members of the Committee wished to condone the taking of hostages, and were not concerned about what could happen to the innocent victims of such a crime. In actual fact, parts of the African continent were in a state of siege, and whole peoples were being held hostage, whether they knew it or not. His delegation would not wish to have a convention which would condemn or hinder those peoples in their attempt to turn the tables upon their repressors in a natural reaction against their current situation. For the same reason, it believed that any association of the actions of freedom fighters with acts of terrorism was unacceptable.

15. The taking of hostages endangered human lives, usually those of helpless people. There need be no logical link connecting the victims with the aims of the kidnappers, but in the case of action taken by freedom fighters, there frequently was an organic link between the two.

16. Without insisting on any specific wording, he felt that the provisions contained in either working paper A/AC.188/L.5, or in its amended version, A/AC.188/L.6, should be included in the text of the convention, in order to make it quite clear that the Committee accepted the United Nations definition of the right of oppressed peoples to struggle against racism, colonialism, foreign domination, racial discrimination and apartheid.

17. Various delegations had referred to other international instruments dealing with the problem of the taking of hostages. In fact, only the European Convention on the Suppression of Terrorism, concluded at Strasbourg earlier in 1977, made specific mention of the taking of hostages as such: and the status of that document before a United Nations committee had not yet been satisfactorily explained. At the same time, the 1977 Geneva additional Protocols made the activities of freedom fighters an international affair.

18. Any convention against the taking of hostages must state that activities

undertaken in the struggle for national liberation could not be regarded as acts of terrorism, and that oppressed peoples must not be prevented from taking their oppressors hostage.

19. Mr. VALDERRAMA (Philippines) agreed with a point previously made by the representative of the Netherlands, namely that article 3, paragraph 2, of the draft convention submitted by the Federal Republic of Germany was potentially ambiguous, and should be redrafted.

20. With regard to article 3, paragraph 3, of the draft convention, he proposed that the words "to the person entitled to possession" should be replaced by the words "to the proper authorities of the country where the object was seized". k/

21. His delegation had no objection to the proposals made by France in document A/AC.188/L.8, or to that made by the United Republic of Tanzania in its working paper, which involved a long-recognized principle enshrined in the Charter of the United Nations.

22. Mr. de ICAZA (Mexico) said that although article 1 of the draft convention was perfectly well structured, it should also define the scope of the convention. So far, the scope of the convention had been discussed in detail only in relation to paragraph 1 of article 10. That paragraph excluded from the scope of the draft convention offences which were covered by other international conventions, while paragraph 2 of article 10 excluded offences which had no international implications and therefore came under national jurisdiction. In his view, the second exclusion should be set out in article 1, rather than in article 10, paragraph 2.

23. The absence of such a definition in article 1 created considerable confusion in the following articles. For instance, article 3 took it for granted that the hostage or his captor would always be in a country other than their own, and paragraph 2 of that article took it for granted that the hostage would be released in a country other than his own. Likewise, paragraph 3 of article 3 took it for granted that objects illegally acquired by the offender were in a place or country other than where they belonged. It was therefore essential that article 1 should state that the draft convention covered only those offences which had international implications, in other words, that unless an offence involved some foreign element it would come under national jurisdiction.

24. With regard to his earlier suggestion that article 1, paragraph 2, should include a clause on the "threat" of taking hostages, it should be clear that such a threat had been defined by international legislation as a totally objective offence. There was a precedent for such a clause in article 2, paragraph 1 (c) of the New York Convention of 1973 on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. Such threats had become a major international problem: potential kidnappers travelled from country to country, extracting ransoms merely by threatening to take hostages. When such threats were made in countries other than the kidnappers' own country, a great deal of friction was created between the countries involved.

25. With regard to article 4, he wondered precisely what was meant by "severe

---

k/ Subsequently circulated as document A/AC.188/L.16.

penalties". In his country, penalties were severe by definition. He was even more concerned at the fact that no distinction was made in that article between the various kinds of offences. The severity of penalties should surely differ in terms of whether the offender was guilty of taking hostages, attempting to take hostages or mere complicity. In his view, the best solution would be simply to remove the word "severe".

26. As all international and intergovernmental organizations were more or less universal, paragraph 1 (b) of article 5 was in effect suggesting that universal jurisdiction should be established for the offences in question. While such jurisdiction was perfectly acceptable in war time, it seemed excessive in peace time to consider subjecting a common offence to universal jurisdiction. If that idea were adopted, virtually every country would have jurisdiction over any offence involving, for instance, extortion from the United Nations. Such an idea created a totally new precedent and its implications for penal law should be seriously considered.

27. Mr. DANOVI (Italy) said that the definition of "taking of hostages" provided in the draft convention was entirely satisfactory. However, his delegation had some reservations regarding the Mexican proposal that the idea of the "threat" of taking hostages should be introduced into article 1. Such an idea was totally subjective and was, in any case, covered by article 2, as such threats could be regarded as a preliminary to the offence itself.

28. His delegation could not agree with the French proposal to place article 4 immediately after article 1 since, logically speaking, provisions concerning prevention should take priority over provisions concerning penalties.

29. The Italian delegation fully agreed with the provisions of article 3, paragraph 1, which it interpreted in conjunction with article 7. He agreed with the representative of the Netherlands that in extremely serious circumstances States should have the possibility of negotiating the release of hostages in return for immunity for their captors. Accordingly, he could not agree with the representative of Canada that there was a difference between the time when an offence was being committed and the time when the offence was already over. If the country which was host to an offender had an absolute obligation to punish him once he was caught, any negotiation based on the promise of immunity for the offender would be pointless.

30. Furthermore, there was some contradiction between that principle and the draft amendment proposed to article 4 (A/AC.188/L.8) by the representative of France. If the Contracting Parties provided for mitigation of penalties when hostages were voluntarily released, States would be unable in extremely serious cases to promise to free the offender in exchange for the release of his hostages.

31. While he agreed that the language of article 3, paragraph 2, could be improved, it was quite clear that the obligation on the country in whose territory the hostage was present to facilitate the latter's departure must be viewed strictly in terms of the hostage's desire to leave the country, whether or not he was a national of that country.

32. Generally speaking, his delegation could support the draft convention and felt that there was no need to make any major changes in it.

33. Mr. EL-HENDAWY (Egypt) reminded the Committee that his delegation had warned repeatedly of the complexity of the task of drafting a convention against the taking of hostages and of the need for a precise, objective and careful approach to such a task. Many amendments and proposals had been formulated with regard to the draft convention submitted by the Federal Republic of Germany, but his delegation felt that if the debate was to prove constructive the Committee's first aim should be to define the main issues involved, so that it could find common ground before discussing the draft convention from a more precise standpoint.

34. So far, there was even some confusion as to the meaning of the title of the draft convention. The representative of Mexico had stressed that the term "taking of hostages" generally referred to the law of war rather than to the law of peace and had tried to draw a distinction between the term as used in the draft convention and as applied in armed conflicts. Furthermore, the word "against" in the title seemed to have political rather than legal connotations. Other instruments, such as the Hague and Montreal Conventions, were far more precise in their scope. Accordingly, the Committee should first define the scope of the convention and the precise meaning of such terms as the "taking of hostages" and "offender" and the measures which countries must take to prevent or punish the taking of hostages, before it attempted to make specific amendments to the draft convention.

35. His delegation could accept the working paper contained in document A/AC.188/L.4. However, the idea of the threat or use of force against the sovereignty, territorial integrity and independence of the States should be embodied in that text. With regard to the working paper contained in document A/AC.188/L.5, the concept of the "taking of hostages" should be defined more clearly, possibly by introducing the notion of the legitimate struggle of national liberation movements. Such a clarification would dispel confusion with regard to the activities of national liberation movements. It should not excuse such activities but should demonstrate that there was a legitimate reason for the activities of national liberation movements.

36. The working paper contained in document A/AC.188/L.6 dealt with the main issue at stake. It was vital that the Committee should determine whether it was dealing with the law of war or the law of peace and whether the term "taking of hostages" should be viewed in the context of armed conflict or peace. That issue should be settled before the draft convention was discussed in detail. With regard to the working paper contained in document A/AC.188/L.8, his delegation believed that it was too early to consider specific amendments to the draft convention.

37. The draft convention represented a valuable working paper for the future convention. Clearly, it was not in itself definitive: the preamble was not comprehensive and article 1 required further elaboration. As there were no provisions for reservations in the draft submitted by the Federal Republic of Germany, his delegation would have great difficulty in regarding the provisions of article 2 (b) as absolute.

38. Unless the Committee first agreed on the scope and definitions of the future convention before discussing the draft in detail, when it came to report to the General Assembly it would give the impression that there was no common ground for agreement on the main issues involved.

39. Mr. MOK (Netherland) said that his delegation had an open mind on the subject of renumbering article 4 of the draft convention, but the question was not of great importance. With regard to the wording of article 4, the word "severe" should be replaced by the word "appropriate", since there was no general agreement on what constituted a "severe" penalty. As for the French proposal to include in article 4 a provision for the mitigation of penalties in the event of the voluntary release of hostages (A/AC.188/L.8), he sympathized with the underlying idea, but felt that such a provision would give rise to legal and practical difficulties. In the Netherlands, there were no prescribed minimum penalties, and it was for judges to determine the penalty appropriate in each case. It would therefore be difficult for his country to accept a convention which imposed restrictions on judges. In addition, it would sometimes be extremely difficult to determine whether hostages had been released voluntarily.

40. Mr. BYKOV (Union of Soviet Socialist Republics) said that the Committee must begin by discussing the basic issues involved in drafting the convention. It was impossible to discuss the wording or order of articles in the draft convention until the basic concepts and the scope of the convention had been established. The term "taking of hostages" was open to a wide variety of interpretations, as was shown by a recent United States court case in which striking teachers had been fined on the grounds that they had held students hostage.

41. It had been argued that the inclusion of a provision in the convention to the effect that the convention would not prejudice the rights of peoples struggling to free themselves from colonialism, racism and foreign domination would constitute a licence to take hostages. That argument was false. The South African racist régime paid no attention to United Nations resolutions condemning colonialism and apartheid, or to article 4 of Protocol II to the 1949 Geneva Conventions concerning the protection of persons not directly involved in hostilities. The United Nations must therefore do everything to help the national liberation movements attain their goals. In that connexion, it should be noted that the General Assembly had recognized armed struggle as a legitimate means in the struggle to attain self-determination and independence.

42. His delegation hoped that the Committee would base its future work on the summary of the general debate prepared by the Secretariat (Conference Room Paper No. 1).

43. Mr. de ICAZA (Mexico), referring to the statement made by the representative of the Soviet Union, said that article 4 of Protocol II to the Geneva Conventions did not apply to peoples struggling to free themselves from colonialism, racism or foreign domination. Such struggles had been recognized as international conflicts and were therefore covered by Protocol I to the same Conventions. The scope of Protocol I was absolute, as was made clear in the preamble. Persons protected included not only persons taking no active part in hostilities, but also members of armed forces who had laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause. It was therefore a principle of humanitarian law that once a person had ceased to participate directly in an armed conflict, that person, if taken prisoner, must be protected and must not be treated as a hostage. In other words, individuals could not be held responsible for the acts or omissions of third parties. Under the provisions of the Fourth Geneva Convention of 1949, the taking of hostages had been prohibited both in domestic conflicts (article 3 of the Convention) and in international

conflicts (article 34 of the Convention), and that had been reaffirmed in Protocol I to the Conventions. Countries which could not accept Protocol I would similarly be unable to accept the convention being drafted by the Committee, and the best course of action would be for the Committee to make a clear distinction between laws applicable in time of peace and those applicable in time of war and to exclude from the scope of the convention acts committed within the context of an armed conflict.

44. It had been argued that it would be wrong to impose restrictions on peoples struggling for freedom from colonialism, racism and foreign domination. That was understandable, since colonial régimes did not respect humanitarian laws. However, although in practice the opponents of colonial and racist régimes would tend to respond by similarly disregarding humanitarian laws, it would be difficult legally to condone such behaviour, since that would involve making an exception to the minimum standards of humanitarian law as established in 1949. The only course of action open to the Committee would be to refrain from attempting to regulate behaviour within the context of such armed conflicts.

45. Mr. FIFOOT (United Kingdom) said that, despite the pessimism of some delegations, his delegation felt that progress had been made. It had become clear that there were opposing views on the question of national liberation movements, and it might take some time to find a solution, but at least the problem had been clearly defined. If the Committee based its work on the summary of the general debate prepared by the Secretariat (Conference Room Paper No. 1), it would be moving backwards. If no agreement existed as to the basic structure of the convention, the Committee should continue discussing the individual elements which would eventually provide that structure.

46. Mr. ACHACHE (Algeria) said that the Committee's discussions lacked cohesion. It might therefore be useful to use the summary of the general debate prepared by the Secretariat as a basis for the future work of the Committee.

47. Mr. VELESKO (Byelorussian Soviet Socialist Republic) agreed with the representative of Algeria that the Committee should base its discussion on an objective document which took all points of view into account. It was vital that the convention that was being drafted should be acceptable to as many States as possible.

48. Mr. ROSENSTOCK (United States of America) said that the summary of the general debate prepared by the Secretariat contained no proposals, and the Committee must therefore base its work on proposals submitted by delegations. With regard to the French proposals concerning article 4 of the draft convention (A/AC.188/L.8), his delegation had no firm views with respect to the order of articles, but would have difficulty in accepting a provision concerning the mitigation of penalties in the event of the voluntary release of hostages. It could accept a situation in which courts took certain circumstances into account when passing sentence, but the French proposal, as it stood, was not acceptable. With regard to the wording of article 4, his delegation slightly preferred the word "severe" to the word "appropriate", since the former had been used in the Conventions most closely related to the question of the taking of hostages. The word "appropriate" had been used in the 1973 New York Convention in recognition of the fact that not all attacks on diplomats merited severe penalties. However, both words were sufficiently clear and would have roughly the same effect within the context of the various legal systems.

49. Mr. KATEKA (United Republic of Tanzania) announced that Algeria, Guinea, the Libyan Arab Jamahiriya and Nigeria had become sponsors of working paper A/AC.188/L.5, and Guinea, the Libyan Arab Jamahiriya and Nigeria had become sponsors of working paper A/AC.188/L.7.

The meeting rose at 6.10 p.m.

15th meeting

Tuesday, 16 August 1977, at 11.30 a.m.

Chairman: Mr. Leslie O. Harriman (Nigeria)

A/AC.188/SR.15

In the absence of the Chairman, Mr. Bracklo (Federal Republic of Germany), Vice-Chairman, took the Chair.

Drafting of an international convention against  
the taking of hostages pursuant to paragraph 3  
of General Assembly resolution 31/103 (continued)  
(A/AC.188/L.2-9, Conference Room Paper No. 1)

1. Mr. ALVARADO CORREA (Nicaragua) said that while his delegation fully endorsed the principles set forth in the working paper submitted by Algeria (A/AC.188/L.4), it thought it preferable for those principles to be presented in a document like the working paper submitted by Mexico (A/AC.188/L.6). His delegation also felt that the working paper submitted by Lesotho and the United Republic of Tanzania (A/AC.188/L.5) had been superseded by that submitted by Mexico.
2. His delegation had difficulty in accepting the definition of the term "taking of hostages" set forth in the working paper submitted by the Libyan Arab Jamahiriya (A/AC.188/L.9).
3. With regard to the working paper submitted by the Federal Republic of Germany (A/AC.188/L.3), his delegation believed that article 1 should certainly be included in any convention in order to avoid any misunderstanding with regard to the scope of the convention. As to article 4, his delegation, which shared the views expressed by others, particularly that of Iran, believed that the meaning of the word "severe" could be preserved by translating it as "grave" in the Spanish text because the offence might have several variants. In that connexion, his delegation fully supported the suggestion by the representative of France regarding the addition of a paragraph to article 4.
4. Mr. ASHTAL (Democratic Yemen) said that no real progress had been made in the work of the Committee because members had avoided confronting the real issue, which was neither juridical nor a matter of drafting. The issue was political in nature. One of the two prevailing views was that the draft convention should be all-inclusive and applicable to national liberation movements, while the other was that the convention should not apply to acts carried out by national liberation movements in the course of their struggle against colonialism, racism, apartheid and foreign domination. His delegation believed that those two views could not be reconciled either by verbal reformulations or through informal consultations. The problem was not a disagreement between two delegations but rather a difference of political philosophies.
5. The first step should therefore be a recognition that the major issue, namely, the scope of the convention, had to be tackled. In that connexion, there were two alternatives: either there would be an internationally accepted convention against the taking of hostages which did not apply to acts carried out by recognized

national liberation movements in the course of their struggle, or there would be no convention at all. A third possibility would be to postpone the matter until such time as the issue relating to national liberation movements was somehow resolved. In other words, it was politically expedient - and therefore technically and juridically possible - for any proposed draft convention to take full account of the views of the developing countries, because such a convention would be useful only if it was accepted by a majority of States Members of the United Nations. Any convention that did not take into account an issue on which a majority of Members held strong views not only would be regional or parochial in scope but would certainly defeat its own aims.

6. Mr. SIAGE (Syrian Arab Republic) said that the question of the scope of the convention and the principles to be included in it was the most important part of the Committee's work at the current session. In order to facilitate that work, his delegation wished to propose amendments to the working papers submitted by Algeria and the United Republic of Tanzania (A/AC.188/L.7) and by Lesotho and the United Republic of Tanzania (A/AC.188/L.5). The text of document A/AC.188/L.7 would read: "Nothing in this Convention can be construed as justifying in any manner the threat or use of force or any interference whatsoever against the sovereignty, independence or territorial integrity of peoples and States, under the pretext of rescuing or freeing hostages." l/ The text of document A/AC.188/L.5 would read: "For the purposes of this Convention, the term 'taking of hostages' shall not apply to any act or acts carried out in the process of national liberation or resistance against colonial rule, racist régimes, alien domination and foreign occupation, by liberation movements recognized by their regional organizations or by the United Nations." m/

7. Mr. ROSENSTOCK (United States of America) said that the mandate given to the Committee by the General Assembly was to study proposals for a draft convention and there was clearly a growing measure of agreement with regard to the working paper submitted by the Federal Republic of Germany (A/AC.188/L.3). While there was clearly no agreement regarding the scope of the draft convention, useful work could still be done in reconciling existing differences. His delegation felt that it was best to discuss the matters on which there was no fundamental disagreement, and it therefore regarded the first amendment proposed by the representative of Syria as irrelevant and the second as indistinguishable from what it was intended to amend.

8. It had been said that article 5, paragraph 1 (b), of the paper submitted by the Federal Republic of Germany was broad in scope. His delegation agreed and regarded that provision as a progressive development in international law which it hoped all States Members of the United Nations family would support, since international civil servants should be free of the pressure and coercion of being taken as hostages.

9. Mr. ONDA (Japan) said that his delegation generally supported the establishment of jurisdiction as set forth in article 5 of the working paper submitted by the Federal Republic of Germany. However, it regarded paragraph 1 (b), under which each Contracting State would establish its jurisdiction over any

---

l/ Subsequently circulated as document A/AC.188/L.11.

m/ Subsequently circulated as document A/AC.188/L.10.

offence aimed at compelling an international organization of which it was a member to do or abstain from doing anything, as being too broad in scope. It was sufficient to establish jurisdiction according to the territory where the offence took place or the nationality of the hostage-taker, as provided in paragraphs 1 (a) and 1 (c).

10. Like the French delegation, his delegation would prefer to see jurisdiction established for countries whose nationals were taken hostage or were being compelled to do or abstain from doing something. The convention would thus enable each Contracting State to deal adequately with cases that affected it.

11. His delegation had no difficulty in accepting articles 6 to 9 of the draft submitted by the Federal Republic of Germany since they were more or less taken from and based on articles in conventions which were widely accepted by the international community.

12. Mr. BEHNKE (Denmark) said that the draft convention provided an excellent basis for discussion and had been modelled on multilateral conventions which had been ratified by his Government. It contained the same provisions as the Montreal, Hague and New York Conventions with respect to the choice between the prosecution and extradition of offenders, and that was important to his Government, which had not ratified or acceded to other conventions that did not permit such a choice. In article 1, paragraph 2, he would prefer to include a reference to the "threat" of the offence in the definition of the offender, as was the case in the New York and Hague Conventions. In article 4, he suggested that the word "severe" should be replaced by "appropriate". The Hague and Montreal Conventions used the word "severe", but the New York Convention referred to "appropriate" penalties, and he considered that expression more suitable for the purposes of the convention under consideration since no obligation regarding the severity of the penalty should be imposed on the courts.

13. He did not agree with the proposal contained in the working paper submitted by France (A/AC.188/L.8) to insert an additional provision permitting mitigation of the penalties in the event of the voluntary release of hostages. However, the French proposal to number the existing article 4 article 2 seemed logical and acceptable. Article 5 was approximately the same as article 3 of the New York Convention and article 5 of the Montreal Convention. His Government's ratification of those conventions had required changes in Danish penal law on extraterritorial jurisdiction, and article 5 therefore posed no problems for his Government.

14. Mr. de ICAZA (Mexico), referring to the working paper submitted by Algeria and the United Republic of Tanzania (A/AC.188/L.7), said that his delegation could accept the proposal contained therein since it derived from a basic principle of law, the prohibition of recourse to force or the threat of force. Although it might be argued that the principle was self-evident and therefore need not be included in the text, he maintained that it should be included for the same reason as the proposal contained in his own delegation's working paper (A/AC.188/L.6), namely, that it stressed a principle of the law of peace. In an armed conflict, in which the use of violence was accepted, any State would have the right to use force against the territorial integrity of another State. If included in the convention, the proposal would therefore emphasize that the convention referred to the law of peace and not to that of war.

15. Mr. DAMILANO (Chile) said, with respect to article 5, that he wished to add to what he had said at the 14th meeting another comment regarding the competence which in the draft would be given to courts of the nationality of the offender. It was understandable that the courts of the State in whose territory the offence was committed should have jurisdiction over that offence: it was there that the main evidence of the fact was to be found, to say nothing of the fact that that State had been harmed by the disruption of its legal order caused by the alleged offender. It was also understandable that the State injured by the offence, in other words the State affected by the illicit act, should be able, since it had an obvious interest in the taking of legal action, to act through its courts in the prosecution of those allegedly responsible for the offence. Similarly, it was acceptable that the courts of the State in which the alleged offender was held should try that person when extradition was denied. On the other hand, there was no reason why the State of which the offender was a national should be given jurisdiction to try him unless a State detained in its territory one of its nationals who had committed an offence in the territory of another State and denied his extradition.

16. The CHAIRMAN, in reply to a query from the representative of Lesotho, said that the Bureau would meet at the end of the current meeting and that arrangements had been made for private consultations among members before the afternoon meeting.

17. Mr. SIMANI (Kenya), speaking in exercise of his right of reply, said that reference had been made by the representative of Jordan in the general debate to certain newspaper reports in which five persons were alleged to have been arrested in Kenya for hijacking and to have been extradited to Israel. He stated that it was impossible to have a meaningful exchange with the representative of Jordan on the basis of press reports.

18. Mr. AL-KHASAWNEH (Jordan) said that the remarks referred to by the representative of Kenya had not been directed against any State. His purpose had been to illustrate the principle that the application of extradition or prosecution on a universal basis could lead to abuse.

19. Mr. SIMANI (Kenya) said that he was grateful to the representative of Jordan for his statement but that Kenya had not been responsible for any abuse.

20. Mr. MOK (Netherlands) said he understood that the Bureau was making arrangements for organizing the debates to be held in the few remaining days of the session. A discussion had begun at the current meeting on a most important point in the draft convention, namely the question of criminal jurisdiction. That principle should be discussed during the time remaining. He also suggested that time should be reserved for discussion of articles 5 and 7 of the draft, which were of particular importance and required separate consideration.

21. The CHAIRMAN said that the Netherlands representative's proposal would be taken into account by the Bureau, which would suggest to the Committee a procedure for the remaining debates.

22. Mr. ASHTAL (Democratic Yemen) said that he was surprised that so much emphasis had been given to less controversial matters in the arrangements for consultations. No discussion had been provided for on the scope of the convention, which was the major obstacle to achieving the Committee's task. That should be one of the central items for the consultations.

23. The CHAIRMAN said it was hoped that various issues would be dealt with in the consultations, including the scope of the convention, the relationship of the convention to other legal instruments, and the position of the liberation movements. He took it that the Netherlands representative's proposal referred to the debates in plenary session. The point made by the representative of Democratic Yemen could be dealt with during the consultations.

The meeting rose at 12.20 p.m.

16th meeting

Tuesday, 16 August 1977, at 4 p.m.

Chairman: Mr. Leslie O. Harriman (Nigeria)

A/AC.188/SR.16

In the absence of the Chairman, Mr. Alvarado Correa (Nicaragua), Vice-Chairman, took the Chair.

Organization of work

1. The CHAIRMAN suggested that the Committee should conclude its discussion of substantive matters by 1 p.m. on Wednesday, 17 August, on the understanding that delegations wishing to comment on matters of substance at a later stage would be able to do so.

2. It was so decided.

Drafting of an international convention against the taking of hostages pursuant to paragraph 3 of General Assembly resolution 31/103 (continued) (A/AC.188/L.2-12, Conference Room Paper No. 1)

3. Mr. EL-HENDAWY (Egypt) announced that his delegation had become a sponsor of working papers A/AC.188/L.5 and A/AC.188/L.7. He regretted that his delegation had been unable to study the draft convention submitted by the Federal Republic of Germany (A/AC.188/L.3) and was therefore unable to comment on the provisions of that draft.

4. Mr. KATEKA (United Republic of Tanzania) announced that Kenya had become a sponsor of working paper A/AC.188/L.7.

5. Mr. FIFOOT (United Kingdom) said that his delegation did not agree with the arguments put forward by the representative of the United States concerning article 5, paragraph 1 (b) of the draft convention submitted by the Federal Republic of Germany. The provision in question would cause serious difficulties, since it would give rise to universal criminal jurisdiction, and the international community must give further thought to the issue before taking a decision.

6. Mr. de ICAZA (Mexico), referring to article 5, paragraph 1 (b), said that if all States members of an international organization had jurisdiction over the offences in question, the country in which the offender was arrested might be flooded with requests for extradition. It would then be difficult for the State concerned to decide which request should be granted or to justify that decision. One possible solution would be to provide that States were obliged to submit a case for prosecution or to turn the offender over to any other State juridically competent to prosecute the offender, but to stipulate that another State could only claim jurisdiction if it was a member of the international organization concerned and if, in addition, the offender or the hostages were nationals of that State. In other words, the mere fact that a State was a member of the international organization involved should not be enough in itself to give a country jurisdiction.

7. Mr. MOK (Netherlands), referring to article 5 of the draft convention submitted by the Federal Republic of Germany, said that his delegation agreed with paragraph 1 (a), but had some doubts about paragraph 1 (b), which could give rise to multiple jurisdiction. In that connexion, the suggestion made by the representative of Mexico that the nationality of the offender or hostages should be used as a criterion for jurisdiction might lead to even greater complications, since the hostages in any given case might include nationals from many different countries. With respect to paragraph 1 (c), it was important to take account of the so-called principle of double criminality. When an offender was prosecuted on the basis of the principle of personality, the offence in question should be a punishable act under the laws of both the State of which the offender was a citizen and the State in which the offence was committed, since, in theory, it was conceivable that the offence might not be a punishable act in the country in which it was committed. Paragraph 1 (c) should therefore be amended to read: "That are committed by any of its nationals in the territory of a Contracting State". n/

8. With respect to article 7, paragraph 1, the State in the territory of which the alleged offender was found might prefer to extradite that alleged offender, but it would be unable to do so if no other State submitted a request for extradition. Accordingly, the words "and which has received a request for extradition by one of the Contracting States mentioned in article 5, paragraph 1," should be inserted before the words "shall, if it does not extradite him". n/ States would then be obliged to prosecute an alleged offender if they refused to comply with a request for extradition, but not if no such requests were received. It would be unreasonable to oblige the State in which the alleged offender was found to prosecute if no other State, including the State in which the offence was committed, wished to prosecute. The wording of article 7, as proposed by the Federal Republic of Germany, had been used in other conventions relating to air piracy and in the 1973 New York Convention, but those conventions were different from the convention that was being drafted by the Committee.

9. If article 7 was amended as suggested, it might then be desirable, for the sake of consistency, to amend article 5, paragraph 2, in a similar fashion. The words "after receiving a request for extradition from one of those States" could be added at the end of the paragraph. n/ However, it would be possible to amend article 7 without amending article 5.

10. Mr. ROSENSTOCK (United States of America), referring to the draft convention submitted by the Federal Republic of Germany, said that article 6 was based on well-established precedents and should be included in the convention. As for article 7, he could not agree that the obligation to prosecute should be made conditional on the submission of a request for extradition. A proposal similar to that of the representative of the Netherlands had been submitted during discussions on the 1973 New York Convention, and it had been rejected. His Government had opposed the proposal since it considered that the main purpose of such a convention was to prevent the recurrence of the acts in question and to ensure the punishment of offenders. The so-called "no safe haven" approach, which had been used in three other conventions, was to be preferred, since the procedures involved in submitting a request for extradition were sometimes rather obscure. Accordingly, article 7 should be left as it stood.

---

n/ For the amendments submitted by the Netherlands, see A/AC.188/L.14.

11. Mr. de ICAZA (Mexico) completely agreed with the representative of the United States. He felt that there was a need for the introduction of the principle of universal jurisdiction, which had been established for the first time in the Geneva Conventions of 1949. That was not to say that an offender should be brought to trial only because no request had been received for his extradition: exceptionally, the State might turn over an offender to the authorities of another State, but its first obligation was normally to prosecute.

12. Mr. DELEAU (France) said that the wording of article 5, paragraph 1 (b), of the draft convention submitted by the Federal Republic of Germany applied to the numerous intergovernmental international organizations, but not to the non-governmental ones. As a result, there were a number of cases in which a Contracting State would have to establish its competence. He thought it would be abnormal for a State to have to do so when either it, or an international organization of which it was a member, was subjected to pressure by an act of hostage-taking. The text of the convention should therefore include provisions for the competence of any State whose nationals became the victims of an act of hostage-taking.

13. He sympathized with the representative of the Netherlands over the difficulties of making such a provision, but felt that the principle should be established. He also shared the concern of the representative of the Netherlands over the provisions contained in article 7 of the draft convention. That article must contain a provision to the effect that criminal proceedings should begin upon receipt of a request from the country in which the offence took place for the extradition of the offender. His delegation had no firm opinion concerning the inclusion of a similar principle in article 5, paragraph 2.

14. Mr. FIFOOT (United Kingdom) said that, in the context of the discussions about extradition and punishment, it was appropriate to consider the second proposal made by Mexico in document A/AC.188/L.6, and to ask where, within the framework of the draft convention, it should be included. He also asked whether the granting of political asylum necessarily gave immunity from prosecution as well.

15. Mr. de ICAZA (Mexico) said that his delegation had no preference regarding the location of the provision concerning the right of asylum. He believed that it could best be placed with the other provisions in the convention relating to exceptions. The 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, had included a similar provision in article 12.

16. Under international law, the granting of asylum did not guarantee immunity from prosecution. A decision not to prosecute would depend upon the internal legislation of the State involved alone.

17. Mr. MOK (Netherlands) said that his delegation would like to see a system applied to article 7 which differed from the systems provided for in the Hague, Montreal and New York Conventions. He was aware that a proposal such as he was now making had been discussed but not adopted during the formulation of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, but felt that that was no reason for not including it in the convention under consideration.

18. The "no safe haven" principle was excellent, but there were considerable

drawbacks in practice. There would always be some safe havens; but even if there were not, that would give States in which an offence was committed an excuse not to mount a prosecution which they might find undesirable for a variety of reasons. In effect, the "no safe haven" principle would permit them to foist the responsibility for prosecution on an otherwise uninvolved State in which the offender or offenders happened to be.

19. Mr. DAMILANO (Chile), referring to the Mexican proposal that nothing in the convention should impair the right of asylum, said that the offence of taking hostages was a common, and not a political, crime. None the less, his delegation would not object to the inclusion in the convention under discussion of a provision similar to article 12 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, instead of Paragraph 2 of the Mexican proposal contained in document A/AC.188/L.6.

20. Mr. de ICAZA (Mexico) pointed out that the crime of taking hostages could have political implications: it could have a political intent, or be related to other political activities. Under the provisions of the 1971 Washington Convention, only the kidnapping of persons entitled to special protection according to international law was to be considered a common crime. Even so, the provisions of that Convention did not impair the right of asylum.

21. Mr. DAMILANO (Chile) said that he had not based his statement upon the Washington Convention, for that was restricted in its application. He had been speaking about criminal law, in which the taking of hostages, like homicide, the poisoning of water, the bombing of schools and similar offences, was considered, regardless of motive, to be a common crime, the perpetrators of which had no right to protection by asylum.

22. Mr. ROSENSTOCK (United States of America), referring to the Hague and Montreal Conventions, which required Contracting States to submit alleged offenders to their competent authorities for the purpose of prosecution, said there was nothing inconsistent in granting asylum to offenders and then instituting prosecution proceedings. His delegation would have no objection to holding informal discussions on the granting of asylum, but thought it undesirable to include unnecessary provisions in the convention, because of the complications that they might cause.

23. Article 12 had been introduced into the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, because of the difficulties connected with diplomatic asylum which were likely to arise in the cases which that Convention was intended to cover. There was not likely to be any disagreement between the United States and the delegations of the Latin American countries over the granting of territorial asylum. As the representative of Mexico had pointed out, a State could grant territorial asylum without granting immunity from prosecution. The United States delegation therefore had no objection to the general doctrine of asylum but felt it was unnecessary to incorporate in the convention under discussion any provisions specifically relating to it.

24. The CHAIRMAN invited any interested delegations to participate in the informal discussions which would take place after the meeting.

The meeting rose at 5.05 p.m.

17th meeting

Wednesday, 17 August 1977, at 11.15 a.m.

Chairman: Mr. Leslie O. Harriman (Nigeria)

A/AC.188/SR.17

In the absence of the Chairman, Mr. Bavand (Iran), Vice-Chairman, took the Chair.

Drafting of an international convention against the taking of hostages pursuant to paragraph 3 of General Assembly resolution 31/103 (concluded) (A/AC.188/L.2-14, Conference Room Paper No. 1)

1. Count SCHIRNDING (Federal Republic of Germany) said that his delegation was encouraged at the degree of support that had been expressed during the discussion for the draft convention it had submitted (A/AC.188/L.3) and appreciated the suggestions that had been made for improving it.
2. His delegation might, however, have difficulty in accepting the proposal by the representatives of Canada and Chile to delete the word "severe" in article 1, paragraph 1, since in his country's legal system the notion of "injury", without any qualifying adjective, would include minor forms of physical harm.
3. The French proposal to insert the word "intergovernmental" before the words "international organization" in article 1, paragraph 1 (d), was generally acceptable. His delegation wished, however, to examine further whether compulsion directed against non-governmental international organizations might be adequately covered by other provisions of article 1, particularly paragraph 1 (b).
4. As to the question raised by the representative of the Netherlands whether article 3, paragraph 1, or article 7 should have priority if a hostage-taker was willing to release his hostages on the condition that he would not be punished, his delegation believed that the two articles were, in principle, of equal rank. However, if a State deemed it appropriate not to prosecute or extradite a hostage-taker in order to secure the release of hostages, it would be authorized to act accordingly. Giving article 3, paragraph 1, and article 7 equal rank would make it more difficult to calculate the risks of hostage-taking, and that would be a desirable result.
5. The formulas proposed by the representatives of the Philippines and Canada replacing the phrase "to the person entitled to possession" in article 3, paragraph 3, were acceptable in principle to his delegation, although it wished to study them further.
6. His delegation had no fundamental difficulty with the proposal by the representatives of Chile and the Netherlands to replace the word "severe" in article 4 by the word "appropriate". It felt, however, that the text as it stood constituted a more adequate safeguard against the meting out of insufficient penalties such as short prison terms or fines.

7. The French proposal to add a second paragraph to article 4 was generally acceptable, but his delegation would like to study it further in the light of the comments made by other delegations. It would also like to study in greater detail the proposal by the representatives of Japan and the Netherlands to delete from article 5, paragraph 1 (b), the words "or an international organization of which the State is a member". His delegation saw no problem in the fact that serious crimes directed against international organizations could be prosecuted practically everywhere, nor did it see any difficulties arising in connexion with extradition requests from various States.

8. The representatives of the Netherlands and France had proposed that the State where the hostage-taker was found should not be obligated to prosecute him in accordance with article 5, paragraph 2, and article 7 if it was not at the same time one of the States mentioned in article 5, paragraph 1, and if none of the latter States requested extradition. His delegation shared the preoccupation of the United States representative that the proposal of those delegations might create a loop-hole in a system that was intended to ensure that hostage-takers would face prosecution everywhere. It was unlikely that a State which had no link to the hostage-taking or the hostages would be expected to shoulder the burden of prosecution; if such a State offered extradition to one of the States more directly concerned by the hostage-taking, there would most probably be strong public pressure in one of those States in favour of an extradition request.

9. The representative of Mexico had raised the question whether the second sentence of article 10, paragraph 2, was in conflict with the principle that the draft convention should be limited to cases of international relevance, and similar doubts had been expressed by the representative of Nigeria. After reflecting on the matter, his delegation had concluded that there might be a stronger case for deleting the provision than for retaining it.

10. His delegation saw no serious obstacles to the inclusion of a clause guaranteeing the right of asylum, as proposed by the Mexican delegation in document A/AC.188/L.6. However, it shared the view that such a provision was unnecessary since the draft convention did not provide for compulsory extradition.

11. Turning to the working paper submitted by the delegation of the Libyan Arab Jamahiriya (A/AC.188/L.9), he said that, if that delegation's proposal was meant to serve as a definition of hostage-taking, it left out an essential aspect of the question, namely, the bringing of compulsion to bear on a person or entity which was not identical with the hostage. That objection would not apply, however, if the proposal was intended to complement a definition of hostage-taking such as that contained in article 1, paragraph 1, of the draft convention submitted by his delegation. Nevertheless, his delegation maintained that the occupation of a foreign territory could not in itself be regarded as constituting the seizure or detention of its inhabitants.

12. Mr. ROSENSTOCK (United States of America) said that article 8 of the draft convention submitted by the Federal Republic of Germany established a flexible régime governing extradition and that there could be no grounds for objecting to it on the basis of any State's extradition practice or rules.

13. Article 9 was an essential element in a legal scheme intended to allow for the hostage-taker to be tried in a State other than that in which the criminal act had been committed. It should serve to allay the fears of those who felt that

conducting a trial might be difficult under certain circumstances. In short, article 9 provided a workable legal scheme which was consistent with the goal of eliminating safe havens for hostage-takers.

14. Mr. de ICAZA (Mexico) observed that an impasse had been reached regarding the degree to which the future convention should be binding on national liberation movements. His delegation maintained that the convention must not cover ground already covered by other international conventions, particularly the Geneva Conventions, of 1949. If the convention was to have the broadest possible support and effectively put an end to the taking of hostages, it was necessary to ensure that all entities capable of committing such acts acceded to it. He could not therefore agree with the view that the convention should not apply to national liberation movements of peoples struggling for their independence. The Committee should not prejudge the position of such movements, as it was possible that they might wish to be parties to the convention. It also seemed unfair for the convention to apply to them simply because it was ratified by a State which falsely claimed to represent the entire people of a territory. It should be left to the peoples struggling for their independence to determine whether or not the convention should apply to them. To that end, a fourth paragraph might be added to article 12 of the draft convention submitted by the Federal Republic of Germany stipulating that the representatives of a people engaged in a struggle against alien domination by, or the racist régime of, a contracting party could undertake to apply the convention by making a unilateral declaration addressed to the Secretary-General as depositary. Upon the latter's receipt of the declaration, the convention would enter into force with respect to the people in question. Such a compromise formula might make it possible for the Committee to end the current stalemate on the issue of national liberation movements.

15. Mr. FIFOOT (United Kingdom) said that it was difficult to assimilate the proposal just made by the representative of Mexico, which related to a delicate and difficult problem dealt with in articles 75 and 96 of the recently adopted additional Protocol I to the Geneva Conventions. He therefore reserved the right of his delegation to comment on it at a later stage.

16. The working paper submitted by Algeria (A/AC.188/L.4) contained no reference to hostages and consequently, in the view of his delegation was not relevant to the mandate which had been assigned to the Committee.

17. The working paper submitted by the Libyan Arab Jamahiriya (A/AC.188/L.9) was similar to other proposals aimed at excluding certain elements from a definition of hostage-taking and was based on a metaphor - likening masses under colonial, racist or foreign domination to hostages - which was not an accurate reflection of the actual situation.

18. Mr. ACHACHE (Algeria) said that his delegation's proposal consisted solely of a draft preamble for the convention.

19. His delegation fully supported the Libyan proposal contained in document A/AC.188/L.9, since it believed that any definition of hostage-taking must cover all possible cases.

20. With regard to the Mexican proposal, he said that the position of his Government and of the African group was quite clear and that further discussion of the question of national liberation movements was necessary.

21. Mr. BYKOV (Union of Soviet Socialist Republics) said that his delegation had pointed out the importance and the complicated nature of the question under consideration and had stressed that it must be viewed in the context of the general problem of international terrorism and its objective causes. Measures to combat the taking of hostages should not have adverse consequences for the peoples struggling for self-determination and freedom from colonialism and racism.

22. Agreement had to be reached on such key issues as basic definitions and the objectives and scope of the convention. A number of interesting proposals had been put forward in the course of the discussion, and no proposal should be neglected because it had not been submitted in writing. During the initial stage in the preparation of any international agreement, the essential task was to harmonize views on key issues, after which questions of detail could be discussed. Without agreement on basic matters, it was futile to discuss subsidiary issues. Only by taking into account the views of all its members could the Committee draw up an effective international legal instrument.

23. Mr. DICKSON (Canada) said he agreed that the harmonization of views on key issues was the essence of the Committee's work. The Committee had conducted a fruitful exchange of views on such basic issues as preventive measures against hostage-taking, criminal sanctions, jurisdiction and extradition. A number of those issues had been usefully clarified, and the absence of agreement on some should not obscure the real progress that had been made.

24. Mr. VALDERRAMA (Philippines) endorsed the views expressed by the representative of Canada. The Committee should not feel that its task was an impossible one: with flexibility on both sides, a compromise could be achieved.

The meeting rose at noon.

18th meeting

Thursday, 18 August 1977, at 4.25 p.m.

Chairman: Mr. Leslie O. Harriman (Nigeria)

A/AC.188/SR.18

In the absence of the Chairman, Mr. Bracklo (Federal Republic of Germany), Vice-Chairman, took the Chair.

Adoption of the report (A/AC.188/L.15)

1. Mr. BELYAEV (Byelorussian Soviet Socialist Republic), Rapporteur, introducing the draft report of the Ad Hoc Committee contained in document A/AC.188/L.15, explained that it was the introductory part of the report, giving an account of the work done by the Ad Hoc Committee up to the current stage and only reproduced the decisions reached by the Committee so far. In drafting that document, he had consulted with representatives of the various regional groups, who had made a number of different suggestions as to the structure and content of the final report. In view of the diversity of those suggestions, he would like the Committee to give him clear instructions as to how he should proceed with the rest of the report.
2. Mr. SIMANI (Kenya) asked how the Rapporteur himself proposed to complete the report.
3. Mr. BELYAEV (Byelorussian Soviet Socialist Republic), Rapporteur, said that he was in a very difficult position. The various suggestions that had been made as to the content and structure of the final report were mutually exclusive, and he needed some guidance from the Committee in order to choose between them. If the delegations which had made those suggestions were unwilling to withdraw them, they should say so. One main issue had been the content of the report. Some delegations wanted the report to contain a very brief summary of the work of the session, while others wished it to be far broader in scope.
4. Mr. KATEKA (United Republic of Tanzania) said that if delegations wished to make additions to the draft report, they should say so. Otherwise, the draft report should be adopted without further controversy.
5. Mr. VALDERRAMA (Philippines) agreed that the draft report should be adopted forthwith unless delegations were prepared to say precisely what else they wanted it to contain.
6. Mr. ROSENSTOCK (United States of America) said that his delegation was in no position to agree to the draft report since it represented only a small part of the full report of the Ad Hoc Committee. The Rapporteur himself had agreed that the draft report was incomplete, and until it included a summary of the debate which gave non-members of the Committee a clear idea of what had happened during the current session it would be inconceivable to adopt it.
7. Mr. CAMARA (Guinea) said that the draft report reflected accurately the work of the current session; it could be adopted as it was and regarded as a supplement to the analytical summary of the general debate, which was the basic document for

the future work of the Committee (Conference Room Paper No. 1). The draft report was perfectly acceptable, since paragraph 8 reflected both the proposals and amendments which had been submitted in connexion with the draft convention and the course of the debate so far.

8. Mr. FIFOOT (United Kingdom) said that the draft report was incomplete, as the Rapporteur himself had admitted, since it gave no indication of the course of the debate at the current session. The final report should include a summary of all the debates of the session.

9. Mr. ACHACHE (Algeria) said that his delegation had no difficulty in accepting the draft report as it stood, since it was quite objective and factual. If any delegations were interested in finding out more about the debate at the current session, they could simply refer to the relevant documents listed in the draft report. As a compromise, however, he suggested that the various working papers and all the summary records for the session should be annexed to the report, as had been done in the Ad Hoc Committee on International Terrorism.

10. The CHAIRMAN said it was clear that most delegations and the Rapporteur himself felt that the draft report should be supplemented. Three concrete suggestions had been made: the report should include a summary of the general debate, a summary of the entire debate, or all the summary records and the various working papers.

11. Mr. MOK (Netherlands) said that as far as possible the report should serve the needs of all those who had not participated in the work of the Ad Hoc Committee. While the analytical summary prepared by the Secretariat, if included in the report, would give a clear impression of the course of the debate up to the final week of the session, it would give no idea of the subsequent debate on the various working papers which had taken place from 11 to 17 August. The summary records of the subsequent debate would take a long time to read and in any case would not give a full picture of the debate. Accordingly, he suggested that the final report should include an analytical summary not only of the general debate but also of the subsequent debate on the various working papers.

12. The CHAIRMAN suggested that the Rapporteur might include in the report all the documents which had been mentioned, namely the analytical summary of the general debate, an analytical summary of the debate on the working papers and all the summary records for the session.

13. Mr. KATEKA (United Republic of Tanzania) observed that, so far, the Committee had only given the Rapporteur very general guidelines as to what to include in the report. If anything was to be included, he would suggest that it should be a summary of the entire debate for the session. However, his delegation had difficulties with regard to the inclusion of an analytical summary of the debate, for, while the outcome of the general debate had been very clear-cut, the debate on the proposals contained in the various working papers had not been concluded, and he wondered what an analytical summary of that debate would say. His delegation also wished to know what would happen to the analytical summary of the general debate prepared by the Secretariat.

14. Mr. BADAWI (Egypt) asked whether the annexes to the report would include the working papers submitted to the Committee.

15. Mr. de ICAZA (Mexico) said that the analytical summary of the general debate prepared by the Secretariat was the only report available to the Committee so far. The draft report contained in document A/AC.188/L.15 was no more than an introduction to the Committee's final report. While it listed the various proposals and speakers in the general debate, it gave no indication as to the speakers or the content of the debate on specific proposals. The analytical summary prepared by the Secretariat was very comprehensive, but it only covered the general debate, which had taken place between 3 and 11 August. The debate on specific proposals, which had taken place from 11 to 17 August, had dealt with the same issues as the general debate. As a result, many of the views and proposals put forward in that debate with regard to issues mentioned in the analytical summary were so far unrecorded and the analytical summary was thus itself incomplete. An analytical summary of the subsequent debate was needed, but the Rapporteur should combine it with that of the general debate in order to provide a subject-by-subject rather than an historical account. However, in his view it was not up to the Committee to make concrete proposals as to the nature of the final report. The report was the Rapporteur's responsibility, and he should simply give an objective summary of what had actually happened during the session.

16. Mr. MAKEKA (Lesotho) asked whether the analytical summaries would be included in the report itself or whether all the documents mentioned would simply be annexed to it. His delegation could agree to either alternative but wondered whether there was sufficient time left before the end of the session to follow the first of those procedures.

17. His delegation wished to co-sponsor document A/AC.188/L.7.

18. The CHAIRMAN asked the Rapporteur what would happen to the analytical summary prepared by the Secretariat and to the working papers submitted to the Committee.

19. Mr. BELYAEV (Byelorussian Soviet Socialist Republic), Rapporteur, pointed out that he had merely asked the Committee for guidelines as to the structure of the report and not for assistance in writing it. He assured the Committee that the final report would be ready by the following day, but he still wished to know what that report should include. If the Committee wished him to include the analytical summary prepared by the Secretariat and the working papers submitted to the Committee, then he would do so. Similarly, if the Committee wanted a short summary of the debate which had taken place between 11 and 17 August, he could draft such a summary and include it in the report. He could also reproduce the summary records in the report if the Committee wished. The final paragraph of the draft report was not conclusive, and he was open to any suggestions which the Committee might make. The report would not take much time to complete, and the Committee could be sure that it would receive it by the following day.

20. The CHAIRMAN, referring to the question by the representative of Lesotho as to whether the documents in question would be annexed to the report or included in it, suggested that the summary records at least should be annexed to the report.

21. Mr. KAPETANOVIĆ (Yugoslavia) said that the Committee should either adopt the report as submitted by the Rapporteur or attach as annexes the summary records for the entire session, the summary of the general debate prepared by the Secretariat and the proposals made by delegations.

22. Mr. MAKEKA (Lesotho) said that certain documents, and in particular the summary of the general debate prepared by the Secretariat, could be annexed to the report but should not be included in the body of the report. The Committee should give the Rapporteur an opportunity to submit a summary of the Committee's debates and decide, on the basis of that summary, what other documents should be included in the report.

23. Mr. ROSENSTOCK (United States of America) said that the Rapporteur should provide a summary of the Committee's debates. His delegation assumed that such a summary would cover all discussions and that delegations would then be able to propose amendments to the summary.

24. Mr. ALVARADO CORREA (Nicaragua) said that the report as submitted by the Rapporteur did not adequately reflect the substance of the Committee's debates. It would, however, be difficult for the Committee to discuss a full report at such a late stage, and it might therefore be preferable merely to list the subjects which had been discussed and then include both the working papers before the Committee and the summary records. He suggested that the meeting should be suspended to enable delegations to proceed with informal consultations.

25. The CHAIRMAN suggested that the summary records, the summary of the general debate prepared by the Secretariat, the proposals submitted by delegations and a summary of debates covering the period 11-19 August should all be included as annexes to the report.

26. Mr. BYKOV (Union of Soviet Socialist Republics) said that he endorsed the proposal of the representative of Yugoslavia. It would be difficult to prepare a satisfactory summary of debates covering the period 11-19 August.

27. Mr. BADAWI (Egypt) asked whether the proposed summary of debates would be a comprehensive summary of the whole session or would be divided into two parts covering the periods before and after 11 August.

28. Mr. BELYAEV (Byelorussian Soviet Socialist Republic), Rapporteur, said that he had received no instructions from the Committee in that regard.

29. Mr. de ICAZA (Mexico) said that the summary of the general debate prepared by the Secretariat should not be included in the body of the report or as an annex to the report, since that summary was incomplete. The report should contain a single document dealing with the same items as were dealt with in the summary prepared by the Secretariat but covering the entire session. A document consisting of summary records and the proposals submitted by delegations did not constitute a report, and the submission of such a document to the General Assembly would be inconsistent with the mandate of the Committee.

30. Mr. KATEKA (United Republic of Tanzania) said that the summary records and the working papers before the Committee should be annexed to the report. In view of the limited time available, the Committee should ask the Rapporteur to prepare a short one-page statement describing the general trend of the Committee's discussions, possibly with a recommendation to the General Assembly that it should renew the Committee's mandate. However, inclusion of the summary of the general debate prepared by the Secretariat would serve no useful purpose.

31. Mr. ROSENSTOCK (United States of America) said that the question of the length of the summary of debates should be left to the Rapporteur. With respect to the

question raised by the representative of Egypt, his delegation assumed that the report would indicate what had been discussed during the general debate and what had been discussed subsequently, and that delegations would be free to propose amendments.

32. Mr. MAKEKA (Lesotho) said that although he agreed with the representative of Nicaragua with respect to the contents of the report, he could not agree with the proposal that delegations should enter into informal consultations on the drafting of the report. The preparation of the report was the responsibility of the Rapporteur. His delegation would have no difficulty in accepting the report as submitted by the Rapporteur, with the summary records, the proposals submitted by delegations and the summary of the general debate prepared by the Secretariat attached as annexes. However, the summary of the general debate prepared by the Secretariat should not be included in the body of the report, since it had not been discussed by the Committee. Another solution would be for the Rapporteur to provide a comprehensive summary of all discussions, which would then be discussed as part of the report.

33. The CHAIRMAN suggested that the Committee should ask the Rapporteur to prepare a summary of debates for the period 11-19 August. It could then decide what other documents to include in the report when it had seen that summary.

34. Mr. BADAWI (Egypt), supported by Mr. de ICAZA (Mexico), Mr. BAVAND (Iran) and Mr. SIMANI (Kenya), said that the Committee should ask the Rapporteur to prepare an integrated summary covering the entire session.

35. Mr. MAKEKA (Lesotho) said that his delegation would have no objection if the Rapporteur based his report on the summary of the general debate prepared by the Secretariat. However, the entire report would then be regarded as the report of the Rapporteur, and delegations would be free to comment accordingly.

36. Mr. KATEKA (United Republic of Tanzania) said that the Committee must decide on the form of the report as a whole. If the summary records and the working papers before the Committee were to be included as annexes, the summary to be included in the body of the report must be very brief, possibly 1 to 1 1/2 pages. A summary of the type prepared by the Secretariat would cause difficulties because of the short time available to the Committee.

37. Mr. FIFOOT (United Kingdom) said that an integrated summary must reflect both the content and the course of the debate.

38. The CHAIRMAN suggested that an integrated summary should be included in the body of the report and that the summary records and the summary of the general debate prepared by the Secretariat should be attached as annexes.

39. Mr. MAKEKA (Lesotho) agreed that the Committee must decide on the form of the report as a whole. The report should contain either an integrated summary prepared by the Rapporteur or the summary of the general debate prepared by the Secretariat, but not both.

40. Mr. ROSENSTOCK (United States of America) said everyone clearly agreed that the report must contain a summary of the complete debate. If it did, it would be unnecessary to include the text of the summary prepared by the Secretariat.

41. Mr. CAMARA (Guinea) suggested that the Rapporteur should begin drafting a summary which the Committee could decide upon at its next meeting.
42. Mr. KATEKA (United Republic of Tanzania) said his delegation insisted that any decision reached by the Committee should cover the format of the complete report; it would accept nothing less than a "package deal".
43. Mr. FIFOOT (United Kingdom) pointed out that, while a summary of the complete debate would have to be prepared, all the other papers which might be included in the report were already in existence. His delegation sympathized with some of the points made by the Tanzanian representative, but he felt that the decision on which papers to include in the annex could be postponed until the summary had been prepared.
44. Mr. BADAWI (Egypt) suggested that the Rapporteur should be allowed to proceed with the drafting of the integrated summary and that the Committee should decide that the annexes to his report should contain the summary records of the debates, the working papers submitted to the Committee, and nothing else.
45. Mr. ACHACHE (Algeria) agreed with the representative of Egypt. He felt that the Committee could accept the first part of the Rapporteur's report as it stood and provide annexes; if a summary of the debates was to be provided, it must be acceptable to all members.
46. Mr. KATEKA (United Republic of Tanzania) said that the Committee must reach a decision on the general format of the report. The first part could consist of a summary of the debate, which would be followed by annexes containing the summary records of the Committee's meetings and the working papers submitted to it.
47. Mr. ROSENSTOCK (United States of America) said that his delegation could not accept something which it would have no opportunity to examine. If the Rapporteur could produce an integrated summary which accurately reflected the course of the debate, there would be no reason to annex the summary records, and his delegation would be loath to support such an unprecedented move with its considerable financial implications.
48. The CHAIRMAN said that one of the principal difficulties was clearly that no one knew how the Rapporteur's report would look. He suggested that the Rapporteur should be asked to prepare an integrated report and to combine it with the documents the Committee had been discussing in a single package, which the Committee could decide upon at its next meeting.
49. Mr. KATEKA (United Republic of Tanzania) said that, if it was to be acceptable to his delegation, the Rapporteur's summary would have to give only a very brief indication of the trend of the debate, accompanied by an annex containing the summary records of all the Committee's meetings.
50. Mr. SIMANI (Kenya) said that his delegation supported the inclusion of the summary records in the report. He suggested that the Rapporteur should proceed with his task, leaving it to the Committee to decide at its next meeting whether or not to attach certain documents in annexes.
51. Mr. BYKOV (Union of Soviet Socialist Republics) said that the Tanzanian representative was correct to insist that the Committee should decide on the

complete format of the report; otherwise, it would be in precisely the same position at its next meeting. There seemed to be general concern in the Committee that the reader of its report would not be able to tell what had taken place and what had been achieved. Either the Algerian proposal to accept the Rapporteur's report as it was, annexing all summary records and working documents, or the Tanzanian proposal to provide a very short summary of the entire debate, and then annex all the summary records, would overcome that problem.

52. The CHAIRMAN said that the Committee now seemed to be reaching agreement at least on the contents of the "package", if not on the texts of the component parts. It would be unreasonable to expect the Committee to accept a report it had not seen; and he accordingly suggested that the Rapporteur should prepare a brief summary of the entire debate to form the body of the report and that everything else should be placed in annexes. The Committee could then consider the compatibility of the two elements.

53. Mr. KATEKA (United Republic of Tanzania) said that he would agree to no conditional decisions on the format of the report. If summary records were to be included, that fact had to be stated.

54. Mr. ROSENSTOCK (United States of America) suggested that the Tanzanian representative should reserve the right to insist that the summary records be included in the report if the summary of the debate to be prepared by the Rapporteur seemed to him inadequate; his own delegation would reserve the right to request their omission if the Rapporteur's summary proved satisfactory.

55. Mr. KATEKA (United Republic of Tanzania) said that the Committee should not play with words. It was clear that it had failed to reach a decision. Under the circumstances, the Rapporteur should draw up a report, using his discretion in deciding what to include, and the Committee could then consider the report on its merits.

56. The CHAIRMAN said that, on the basis of the discussion which had been taking place, the Rapporteur should now have a clear idea of what the Committee wanted him to include in his report.

57. Mr. KATEKA (United Republic of Tanzania) said it must be made clear that, in the absence of any agreement, the Committee had given the Rapporteur no formal guidelines on which to base his report.

58. Mr. BELYAEV (Byelorussian Soviet Socialist Republic), Rapporteur, said that he had known before the beginning of the meeting what the individual viewpoints of delegations had been. He had asked the Committee for guidance and was prepared to draw up whatever type of report it might require.

59. Mr. de ICAZA (Mexico) observed that the Rapporteur had listened to all the discussions taking place in the Committee; he had said that he had various drafts for his report in preparation, and he must therefore shoulder his responsibilities and produce a report.

60. Mr. CAMARA (Guinea) proposed that the Rapporteur should prepare a short summary of the discussions which had taken place in the Committee, and that would constitute his report. He should take note of the fact that no decisions had been reached. The relevant documents should be annexed to the report, which would then

serve as the point of departure for the future work of the Committee. It was important to state that the current session had produced no results.

61. Mr. ROSENSTOCK (United States of America) said that the discussions in the Committee should have given the Rapporteur a considerable measure of guidance. On the clear understanding that those discussions in no way tied his hands, the Rapporteur should now draft a report for the Committee's consideration at its next meeting.

62. Mr. BYKOV (Union of Soviet Socialist Republics) recalled that, at the beginning of the meeting, many representatives had given their support to the report already submitted by the Rapporteur. He hoped that, at the next meeting, members would not make excessive demands on the Rapporteur.

63. Mr. BELLYAEV (Byelorussian Soviet Socialist Republic), Rapporteur, reminded the members of the Committee that the brief summary of the Committee's deliberations contained in Conference Room Paper No. 1 had run to eight pages.

The meeting rose at 6.30 p.m.

19th meeting

Friday, 19 August 1977, at 4.15 p.m.

Chairman: Mr. Leslie O. Harriman (Nigeria)

A/AC.188/SR.19

In the absence of the Chairman, Mr. Alvarado Correa (Nicaragua), Vice-Chairman, took the Chair.

Adoption of the report (concluded) (A/AC.188/L.15-17)

1. The CHAIRMAN announced that a consensus had been reached on the addition of a twelfth paragraph to the draft report (A/AC.188/L.15), the text of which would read as follows:

"Most delegations expressed their gratification at the initiative of the Federal Republic of Germany, which was followed up by a set of draft articles submitted by the Federal Republic of Germany (A/AC.188/L.3) as well as other proposals submitted by other delegations (A/AC.188/L.4-14 and 16). The general debate as well as the discussion of the various proposals revealed, however, considerable differences of views concerning the scope and/or definition in the convention, issues which, some delegations argued, should be resolved at an early stage of the Committee's work. Nevertheless, there was a useful exchange of views on a number of issues. During the debate in the Committee, members of the Committee expressed the view that some progress was made and that the spirit of the discussions had shown a genuine willingness of the members of the Committee to continue the work."

2. The second sentence of paragraph 11 of the Rapporteur's report would now become paragraph 13.
3. Members of the Committee had also reached agreement on the draft resolution submitted by the Federal Republic of Germany in document A/AC.188/L.17; if he heard no objection, he would take it that the draft resolution was adopted.
4. Draft resolution A/AC.188/L.17 was adopted.
5. Mr. BYKOV (Union of Soviet Socialist Republics) said that the Soviet delegation had not objected to the adoption of the draft resolution by consensus. It thought it necessary to state, however, that in its view the recommendation contained in that resolution went beyond the competence of the Ad Hoc Committee as defined by General Assembly resolution 31/103 and should not prejudge consideration of the question by the General Assembly.
6. Baron von WECHMAR (Federal Republic of Germany) said that he wished to draw the attention of the Committee to a correction to the third preambular paragraph of the resolution it had just adopted. The word "some" should be inserted before the word "States".
7. Mr. de ICAZA (Mexico) said that his delegation had not objected to the consensus because it could hardly object to something which did not say anything.

The fact that it had not objected did not mean that it agreed that the Committee had not been able to adopt a report. The document before the Committee was not a report; it referred only to the formal and procedural side of the Committee's deliberations. The principal areas of agreement and disagreement which had emerged during the debate had not been mentioned or even listed. The document was inadequate, for it would be necessary to read the summary records of the meetings in order to understand what had taken place in the Committee, as the new paragraph 13 acknowledged.

8. His delegation regretted not only that the Committee had been unable to draft a convention but also that it had not even been able to agree why it had not fulfilled its mandate. At the end of three weeks of negotiations, it was not even clear what the areas of controversy were. The Committee was leaving it to the reader to draw his own conclusions from the summary records. His delegation considered paragraph 12 to be useless and unnecessary, like the report as a whole.

9. Baron von WECHMAR (Federal Republic of Germany) thanked the officers and members of the Committee for the part they had taken in the Committee's work. He felt that no one should be discouraged by the results of that work, since the formulation of other similar conventions had also taken time. The important thing was that the convention should be based on a true consensus. He looked forward to resuming work at the next session of the Committee.

10. Mr. ROSENSTOCK (United States of America) asked whether the Committee had yet adopted the report.

11. The CHAIRMAN said that the Committee had adopted the draft resolution contained in document A/AC.188/L.17 and in so doing had adopted the proposed paragraph 12 and the report submitted by the Rapporteur. At the same time, the proposal to include in the annexes of the report the working papers submitted by delegations and the summary records of meetings had also been adopted.

12. Mr. ROSENSTOCK (United States of America) said he wished to record his delegation's view that the part of the adopted text which spoke of progress being made in an atmosphere of co-operation was correct. He regretted that a few members of the Committee had sought to reflect as little of that co-operation and progress as possible in the Committee's report; he was particularly disturbed to note that one representative, who served as an officer of the Committee, had brought to it a tradition of suppressing facts and suppressing history and had declined to permit the Committee to see a summary of its debates which might have made its report much more useful. As it was, the Committee could merely state that it had had a useful session, without being able to say either how or why it had been useful.

#### Closure of the session

13. The CHAIRMAN said that, since the Committee's approval of the report as a whole, as amended, was a fact, the Committee had come to the end of its work for the session. He declared the session closed.

The meeting rose at 4.45 p.m.

## ANNEX II

### Working papers submitted to the Committee

#### A. Working paper submitted by the Federal Republic of Germany (A/AC.188/L.3)

##### Preamble

##### The States Parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and the promotion of friendly relations and co-operation among States,

Recognizing that everyone has the right to life, liberty and security, as set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,

Considering that the taking of hostages is a matter of grave concern,

Convinced that there is an urgent need to adopt appropriate and effective measures for the prevention and punishment of the taking of hostages,

Have agreed as follows:

##### Article 1

1. Any person who seizes or detains another person (hereinafter referred to as "hostage") and threatens with death or severe injury or continued detention of that person in order to compel

- (a) A third person,
- (b) A body corporate under national law,
- (c) A State or
- (d) An international organization or international conference

to do or abstain from doing anything commits an act of taking hostages, an offence within the meaning of this Convention.

2. Any person who

- (a) Attempts to commit an act of taking hostages, or
- (b) Is an accomplice of anyone who commits or attempts to commit an act of taking hostages

also commits an offence within the meaning of this Convention.

## Article 2

Contracting States shall co-operate in the prevention of the offences set forth in article 1, particularly by:

(a) Taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories:

(b) Exchanging information and co-ordinating the taking of administrative and other measures as appropriate to prevent the commission of those offences.

## Article 3

1. Each Contracting State in whose territory the offender is present with his hostage shall take such measures as it deems appropriate to ease the situation of the hostage and to secure his release.

2. After the hostage has been freed the Contracting State in whose territory he is present will facilitate his prompt departure from the country.

3. If any object which the offender has illegally acquired as a result of the taking of hostages comes into the custody of a Contracting State, that Contracting State shall return it promptly to the person entitled to possession.

## Article 4

Each Contracting State shall make the offences mentioned in article 1 punishable by severe penalties.

## Article 5

1. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over any of the offences set forth in article 1.

(a) That are committed in its territory or on board a ship or aircraft registered in that State,

(b) By which that State itself or an international organization of which the State is a member is to be compelled to do or abstain from doing anything or

(c) That are committed by any of its nationals.

2. Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 1 in the case where the alleged offender is present in its territory and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

## Article 6

1. Upon being satisfied that the circumstances so warrant, the Contracting State in whose territory the alleged offender is present shall take the appropriate measures under its internal law so as to ensure his presence for the purpose of prosecution or extradition. Such measures shall be notified without delay directly or through the Secretary-General of the United Nations to:

- (a) The State where the offence was committed,
- (b) The State against which compulsion has been directed or attempted,
- (c) The State of which the person or the body corporate against whom compulsion has been directed or attempted is a national,
- (d) The State of which the hostage is a national,
- (e) The State of which the alleged offender is a national or, if he is a stateless person, in whose territory he permanently resides,
- (f) The international organization or conference against which compulsion has been directed or attempted.

2. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national.

## Article 7

1. The Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.

2. Any person regarding whom proceedings are being carried out in connexion with any of the offences set forth in article 1 shall be guaranteed fair treatment at all stages of the proceedings.

## Article 8

1. Each of the offences set forth in article 1 shall be deemed to be included as extraditable offences in any extradition treaty existing between Contracting States. Contracting States undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a Contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offences set forth in article 1. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. Contracting States which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 1 as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. The offences set forth in article 1 shall be treated, for the purpose of extradition between Contracting States, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

#### Article 9

1. Contracting States shall afford one another the greatest measure of assistance in connexion with criminal proceedings brought in respect of the offences set forth in article 1, including the supply of all evidence at their disposal necessary for the proceedings.

2. The provisions of paragraph 1 of this article shall not affect obligations concerning mutual judicial assistance embodied in any other treaty.

#### Article 10

1. This Convention shall not affect the Geneva Conventions of 12 August 1949 for the protection of war victims, the Convention of 16 December 1970 for the Suppression of Unlawful Seizure of Aircraft, the Convention of 23 September 1971 for the Suppression of Unlawful Acts against the Safety of Civil Aviation and the Convention of 14 December 1973 on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.

2. This Convention shall not apply where the offence is committed within a single State, where the hostage, the offender, and the person or body corporate subjected to demands are all nationals of that State and where the offender is found in the territory of that State. This Convention shall, however, apply if a State, an international organization or an international conference is subjected to demands.

#### Article 11

Any dispute between two or more Contracting States concerning the interpretation or application of this Convention which is not settled by negotiation may be submitted to arbitration by any party to the dispute by means of a written notification to any other party to the dispute. If the arrangements necessary to permit this arbitration to proceed, including the selection of the arbitrator or arbitrators, have not been completed within six months of the date of receipt of the notification, any party to the dispute may submit the dispute to the International Court of Justice for decision in accordance with the Statute of the Court.

## Article 12

1. This Convention shall be open for signature by all States until ..... at United Nations Headquarters in New York.
2. This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. This Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

## Article 13

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.
2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

## Article 14

1. Any Contracting State may denounce this Convention by written notification to the Secretary-General of the United Nations.
2. Denunciation shall take effect six months following the date on which notification is received by the Secretary-General of the United Nations.

B. Working paper submitted by Algeria, later joined by the Libyan Arab Jamahiriya (A/AC.188/L.4)

## Preamble

The States Parties to this Convention,

Having in mind General Assembly resolution 1514 (XV) of 14 December 1960 containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, as well as all other United Nations resolutions on the subject,

Recalling General Assembly resolution 2625 (XXV) of 24 October 1970 containing the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

Recalling General Assembly resolution 3314 (XXIX) of 14 December 1974 containing the Definition of Aggression,

Considering that when a population engages in violent acts against colonialist,

neo-colonialist, racist and foreign régimes within the framework of a struggle to restore its legitimate rights or to redress an injustice of which it is the victim, the international community, once it has recognized the validity of those goals, cannot take repressive measures against acts which it must on the contrary encourage, support and defend,

Considering that when persons engage in violent acts for motives other than those described above, those acts should be considered by the international community to fall within the scope of the general law of each State.

- C. Working paper submitted by Lesotho and the United Republic of Tanzania, later joined by Algeria, Egypt, Guinea, the Libyan Arab Jamahiriya and Nigeria (A/AC.188/L.5)

Scope

For the purposes of this Convention, the term "taking of hostages" shall not include any act or acts carried out in the process of national liberation against colonial rule, racist and foreign régimes, by liberation movements recognized by the United Nations or regional organizations.

- D. Working paper submitted by Mexico (A/AC.188/L.6)

Scope

1. For the purposes of this Convention, the term "taking of hostages" shall not include any act or acts covered by the rules of international law applicable to armed conflicts, including conflicts in which peoples are fighting against colonial domination and foreign occupation and against racist régimes, in the exercise of the right of peoples to self-determination embodied in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

2. None of the provisions of this Convention shall be interpreted as impairing the right of asylum.

- E. Working paper submitted by Algeria and the United Republic of Tanzania, later joined by Egypt, Guinea, Kenya, Lesotho, the Libyan Arab Jamahiriya and Nigeria (A/AC.188/L.7)

States shall not resort to the threat or use of force against the sovereignty, territorial integrity or independence of other States as a means of rescuing hostages.

- F. Working paper submitted by France (A/AC.188/L.8) concerning article 4 of the working paper submitted by the Federal Republic of Germany (A/AC.188/L.3)

1. Make the present article 4 article 2, and renumber articles 2 and 3 accordingly.

2. Word the new article 2 (old article 4) to read as follows:

- "1. Each Contracting State shall undertake to make the offences mentioned in article 1 punishable by severe penalties.
- "2. The Contracting States shall provide for mitigation of the penalties in the event of the voluntary release of hostages."

G. Working paper submitted by the Libyan Arab Jamahiriya (A/AC.188/L.9)

For the purposes of this Convention, the term "taking of hostages" is the seizure or detention, not only of a person or persons, but also of masses under colonial, racist or foreign domination, in a way that threatens him or them with death, or severe injury or deprives him or them of their fundamental freedoms.

H. Working paper submitted by the Syrian Arab Republic (A/AC.188/L.10) concerning the working paper submitted by Algeria, Egypt, Guinea, Lesotho, the Libyan Arab Jamahiriya, Nigeria and the United Republic of Tanzania (A/AC.188/L.5)

For the purposes of this Convention, the term "taking of hostages" shall not apply to any act or acts carried out in the process of national liberation or resistance against colonial rule, racist régimes, alien domination and foreign occupation, by liberation movements recognized by their regional organizations or by the United Nations.

I. Working paper submitted by the Syrian Arab Republic (A/AC.188/L.11) concerning the working paper submitted by Algeria, Egypt, Guinea, Kenya, Lesotho, the Libyan Arab Jamahiriya, Nigeria and the United Republic of Tanzania (A/AC.188/L.7)

Nothing in this Convention can be construed as justifying in any manner the threat or use of force or any interference whatsoever against the sovereignty, independence or territorial integrity of peoples and States, under the pretext of rescuing or freeing hostages.

J. Working paper submitted by Nicaragua (A/AC.188/L.12) concerning article 4 of the working paper submitted by the Federal Republic of Germany (A/AC.188/L.3)

Each Contracting State shall make the offences mentioned in article 1 punishable by severe penalties.

The Contracting States shall provide for mitigation of the penalties in the event of the voluntary release of hostages.

K. Working paper submitted by France (A/AC.188/L.13) concerning the working paper submitted by the Federal Republic of Germany (A/AC.188/L.3)

Article 1

Replace the text of the article by the following:

"1. The taking of hostages constitutes a serious offence within the meaning of this Convention.

"2. Any person who seizes or detains and threatens with death, physical violence and injury or prolonged detention another person in order

(a) To prepare for or facilitate the commission of a serious offence or to help its perpetrators or their accomplices to escape or evade punishment or,

(b) By holding this person in a secret place, to compel:

another physical or juridical person,

a State, or

an international intergovernmental organization or conference

to do or refrain from doing anything commits the taking of hostages.

"3. Any person who

(a) Attempts to commit the taking of hostages or

(b) Becomes an accomplice of anyone who commits or attempts to commit the taking of hostages also commits a serious offence within the meaning of this Convention."

Article 5

Add the following subparagraph to paragraph 1:

"(d) The victims of which, namely the hostages, are nationals of that State."

Article 7

Reword paragraph 1 to read:

"The Contracting State in the territory of which the alleged offender is found and which has received a request for extradition from a State having jurisdiction over the offence in pursuance of this Convention shall, if it does not extradite the alleged offender, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State."

## Article 10

Replace the final sentence of article 10, paragraph 2, by:

"This Convention shall, however, apply if a foreign State or an international intergovernmental organization or conference is subjected to demands."

## Throughout the text

Wherever the term "international organization" occurs, add the word "intergovernmental".

- L. Working paper submitted by the Netherlands (A/AC.188/L.14) concerning the working paper submitted by the Federal Republic of Germany (A/AC.188/L.3)

## Article 3, paragraph 2

Replace the words "his prompt departure from the country" by the words "him to go where he pleases".

## Article 5, paragraph 1, subparagraph (b)

Delete the words "itself or an international organization of which the State is a member".

## Article 5, paragraph 1, subparagraph (c)

Add the words:

"in the territory of a Contracting State, or on board a ship or aircraft registered in a Contracting State".

## Article 5, paragraph 2

Add the words:

"after receiving a request for extradition from one of those States".

## Article 7, paragraph 1

After the words "The Contracting State in the territory of which the alleged offender is found" insert the words "and which has received a request for extradition by one of the Contracting States mentioned in article 5, paragraph 1".

- M. Working paper submitted by the Philippines (A/AC.188/L.16) concerning article 3, paragraph 3, of the working paper submitted by the Federal Republic of Germany (A/AC.188/L.3)

At the end of article 3, paragraph 3, replace "to the person entitled to possession" by "to the proper authorities of the country where the object was seized".



---

### كيفية الحصول على منشورات الأمم المتحدة

يمكن الحصول على منشورات الأمم المتحدة من المكتبات ودور التوزيع في جميع أنحاء العالم. استلم عنها من المكتبة التي تتعامل معها أو اكتب إلى : الأمم المتحدة، قسم البيع في نيويورك أو في جنيف.

#### 如何购取联合国出版物

联合国出版物在全世界各地的书店和经销处均有发售。请向书店询问或写信到纽约或日内瓦的联合国销售组。

#### HOW TO OBTAIN UNITED NATIONS PUBLICATIONS

United Nations publications may be obtained from bookstores and distributors throughout the world. Consult your bookstore or write to: United Nations, Sales Section, New York or Geneva.

#### COMMENT SE PROCURER LES PUBLICATIONS DES NATIONS UNIES

Les publications des Nations Unies sont en vente dans les librairies et les agences dépositaires du monde entier. Informez-vous auprès de votre libraire ou adressez-vous à : Nations Unies, Section des ventes, New York ou Genève.

#### КАК ПОЛУЧИТЬ ИЗДАНИЯ ОРГАНИЗАЦИИ ОБЪЕДИНЕННЫХ НАЦИЙ

Издания Организации Объединенных Наций можно купить в книжных магазинах и агентствах во всех районах мира. Наводите справки об изданиях в вашем книжном магазине или пишите по адресу: Организация Объединенных Наций, Секция по продаже изданий, Нью-Йорк или Женева.

#### COMO CONSEGUIR PUBLICACIONES DE LAS NACIONES UNIDAS

Las publicaciones de las Naciones Unidas están en venta en librerías y casas distribuidoras en todas partes del mundo. Consulte a su librero o diríjase a: Naciones Unidas, Sección de Ventas, Nueva York o Ginebra.

---