

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

GENERAL ASSEMBLY
OFFICIAL RECORDS: THIRTY-THIRD SESSION
SUPPLEMENT No. 39 (A/33/39)



UNITED NATIONS



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I. INTRODUCTION

1. At its 105th plenary meeting, on 16 December 1977, the General Assembly, on the recommendation of the Sixth Committee, 1/ adopted resolution 32/148, which reads as follows:

"The General Assembly,

Recalling its resolution 31/103 of 15 December 1976,

Having considered the report of the Ad Hoc Committee on the Drafting of an International Convention against the Taking of Hostages, 2/

Considering that the Ad Hoc Committee has been unable to complete the mandate given to it within the allocated time,

Mindful of the need to conclude, under the auspices of the United Nations, an international convention against the taking of hostages, taking into account the urgency of formulating effective measures to put an end to the taking of hostages,

Bearing in mind the recommendation of the Ad Hoc Committee that it should continue its work in 1978, 3/

1. Takes note of the report of the Ad Hoc Committee on the Drafting of an International Convention against the Taking of Hostages;

2. Decides that the Ad Hoc Committee, as constituted, 4/ should continue, in accordance with paragraph 3 of General Assembly resolution 31/103, to draft at the earliest possible date an international convention against the taking of hostages and, in the fulfilment of its mandate, to consider suggestions and proposals from any State, bearing in mind the views expressed during the debate on this item at the thirty-second session of the Assembly;

3. Invites Governments to submit, or to bring up to date, suggestions and proposals for consideration by the Ad Hoc Committee;

4. Requests the Secretary-General to render all assistance to the Ad Hoc Committee, including the preparation of summary records of its meetings;

1/ Official Records of the General Assembly, Thirty-second Session, Annexes, agenda item 119, document A/32/467.

2/ Ibid., Thirty-second Session, Supplement No. 39 (A/32/39).

3/ Ibid., para. 14.

4/ Ibid., para. 2.

5. Requests the Ad Hoc Committee to submit its report and to make every effort to submit a draft convention against the taking of hostages to the General Assembly at its thirty-third session;

6. Decides to include in the provisional agenda of its thirty-third session the item entitled 'Drafting of an international convention against the taking of hostages'."

2. The Ad Hoc Committee was composed of the following Member States appointed by the President of the General Assembly under the terms of paragraph 2 of Assembly resolution 31/103:

Algeria	Mexico
Barbados	Netherlands
Byelorussian Soviet Socialist Republic	Nicaragua
Canada	Nigeria
Chile	Philippines
Democratic Yemen	Poland
Denmark	Somalia
Egypt	Surinam
France	Sweden
Germany, Federal Republic of	Syrian Arab Republic
Guinea	Union of Soviet Socialist Republics
Iran	United Kingdom of Great Britain and Northern Ireland
Italy	United Republic of Tanzania
Japan	United States of America
Jordan	Venezuela
Kenya	Yugoslavia
Lesotho	
Libyan Arab Jamahiriya	

3. The Ad Hoc Committee met at the United Nations Office at Geneva from 6 to 24 February 1978. The session was opened on behalf of the Secretary-General by Mr. Yuri M. Rybakov, Director of the Codification Division of the Office of Legal Affairs.

4. At its 20th and 25th meetings, on 6 and 9 February, the Ad Hoc Committee agreed upon the composition of the Bureau as follows:

Chairman: Mr. Leslie O. Harriman (Nigeria);

Vice-Chairmen: Mr. Hermidas Bavand (Iran);

Mr. Eike Bracklo (Federal Republic of Germany);

Mr. José Alvarado Correa (Nicaragua);

Rapporteur: Mr. Vadim Ivanovich Loukianovich (Byelorussian Soviet Socialist Republic).

5. Mr. Erik Suy, Under-Secretary-General for Legal Affairs, the Legal Counsel, attended the session from 20 to 24 February and represented the Secretary-General on that occasion. Mr. Yuri M. Rybakov, Director of the Codification Division of the Office of Legal Affairs, represented the Secretary-General from 6 to 17 February and acted as Secretary of the Committee during the session.

6. At its 20th meeting, on 6 February, the Ad Hoc Committee adopted the following agenda (A/AC.188/L.18):

- "1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Drafting of an international convention against the taking of hostages pursuant to paragraph 3 of General Assembly resolution 31/103 and paragraph 2 of General Assembly resolution 32/148.
6. Adoption of the report."

7. The Ad Hoc Committee had before it document A/AC.188/1 containing the suggestions and proposals submitted by Governments in accordance with General Assembly resolution 32/148.

8. The Ad Hoc Committee also had before it the working papers submitted during its 1977 session and reproduced in annex II to its report to the General Assembly at the thirty-second session. 2/ During the current session, Yugoslavia submitted a working paper (A/AC.188/L.19) concerning article 2 of the draft convention contained in the working paper submitted by the Federal Republic of Germany (A/AC.188/L.3). France submitted a working paper (A/AC.188/L.20) concerning the draft convention contained in the working paper submitted by the Federal Republic of Germany (A/AC.188/L.3).

9. At its 21st meeting, on 7 February, the Ad Hoc Committee decided to resume its work at the point at which it had left off at the previous session.

10. At its 25th meeting, on 9 February, the Ad Hoc Committee decided to establish two open-ended working groups. Working Group I was requested to examine the thornier questions connected with the drafting of an international convention against the taking of hostages, and to try to find some common ground by means of consultations. Working Group II was requested to deal with draft articles that were not generally controversial and with text on which Working Group I had come to an agreement. Working Groups I and II respectively elected as their chairmen Mr. Hermidas Bavand (Iran) and Mr. Eike Bracklo (Federal Republic of Germany), Vice-Chairmen of the Ad Hoc Committee.

11. At the 26th meeting, on 15 February, the Chairman of Working Group I made orally a progress report on the work carried out by the Group during its first three meetings, held between 10 and 14 February. The Chairman of Working Group II made orally a progress report on the work carried out by the Group during its first four meetings, held between 9 and 14 February. The progress reports on the work of the two working groups are reflected in the summary record of the 26th meeting of the Ad Hoc Committee (A/AC.188/SR.26).

12. At its 28th and 29th meetings, on 24 February, the Ad Hoc Committee considered and approved the reports of Working Groups I and II. At its 29th meeting, it decided that those reports would constitute sections II and III, respectively, of its report to the General Assembly. It further decided to annex to its report the summary records of its meetings.

13. This report reflects informal discussions which do not prejudge the final position of States.

II. REPORT OF WORKING GROUP I

14. Working Group I, established by the Ad Hoc Committee at its 25th meeting, on 9 February, was requested to examine the thornier questions connected with the drafting of an international convention against the taking of hostages, and to try to find some common ground by means of consultations. It held six meetings between 10 and 23 February 1978 under the chairmanship of Mr. Hermidas Bavand, Vice-Chairman of the Ad Hoc Committee.

15. The Chairman of the Working Group identified the following issues as being among those on which Working Group I should focus:

- (a) The scope of the Convention and the question of national liberation movements;
- (b) The question of the definition of taking of hostages;
- (c) The question concerning extradition and right of asylum;
- (d) The respect for the principles of sovereignty and territorial integrity of States with regard to the release of hostages.

Some delegations considered that the concept of political offence as well as the general condemnation of the taking of hostages, including by States, should be added to the above list. Other delegations considered some of these aspects as irrelevant.

The deliberations within the Group focused mostly on the first of the issues identified by the Chairman.

16. In this connexion, the negotiations revolved around the generally agreed principle that the taking of hostages was an act prohibited under international law. In this respect, there was general agreement that no one should be granted an open licence for taking hostages.

17. As negotiations went on there seemed to exist a feeling to consider the establishment of a possible link between the proposed convention and other international legal instruments.

18. The Working Group had before it the documents contained in the annex to the report of the Ad Hoc Committee on its 1977 session (A/AC.188/L.4, L.5, L.6, L.7, L.9, L.10 and L.11).

19. Two distinctive approaches were envisaged. On the one hand, it was suggested that a distinction should be made between the provisions of the proposed convention and the rules of international law applicable in armed conflicts. This suggestion on the scope of the proposed convention was the subject of the following text submitted informally by a group of members of the Working Group:

"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 apartheid and 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."

This suggestion, which reflected a spirit of conciliation on the part of the said group, was well received among a number of members of the Working Group who regarded it as containing a constructive approach for negotiation.

20. On the other hand, there was a suggestion for a comprehensive approach to the effect that the scope of the proposed convention should be broad enough to encompass all cases of taking of hostages and therefore the provisions of the convention, if necessary, would supplement the Geneva Conventions of 1949 and the 1977 Additional Protocols. This suggestion was reflected in the following text later formally submitted in document A/AC.188/L.20:

"In the case of acts committed during an armed conflict, the provisions of the present Convention supplement, if necessary, the Geneva Conventions of 1949 for the protection of war victims and the Additional Protocols of 1977."

21. The following alternative to the suggestion reflected in paragraph 19 above was suggested with the same goodwill and spirit of conciliation on behalf of another group of members of the Working Group:

"The provisions of the present Convention do not apply to acts committed in the course of international armed conflicts to the extent that the Geneva Conventions of 12 August 1949 for the protection of war victims or the Additional Protocols of 10 June 1977 to these Conventions are applicable."

Subsequently other texts were discussed in an endeavour to take into account the points of view of the various groups.

22. As a result of intensive and prolonged negotiations, the gap between the negotiating groups seemed to grow narrower as negotiations went on. Although the negotiations did not lead to an agreed solution at this stage, it was particularly stressed at the last meeting of the Working Group that considerable progress had been made. The constructive and co-operative attitude of delegations had been very encouraging and the results of the session constituted a solid ground for the future work of the Ad Hoc Committee.

III. REPORT OF WORKING GROUP II

23. Working Group II, established by the Ad Hoc Committee at its 25th meeting, on 9 February 1978, was instructed to deal with draft articles that were not generally controversial and with texts on which Working Group I had come to an agreement. It held seven meetings between 9 and 20 February 1978 under the chairmanship of Mr. Eike Bracklo (Federal Republic of Germany), Vice-Chairman of the Ad Hoc Committee.

24. In the course of its 1st to 4th meetings, held between 9 and 14 February 1978, the Working Group examined in first reading articles 2 to 9, paragraph 2 of article 10 and article 11 of the working paper submitted at the 1977 session by the Federal Republic of Germany (A/AC.188/L.3); 5/ it also examined related working papers submitted at the previous session by France (A/AC.188/L.8 and L.13), 6/ Nicaragua (A/AC.188/L.12), 7/ the Netherlands (A/AC.188/L.14) 8/ and the Philippines (A/AC.188/L.16) 9/ and at the current session by Yugoslavia (A/AC.188/L.19) and Barbados (A/AC.188/WG.II/CRP.3), as well as a number of oral suggestions from various delegations.

25. In the course of its 5th to 7th meetings, held from 16 to 20 February, the Working Group reviewed the texts for articles 2 to 9, paragraph 2 of article 10 and article 11, as they emerged from the first reading, as well as remaining proposals and suggestions relating thereto.

26. The stage reached in relation to each of the above-mentioned articles is described below. It was the understanding that the results of the work would be subject to an agreement reached also on the issues dealt with in Working Group I.

Article 2

27. In connexion with this article, the Working Group had before it a working paper from Yugoslavia (A/AC.188/L.19) which sought to add a paragraph 2 to article 2, or insert a new article 2 bis reading as follows:

"The Contracting States will be obliged to undertake effective measures to prohibit on their territories illegal activities of persons, groups and organizations that organize, instigate, encourage or engage in the perpetration of acts of taking of hostages."

28. As orally revised at a later stage, this proposal sought to add the following words at the end of subparagraph (a):

5/ Official Records of the General Assembly, Thirty-second Session, Supplement No. 39 (A/32/39), annex II, p. 106.

6/ Ibid., pp. 111 and 113.

7/ Ibid., p. 112.

8/ Ibid., p. 114.

9/ Ibid.

", including measures to prohibit on their territories illegal activities of persons, groups and organizations that organize, instigate, encourage or engage in the perpetration of acts of taking of hostages."

29. This addition was generally considered as acceptable. Doubts were, however, expressed by several delegations on the words ", groups and organizations" and it was agreed that those words should appear at this stage between square brackets in the text.

30. With respect to subparagraph (b), one representative indicated that, in his interpretation, the exchange of information referred to in that subparagraph was to take place on a bilateral basis. In this connexion, it was suggested that the delegation concerned place on record at the appropriate stage its interpretation of the words "as appropriate" as meaning "on a bilateral basis". 10/

Article 3

Paragraphs 1 and 2

31. The delegation of the Netherlands indicated that it did not insist on its proposal concerning paragraph 2 (A/AC.188/L.14). 11/

32. There was general agreement on a suggestion to combine paragraphs 1 and 2 as follows:

"The Contracting State in whose territory the hostage is held by the offender shall take all measures it considers appropriate to ease the situation of the hostage, in particular, to secure his release and, after his release, to facilitate his departure."

Present paragraph 3 (new paragraph 2)

33. It was agreed to replace the word "promptly" by "as soon as possible" and to incorporate into the original text the substance of a proposal by the Philippines (A/AC.188/L.16) 12/ and of an oral suggestion from another delegation. The resulting text, reading as follows, was generally considered as acceptable:

10/ In view of the foregoing, article 2 would read as follows:

"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, including measures to prohibit on their territories illegal activities of persons /, groups and organizations / that organize, instigate, encourage or engage in the perpetration of acts of taking of hostages;

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

11/ See foot-note 8 above.

12/ See foot-note 9 above.

"If any object which the offender has illegally obtained as a result of the taking of hostages comes into the custody of a Contracting State, that Contracting State shall return it as soon as possible to the person from whom the object was illegally obtained or to the appropriate authorities of his country." 13/

Article 4

34. In connexion with the words "severe penalties", some delegations supported the so-called New York Convention formulation, namely "appropriate penalties which take into account their grave nature". Others, while preferring the original text, said they could accept the New York Convention formulation. Still others took the view that the matter should be more fully examined. Various alternatives were suggested but no agreement was reached on this point.

35. The delegation of France indicated that it did not insist on its proposal to add a paragraph to article 4 (A/AC.188/L.8). 14/

36. With respect to the placement of article 4, the proposal by France to make present article 4 article 2 (A/AC.188/L.8) 15/ was generally considered as acceptable, it being understood that this would be without prejudice to the possible insertion of one or several articles before new article 2 (former art. 4).

Article 5

Paragraph 1

Opening sentence

37. There was a strong trend to enlarge the scope of the opening sentence of the article by inserting after the words "any of the offences set forth in article 1" a compromise formula worked out between the Netherlands and other interested delegations, reading as follows: "or any other serious act of violence committed in connexion with such offences by the alleged offender against the hostage causing death or bodily injury".

13/ In view of the foregoing, article 3 would read as follows:

"Article 3

"1. The Contracting State in whose territory the hostage is held by the offender shall take all measures it considers appropriate to ease the situation of the hostage, in particular, to secure his release and, after his release, to facilitate his departure.

"2. If any object which the offender has illegally obtained as a result of the taking of hostages comes into the custody of a Contracting State, that Contracting State shall return it as soon as possible to the person from whom the object was illegally obtained or to the appropriate authorities of his country."

14/ See foot-note 6 above.

15/ Idem.

Subparagraph (b)

38. It was agreed to replace "By which" by "When" for stylistic reasons.

39. While some delegations expressed preference for the original text, they said they could go along with the general trend in favour of the proposal by the Netherlands (A/AC.188/L.14) 16/ to delete the words "itself or an international organization of which the State is a member".

Proposed additional subparagraph (d)

40. The delegation of France indicated that it did not insist on its proposal to add a subparagraph (d) to paragraph 1 (A/AC.188/L.13). 17/

Paragraph 2

41. An oral suggestion to delete the words "pursuant to article 8" was considered as generally acceptable.

42. The delegation of the Netherlands indicated that it did not insist on its proposal concerning this paragraph (A/AC.188/L.14). 18/ 19/

16/ See foot-note 8 above.

17/ See foot-note 6 above.

18/ See foot-note 8 above.

19/ In view of the foregoing and subject to what is said in para. 37 above, art. 5 would read as follows:

"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) When that State 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 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

43. A formulation combining the first two paragraphs of article 6 of The Hague and Montreal Conventions (as paras. 1 and 2), the second sentence of paragraph 1 of the original text (as para. 3), paragraph 2 of article 6 of the New York Convention (as para. 4) and the last sentence of paragraph 4 of article 6 of The Hague and Montreal Conventions (as para. 5) was considered as generally acceptable, as was also a proposal by France (A/AC.188/L.13) 20/ to insert the word "intergovernmental" between "international" and "organization" and to do likewise wherever the term "international organization" occurs in the draft.

44. It was further agreed to insert at the end of paragraph 1 (d) of the original text the words "or in which he has his permanent residence", it being understood that, at a later stage, this phrase could be brought into line with paragraph 1 (e).

45. Some doubts were expressed on the need for the words "or conference". 21/

20/ See foot-note 6 above.

21/ In view of the foregoing and subject to what is said in paras. 44 and 45 above, art. 6 would read as follows:

"Article 6

"1. Upon being satisfied that the circumstances so warrant, any Contracting State in the territory of which the offender is present shall take him into custody or take other measures to ensure his presence. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as it is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary enquiry into the facts.

3. The custody or other measures referred to in paragraph 1 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 or in which he has his permanent residence;
- (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 intergovernmental organization or conference against which compulsion has been directed or attempted.

4. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled:

- (a) To communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise

Article 7

Paragraph 1

46. The Working Group considered a proposal by France (A/AC.188/L.13) 22/ and a proposal by the Netherlands (A/AC.188/L.14) 23/ as well as alternative oral suggestions. No text was however agreed upon for this paragraph.

Paragraph 2

47. It was agreed that the following words should be added at the end of paragraph 2:

"including enjoyment of all the rights and guarantees provided by the law of the country in the territory of which he is present". 24/

Proposed additional paragraph 3

48. Barbados submitted a working paper (A/AC.188/WG.II/CRP.3) seeking to add to article 7 a paragraph 3 reading as follows:

"3. A Contracting State, in whose territory the offender is present, may, if no request for extradition is made, ask the Secretary-General of the United Nations to identify a Contracting State willing to assume responsibility for the trial, provided that the Contracting State in whose territory the offender is present is incapable of prosecuting the offender by reason of the fact that such a trial would cause a threat to national security, disruption or great hardship to the population."

The Working Group had a brief exchange of views on the proposed text and agreed to come back to it at a later stage.

(continued)

entitled to protect his rights or, if he is a stateless person, which he requests and which is willing to protect his rights;

(b) To be visited by a representative of that State.

5. The State which makes the preliminary enquiry contemplated in paragraph 2 shall promptly report its findings to the States, organization or conference referred to in paragraph 3 and indicate whether it intends to exercise jurisdiction."

22/ See foot-note 6 above.

23/ See foot-note 8 above.

24/ In view of the foregoing and subject to what is said in para. 37 above, para. 2 of art. 7 would read as follows:

"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, including enjoyment of all the rights and guarantees provided by the law of the country in the territory of which he is present."

Article 8

49. In view of the trend towards an enlargement of the opening sentence of article 5 (see para. 37 above) it would be necessary to make in article 8 the required consequential change. 25/

Article 9

50. In view of the trend towards an enlargement of the opening sentence of article 5 (see para. 37 above) it would be necessary to make in article 9 the required consequential change. 26/

25/ Article 8 of the original text reads as follows:

"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."

26/ Article 9 of the original text reads as follows:

"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, paragraph 2 27/

First sentence

51. It was agreed to replace the word "offender" by "alleged offender".

Second sentence

52. The Working Group examined a proposal by France (A/AC.188/L.13 28/ and A/AC.188/L.20) to insert the word "foreign" before the word "State". Alternative suggestions were considered but no agreement was reached on this point.

53. As indicated in paragraph 43 above, it has been agreed within the Working Group that the word "intergovernmental" should be inserted between "international" and "organization" wherever the term "international organization" occurs in the draft.

54. Mention should also be made, in connexion with this sentence, of the doubts expressed on the words "or conference" in relation to article 6 (see para. 45 above).

Article 11

55. Some delegations supported the text in its present drafting. Others said that the text as presently drafted would cause difficulties to them. In this connexion, it was suggested to rephrase the article along the lines of article 12 of The Hague Convention, article 14 of the Montreal Convention, and article 13 of the New York Convention. Still other delegations said that they could accept both approaches. 29/ One delegation said it generally agreed with the formulation of article 11 but would like the last sentence modified to specify that Contracting States that submit a case to the International Court of Justice should abide by the compulsory jurisdiction of the Court in accordance with the Statute of the Court.

56. No agreement was reached on this article.

27/ The Working Group, while recognizing that article 10 touched upon questions which fell within the terms of reference of Working Group I, decided to examine para. 2 of that article, this being without prejudice to future developments concerning para. 1.

28/ See foot-note 6 above.

29/ Article 11 of the original draft reads as follows:

"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

(continued)

dispute may submit the dispute to the International Court of Justice for decision in accordance with the Statute of the Court."

Article 13 of the New York Convention reads as follows:

"Article 13

"1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations."

Articles 12 of The Hague Convention and 14 of the Montreal Convention are almost identical to the above article 13.

IV. RECOMMENDATION OF THE AD HOC COMMITTEE

57. At its 29th meeting, on 24 February, the Ad Hoc Committee adopted by consensus the following draft resolution submitted by the Federal Republic of Germany:

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

Recalling General Assembly resolutions 31/103 of 15 December 1976 and 32/148 of 16 December 1977,

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

Recommends that the General Assembly at its thirty-third session should invite the Ad Hoc Committee to continue its work in 1979.

ANNEX

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Organization of work (concluded)	
Appointment of a new Rapporteur	
26th meeting	57
<u>Wednesday, 15 February 1978, 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 and paragraph 2 of General Assembly resolution 32/148 (continued)	
27th meeting	63
<u>Monday, 20 February 1978, 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 and paragraph 2 of General Assembly resolution 32/148 (continued)	
28th meeting	66
<u>Friday, 24 February 1978, at 11.20 a.m.</u>	
Drafting of an international convention against the taking of hostages pursuant to paragraph 3 of General Assembly resolution 31/103 and paragraph 2 of General Assembly resolution 32/148 (continued)	
29th meeting	74
<u>Friday, 24 February 1978, at 3.40 p.m.</u>	
Drafting of an international convention against the taking of hostages pursuant to paragraph 3 of General Assembly resolution 31/103 and paragraph 2 of General Assembly resolution 32/148 (concluded)	
Adoption of the report	
Closure of the session	

20th meeting

Monday, 6 February 1978, at 3.35 p.m.

Temporary Chairman: Mr. Yuri M. Rybakov (Director of the Codification Division, representing the Secretary-General)

Chairman: Mr. Leslie O. Harriman (Nigeria)

A/AC.188/SR.20

OPENING OF THE SESSION (item 1 of the provisional agenda)

1. The TEMPORARY CHAIRMAN speaking as the representative of the Secretary-General, declared open the 1978 session of the Ad Hoc Committee and assured its members of the Secretary-General's most cordial wishes for the success of the session.
2. He recalled that the question of the drafting of an international convention against the taking of hostages had been included in the agenda for the thirty-first session of the General Assembly, in 1976. Following the consideration of the item by the Sixth Committee, the Assembly had adopted resolution 31/103, by which it had established an Ad Hoc Committee entrusted with the task of drafting, at the earliest possible date, an international convention against the taking of hostages. The Ad Hoc Committee had met from 1 to 19 August 1977, but had not fully discharged its mandate and had therefore recommended by consensus in its report to the General Assembly at its thirty-second session (A/32/39) a/ that it should be invited to continue its work in 1978.
3. After study of that report by the Sixth Committee, the General Assembly had adopted by consensus resolution 32/148, in which it had decided that the Ad Hoc Committee should continue, in accordance with paragraph 3 of Assembly resolution 31/103, to draft at the earliest possible date an international convention against the taking of hostages. In the preamble of resolution 31/103, more particularly the fourth and fifth paragraphs thereof, the Assembly had stressed its grave concern at the increase in instances of the taking of hostages and had recognized that such acts endangered innocent human lives and violated human dignity. In the fourth preambular paragraph of its resolution 32/148, the General Assembly had stressed the need to conclude an international convention against the taking of hostages, bearing in mind the urgency of formulating effective measures to put an end to the taking of hostages.
4. It would be possible for the Ad Hoc Committee to meet twice a day from Monday to Friday, during the current session. To assist them in their work, members would have before them document A/AC.188/L.2 and Corr.1, containing pertinent information on the taking of hostages, which had been prepared by the Secretariat in pursuance of paragraph 4 of General Assembly resolution 31/103. No suggestions or proposals for consideration by the Ad Hoc Committee had yet been received from Governments in response to the note issued in that connexion by the Secretary-General pursuant to General Assembly resolution 32/148, paragraph 3.

a/ Official Records of the General Assembly, Thirty-second Session, Supplement No. 39.

ELECTION OF OFFICERS (item 2 of the provisional agenda)

5. Mr. Leslie O. Harriman (Nigeria) was re-elected Chairman by acclamation.
6. Mr. Harriman (Nigeria) took the Chair.
7. Mr. Hermidas Bavand (Iran), Mr. Eike Bracklo (Federal Republic of Germany) and Mr. José Antonio Alvarado Correa (Nicaragua) were re-elected Vice-Chairmen by acclamation.
8. Mr. Petr G. Belyaev (Byelcrussian Soviet Socialist Republic) was re-elected Rapporteur by acclamation.

ADOPTION OF THE AGENDA (item 3 of the provisional agenda) (A/AC.188/L.18)

9. The agenda was adopted.

ORGANIZATION OF WORK (agenda item 4)

10. The CHAIRMAN invited all members of the Committee who so wished to join its officers in the consultations they were to hold forthwith on the Committee's programme of work.

The meeting rose at 3.45 p.m.

21st meeting

Tuesday, 7 February 1978, at 11.10 a.m.

Chairman: Mr. Leslie O. Harriman (Nigeria)

A/AC.188/SR.21

ORGANIZATION OF WORK (agenda item 4) (continued)

1. The CHAIRMAN stated that, at a meeting of the officers of the Committee held on the previous day which had been open to all members of the Committee and had been attended by a fairly large number of representatives, the following suggestions had been put forward, which had given rise to no objections: there should be no general debate, it being understood that delegations could make general observations during the discussion of particular aspects of the problem; the Committee should resume its work at the point at which it had left off at the previous session, the possibility of a second reading not being excluded; for the time being, the Committee should continue working in plenary meetings, so as to have the benefit of summary records, but it could also meet as a working group if that should prove necessary.

2. Mr. SANNE (Federal Republic of Germany) said he felt encouraged by the pragmatic approach which characterized the useful proposals made at the Bureau meeting and by the willingness shown by the participants at that meeting to work effectively in a spirit of mutual understanding. What mattered more than the practical arrangements for the organization of the work was the manner in which the Committee tackled the serious problems confronting it. It would, in the first place, be necessary to try to reach agreement on those points which did not give rise to real problems, leaving aside the more difficult issues which members of the Committee could discuss, or on which they could even conduct negotiations, in private. In the initial stages, therefore, agreement would be reached only on matters of minor importance, and negotiations on the more important ones would not be prejudged. Delegations would, of course, reserve their position on basic matters, but that method of working might help to build up a climate of confidence.

3. The working paper submitted by his country (A/AC.188/L.3) a/ had been well received both at the previous session of the Committee and at the Sixth Committee of the General Assembly. Some articles had caused no major difficulty and others had led to requests for drafting changes; there was a third group of articles involving major political issues which had given rise to formal proposals by several delegations.

4. Article 10 of his country's draft, which was closely related to the major political problems to be solved, had not been considered at the previous session and might serve as a starting point for the Committee's work. The Committee could then go on to consider the remainder of the draft, a procedure which would make it possible to identify areas lending themselves to early agreement and those necessitating an in-depth discussion.

5. The CHAIRMAN said that, if there was no objection, he would take it that

a/ See Official Records of the General Assembly, Thirty-second Session, Supplement No. 39, p. 110.

the Committee wished to begin by considering article 10 of the draft submitted by the Federal Republic of Germany.

6. It was so decided.

DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE TAKING OF HOSTAGES PURSUANT TO PARAGRAPH 3 OF GENERAL ASSEMBLY RESOLUTION 31/103 AND PARAGRAPH 2 OF GENERAL ASSEMBLY RESOLUTION 32/148 (agenda item 5)

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

Article 10

7. Mr. ROSENSTOCK (United States of America) said that his delegation could readily accept article 10, as drafted, although paragraph 1, relating to possible conflicts of texts, did not appear to be absolutely essential. Paragraph 2 expressed a logical idea, namely that offences committed entirely within the territory of a single State should not be covered by the convention. It remained to be specified whether the convention should apply to an offender who had fled to a third State; his delegation had no very definite ideas on that point. It went without saying that, if cases where a State was subjected to demands were to be covered by the convention, so should cases where a demand was made on an international organization, as they involved, not only the interests of all the States members of that organization, but also those of the organization itself, which possessed international personality. There again, his delegation was open to suggestions.

8. Mr. MACAULAY (Nigeria) said that the convention was not meant to partially replace the international instruments referred to in article 10, paragraph 1, but to cover cases of hostage-taking not provided for in those instruments. Article 10, paragraph 2, limited the scope of the convention to cases of international relevance. It might perhaps be desirable to deal, in that context, with the case of those fighting on behalf of liberation movements, as it should be made clear in the convention whether acts committed by freedom fighters were or were not of an entirely domestic character. Furthermore, a link should perhaps be established between the future convention and the Protocols b/ additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of international and non-international armed conflicts; adopted on 8 June 1977.

9. Mr. CHAMBERLAIN (United Kingdom) said that article 10, paragraph 1, was useful, as it made it plain that the convention was to supplement the instruments referred to and not to derogate from their provisions. With regard to paragraph 2, the first part was important in that it limited the scope of the convention to incidents in which there was an international element; on the other hand, his delegation questioned the advisability of providing that the convention should apply to cases where demands were made on a State, in these cases where they was no element.

10. Mr. KAWAMURA (Japan) said that, taken as a whole, article 10 was acceptable to his delegation. As had been pointed out, paragraph 1 was doubtless not absolutely necessary, but it had the advantage of making things clearer. His delegation had no objection to the first part of paragraph 2, but it shared the doubts expressed by the representative of the United Kingdom as to the second part.

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

11. Mr. DRAPEAU (Canada) said he thought that article 10, paragraph 1, could be useful if the provisions of the convention were inconsistent with those of the instruments referred to in the paragraph concerned. Since, however, that was not the case, he wondered whether that provision was really necessary, particularly as it might be taken to imply that the courts of States parties were required to interpret the different instruments in relation to one another, in order to determine which of the instruments governed a particular act.

12. He agreed with the first part of paragraph 2, relating to the case in which the offender was still in the territory of the State where the offence had been committed, but he stressed that the convention should be applicable from the moment when the person concerned fled to a third State. The second part of that paragraph could also be accepted by his delegation.

13. Mr. VALDERRAMA (Philippines) said that article 10, paragraph 1, did not cause his delegation difficulty. With regard to paragraph 2, it was obvious that the convention would not apply if the offence involved only a single State, where the hostage, the offender and the person subjected to demands were all nationals of that State and where the offender was found, but he, too, was of the opinion that it should apply where the offender fled to a third State. The second sentence of paragraph 2 should perhaps be expanded a little.

14. Mr. MOK (Netherlands) said, with reference to the view expressed by the United Kingdom representative on article 10, paragraph 1, that the different instruments in question, including the future convention, should indeed supplement each other. Thus, in a case involving the taking of diplomats as hostages, the fact that such a case was covered by the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents should not exclude the possibility of applying the new convention, particularly as the Contracting Parties would not necessarily be the same ones. If that paragraph, whose usefulness was doubtful, were to be retained, it would be necessary to mention, in addition to the Geneva Conventions of 1949, c/ the additional Protocols of 1977.

15. He endorsed the first part of paragraph 2, but thought that the second part was not very clear. If the conditions set out in the first sentence were met, and the State subjected to demands was the State in whose territory the offence had been committed, the convention would not apply. For that reason, his delegation approved the concept underlying the French amendment (A/AC.188/L.13), d/ providing for the insertion of the word "foreign" before the word "State" in the last sentence. It thought, however, that there was no need to adopt that amendment as, in its opinion, the only exception that should be provided for in the second sentence was international conferences.

16. Mr. RIOS de MARIMON (Chile) said that, in his view, paragraph 1 of article 10 was essential. Paragraph 1 and the first part of paragraph 2 did not call for any comment. On the other hand, the second part of paragraph 2 seemed to give an international character to an offence committed in the State subjected to the demand, even if the guilty party was in the territory of that State; that hardly seemed logical. It should therefore be specified that the convention applied when the demand was made on a "foreign" State or a "third" State, thus giving the

c/ United Nations, Treaty Series, vol. 75, Nos. 770-973.

d/ See Official Records of the General Assembly, Thirty-second Session, Supplement No. 39, p. 114.

offence an international character. Drafted in that way, paragraph 2 would be acceptable to his delegation.

17. Mr. BAVAND (Iran) said that article 10, paragraph 1, occasioned no difficulty for his delegation; similar clauses were, moreover, to be found in several international treaties, in particular in article 73 of the Vienna Convention on Consular Relations. e/ As had already been said, the object of the future convention was not to replace existing instruments, but to provide for cases that were not covered by those instruments.

18. With regard to paragraph 2, the first sentence gave rise to no difficulty. In the second sentence, however, his delegation, like that of the Netherlands, would prefer the text to be clearer and for that reason endorsed the French amendment to add the adjective "foreign" before the word "State". He also thought that it would be better to place the provision set out in that sentence in another article.

19. Mr. LARSSON (Sweden) said that his delegation had no major difficulty with article 10. He noted, however, the comment by the Netherlands delegation to the effect that it would be desirable to mention in paragraph 1 the 1977 additional Protocols, and he shared the view of representatives who had asked for the second sentence of paragraph 2 to be made more explicit.

20. Mr. de GOUTTES (France) said that, in principle, his delegation approved article 10 of the draft submitted by the Federal Republic of Germany. It interpreted paragraph 1 in the same way as the delegations of the United Kingdom and the Netherlands -- namely, as implying that the provisions of the convention supplemented, where appropriate, those of the 1949 Geneva Conventions when the acts concerned had been committed in the course of an armed conflict. However, his delegation reserved the right, should any ambiguities in the interpretation of that paragraph emerge during the discussion, to submit such amendments as could serve to dispel those ambiguities.

21. With regard to paragraph 2, his delegation recalled that it had already submitted an amendment to the second sentence, proposing the insertion of the adjective "foreign" before the word "State", so as to introduce an international element into the provision, and the replacement of the words "an international organization or an international conference" by "an international intergovernmental organization or conference".

22. Mr. MACAULAY (Nigeria) said he wondered whether the Federal Republic of Germany would agree to delete the words "or an international conference" in the second sentence of paragraph 2; that expression could cover conferences which were not held under the auspices of an international organization -- for example, a conference of Baptists.

23. Mr. KAPETANOVIĆ (Yugoslavia) supported the Netherlands suggestion to mention in paragraph 1 the Protocols additional to the Geneva Conventions of 1949, which were now part of international law.

24. He suggested that the second sentence of paragraph 2, which was a source of difficulty, should be reworded to read: "This Convention shall, however, apply

e/ United Nations Treaty Series, vol. 596, No. 8638, p. 268.

whenever an international element is involved." However, that was not intended as a formal amendment.

25. Mr. OMAR (Libyan Arab Jamahiriya) agreed that the Protocols adopted in 1977 should be mentioned in article 10.

26. Mr. ATTAF (Algeria) said he also approved the idea of mentioning the 1977 Protocols in paragraph 1 of article 10. For that purpose, the following words could be added at the beginning of the sentence after the title of the Geneva Conventions of 1949: "as amended by the additional Protocols of 1977".

27. The question dealt with in paragraph 2 should be the subject of a separate chapter which might be headed "Scope of the Convention" and which would be drafted to take account of the following considerations: firstly, it should be stipulated that the convention did not apply to national resistance movements; secondly, it should be indicated that the offence must have an international element - which was the aim of the French amendment to insert the word "foreign" before "State" - and provision should be made for cases where the abductors fled to other foreign States.

Article 11

28. Mr. BAVAND (Iran) endorsed article 11, the provisions of which were important and were consistent with article 12 of the Hague Convention, f/ article 14 of the 1971 Montreal Convention g/ and article 13 of the 1973 New York Convention on the protection of diplomatic agents. h/

29. Mr. VALDERRAMA (Philippines) said that, in his view, the second sentence should be reworded so as to specify that the Contracting States that submitted a case to the International Court of Justice should accept the compulsory jurisdiction of the Court.

30. Mr. MACAULAY (Nigeria) said he shared the views of the representative of Iran regarding article 11; he thought that provision should be made in the convention for dispute-settlement machinery, and, in that connexion, wondered what would happen if a State refused to accept the compulsory jurisdiction of the International Court of Justice, notwithstanding Article 36 of the Court's Statute. It was hoped that a form of words would be devised which would ensure that both parties to a dispute recognized the Court's competence.

31. Mr. ROSENSTOCK (United States of America) said he, too, regarded the provisions of article 11 as an essential element of the convention. He noted that his country acknowledged the competence of the International Court of Justice, but with important reservations. In his opinion, acceptance of the provision embodied in the second sentence of article 11 would involve recognizing the competence of the Court to deal with matters covered by the convention. The question of the existence or absence of a declaration under Article 36, paragraph 2, of the

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

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

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

Court's Statute did not arise in the present case. The only problem likely to come up in that context would be that of a State which, although having in fact recognized the Court's jurisdiction, nevertheless denied its competence in a given case; his delegation did not, however, think that the time had come to tackle that problem.

32. Mr. DRAPEAU (Canada) said that article 11 was a useful provision, the wording of which was similar to that of the Hague, Montreal and New York Conventions. Even supposing that the misgivings voiced by the Nigerian representative were to prove justified, it was necessary to lay down in the convention the procedure to be followed in the event of a dispute. Any problem concerning the competence of the International Court of Justice could be settled under other international instruments. His delegation therefore endorsed article 11.

The meeting rose at 12.20 p.m.

22nd meeting

Tuesday, 7 February 1978, at 3.35 p.m.

Chairman: Mr. Leslie O. Harriman (Nigeria)

A/AC.188/SR.22

DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE TAKING OF HOSTAGES PURSUANT TO PARAGRAPH 3 OF GENERAL ASSEMBLY RESOLUTION 31/103 AND PARAGRAPH 2 OF GENERAL ASSEMBLY RESOLUTION 32/148 (agenda item 5) (continued)

1. The CHAIRMAN invited the Committee to re-examine the text of the draft articles contained in the working paper submitted by the Federal Republic of Germany (A/AC.188/L.3) a/ beginning with article 2. That re-examination would serve to clarify certain ideas and impressions and would not entail acceptance of any of the articles at the present stage. The relevant amendments proposed might also be considered, and those which received general agreement could be reverted to later.
2. Mr. OMAR (Libyan Arab Jamahiriya) said that his delegation would not object to that procedure if it met with general agreement among members of the Committee, although it considered that it would be more appropriate to identify and deal with the areas of difficulty before proceeding to the easier matters.
3. Mr. BRACKLO (Federal Republic of Germany) said that his delegation was in favour of the procedure outlined by the Chairman, which would provide an opportunity to consider the various observations made during the first reading of the articles.
4. Mr. ZVIRBUL (Union of Soviet Socialist Republics) said he wished to present his delegation's preliminary observations on the subject under discussion.
5. Firstly, a convention against the taking of hostages should avoid affecting existing international instruments, as noted in article 10, paragraph 1, of document A/AC.188/L.3. In addition, it should not affect the rights and obligations of States arising from multilateral and bilateral agreements.
6. Secondly, his delegation supported the proposal to the effect that the convention should not apply to crimes of an international nature.
7. Thirdly, his delegation agreed with the Algerian representative (21st meeting) that the scope of the convention should be defined in a separate article.
8. Fourthly, on the subject of international machinery to which the parties involved could have recourse, it would be as well to proceed on the understanding that any arbitration should be conducted by the States concerned. In that connexion, his delegation thought that attempts to invoke the Charter and the Statute of the International Court of Justice were not desirable. In his delegation's view, the Committee would have to seek some compromise in order to make headway in performing the task assigned to it.

a/ See Official Records of the General Assembly, Thirty-second Session, Supplement No. 39, p. 106.

9. Mr. ROSENSTOCK (United States of America) said that his delegation had no difficulty regarding the substance of article 2. While consideration should be given to the French proposal (A/AC.188/L.8, b/ to change the order of articles 2, 3 and 4, his delegation preferred the existing order.
10. Mr. BIALY (Poland) said that his delegation, which had made only general observations on the draft convention at the previous session, reserved the right to speak later on article 1, as well as on the texts of other working papers submitted.
11. His delegation could accept the wording of article 2, which was in accordance with the text of article 4 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, c/ adopted at New York in 1973.
12. Mr. VALDERRAMA (Philippines) said that his delegation could accept the French proposal to make the present article 4 article 2 and to add a further paragraph to the new article 2.
13. Mr. BAVAND (Iran) said that, as his delegation had noted during the Committee's previous session, it would be difficult to reach agreement on the concept of "severe" penalties, as mentioned in article 4 of the text under consideration. The application of that concept would vary according to the criminal law of the individual Contracting States. The matter was further complicated by the question of category of offender - prime culprit or accomplice - referred to in article 1. His delegation would prefer a different wording for article 4.
14. Mr. RIOS de MARIMON (Chile) said that his delegation found no difficulty with the text of article 2.
15. With regard to article 4, his delegation could accept the word "severe", since international law surely made the meaning of the term quite clear. His delegation would have no objection to a change in the positions of articles 2 and 4.
16. Mr. MACAULAY (Nigeria) noted that the provisions of article 2 were in conformity with those of existing international instruments of a similar nature, which sought to establish an obligation to prevent, as far as possible, occurrences of the type in question. Therefore, his delegation had no difficulty with the text of article 2 as it stood.
17. His delegation was among those which would like to see the positions of articles 2 and 4 changed. The word "severe" in the present article 4 could lead to problems. It would be difficult for Nigerian jurists to interpret the meaning of "severe" penalties, especially in view of the distinction made between the types of offender.
18. Mr. LOUKIANOVICH (Byelorussian Soviet Socialist Republic) said that his delegation shared the Nigerian delegation's view that article 2 must be considered in the light of the other articles, including article 1. The proposal concerning the change in the order of articles 2 and 4 caused no difficulty for his delegation.

b/ Ibid., p. 111.

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

19. Mr. MOK (Netherlands) said that, although the text of article 2 was closely related to similar texts in previous conventions, it differed in some respects - for instance, the word "practicable" did not appear in the Convention for the Suppression of Unlawful Seizure of Aircraft, d/ signed at The Hague in 1970. His delegation considered the introduction of that term to be an improvement, since certain measures might be conceivable but not practicable.

20. Another difference concerned the omission of the words "in accordance with international and national law" which appeared in article 10 of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, e/ adopted at Montreal in 1971, although not in the 1973 New York Convention. His delegation wondered whether legislation might not have to be amended in some countries to give effect to article 2. For example, it might be deemed useful and practicable to make conspiracy a punishable act, but there were some systems of national law under which conspiracy was not punishable.

21. With regard to the use of the word "severe" in article 4, replacement of that term by "appropriate" might imply that the penalties were meant to be less severe. His delegation, therefore, would prefer to retain the existing wording, although the meaning of severity varied, of course, according to the national legal system concerned.

22. With regard to the proposal to change the order of articles 2 and 4, his delegation considered the present order to be more logical, but would not object to such a modification if there was a majority in favour of it.

23. Mr. de GOUTTES (France) said that the principle embodied in the present article 4 should appear in the position occupied by article 2, thus emphasizing the need for severe punishment and corresponding more closely to the order of provisions in previous instruments such as the 1971 Montreal Convention and the 1970 Hague Convention.

24. The new article 2 should also contain an additional paragraph, in accordance with the text of the working paper submitted by his delegation (ibid.). The proposed additional paragraph would not inhibit judgements by national courts, as some delegations had contended during the Committee's previous session, but rather should prompt Contracting States to establish legal grounds for mitigation of penalties in cases where hostages were released voluntarily, so that, knowing that such a general provision existed, offenders might have an incentive to release their hostages.

25. Mr. OMAR (Libyan Arab Jamahiriya) said that his delegation could accept the proposal to change the order of articles 2 and 4. It had difficulty, however, in accepting the wording of article 2 (b), since it felt that the measures envisaged therein could more appropriately form the subject of bilateral agreements.

26. Mr. AL-KHASAWNEH (Jordan) said that his delegation shared the Iranian

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

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

representative's views regarding the concept of "severe" punishment. It was a concept that could be abused. Moreover, there was a need for the harmonization of internal penal law. Even if the word "severe" had been used in previous international instruments, there was no strict doctrine of precedent in international law and no reason why changes should not be made.

27. Mr. CHAMBERLAIN (United Kingdom) said that his delegation had no difficulty with the text of article 2 and no strong views concerning the proposal to place article 4 before article 2, although it saw nothing to be gained from such a change.

28. With regard to the use of the word "severe" in article 4, his delegation thought it as well to conform as far as possible to the wording used in the 1970 Hague Convention and the 1971 Montreal Convention. During the preparation of the Hague Convention it had been decided that the term "severe penalties" would be too difficult to define. His delegation would have no objection to the use of the word "appropriate", provided that it was accompanied by wording, on the lines of the 1973 New York Convention, to the effect that each State Party would take into account the grave nature of the offences concerned when establishing penalties.

29. The French delegation's proposal for the insertion of an additional paragraph in the present article 4 (*ibid.*) would cause some difficulty for the United Kingdom on account of the latter's penal system, under which penalties were applied at the courts' discretion. A further difficulty might arise in determining what was meant by "voluntary", since a release of hostages resulting from negotiations and inducements might not be regarded as a truly voluntary act. His delegation preferred to retain the wording of the present article 4; if, however, an addition were to be made, its wording should conform to the relevant provisions contained in the 1973 New York Convention.

30. Mr. DRAPEAU (Canada) said that his delegation found the text of article 2 unexceptionable and that in any case it regarded prevention as a police activity for which legal provisions were not needed.

31. The difficulties encountered by some delegations with regard to the word "severe" in article 4 might be overcome if the Committee could accept wording on the lines of that used in the 1973 New York Convention. His delegation agreed with the United Kingdom representative that if the word "appropriate" was used, further wording would be needed to make it clear that the gravity of the offences concerned should be taken into account.

32. On account of its legal system, Canada would have the same difficulty as the United Kingdom regarding the use of the word "voluntary", as proposed by the French delegation. Under Canadian law, an offence was committed as soon as hostages were taken. If the hostages were later released, as a result of inducement or otherwise, Canadian courts took the circumstances of the release into consideration when passing sentence; however, Canada could not accept the notion of a differentiation, in its legislation, according to whether an offence consisted of a completed act or an abandoned one. His delegation would prefer the text of article 4 to remain as it stood.

33. Count SCHIRNDING (Federal Republic of Germany) said that his delegation would have no objection to changing the order of articles 2 and 4 of the draft convention if the Committee favoured such a step. It had proposed articles 2 to 4 in their present order because it considered them to refer respectively to the measures which should be taken before, during and after the taking of hostages.

34. The present wording of article 4 of the draft convention had been selected because it was similar to that of the corresponding articles of the 1970 Hague Convention and the 1971 Montreal Convention and shorter than the text of article 2, paragraph 2, of the 1973 New York Convention. While his delegation would have no difficulty in accepting the language used in the latter provision, it should be borne in mind in considering such a change that the 1973 New York Convention referred to a wider range of offences than did the draft now before the Committee. The proposal of France that the draft convention should provide for the mitigation of penalties in the event of the voluntary release of hostages would cause no problems in relation to the law of the Federal Republic of Germany, which already authorized such action.

35. Mr. BIALY (Poland) said, with regard to article 4, that his delegation preferred the current wording, as being unambiguous and having precedents in international law. Of the proposals by France contained in document A/AC.188/L.8, it would seem more appropriate to discuss that concerning the order of draft articles 2 and 4 when the Committee had before it a complete text of the draft convention. Since the national law of almost all countries, including Poland, permitted the mitigation of penalties, the incorporation in the draft convention of a specific provision on that subject might be superfluous, but his delegation would support it if the Committee felt that the plight of future hostages could be alleviated thereby.

36. Mr. LARSSON (Sweden) said his delegation found the present wording of article 2 acceptable and was inclined, for the reasons given by others, to retain articles 2 and 4 in their present positions. It also favoured the retention in article 4 of the phrase "severe penalties". It could not accept the French proposal that a provision should be made for the mitigation of penalties, since that would be incompatible with Swedish law.

37. Mr. SIMANI (Kenya) said that his delegation could accept article 2 as it stood. He suggested that the Libyan representative's objections to article 2, paragraph (b), which he understood, could be met by the incorporation in the preamble to the draft convention of a reference to friendly co-operation. He shared the view of the representative of Poland concerning the order of articles 2 and 4.

38. His inclination was to leave article 4 in its present form. If, however, the provisions of certain legal systems made a change necessary, his preference would be for wording which, like that of article 2, paragraph 2, of the 1973 New York Convention, referred to the gravity of the offence. A formal statement in a legal instrument to the effect that penalties would be mitigated if an offender voluntarily released his hostages might lead to hostage-taking becoming more, rather than less, prevalent. Consequently, the question of such mitigation should be left to the discretion of the courts.

39. Mr. VALDERRAMA (Philippines) said that his delegation preferred the retention in article 4 of the phrase "severe penalties", but would not object to a provision for the mitigation of penalties in the event of the release of hostage as had been suggested. The Philippine legal system provided for mitigation of penalties and for a measure of discretion on the part of the courts. The Philippines in fact, had always supported United Nations resolutions against torture and other kinds of cruel punishment. His delegation would not oppose a formulation in article 4 along the lines of article 2, paragraph 2, of the 1973 New York Convention, which would mete punishment to offenders according to the gravity of their offence. His delegation would favour striking an acceptable balance between the words "severe" and "appropriate" as proposed by the delegation of the Federal Republic of Germany.

40. Mr. ROSENSTOCK (United States of America) said, with reference to the statement by the representative of the Netherlands, that the reason why article 4, paragraph (a), of the 1973 New York Convention referred solely to all practicable measures, without including the phrase "in accordance with international and national law", was that the members of the Drafting Committee for the 1973 New York Convention had agreed that the latter expression was redundant. His delegation, which had been a member of that Drafting Committee, continued to uphold that view and to consider that it would be excessive to use the longer phrase in article 2, paragraph (a), of the draft convention under discussion.

41. His delegation favoured the retention in article 4 of the phrase "severe penalties". He pointed out in that respect that the different wording used in article 2, paragraph 2, of the 1973 New York Convention could no doubt be explained by the fact that it was designed to cover many offences, including the relatively minor crime of a threat to attack property. Notwithstanding, his delegation remained open to proposals for article 4 of the draft convention which used wording falling between that of the present text and that of article 2, paragraph 2, of the 1973 New York Convention. He shared the objections which had been raised to the proposal for a provision on the mitigation of penalties: not only would it entail difficult decisions as to whether, for example, an offender who held hostages for several hours deserved a lesser penalty than one who held hostages for several days, but it would cause very serious problems for his country, which allowed its courts discretion in the choice of sentence.

42. Mr. KAWAMURA (Japan) said that his delegation could accept article 2 as it stood. It believed the question of the order of articles 2 and 4, on which it had no firm views, could best be settled when the Committee had established a text for the draft convention as a whole.

43. While he appreciated the concern of other speakers over the use in article 4 of the term "severe penalties" he favoured its retention, since it would constitute a greater psychological deterrent to the taking of hostages than would the words "appropriate penalties". In any event, the concept of severity was a relative one, for interpretation by national courts. His delegation could see that the French proposal on the mitigation of penalties might help to save the lives of hostages but, on the other hand, appreciated that it would cause difficulties for some countries. Consequently, it reserved its position on the proposal for the moment.

44. Mr. ZVIRBUL (Union of Soviet Socialist Republics) said that he could see no obstacle at the present stage to the retention of article 2 as it stood. It would, however, be appropriate to discuss possible changes to the article when the Committee came to consider the preamble and article 1, which also related to the prevention of the taking of hostages. Similarly, he could at present see no obstacle to changing the positions of articles 2 and 4, but he felt that a final decision on that subject should be taken only when the full text of the draft convention was available.

45. With regard to the wording of article 4, he observed that the phrase "severe penalties" had been used in earlier instruments and could therefore justifiably be retained. However, he recognized that a reference to "appropriate" penalties might be considered more in keeping with the current trend in international criminal law towards the humanization and individualization of punishment. He agreed with the United Kingdom representative that, if finally used in the draft convention, the expression "appropriate penalties" should not stand alone, but should be accompanied by a reference to the grave nature of the crime. The French proposal for the incorporation in the draft convention of a provision on the mitigation of penalties would really be neutral in its legal effects, since all legislations already considered the voluntary abandonment of a criminal act to be a mitigating factor. The Committee should, however, bear in mind the risk that such a provision might in fact encourage the taking of hostages, as mentioned by the representative of Kenya.

46. Mr. RIOS de MARIMON (Chile) supported the French proposal that provision should be made for the mitigation of penalties, since the future convention should seek not only to punish, but also to prevent the taking of hostages. Acceptance of the proposal should not cause any problems in relation to the legislation of Latin American countries.

47. Mr. KAPETANOVIĆ (Yugoslavia) announced that his delegation considered that article 2 should be supplemented and would be submitting a working paper in that connexion. f/ In order to avoid difficulties in determining what was "practicable" and what was not, the beginning of article 2, paragraph (a), should be amended to read "Taking all measures ...".

48. The current wording of article 4 should be maintained, since "severe penalties" were what the crime of hostage-taking merited. The French proposal for a provision on the mitigation of penalties was unacceptable, since Yugoslav legislation and probably that of other countries as well, provided for the relaxation of penalties, including cases involving the taking of hostages. Furthermore, there would be enormous problems in determining whether the release of hostages had truly been voluntary, and the holding of hostages for even a very short while could endanger the lives of numerous people.

49. The CHAIRMAN invited the Committee to consider article 3 of the draft articles submitted by the Federal Republic of Germany (A/AC.188/L.3).

50. Mr. CHAMBERLAIN (United Kingdom) said that the present wording of article 3, paragraph 1, was acceptable to his delegation. Paragraph 2 of the article should

f/ Subsequently issued as document A/AC.188/L.19.

be redrafted so that it would not oblige a State to facilitate the departure from its territory, after their release, of persons who had been taken hostage there rather than elsewhere. With regard to paragraph 3 of the article, it would be advisable to replace the word "promptly" by an expression such as "as soon as practicable" or "as soon as possible", so as to give Contracting States which required it the opportunity to use articles illegally acquired by an offender in their inquiries into the case or as evidence before their courts.

51. Mr. VALDERRAMA (Philippines) said that his delegation would have no objection to the amendment of article 3, paragraph 3, in the light of the reason adduced by the representative of the United Kingdom.

52. Mr. DRAPEAU (Canada) considered paragraph 1 of the article acceptable. He agreed that paragraph 2 should be amended as requested by the United Kingdom representative, but felt that the objections of those delegations which had said, at the 1977 session, that the present text of the paragraph would prevent the State in which a hostage was freed from trying him for an offence he might have committed there earlier were covered by draft article 5, paragraph 3. His delegation maintained its own objection from the 1977 session to the effect that the use in article 3, paragraph 3, of the expression "person entitled to possession" might involve States in private law disputes as to the identity of the person having title to an object illegally acquired. It continued, therefore, to believe that the phrase should be replaced by some such words as "the person from whom the object was illegally obtained".

53. Mr. MOK (Netherlands) said that paragraph 1 of article 3 was the most important in the entire draft convention and contained a provision that was absolutely essential.

54. With regard to paragraph 2, his Government had proposed an amendment (A/AC.188/L.14) g/ which, he thought, would solve the difficulties mentioned by various speakers.

55. His delegation was able to support the United Kingdom proposal concerning the amendment of paragraph 3.

56. Mr. ROSENSTOCK (United States of America) said that the French proposal concerning mitigation of penalties was largely covered by paragraph 1 of article 3.

57. Paragraphs 2 and 3 related to the restoration of the status quo ante after the hostage-taking incident had ended. The wording of those two paragraphs was, perhaps, imperfect. It might be possible to settle potential problems either by redrafting or by recording an understating of the significance of the wording.

58. Mr. BIALY (Poland) said that, from the legal point of view, he had some doubts regarding paragraph 1. The words "as it deems appropriate" seemed to give rather too much latitude.

g/ See Official Records of the General Assembly, Thirty-second Session, Supplement No. 39, p. 114.

59. His delegation was able to accept paragraph 2 as it stood, and supported the United Kingdom proposal to amend paragraph 3.

60. Mr. MACAULAY (Nigeria) said that article 3 of the draft convention was generally similar to article 9 of the Hague Convention of 1970. However, paragraph 1 of article 3 imposed the obligation to ease the situation of the hostage solely on the Contracting State in whose territory the offender was present, and not on all Contracting States indiscriminately. That was quite important, as was the fact that the text left it to the Contracting State in question to decide what action should be taken. Without such a provision, the convention might virtually guarantee the success of a hostage-taking incident, and that was hardly the intent.

61. The provision in paragraph 2 was a useful one. A released hostage might need help and it was quite possible that his Government might have no representation in the country in which he found himself.

62. The provision of the Hague Convention corresponding to paragraph 3 related to the aircraft and its cargo. The idea behind the wording of paragraph 3 seemed to be to extend the scope of that provision to ransom money in the offender's possession. Since it might be quite difficult and time-consuming to decide to whom such money belonged, his delegation supported the United Kingdom suggestion concerning the replacement of the word "promptly".

63. Mr. BAVANE (Iran) said that he thought that paragraph 1 was primarily addressed to a situation in which pressure was being exercised on the Contracting State in whose territory the offender was present. It was clear that, in such circumstances, the convention should not oblige the State to meet the offender's demands.

64. Nevertheless, it might be excessive to give carte blanche to a Contracting State which was not subject to such pressure. It was not impossible to imagine a case in which a Contracting State would make use of the situation to exert pressure on other States.

65. Mr. OMAR (Libyan Arab Jamahiriya) said that, while his delegation accepted the principle of paragraph 1, it agreed with the Polish delegation that the expression "as it deems appropriate" was too imprecise.

66. He thought that the Netherlands amendment would improve the text of paragraph 2, and supported the United Kingdom proposal concerning the amendment of paragraph 3.

67. Mr. KAPETANOVIĆ (Yugoslavia) said that paragraph 1 was very important for humanitarian reasons, but created some difficulties, as the Nigerian representative had well explained. Some drafting changes seemed necessary.

68. Incidentally, he wished to go on record as stating that if the situation arose, his country would never meet a hostage-taker's demands.

69. The CHAIRMAN pointed out that the measures which a Contracting State deemed appropriate might be quite severe. He failed to see why most speakers seemed to think that they would be conciliatory ones.

70. Mr. SIMANI (Kenya) asked the representative of the Netherlands to explain his delegation's amendment to article 3, paragraph 2. For his own part, he did not see why a hostage should be helped to go somewhere other than his original destination.
71. Mr. HOFSTEE (Netherlands) said that, in his view, the present wording was too rigid. He agreed, however, that his delegation's amendment did not cover some of the problems that had been mentioned.
72. Mr. RIOS de MARIMON (Chile) said that his delegation supported paragraph 1 in its existing drafting; had no trouble with the wording of paragraph 2 - which surely came into play only when a hostage asked to leave the country; and supported the United Kingdom proposal to amend paragraph 3.
73. Mr. ZVIRBUL (Union of Soviet Socialist Republics) said that the substance of article 3 had to be retained, since it served a very humanitarian purpose. On the other hand, it was clear that the wording was by no means perfect. He suggested that the representative of the Federal Republic of Germany should be requested to reconsider his delegation's draft in the light of the comments made and the amendments put forward.
74. Mr. de GOUTTES (France) said that his delegation was able to accept paragraph 1, which would, in part, cover the question of mitigation of penalties.
75. With respect to paragraph 2, he agreed that the existing wording could be interpreted as imposing an obligation to facilitate the hostage's departure, whatever the circumstances. On the other hand, the Netherlands amendment, although presumably designed simply to facilitate a hostage's departure from a State's territory if he needed such help, could be interpreted as imposing a very heavy obligation on a State: that of assuming responsibility for the hostage and taking him to whichever part of the world he wanted to go.
76. His delegation would be unable to support the United Kingdom proposal concerning paragraph 3, since it did not think that the word "promptly" involved any excessive constraint, while the suggested new version would introduce an overly subjective element of judgement.
77. Mr. LARSSON (Sweden) said that the text of paragraph 1 was acceptable. With regard to paragraphs 2 and 3, he agreed with the representative of the United States that the intention was to restore the status quo ante. If the existing text reflected that purpose, it was acceptable. If not, it required improvement. In that connexion, he supported the United Kingdom suggestion.
78. Count SCHIRNDING (Federal Republic of Germany) said that paragraph 1 undoubtedly gave carte blanche to the Contracting State in whose territory the offender was present to take any measures it deemed appropriate, including mitigation of punishment, or even exemption from punishment. It should be borne in mind, however, that such measures would not bind the other Contracting States. While his delegation was open to suggestions regarding improvements in the drafting, it thought that the greatest possible latitude should be left to the State in question.

79. He agreed that the wording of paragraph 2 could be misinterpreted, to the extent that even a citizen of the Contracting State concerned would have to have his departure facilitated. The Netherlands' amendment was no improvement, however. It could be misinterpreted to mean that ex-hostages were entitled to a holiday at the expense of the Contracting State.

80. While his delegation had no difficulty with the United Kingdom proposal concerning paragraph 3, it agreed with the French representative that it was not really necessary to change the existing wording.

81. Mr. OMAR (Libyan Arab Jamahiriya) suggested that paragraph 2 should be deleted. If the release of a hostage was secured, he would be free to go wherever he wished.

82. Mr. VALDERRAMA (Philippines) said that, while his delegation found paragraph 2 acceptable, it would have no objections to its deletion if paragraphs 1 and 2 were merged and the words "where applicable" were inserted after the word "facilitate".

83. Mr. ROSENSTOCK (United States of America) said that, if paragraph 2 were deleted, paragraph 1 could be amended by replacing the word "and" after the word "hostage" by a comma, and adding, at the end of the sentence, the words "and to facilitate his return".

84. Mr. BIALY (Poland) said that his delegation supported the Libyan proposal. Paragraph 2 was technical in nature and not required in the convention.

85. The CHAIRMAN said that article 3 would be passed to the delegation of the Federal Republic of Germany for redrafting in the light of the comments made.

86. Speaking as the representative of Nigeria, he said that he thought the United States suggestion a good one, although the language proposed might require some further refinement.

The meeting rose at 5.45 p.m.

23rd meeting

Wednesday, 8 February 1978, at 11.10 a.m.

Chairman: Mr. Leslie O. Harriman (Nigeria)

A/AC.188/SR.23

DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE TAKING OF HOSTAGES PURSUANT TO PARAGRAPH 3 OF GENERAL ASSEMBLY RESOLUTION 31/103 AND PARAGRAPH 2 OF GENERAL ASSEMBLY RESOLUTION 32/148 (agenda item 5) (continued)

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

Second reading

Article 2

1. E Mr. KAFETANOVIC (Yugoslavia) said that he was in favour of article 2 of the draft convention submitted by the Federal Republic of Germany but thought that the provision should be supplemented to take account of cases - increasingly frequent in recent years - in which acts of hostage-taking were perpetrated by individuals, groups or organizations already known for their terrorist activities, who frequently escaped justice and were thus able to continue their nefarious actions. One of the best ways of preventing hostage-taking would be to eliminate terrorism, by asking States to ban terrorist organizations and groups and to take the necessary steps to prevent them from engaging in their activities. The recent decision by which the Federal Administrative Court of the Federal Republic of Germany had outlawed two terrorist organizations constituted, in that respect, the best possible contribution to international action against terrorism.

2. His delegation proposed that a new paragraph 2 should be added to article 2, or a new article 3 inserted, to read:

"The Contracting States will be obliged to undertake effective measures to prohibit on their territories illegal activities of persons, groups and organizations that organize, instigate, encourage or engage in the perpetration of acts of taking of hostages."

3. The wording of that proposal was similar to that of recommendation 5 of the Committee on Relations with the Host Country, b/ which the Sixth Committee had adopted by consensus. He hoped that the Ad Hoc Committee would also adopt it by consensus.

4. The CHAIRMAN invited the Committee to begin its consideration of article 5 and to return later to article 2 and the Yugoslav proposal.

Article 5

5. Mr. SCHUTTE (Netherlands) said he found it extremely difficult to discuss article 5 independently of other provisions of the draft convention, particularly

a/ See Official Records of the General Assembly, Thirty-second Session, Supplement No. 39, p. 106.

b/ Ibid., Supplement No. 26, para. 26.

articles 7 and 6. The article established three kinds of jurisdiction: paragraph 1 established a primary compulsory jurisdiction in the case of the States most directly affected by the actual taking of hostages; paragraph 2 established a subsidiary jurisdiction for States less directly concerned; and paragraph 3 established a facultative original jurisdiction by enabling States which wished to do so to go beyond the provisions of paragraph 1.

6. He thought it essential to limit the number of States having primary compulsory jurisdiction over the offences set forth in article 1. That jurisdiction should be accorded to only three States in each case: the State in whose territory the offence had been committed, since that was the State most familiar with the circumstances of the act; the State of which the offender was a national, since that State was in the best position to try the offender; and the State which had been subjected to the demand, since that was the State most directly concerned. To extend primary compulsory jurisdiction to a greater number of States might weaken the system of enforcement established by the convention. If primary jurisdiction was accorded to States of which the victims of the offence were nationals, as prescribed by the French amendment to paragraph 1 (A/AC.188/L.13), c/ it would be very difficult to determine, where there were several victims of different nationalities, which States had jurisdiction over the offence. Likewise, if the mere fact of being a member of an international organization which had been subjected to demands was sufficient to establish the primary jurisdiction of a State, as provided for in paragraph 1, subparagraph (b), the same offence could come within the jurisdiction of a very large number of States, thus weakening the operative provisions of article 5. Consequently, his delegation proposed that the last category of States having jurisdiction over the offences set forth in article 1 should be eliminated by deleting from paragraph 1, subparagraph (b), the phrase "itself or an international organization of which the State is a member".

7. Moreover, article 5 covered only the offences set forth in article 1 and article 1, in its current form, referred only to detention and threats and not to the consequences of such threats or even cases in which the threats were put into effect. It might perhaps be useful, therefore, to take the wording of article 4 of the 1970 Hague Convention d/ as a model and extend the jurisdiction of the States to "any serious act of violence against a hostage committed by the alleged offender in connexion with one of the offences mentioned in article 1". Thus, if a hostage were murdered, the offender could be extradited and prosecuted not only for illegal deprivation of liberty but also for murder. Both offences were obviously part and parcel of one and the same act and it was that complex act which should be judged under article 5. If that proposal were accepted, it would probably be necessary to make consequential amendments to article 5, paragraph 2, and article 8, paragraphs 2 and 3.

8. Lastly, he thought that in paragraph 1, subparagraph (a), the words "wholly or partially" might, perhaps, be added after the word "committed", to indicate that, where a hostage-taking act began in the territory of one State and continued in the territories of one or more other States, it should be regarded as having been committed in the territory of each of those States.

c/ Ibid., Supplement No. 39, p. 113.

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

9. Mr. CHAMBERLAIN (United Kingdom) said that he shared the doubts of the representative of the Netherlands regarding the scope of article 5. He was able to accept the provision in paragraph 1, subparagraph (a), which appeared reasonable, but had some difficulty in accepting the one set forth in subparagraph (b), in so far as it referred to an international organization of which the State was a member. If the United Nations itself was subjected to demands, that provision would oblige all the Member States to establish their jurisdiction over the offence, which would be going much too far. Moreover, that provision should be considered in the light of article 8, on extradition, and particularly paragraph 4 thereof, according to which "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." In the case of the United Nations, that would mean that a State was bound to grant extradition to any State Member of the United Nations which requested it. His delegation thus supported the Netherlands proposal that, in subparagraph (b), all reference to an international organization of which the State was a member should be deleted. Nevertheless, if the majority of members of the Committee wished to refer in article 5 to international organizations or conferences, his delegation would be able to accept, as a compromise, a provision that would bind only the State in which the international organization had its headquarters or the State where the international conference was held.

10. He had no difficulty in accepting subparagraph (c), which he found to be in keeping with the Hague, Montreal e/ and New York f/ Conventions, and saw no need to restrict its scope by adding "in the territory of a Contracting State, or on board a ship or aircraft registered in a Contracting State", as the Netherlands delegation had proposed (A/AC.188/L.14). g/

11. The subparagraph (d) proposed by France, which would grant jurisdiction to States of which the victims were nationals, was also difficult to accept, since a number of States might be obliged to establish their jurisdiction, as the representative of the Netherlands had pointed out.

12. On the other hand, his delegation had no hesitation in supporting the proposal by the Netherlands that the jurisdiction of States should be established not only over the offences set forth in article 1 but also over any other offence committed in connexion with the hostage-taking. On that point, he, like the Netherlands representative, would draw the Committee's attention to article 4, paragraph 1, of the 1970 Hague Convention.

13. Mr. RIOS de MARIMON (Chile) said that article 5 of the draft convention gave each State the power to establish its jurisdiction over any of the offences mentioned in article 1. He thought it would be more practical to set out in the convention itself the rules for determining the courts which would try the offenders. Then, for the convention to become fully applicable, it would only

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

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

g/ See Official Records of the General Assembly, Thirty-second Session, Supplement No. 39, p. 114.

be necessary for each State to indicate the penalty for the offence, in conformity with article 4. It was true that there were some international conventions which left it to each individual State to take the necessary steps to establish its jurisdiction, but that procedure was not a uniform one since there were treaties which established jurisdiction directly, such as the Code of Private International Law (Bustamante Code) in its article 340. h/

14. In his view, the nationality of the accused should not be taken as a ground for determining jurisdiction. He thought that the sole courts which should have jurisdiction were those of the State in whose territory the offence had been committed or in which the ship or aircraft on board which the offence had been committed was registered; the State which had been subjected to demands; and the State in whose territory the alleged offender had been found, in the event that the latter State did not grant the request for extradition (art. 7 of the draft). If the demands had been made on an international intergovernmental organization, then the courts of the State in whose territory the offence had been committed or in whose territory the alleged offender had been found should have jurisdiction over the offence.

15. Mr. de GOUTTES (France) said that his delegation's amendment to article 5 would add a new subparagraph to paragraph 1, reading: "(d) The victims of which, namely the hostages, are nationals of that State". The draft convention submitted by the Federal Republic of Germany did not provide, among the cases in which the State should establish its jurisdiction, for that in which the victims were its nationals. In his delegation's view, it would not be normal for a State not to establish its jurisdiction when its nationals were direct victims of the hostage-taking. By adding a further ground for jurisdiction - that of passive personal jurisdiction - based on the nationality of the victim, the French amendment enabled that gap to be filled.

16. He had three further comments to make. In the first place, his delegation wanted the word "intergovernmental" to be inserted after the word "international" in subparagraph (b) and passim, unless the reference to international organizations was deleted, as the delegations of the United Kingdom and the Netherlands had proposed. It also thought that the reference to article 8 in paragraph 2 was obscure and unnecessary, even though it was taken from the 1970 Hague Convention and the 1971 Montreal Convention. Lastly, the suggestion by the Netherlands that, in the first sentence of paragraph 1, a reference should be added to other offences committed in connexion with those set forth in article 1 seemed, at first sight, to be hard to accept, since it would introduce into article 5 a provision that was too comprehensive for the scope of the convention. Nevertheless, the proposal was worthy of more detailed examination.

17. Mr. BIALY (Poland) said that article 5 was similar in substance to article 4 of the 1970 Hague Convention, article 5 of the 1971 Montreal Convention and article 3 of the 1973 New York Convention. Since the latter Convention had served as a model for the draft of the Federal Republic of Germany, it was not surprising that article 5 should contain a provision - stated in paragraph 1, subparagraph (c) - that was not included in the first two conventions.

18. Like the representative of the Netherlands, he thought that article 5 was closely connected with the following three articles. Its purpose was to establish

h/ League of Nations, Treaty Series, vol. LXXXVI, No. 1950, p. 246.

universal jurisdiction so as to prevent alleged offenders from escaping justice. However, from that point of view, there was a gap in the present draft: although the provision contained in subparagraph (a) was acceptable in so far as it covered all cases of offences committed in the territory of a State by its own nationals or by foreigners, subparagraph (c), on the other hand, did not take account of the situation of a State in the territory of which there might be present a foreigner who had seized another foreigner as a hostage. He did not think that that situation was provided for in article 7 or in the amendments proposed by France and the Netherlands. To fill that gap, therefore, he proposed that the words "or by foreigners" should be added at the end of subparagraph (c).

19. His delegation had no difficulty in approving paragraphs 2 and 3 of article 5 and thought that the Netherlands amendment to paragraph 2 was not necessary, since the problem of extradition was dealt with in other articles.

20. Count SCHIRNDING (Federal Republic of Germany) said that his delegation could not support the idea, put forward by the Netherlands and United Kingdom delegations, of reducing the number of States which would be required to establish their primary jurisdiction under article 5, paragraph 1, as it did not seem desirable for him to resort too often to the provisions of paragraph 2, providing for the subsidiary jurisdiction of States which might have no direct connexion with the offender, the offence itself or the victim. On the other hand, he supported the French amendment for the addition of a further subparagraph to paragraph 1, inasmuch as his country's courts would have no difficulty in establishing their jurisdiction if persons taken as hostages were nationals of the Federal Republic. Moreover, it was his understanding that the only international organizations covered by subparagraph (b) were intergovernmental organizations and, consequently, he questioned the usefulness of the French proposal on that subject.

21. As for the Netherlands proposal, supported by the United Kingdom delegation, to extend primary jurisdiction of States under paragraph 1 to other acts committed in connexion with the taking of hostages, a suggestion based on a provision in the Hague Convention, it should be studied with care, but at first glance it would seem to improve the text of article 5.

22. Lastly, referring to the case mentioned by the representative of Poland, he said that, if a national of the Federal Republic fled to Poland, for example, after having taken another national of the Federal Republic as a hostage, in his country, Poland would be able to establish its jurisdiction on the basis of article 5, paragraph 2.

23. Mr. KRECZKO (United States of America) said that the proposal of the Netherlands delegation to extend the jurisdiction of States under paragraph 1 to other offences committed in connexion with an act of hostage-taking was a constructive one. Moreover, the addition of the words "wholly or partially" after the words "that are committed" in subparagraph (a) caused him no difficulty, although the idea was already implicit in that provision. It was preferable to keep subparagraph (b) as it stood, since, in the opinion of his delegation, the responsibility of States was not necessarily reduced by enlarging the basis for primary jurisdiction; however, if the phrase which it was proposed to delete should cause particular delegations serious difficulties, his delegation would be prepared to review the question. Still referring to subparagraph (b), he shared the view of the representative of the Federal Republic of Germany concerning the French amendment. With regard to subparagraph (c), which the Polish delegation had

proposed to amend, he observed that the sole purpose of paragraph 1 of article 5 was - as had been said - to establish a basis for primary jurisdiction, in other words to recognize that the States which were most directly affected by the taking of hostages had primary jurisdiction over the offence in question. That being so, he did not see any gap in article 5, since the case referred to by the representative of Poland would be covered by the provisions of paragraph 2, dealing with the subsidiary jurisdiction of States.

24. He shared the doubts expressed by the representatives of the Netherlands and the United Kingdom with regard to the new subparagraph proposed by the French delegation, since not all States had embraced the theory of passive personality - in other words, the idea of establishing their jurisdiction on the basis of the nationality of the victim. His delegation would therefore be reluctant to introduce a provision along those lines in an instrument to which it would like to see all States accede, especially since paragraph 3 of article 5 partly met the concern expressed by the French delegation: it permitted countries which found themselves in the same situation as France to exercise their jurisdiction when the victims were nationals of theirs, but at the same time did not oblige other States to accept the passive personality theory.

25. Mr. KAWAMURA (Japan) said that, in his opinion, it was necessary both to bar any refuge to those who had taken hostages and to avoid undue extension of the jurisdiction of States, which might complicate the practical settlement of cases of hostage-taking. That being said, his delegation approved the French amendment for the addition of a new subparagraph to paragraph 1, as well as the Netherlands proposal to delete the reference to international organizations in paragraph 1, subparagraph (b). For the time being, it had no firm views concerning article 5 and reserved the right to speak again in connexion with other aspects of that article.

26. Mr. BAVAND (Iran) said he supported the Netherlands proposal concerning the first phrase in paragraph 1. He supported subparagraphs (a) and (c) as worded, as well as the proposal to delete the reference to international organizations in subparagraph (b). On the other hand, he could not support the French amendment, which caused his delegation the same difficulties as it did to the United States delegation. Paragraph 2, which was based on provisions in various Conventions, seemed to him to be acceptable.

27. Mr. LARSSON (Sweden) said he thought that article 5 was satisfactory as a whole, but that nevertheless certain amendments did deserve consideration; for example, he considered that the Netherlands proposal to extend the primary jurisdiction of States to acts committed in connexion with the taking of hostages was a constructive one and he supported the idea of deleting the reference to international organizations in paragraph 1, subparagraph (b). The new subparagraph proposed by France seemed to him to be superfluous, since paragraph 3 of article 5 met the same purpose. Lastly, his delegation firmly supported the Netherlands amendment to add to paragraph 2 the phrase "after receiving a request for extradition from one of those States", an amendment which should be considered in the light of article 7 of the draft.

28. Mr. ZVIRBUL (Union of Soviet Socialist Republics) emphasized that the Committee could not finalize the procedural provisions until it had settled the substantive questions and, in particular, until it had defined the expression "taking of hostages". For that reason, his delegation reserved the right to revert to those provisions later on.

29. The article under discussion defined the jurisdiction of States in relation to the place where the offence had been committed and not in relation to the offender and the victim of the offence, and gave the impression that a State could not have jurisdiction over the offence unless it had been committed in its territory. In the opinion of his delegation, it would therefore be necessary to amend paragraph 1, subparagraph (a), or to add a new article to clarify that point. The French amendment aimed at extending the jurisdiction of States to cases where the victims were nationals of theirs was an interesting one, but, as the United States delegation had pointed out, it was necessary to think of all the difficulties which might be caused by a provision of that kind, taking account of international law and the internal legislation of States; in the present case, it was therefore better to adhere to the model supplied by the Hague and Montreal Conventions. Lastly, his delegation proposed that subparagraph (c) should be amended to provide that the State must establish its jurisdiction when "the alleged offender" was one of its nationals.

30. Mr. DRAPEAU (Canada) said he thought that the Netherlands proposal concerning the first phrase in paragraph 1 called for more thorough examination, but that it ought not to cause any difficulties, since it echoed an idea which was accepted in other conventions. On the other hand, he could not agree to the deletion of the reference to international organizations in subparagraph (b), since the convention should enable as many States as possible to establish their jurisdiction, and particularly those countries which were not directly affected, if none of the others wished to exercise its jurisdiction.

31. With regard to the new subparagraph proposed by France, he observed that the New York Convention, on the basis of which Canada had amended its legislation, provided that a State could establish its jurisdiction if the victim was an internationally protected person who was a national of that State; however, was it possible to distinguish between diplomats and ordinary nationals of the same country in the case of the taking of hostages? The French amendment was justified in principle, therefore, but in view of the provisions of article 5, paragraph 3, he would not press for its adoption.

32. Mr. ATTAF (Algeria) said that, without prejudging the definition of the expression "taking of hostages" and the delimitation of the scope of the convention, his delegation shared the opinion that article 5 did not define the jurisdiction of States closely enough. It was obvious that the taking of hostages concerned three categories of countries: the State in the territory of which the offence charged was committed; the nation or entity against which the offence charged was directed; and States of which the abductors or victims were nationals. It seemed necessary, therefore, to revise article 5 so as to make it clear, first, that any Contracting State in whose territory an act of hostage-taking had been committed should establish its jurisdiction over the offence (primary jurisdiction) and, secondly, that, if the circumstances so warranted, and in co-operation with the State in whose territory the act had been committed, the States of which the abductors or victims were nationals, as well as the States against which the taking of hostages was directed, should establish their jurisdiction over the offence (subsidiary jurisdiction deriving from an extradition agreement or bilateral or multilateral judicial assistance arrangement). In addition, it was necessary to retain the idea, expressed in paragraph 3, that the Convention did not exclude any criminal jurisdiction exercised in accordance with internal law. Lastly, it should be emphasized, either in article 5 itself or in a separate article, that no provision could be construed as authorizing the resort to the threat or use of force against the sovereignty, territorial integrity or independence of other States as a means of rescuing hostages.

33. Mr. MACAULAY (Nigeria) said he considered the Netherlands proposal to broaden the scope of paragraph 1 an interesting one, but reserved his delegation's position on that subject. In his delegation's opinion, the State in the territory of which the offence had been committed, or the nationality of which was possessed by the offender or the victim of the offence, would be the first which could establish its jurisdiction. As the Netherlands delegation had proposed, it would perhaps be advisable to delete the phrase "itself or an international organization of which the State is a member" in paragraph 1, subparagraph (b), as the State member of an international organization could itself decide on the policy to be followed in the event of the taking of hostages. As for the case referred to by the representative of Poland, it could be settled under article 5, paragraph 3. In that connexion, his delegation proposed that the words "internal law" should be replaced by the words "the municipal laws of the contracting States".

34. Mr. KAPETANOVIĆ (Yugoslavia) said that article 5, as drafted, was satisfactory to his delegation; in particular, paragraph 1, subparagraph (b), provided greater security in cases where the offender - a terrorist organization, for example - practised blackmail against a State by demanding that an international organization should do or refrain from doing a certain thing, and that was one of the reasons why that subparagraph should be retained.

35. Moreover, like Algeria, his country considered it necessary to specify that nothing in article 5 could be construed as authorizing resort to the threat or use of force against the sovereignty, territorial integrity or independence of other States as a means of rescuing or freeing hostages.

36. Mr. SIMANI (Kenya) said that his delegation, like that of Nigeria, wished to reserve its position with regard to article 5 until the Committee considered the proposal submitted by several delegations, including those of Kenya and Nigeria, at the 1977 session (A/AC.188/L.7). i/

37. Mr. VALDERRAMA (Philippines) supported the position of the Netherlands delegation concerning article 5 and also associated himself with the remarks made by Algeria concerning the protection of the territorial integrity, sovereignty and independence of States.

38. The CHAIRMAN suggested that delegations which wished to amend the text of article 5 should get together with the Rapporteur and the delegation of the Federal Republic of Germany, with a view to consolidating the various proposals.

Article 6

39. Mr. de GOUTTES (France) said that his delegation could accept the text of article 6 but he again asked that the term "intergovernmental" should be added between "international" and "organization", in article 6 as in the convention as a whole.

i/ See Official Records of the General Assembly, Thirty-second Session, Supplement No. 39, p. lll.

40. Mr. ROSENSTOCK (United States of America) said he could easily accept the text of that article, which was based, inter alia, on the New York Convention. As for the French suggestion to add the word "intergovernmental" after the word "international", his delegation thought that that was a drafting question which should be dealt with at a later stage, when the definition of the term "international organization" came to be discussed. In his opinion, an effort should be made to harmonize the terminology used in the convention under consideration with that used in other international conventions.

41. Mr. OMAR (Libyan Arab Jamahiriya) said that his delegation had no objection to article 6 as a whole, but reserved the right to comment on the meaning of the word "extradition" in the light of the debate on article 1.

42. Mr. SCHUTTE (Netherlands) observed that the wording of article 6 was taken from the corresponding provision of the 1973 New York Convention (art. 6), but that the corresponding text in the 1970 Hague Convention (art. 6, para. 1) was different in that it provided that the alleged offender could be detained only for such time as was necessary to enable any criminal or extradition proceedings to be instituted. All States could be supposed to have a code of penal procedure providing for temporary custody pending trial. The only difficulty which might arise in connexion with the measures provided for in paragraph 1 concerned temporary custody by virtue of a law or a treaty on extradition, particularly if the State in question exercised subsidiary jurisdiction under article 5, paragraph 2. The jurisdiction of the State then depended on whether a request for extradition would or would not be presented, and if so, if it would be granted. If it were not granted, there could be no temporary custody except by virtue of the provisions of the State's code of penal procedure. To sum up, his delegation interpreted article 6 to mean that custody and other measures aimed at ensuring the presence of the alleged offender would be ordered and carried out in conformity with the provisions of the internal law of the State in which the person in question was present and that custody would continue until the other Contracting State, having first notified its intention to request extradition, had had the time to submit its request officially through the diplomatic channel, together with all the necessary documents. If that interpretation was shared by the other members of the Committee, his delegation could accept article 6 in its present form.

43. Mr. ZVIRBUL (Union of Soviet Socialist Republics) said he thought that article 6 could be more precise and that a provision should be added to the effect that when the State had established its jurisdiction, it should bring the offender to trial without delay in order to reduce the length of the period of custody, as was provided for in the other conventions. It would also be desirable to indicate that the State should immediately communicate the results of the judicial inquiry and specify its intentions concerning the exercise of its jurisdiction. Lastly, consideration should be given to the possibility of giving the detainee the right to communicate with representatives of the State of which he was a national, as provided for in article 6, paragraph 2, of the 1973 New York Convention and, in the case of a stateless person, the right to communicate with a representative of the State which had declared its willingness to protect his rights.

44. Count SCHIRNDING (Federal Republic of Germany) observed that the proposal of the Netherlands delegation to limit the length of custody to the period of time up to receipt of the request for extradition need be adopted only if the Committee

agreed to amend paragraph 2 of article 5, as had been proposed by that same delegation: so long as article 5 remained in its present wording, the custody provided for in article 6 would take place not only for the purposes of extradition but also for the purposes of the proceedings instituted by the State where the offender was found. For the time being, however, his Government was not in favour of the proposed amendment to article 5, paragraph 2, of its draft.

45. As for the USSR suggestion to amend article 6, paragraph 2, so as to provide for the case of stateless persons, it should be possible to prepare a text along the lines of the model provided by the other conventions.

Article 7

46. Mr. HOFSTEE (Netherlands) recalled that his delegation had submitted an amendment proposing the insertion of the words "and which has received a request for extradition by one of the Contracting States mentioned in article 5, paragraph 1" after the words "The Contracting State in the territory of which the alleged offender is found" in paragraph 1. With that amendment, the State would be obliged to prosecute the alleged offender only after a request for extradition had been received and denied. His delegation thought that, the primary responsibility to prosecute the offender lay with the State which was most directly concerned. However, under the present article 7, if the State in whose territory the offence had been committed did not bother to request extradition, the State in whose territory the offender was found would be obliged to prosecute, and that was what his delegation would like to avoid.

47. Mr. de GOUTTES (France) recalled that his delegation had submitted an amendment, according to which a request for extradition would have to be submitted in order to bring the machinery of article 7 into operation. As the Netherlands delegation had pointed out, it would seem to be correct legal practice for the State which did not extradite the offender not to be obliged to submit the case to its judicial authorities for the purpose of prosecution unless it had received a request for extradition. After reading out the amended version of paragraph 1, proposed by his delegation, and observing that the second sentence of the paragraph remained unchanged, he said that, since the French amendment was close to that of the Netherlands, the two delegations could perhaps consider the text together.

48. Mr. ROSENSTOCK (United States of America) said he did not share the opinion of the Netherlands and French delegations. In his view, the amendments proposed by those two delegations marked a step backwards from the Hague and Montreal Conventions, and would weaken the text by limiting the scope of the machinery of article 7, a step which his delegation would regret.

49. Mr. ZVIRBUL (Union of Soviet Socialist Republics) said that, in article 7, paragraph 2, his delegation would like to see the word "criminal" inserted before "proceedings". In addition, the expression "fair treatment" had connotations which were more ethical than legal, and it would be better to say that "Any person ... shall enjoy all the rights and guarantees provided for by the legislation of the country in whose territory he is present".

50. Mr. CHAMBERLAIN (United Kingdom) said that article 7 was one of the most important, if not the most important, in the convention and was based on the corresponding provision in the Hague, Montreal and New York Conventions. For its part, his delegation would like to include in it the wording of the preceding conventions.

51. He understood the reasons behind the Netherlands and French proposals, for it was the State of primary jurisdiction that was most directly concerned with prosecuting the offender, and it would perhaps be onerous to oblige a State which was unconnected with the offence to prosecute the offender. However, his delegation, like that of the United States, and for the same reasons, preferred to adhere to the structure of earlier conventions. The incorporation of the Netherlands or French proposal in the present article 7 might create a serious ambiguity. Article 7 was applicable "without exception whatsoever and whether or not the offence was committed in its /the Contracting State's/ territory" - in other words, it covered all situations, including the case where the offender was found in the territory of a State having primary jurisdiction over the offence. Therefore, to introduce in article 7 the idea that, in order to exercise its jurisdiction under that article, the State must have previously received a request for extradition might seriously weaken the obligation incumbent on a Contracting State in the territory of which the offender was found, where that State had primary jurisdiction under the very wording of article 7. Consequently, if the French or Netherlands proposal were accepted, the Committee would have to examine the wording of article 7 very closely so as to avoid altering its scope.

The meeting rose at 1 p.m.

24th meeting

Wednesday, 8 February 1978, at 3.40 p.m.

Chairman: Mr. Leslie O. Harriman (Nigeria)

A/AC.188/SR.24

DRAFTING OF AN INTERNATIONAL CONVENTION AGAINST THE TAKING OF HOSTAGES PURSUANT TO PARAGRAPH 3 OF GENERAL ASSEMBLY RESOLUTION 31/103 AND PARAGRAPH 2 OF GENERAL ASSEMBLY RESOLUTION 32/148 (agenda item 5) (continued)

1. The CHAIRMAN invited the Committee to continue its consideration of the draft convention submitted by the Federal Republic of Germany (A/AC.188/L.3), a/ as well as the various amendments and working papers which had been presented.

Article 7 (continued)

2. Mr. BIALY (Poland) said that his delegation did not find the text submitted by the Federal Republic of Germany entirely satisfactory. It preferred the text appearing in the 1973 New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, b/ which was short, simple and clear and did not lend itself to misinterpretation.

3. He had no objection to the Netherlands amendment (A/AC.188/L.14) c/ and supported the suggestions made by the USSR representative at the previous meeting concerning paragraph 2.

4. Count SCHIRNDING (Federal Republic of Germany) said that the Committee could, of course, follow the model that the Polish representative had suggested rather than the model of the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft. d/ His own delegation was able to accept either solution.

5. His delegation had already stated in connexion with article 6 that it found the Netherlands amendment unsatisfactory. While it agreed that it might not be fair to impose the obligation to prosecute upon a State that had nothing to do with a given case apart from the fact that the hostage-taker happened to be found on its territory, while other States with a clearer relationship to the case refrained from requesting extradition, it preferred to increase rather than reduce the number of States having jurisdiction.

a/ See Official Records of the General Assembly, Thirty-second Session, Supplement No. 39, p. 106.

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

c/ See Official Records of the General Assembly, Thirty-second Session, Supplement No. 39, p. 114.

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

6. The problem was a theoretical one that was most unlikely to occur in practice. If the State which had arrested a hostage-taker offered to extradite him, public opinion in one of the States more closely connected with the case would surely insist on the extradition offer being accepted.

7. Mr. ATTAF (Algeria) said that many delegations clearly felt that the primary jurisdiction could only be that of the State in whose territory the offence had been committed. All other jurisdictions would perforce be secondary and peripheral.

8. As for the substance of article 7, the wording of paragraph 1 seemed at first sight to cover politically motivated offences, and that was unacceptable to his delegation. It was absolutely necessary to exclude national liberation movements from the scope of the article.

9. Mr. SCHUTTE (Netherlands) said it was not the intention of his delegation's amendment that the Contracting State in which an offender was found - a State with secondary responsibility - should exercise its jurisdiction only if there were a request for his extradition.

10. The Netherlands amendment did not suggest the deletion from article 7 of the phrase "if it does not extradite him". The question was how long it would take for the Contracting State in whose territory the alleged offender was found to discover whether or not another State intended to ask for his extradition. If only three States were entitled to do so, the situation under his delegation's amendment, it could readily be ascertained whether or not such a request was to be made.

11. It had been objected that, if his delegation's amendment were accepted, there might be no prosecution at all because none of the States entitled to ask for extradition under article 5, paragraph 1, had, in fact, done so. In such a case the blame rested not with the State in the territory of which the alleged offender was found but with the States which failed to exercise their primary responsibility.

12. Mr. LARSSON (Sweden) said that, while his delegation had much sympathy for the Netherlands amendment, it recognized the reasons underlying the objections raised to it. It was possible that the amendment could be subamended to take account of those objections.

13. It was by no means clear why paragraph 2 had been inserted in the draft convention. There were other international instruments that set standards for the treatment of suspected persons and it was surely invidious to single out one aspect of those standards in the draft convention.

14. Mr. LOUKIANOVICH (Byelorussian Soviet Socialist Republic) said that his delegation, while fully realizing that article 7 was modelled on the corresponding provision of the 1970 Hague Convention, preferred the wording of article 7 of the 1973 New York Convention, which was more succinct and also contained a time element - "without undue delay" - which would make for easier implementation.

15. He fully supported the USSR proposal that the word "criminal" should be inserted before the word "proceedings" in paragraph 2.

16. Ms. BALZA (Venezuela) said that article 7 should be amended to take account of the political motivations of an offence and the political circumstances in which it took place.

17. The CHAIRMAN commented that problems of the nature mentioned by the Algerian and Venezuelan representatives should be settled under article 1, concerning the scope of the convention.

18. Mr. KAWAMURA (Japan) said he wished to remind the members of the Committee why a draft convention was being prepared. There was a general consensus throughout the world that the taking of hostages was an abhorrent act which had to be combated, the more so as the number of cases was continually increasing. It had been found that the actions of individual countries were insufficient to control the phenomenon and that a response by the international community was needed. It was vital that the perpetrators of such offences should be denied a safe haven.

19. In view of that background and the need to ensure that hostage-takers would be brought to justice wherever they went, his delegation felt that the existing text of article 7 was an appropriate one.

20. Mr. BAVAND (Iran) said that the problem dealt with in article 7 was a practical one which several previous international instruments had in vain attempted to solve. An appropriate formula had to be found, and the Netherlands amendment seemed fairly close to achieving that aim.

21. His delegation was strongly in favour of the retention of paragraph 2, which contained a provision designed to prevent the convention from having a negative effect on human rights in other areas.

22. Mr. OMAR (Libyan Arab Jamahiriya) said that his delegation reserved the right to comment on articles 7 and 8, once the text of article 1 had been accepted.

23. Mr. SCHUTTE (Netherlands) said he wondered whether the USSR amendment to paragraph 2 was intended to exclude extradition proceedings or not.

24. Mr. ZVIRBUL (Union of Soviet Socialist Republics) said that that amendment would not exclude such proceedings.

25. Mr. VALDERRAMA (Philippines) suggested that the word "regarding" in paragraph 2 might be replaced by the word "against".

26. Mr. ROSENSTOCK (United States of America) said that the word "against" might not be entirely accurate in terms of, for instance, the preliminary stages of extradition hearings. The word "regarding" was thus preferable.

Article 8

27. Mr. CHAMBERLAIN (United Kingdom) said that his delegation had no basic difficulty with the text of that article. If, however, the reference under article 5, paragraph 1 (b), to an international organization was retained, it would seem to be going too far to authorize any member State of such an organization to ask for extradition. He reserved the right to return to the subject once the fate of article 5 had been decided.

28. Mr. SCHUTTE (Netherlands) recalled that his delegation had proposed in respect of article 5 that any serious offence of violence committed by a hostage-taker should also be taken into account. In the case of article 8, he thought that there should be a reference not only to the basic offence of hostage-taking but also to all serious offences connected therewith, since extradition followed the rule of speciality and an extradited person could not be tried for offences other than those specified in the request for extradition.

29. Mr. ROSENSTOCK (United States of America) said that his delegation agreed with the Netherlands representative and disagreed with the United Kingdom representative.

30. He thought it most unlikely that, where an international civil servant was taken hostage or an international organization threatened, all the member States would immediately ask for extradition. In normal circumstances, the host country or the State on whose territory the offence had been committed would fulfil its responsibilities. It was valuable, however, to include a provision to meet the rare case in which they failed to do so. In any event, the symbolic significance of the provision was important.

Article 5

31. The CHAIRMAN suggested that, since article 5 seemed to be the key one, an informal meeting should be held to discuss that article.

32. Mr. ROSENSTOCK (United States of America) and Mr. BRACKLO (Federal Republic of Germany) welcomed the suggestion. If the informal meeting succeeded in settling the question of article 5 fairly quickly, it might also consider some other problems.

33. Mr. SIMANI (Kenya) said he did not think that article 5 was really the crux of the problem. If other problems were solved, the difficulty with article 5 might well disappear.

34. Mr. BRACKLO (Federal Republic of Germany) suggested that the informal meeting should be devoted to legal and technical problems, while other matters would continue to be discussed in the plenary.

35. It was so decided.

36. Mr. SCHUTTE (Netherlands) said that, as far as his delegation could see, article 9, paragraph 2, served no purpose at all. He felt sure that many other delegations thought likewise; indeed, during the preparation of the 1970 Hague Convention, there had been some 50 abstentions during the vote on the adoption of a similar paragraph.

37. Mr. VALDERRAMA (Philippines) said he was constrained to differ from the view expressed by the Netherlands representative. The essence of the paragraph seemed clear enough to his delegation. He could envision the existence of treaties on a bilateral basis which provided for mutual judicial assistance between the Contracting States, and that that obligation between them should not be affected under the convention.

38. Count SCHIRNDING (Federal Republic of Germany) said that the wording of paragraph 2 followed that of the 1973 New York Convention. The intention was to deal with instances where, for example, evidence was called for under the terms of

a bilateral treaty as well as under the convention being prepared, in which case the requirements under the bilateral treaty would take precedence. His delegation would have no objection to the deletion of that paragraph, although it felt that the Committee should not discard too readily a provision embodied in an existing instrument.

39. Mr. de GOUTTES (France) agreed with the previous speaker that paragraph 2 should not be readily relinquished. As had been pointed out, the paragraph would, in particular, not affect existing bilateral treaties, which could be much more complete, and similar texts were to be found in existing international instruments.

40. Mr. ZVIRBUL (Union of Soviet Socialist Republics) said that paragraph 2 should be retained, since it was important not to prejudice obligations arising from existing treaties. Indeed, the wording of that paragraph might well be expanded to reflect the fact that, when one State agreed to grant judicial assistance to another, the agreement constituted an addition to the latter State's body of legislation.

41. Mr. MACAULAY (Nigeria) supported the retention of the paragraph, since there were similar texts in existing conventions.

42. Mr. ROSENSTOCK (United States of America) said that the paragraph in question was doubtless intended to confirm that article 9, paragraph 1, should not affect obligations stemming from any other treaty. Although his delegation saw no harm in leaving paragraph 2 as it stood, it would not urge that paragraph's retention.

43. Mr. VALDERRAMA (Philippines), referring to the end of article 9, paragraph 1, requested clarification regarding who was to determine what evidence was necessary.

44. Count SCHIRNDING (Federal Republic of Germany) said that, in his delegation's view, only the requesting State could judge what evidence was required. The question just raised could perhaps be discussed if the Committee so wished, but consideration of it had not been thought necessary during the preparations for the 1973 New York Convention.

Articles 2, 10 and 11

45. Following a short procedural discussion in which the CHAIRMAN, Mr. ZVIRBUL (Union of Soviet Socialist Republics), Mr. BIALY (Poland), Mr. de GOUTTES (France) and Mr. LOUKIANOVICH (Byelorussian Soviet Socialist Republic) took part, the CHAIRMAN suggested that further consideration of article 2, including the working paper submitted by Yugoslavia (A/AC.188/L.19), and of articles 10 and 11 should be deferred and that the Committee should first of all give further consideration to article 1.

46. It was so decided.

Article 1

47. Mr. RIOS de MARIMON (Chile) said that in general he could accept the text of article 1 as it stood in document A/AC.188/L.3. Regarding paragraph 1 of that article, however, he thought that the word "continued" should be deleted. Any detention at all was surely a culpable act; but even if length of time was deemed a criterion, a word such as "continued" would have to be carefully defined.

48. The wording from "to do or abstain" to the end of the same paragraph likewise required some revision, since in some countries, including Chile, it would be difficult, under current legislation, to make a distinction in certain circumstances between committing and not committing culpable acts.

49. Paragraph 2 likewise caused some difficulty for his delegation, which thought that confusion could arise from the distinction, implicit in the text as it stood, between an attempt to commit an act of taking hostages and complicity in such an act. His delegation hoped that fresh wording could be sought in order to clarify the intention of paragraph 2.

50. Count SCHIRNDING (Federal Republic of Germany) said that the text of article 1 had been based on the relevant wording in the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. He agreed with the Chilean representative that the text could possibly be worded somewhat differently.

51. Mr. de GOUTTES (France) recalled that his delegation had submitted an amendment (A/AC.188/L.13), e/ at the Committee's previous session, aimed at supplementing the definition contained in the text of the Federal Republic of Germany concerning the taking of hostages; it had referred in particular to the purposes for which hostages might be taken and to the holding of such persons in a secret place. The object of the proposed amendment was to prevent possible loopholes in the convention's application. His delegation reserved the right to speak in detail on that amendment at a later stage if necessary.

52. Mr. ATTAF (Algeria), supported by Mr. ZVIRBUL (Union of Soviet Socialist Republics), proposed that the Committee, before proceeding with further consideration of the draft articles, should discuss the draft preamble, including the working paper submitted by the Algerian delegation (A/AC.188/L.4). f/

53. Mr. ROSENSTOCK (United States of America) said that discussion of draft article 1 had already begun, and should be concluded first.

54. The CHAIRMAN said that, according to advice given by the Secretariat on the basis of past practice in such cases, it would be more appropriate for the Committee to continue its consideration of the draft articles before refining the preamble.

55. Mr. CHAMBERLAIN (United Kingdom) expressed strong support for the Chairman's ruling that the Committee should continue its discussion of article 1: it would be premature to discuss the preamble to the draft convention before the substance of the instrument.

56. He was concerned that the definition of the taking of hostages given in article 1, paragraph 1, of the draft convention might be unduly restrictive, for there might be instances of the taking of hostages in which the offender had no intention to compel any of the persons or bodies listed in that provision to do or abstain from doing anything, or in which the element of compulsion could not be clearly identified. He would welcome the views of other delegations on possible solutions to the problem.

e/ See Official Records of the General Assembly, Thirty-second Session, Supplement No. 39, p. 113.

f/ Ibid., p. 110.

57. Turning to the French proposal for article 1 of the draft convention, he suggested that its first paragraph could more appropriately be placed after, rather than before, the definition of the offence of taking hostages. He did not agree with the reference in paragraph 2, subparagraph (b), of the proposal to the holding of hostages in "a secret place", for it would have the effect of excluding from the scope of the future convention the holding of hostages in places which, for one reason or another, were not secret.

58. Mr. MARIN BOSCH (Mexico) said that, while the Committee could conceivably continue to discuss the specific proposal for the text of article 1 of the draft convention contained in document A/AC.188/L.3, he believed it would make more progress towards its ultimate goal of drafting a full convention if it took up what had been termed matters of principle, namely the question of the scope of the convention. In that event, it should widen its discussion to include the working paper submitted by the Algerian delegation and the working paper submitted by his own delegation (A/AC.188/L.6). g/

59. Mr. OMAR (Libyan Arab Jamahiriya) proposed that, since there were differing interpretations of the Chairman's ruling that the Committee should continue to discuss article 1 of the draft convention, the meeting should be adjourned for consultations on the procedure to be followed.

60. It was so decided.

The meeting rose at 5.30 p.m.

g/ Ibid., p. 111.

25th meeting

Thursday, 9 February 1978, at 11.30 a.m.

Chairman: Mr. Leslie O. Harriman (Nigeria)

A/AC.188/SR.25

ORGANIZATION OF WORK (agenda item 4) (concluded)

1. The CHAIRMAN announced that the officers of the Committee had that morning held a meeting open to all members of the Committee, in which most of them had taken part, in order to review the organization of work at the present session. At the close of the meeting, the officers had decided to suggest to the plenary Committee the establishment of two working groups open to all interested delegations in which no summary records would be taken of the proceedings. Working Group I would examine the thornier questions connected with the drafting of an international convention against the taking of hostages, and would try to find some common ground by means of consultations. Working Group II would concern itself with draft articles that were non-controversial or on which Working Group I had come to an agreement; it would in fact be a drafting group. The Working Groups would meet consecutively, one in the morning and one in the afternoon, and would elect their own officers. It had also been suggested that the Committee should meet again in plenary the following Tuesday in order to continue its discussion of the draft articles, whether or not agreement had been reached within the Working Groups.

2. Replying to questions put by Mr. ATTAF (Algeria), Mr. AL-KHASAWNEH (Jordan) and Mr. CACERES (Mexico), the CHAIRMAN said that the various amendments, drafts and papers submitted to the Committee would be examined at the same time as the articles to which they related, and that the working paper of the Federal Republic of Germany had been taken as the basis for discussion because it was the only draft containing a comprehensive set of articles. Texts that did not relate directly to the draft articles prepared by the Federal Republic of Germany but concerned the over-all scope of the convention would be taken up during the discussion on the preamble and article 1.

3. Mr. ROSENSTOCK (United States of America) said he assumed that, when the Committee met again in plenary, it would be permissible for delegations to request consideration of the texts they had submitted.

4. The CHAIRMAN said that, if there was no objection, he would take it that the Committee agreed to the suggestions he had just made concerning the organization of work.

5. It was so decided.

APPOINTMENT OF A NEW RAPPORTEUR

6. The CHAIRMAN announced that the Rapporteur elected at the present session, Mr. Belyaev (Byelorussian Soviet Socialist Republic), would be unable to take part in the work of the Committee. He suggested that Mr. Loukianovich, a member of the same delegation, should be appointed in his stead.

7. It was so decided.

The meeting rose at 11.55 a.m.

26th meeting

Wednesday, 15 February 1978, at 11.15 a.m.

Chairman: Mr. Leslie O. Harriman (Nigeria)

A/AC.188/SR.26

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 AND PARAGRAPH 2 OF GENERAL ASSEMBLY RESOLUTION 32/148 (agenda item 5) (continued)

Reports of Working Groups I and II, established by the Ad Hoc Committee at its 25th meeting

1. The CHAIRMAN said that Working Group I on controversial matters, of which he was Chairman, had held three meetings between Friday, 10 February and Tuesday, 14 February. At the beginning of the negotiations, it had been generally felt that the main areas of controversy were the safeguarding of the rights of national liberation movements, questions concerning extradition and the right of asylum, and respect for the sovereignty and territorial integrity of States with regard to the release of hostages. It had also been generally felt that the question raising the greatest difficulties was that of the rights of national liberation movements.

2. With regard to the latter point, it had been suggested that the proposed convention should contain a list of specific acts constituting the offence of hostage-taking and a provision similar to article 13 of the Strasbourg European Convention a/ making it possible to refuse extradition if there were grounds to believe that the request was based on political, ethnic, religious or other reasons. Certain representatives had pointed out that the Strasbourg Convention fitted the case of a homogeneous society, all of whose members had similar concepts of justice and legal systems, but might not necessarily be suitable in a universal context. It had also been noted that, whereas the Strasbourg Convention referred only to extradition, the proposed convention was based on the principle of extradition or prosecution; however, it had seemed possible to work out a compromise formula on that point. The same representatives had considered that the most sensible course of action was to determine whether articles 1 and 10 of the working paper submitted by the Federal Republic of Germany (A/AC.188/L.3) b/ contained elements going beyond what had already been agreed upon in the 1977 Additional Protocols to the 1949 Geneva Conventions and, if so, to concentrate the discussion on those elements. It had been stressed, however, that the 1977 Protocols were not yet in force. Some representatives had suggested that similar consideration should be given to the working papers concerning the rights of national liberation movements which had been submitted at the previous session of the Committee (A/AC.188/L.4 and L.5). c/

a/ See A/AC.188/L.2, p. 33.

b/ See Official Records of the General Assembly, Thirty-second Session, Supplement No. 39, p. 106.

c/ Ibid., pp. 110 and 111.

3. During the negotiations, it had been generally felt that the taking of hostages was an act prohibited under international law. In that connexion, even the proponents of safeguards for the rights of national liberation movements had maintained that they were in no way suggesting that those movements should be granted an open licence to take hostages. However, it had been pointed out that a clear distinction should be drawn in the convention between genuine activities of national liberation movements and acts of terrorist groups which had nothing in common with them. The question of the safeguarding of the right of asylum had also been raised.

4. It had also been suggested that, in the formulation of provisions, account should be taken of the need for the proposed convention to be acceptable to States having different economic, social and legal systems, so as to cause no collision and to establish a link between the proposed convention and the 1977 Additional Protocols to the Geneva Conventions. It seemed that the latter point - namely, the establishment of a logical bridge between the proposed convention and other corresponding international instruments - commanded growing support among delegations.

5. As to whether the proposed convention should cover an act committed by a State, it had been stressed that the act of taking hostages constituted a case of individual responsibility, a concept established and enhanced by international law since the Second World War. It had nevertheless been maintained that the proposed convention should expressly cover cases of hostage-taking by States. In that connexion, individual responsibility would also arise if a government official of any State committed such an act, but the wording of article 1 of the draft convention might be modified by adding, after the words "Any person who", an expression such as "for whatever reasons", without further enlarging the scope of the convention. It had been said that the scope of the convention should be broad enough to encompass all cases of the taking of hostages, and express reference had been made to the amendment to the draft of the Federal Republic of Germany submitted by the Netherlands (A/AC.188/L.14) d/ at the previous session of the Committee.

6. In conclusion, he considered that the questions of the right of asylum and respect for the sovereignty and territorial integrity of States with regard to the release of hostages constituted minor problems which could be settled by rewording the relevant provisions of the proposed convention in the light of the suggestions made during the negotiations. In spite of the efforts already made, the most difficult question - the safeguarding of the rights of national liberation movements - required further negotiations for a generally agreed solution to be reached.

7. The Committee had reached the stage of seriousness and moderation: on the one hand, it had to engage in serious negotiations with regard to the definition of the taking of hostages and the scope of the convention - in other words, articles 1 and 10 of the draft; on the other, any new formula proposed should be sufficiently moderate to be acceptable, from the logical, practical and legal standpoints, to all members of the Committee.

d/ Ibid., p. 114.

8. Mr. BRACKLO (Federal Republic of Germany), speaking as Chairman of Working Group II, which had been entrusted with the task of examining suggestions and proposals concerning articles 2 to 11 of the draft convention submitted by the Federal Republic of Germany, said that the Group had held four meetings on 9, 10, 13 and 14 February and had issued two Conference Room Papers (A/AC.188/WG.II/CRP.1 and 2). Those documents contained proposals already submitted to the Committee at its previous session and at the beginning of the current session, as well as new proposals made during the discussion in the Working Group. The Group had examined the draft of the Federal Republic of Germany article by article, studying the proposals and suggestions relating to each article.

9. Extremely encouraging progress had been achieved on articles 2 to 4, and the Group had almost reached agreement on a text acceptable to the majority of the members of the Committee. Thus, for article 3 (easing of the situation of hostages), the Federal Republic of Germany and the Soviet Union had agreed on a common text which merged paragraphs 1 and 2. The new text proposed for the former paragraph 3, which would become paragraph 2 of article 5, combined the formulas proposed by Canada and the Philippines.

10. On the other hand, article 5 (establishment of jurisdiction) continued to pose four important problems: first of all, whether it was necessary to include, at the beginning of paragraph 1, offences committed in connexion with those set forth in article 1, as proposed by the Netherlands delegation, supported by other delegations; secondly, whether mention should be made of international organizations in paragraph 1 (b); thirdly, whether a State should establish its jurisdiction where the victims of an act of hostage-taking were nationals of that State, as suggested by the French delegation in the subparagraph (d) which it proposed to add to paragraph 1; lastly, whether the State was obliged to prosecute the offender only after having received a request for extradition, as had been proposed by the delegations of the Netherlands and France. The latter point was very important and required more detailed consideration.

11. The new text proposed by the United Kingdom for article 6 (custody of the offender) included points proposed by other delegations and seemed acceptable to the majority of the members of the Committee.

12. Article 7 (principle of prosecution or extradition) also raised the question whether a request for extradition was necessary before the State was obliged to prosecute the offender, as proposed by the Netherlands delegation.

13. Articles 8 and 9 would have to be amended if the proposal to include in article 5 offences committed in connexion with the taking of hostages was adopted.

14. Working Group II had not examined article 10, which involved problems coming within the competence of Working Group I.

15. With regard to article 11, some delegations had been in favour of retaining the present text, while others had thought that it should be brought into line with the corresponding provision of the Hague, Montreal and New York Conventions.

16. Lastly, at the end of the Group's deliberations, the delegation of Barbados had proposed the insertion in article 7 of an additional paragraph which it itself would introduce to the Committee.

17. In conclusion, he felt that Working Group II had made very encouraging progress and should shortly arrive at texts acceptable to all the members of the Committee.

18. Mr. OMAR (Libyan Arab Jamahiriya) said he thought that the Committee should now take up the question of the definition of the taking of hostages, since that was a very important matter which was also attracting attention outside the Committee. In his opinion, the definitions proposed by the Federal Republic of Germany and France dealt with only one aspect of the taking of hostages. At the previous session, his delegation had drawn the Committee's attention to the situation of peoples under colonial, racist or foreign domination, which in its opinion constituted another form of hostage-taking. He hoped that the Committee would take that situation into consideration and adopt a general criterion that covered all acts of hostage-taking.

19. The "hostage situation" did not necessarily result from an act of seizure or detention of a hostage. It could also exist in the following circumstances: where one person was deliberately placed under the control of another party in order to ensure the security of that other party or to act as a deterrent force for the other party; where there was a deliberate exchange of hostages to ensure the implementation of agreements or to maintain peaceful relations; and where a person deliberately offered himself as a hostage, for example, in order to secure the release of another hostage. In sum, a "hostage situation" was characterized by the fact that one of the parties had the power to threaten or harm another (the hostage). The party which exploited that situation did not need to detain or to seize the hostage, since the latter was already under his power.

20. Therefore, the proposed convention should not be limited to the protection of hostages who had been recently seized or detained and neglect those who had long been the victims of a "hostage situation". It should protect, in particular, persons under colonial domination and national liberation movements, since they were always actual or potential hostages.

21. Mr. KHOURY (Syrian Arab Republic) recalled that his country had submitted two working papers, the texts of which were reproduced in the report of the Committee (A/AC.188/L.10 and L.11), e/ concerning, on the one hand, the definition of the term "taking of hostages" and, on the other, the protection of the sovereignty and territorial integrity of States in connexion with the freeing of hostages. His delegation's concern with those questions was based on its desire to defend respect for human rights and the principles set forth in the Charter and on its conviction that the struggle against any form of oppression was just, as was the fight of peoples to secure self-determination, freedom and sovereignty over their homelands. It was not possible to ignore the link which existed between an act and its motives. Therefore, while condemning the taking of hostages with a view to exacting a ransom or for other criminal purposes, his delegation did not place on the same footing the actions of those who were fighting for their freedom and self-determination, which were different in nature. Consequently, in the work of the Committee on the Drafting of an International Convention against the Taking of Hostages, his delegation would always be guided by respect for human rights and the United Nations decisions upholding the right of peoples to self-determination and to defend their own cause. It must not be forgotten that the taking of hostages could be committed by a State or State body as well as by an individual. For

e/ Ibid., p. 112.

example, a racist State occupying another party's territory by force was, in his delegation's opinion, committing an act of hostage-taking; the occupying régime was exerting pressure on the international community to oblige it to recognize a situation which it itself had created, pressure which must be resisted by all available means.

22. Lastly, his delegation suggested that the Committee should analyse the phenomenon of hostage-taking in the light of the conditions obtaining in the developed industrial societies; it wondered whether the deep-seated reasons for that phenomenon were not the expression of a crisis due to the ills which accompanied disorderly economic and social development.

23. In conclusion, he stressed the need to define the meaning and scope of the term "taking of hostages" if agreement was to be reached on an acceptable and constructive international convention.

24. Mr. BLACKMAN (Barbados), explaining the reasons for which his delegation had suggested the insertion in article 7 of an additional paragraph 3 (A/AC.188/WG.II/CRP.3), said that, under that paragraph, a Contracting State, in whose territory the offender was present, might, if no request for extradition was made, ask the Secretary-General of the United Nations to identify a Contracting State willing to assume responsibility for the trial, provided that the Contracting State in whose territory the offender was present was incapable of prosecuting the offender by reason of the fact that such a trial would cause a threat to national security, disruption or great hardship to the population. That suggestion met the concern of small countries which did not have the necessary machinery to protect themselves against the very serious problems with which they might be confronted by genuine freedom fighters or terrorists who passed themselves off as such. His Government was convinced that a convention such as the one being considered by the Committee was essential for the establishment of a world order in which the weaker countries could exercise their sovereignty without hindrance. To that end, it would be necessary for States which were in a position to do so to provide the small countries with the assistance they required to implement the provisions of the convention. Reference had been made to the principle of prosecution or extradition; however, there were cases where the capacity of a State to undertake prosecution was seriously impaired by its size, situation or weakness. The new paragraph 3 should make it possible to deal with that type of situation.

25. His delegation was well aware that the text which it was proposing introduced a new element, as compared with previous conventions serving as models for the future convention against the taking of hostages; however, in view of the comments made during the discussion the previous week, the Committee should be able to accept a new element which was in keeping with the common objective of all the members of the Committee, namely the building of a peaceful and safe world. The proposed procedure, which would involve acting through the Secretary-General, should facilitate the search for a Contracting State willing to assume responsibility for the trial.

26. Mr. HOFSTEE (Netherlands), Mr. CHAMBERLAIN (United Kingdom) and Mr. ROSENSTOCK (United States of America) said that their delegations would refrain from commenting on the statements made by the representatives of the Libyan Arab Jamahiriya and the Syrian Arab Republic, since the questions which they had raised were under consideration in Working Group I.

27. In response to a question put by Mr. SIMANI (Kenya), the CHAIRMAN suggested that the Working Groups should continue consideration of the questions entrusted to them and that the Committee should meet in plenary at the beginning of the following week.

28. It was so decided.

The meeting rose at 12.15 p.m.

27th meeting

Monday, 20 February 1978, at 11.30 a.m.

Chairman: Mr. Leslie O. Harriman (Nigeria)

A/AC.188/SR.27

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 AND PARAGRAPH 2 OF GENERAL ASSEMBLY RESOLUTION 32/148 (agenda item 5) (continued)

Working paper submitted by France (A/AC.188/L.20)

1. Mr. de GOUTTES (France) said that his delegation had carefully considered the latest suggestion submitted by the group of non-aligned countries, in which those countries had stated that, on the whole, they could accept the working paper which had been submitted by Mexico at the preceding session in document A/AC.188/L.6. ^{a/} His delegation nevertheless wished to draw attention to the difficulties to which that text would inevitably give rise. First, it related the exclusion from the convention of acts committed during armed conflicts or during conflicts in which peoples were fighting for national liberation directly to the definition of the taking of hostages, whereas, in fact, that was a matter involving only the scope of the convention, not the definition of the taking of hostages, which should be uniform and comprehensive. Secondly, it did not refer either to the Geneva Conventions of 1949 or to the Additional Protocols of 1977. His delegation could therefore not accept the suggestion of the non-aligned countries in its present form. It wished to refer again, by way of explanation, to the two main amendments it had proposed in the working paper contained in document A/AC.188/L.20.

2. His country was, first of all, proposing the insertion in the preamble of an additional paragraph stating that "the taking of hostages is and must be proscribed always, everywhere and in all circumstances". In so doing, it was merely recalling the most firmly established rules of international law, since the taking of hostages, both in international armed conflicts and in internal conflicts, was proscribed by the 1949 Geneva Conventions and the Additional Protocols. To say nothing on that point in the convention would undoubtedly lead to misunderstanding on the part of world opinion, which might interpret the Committee's silence as a sign of weakness at a time when the public was especially sensitive to the problem of the taking of hostages. His delegation was, however, open to any suggestions of a drafting nature relating to that amendment.

3. The second amendment related to article 10 and consisted essentially in adding a paragraph stating that the convention would, if necessary, supplement the Geneva Conventions of 1949 and the Additional Protocols of 1977. That amendment was designed to establish a logical link between the future convention and other instruments of humanitarian law and to provide a clear-cut statement of his

^{a/} See Official Records of the General Assembly, Thirty-second Session, Supplement No. 39, p. 111.

delegation's position with regard to the scope of the convention, which could be summed up in the following way: the convention must punish only acts of hostage-taking, but it must punish them all.

4. Thus, the convention must apply only to the crime of hostage-taking stricto sensu, which was particularly odious and was universally condemned by public opinion. That was why his country was stressing the need for as precise a legal definition as possible of the taking of hostages and why it was not in favour of proposals which were, in one way or another, designed to broaden excessively the scope of the convention and to make it applicable to offences other than the taking of hostages itself. The Committee's terms of reference required it to draft an instrument for the punishment of that particular crime, as restrictively defined in article 1, not to discuss terrorism in general, a much broader subject which went beyond the law and called for fine distinctions. The punishment of the taking of hostages should be nothing more than a specific problem which would, like offences such as aerial hijacking or interference with the safety of civil air travel, which had been the subject of generally accepted international instruments, be covered by international criminal law. His delegation was therefore of the opinion that it would be inappropriate to include in the future convention extra-legal concepts or political considerations that were not contained in any of the other international conventions on which the Committee was basing its work.

5. The convention must also punish all acts of hostage-taking. According to the precise legal meaning of the term, as his delegation understood it, the taking of hostages was an act which must be condemned absolutely and which no circumstance or grounds could justify, regardless of the nobility of the cause for which it might have been committed. General Assembly resolution 31/103 recalled that international law prohibited the taking of hostages. Any solution which would, if only indirectly or by omission, furnish a justification for the taking of hostages in certain circumstances or which would provide for a special régime other than that of the convention for particular cases of hostage-taking would be contrary to the spirit of the Committee's terms of reference. Moreover, such an attitude would never be understood by world public opinion, which was closely following all the work being carried out to prevent the taking of hostages. The Committee must draft a convention which would ensure a minimum of respect for human life always, everywhere and in all circumstances.

6. Another important point made in his delegation's amendment was that the convention must not affect the Geneva Conventions and the Additional Protocols, but must supplement them, if necessary; of course, those humanitarian instruments remained fully in effect in their own spheres, and to set aside their application would, in fact, be contrary to the Committee's terms of reference. But the convention must supplement, where necessary, those instruments, as required by resolution 31/103, in which the General Assembly had recalled that the taking of hostages was prohibited by the Geneva Conventions and stressed the "urgent need for further effective measures to put an end to the taking of hostages". That interpretation was, moreover, merely an example of the application of the usual rules concerning the relationship between conventions that covered common ground and had interrelating effects. The same rule would be applicable to the New York Convention of 1973 and, if necessary, to the Hague and Montreal Conventions.

7. When an act of hostage-taking which was covered by the precise definition embodied in the convention now being drafted and which combined all the constituent elements set forth in article 1 occurred, it could be considered that the convention

now being prepared would apply as a special legal instrument and that the machinery for which it provided could be set in motion. In any event, it was difficult to see what major objection there could be to bringing acts of hostage-taking committed in the course of an armed conflict within the scope of the future convention, if necessary, since such acts were already covered by the prohibition stated in the Geneva Conventions and in the Additional Protocols of 1977.

8. Count SCHIRNDING (Federal Republic of Germany) said that, in view of the informal consultations which delegations were now holding in order to reach a compromise on the key problems involved in the drafting of a convention against the taking of hostages, he reserved his delegation's position on the amendments proposed by France.

9. Mr. DICKSON (Canada) said that, although his delegation would, for the same reasons as the delegation of the Federal Republic of Germany, refrain from making any comments on specific proposals, he wished to make it clear that his delegation's position with regard to the legal problems involved in the drafting of the convention was based on two fundamental considerations.

10. First, the taking of hostages was absolutely prohibited by international law. In the law relating to armed conflicts, the prohibition applied to all cases of hostage-taking, whatever the circumstances, and it was accompanied by provisions designed to ensure that offenders would not escape punishment. In drafting the future convention, it was therefore necessary to ensure that any person who committed an act of taking hostages would be brought to justice.

11. Secondly, his delegation was of the opinion that a convention against the taking of hostages must supplement, but not affect, existing and generally accepted international legal instruments. It was therefore important clearly to define the scope of the convention in order to avoid any ambiguity on that point.

12. The CHAIRMAN said that delegations and regional groups were still holding discussions and consultations, particularly on the informal proposal submitted by Algeria on behalf of the non-aligned countries. It was still too early to take stock of the work of the two Working Groups. If he heard no objection, he would therefore take it that the members of the Committee wished to continue working, for the time being, either within the Groups or on an informal basis.

13. It was so decided.

The meeting rose at noon.

28th meeting

Friday, 24 February 1978, at 11.20 a.m.

Chairman: Mr. Leslie O. Harriman (Nigeria)

A/AC.188/SR.28

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 AND PARAGRAPH 2 OF GENERAL ASSEMBLY RESOLUTION 32/148 (agenda item 5) (continued)

1. The CHAIRMAN invited the members of the Committee to consider the draft reports of Working Group I (A/AC.188/L.22) and Working Group II (A/AC.188/L.23). The following changes should be made in document A/AC.188/L.22: first, the last sentence of paragraph 5 and the word "high" in the last sentence of paragraph 6 should be deleted; secondly, the words "the members of the Working Group" in the last sentence of paragraph 6 should be replaced by the words "a number of the members of the Working Group".
2. Mr. ATTAF (Algeria) said that the time had come to evaluate a session which had been extremely fruitful but had been characterized by divergent and opposing views on the very meaning of the convention to be drafted. Like the delegations of all the other non-aligned countries, his own delegation had always been determined to find common ground and to devise a legal instrument which would provide the necessary legal framework for the effective prevention and punishment of hostage-taking without prejudicing the rights of peoples struggling against colonial and racist régimes, apartheid and all forms of foreign domination or jeopardizing the already precarious resources available to them for that purpose.
3. The fundamental belief on which his country had based its point of view was that hostage-taking, terrorism and violence in general, particularly that of a political nature, could be fully eliminated only by setting in motion a process by which dispassionate attempts would be made to root out the underlying causes of acts of violence. His delegation, which sincerely wished to reach a reasonable solution, had repeatedly stated that, in accordance with the task entrusted to it by the General Assembly, the Committee must show respect for the rights of all and, in particular, the rights of national liberation movements and a desire to avoid codifying rules which might possibly be used against the oppressed peoples. Accordingly, the Committee must bear in mind six main principles.
4. The first was that, from a strictly legal point of view, the future convention and, in particular, the definition of "the taking of hostages" could not apply to conflicts in which peoples were struggling against foreign domination. The Committee's terms of reference were not to codify the law of war or to redefine, in a separate convention, the requirements relating to the taking of hostages contained in the Additional Protocols of 1977. Other bodies were competent to deal with acts of hostage-taking committed in the course of international armed conflicts, and the activities of liberation movements could not be covered by the future convention. In order to avoid any misunderstanding, he wished to make it clear that his delegation had no intention of giving a blank cheque for hostage-taking to any group or entity whatever. As parties to international armed conflicts, national liberation movements were subject to the law of war, which in essence prohibited acts of hostage-taking. It was true that some persons considered that that way of looking at

the problem would enable small terrorist groups to set themselves up as liberation movements and, thus, to benefit from the provisions of the future convention, but that was not at all the case, as shown by any one of the relevant United Nations resolutions, which made it possible definitely to verify the authenticity of movements involved in struggles for self-determination.

5. The second principle was the need for a clear definition of the concept of hostage-taking which avoided the much too simplistic notion that that act could be defined simply in terms of the abductor, the hostage and the element of constraint. The third principle was that acts of hostage-taking, including any such acts which might be committed by States, were to be generally condemned. According to the fourth principle, any use or threat of force and any violation of the sovereignty or territorial integrity of States as a means of rescuing hostages were to be prohibited. The fifth principle to be borne in mind was that of respect for the right to asylum recognized by international law. The sixth principle was that it was necessary to prevent the convention from automatically classifying acts of hostage-taking as offences under ordinary law; account must be taken of the fact that the criminal legislation of a number of countries contained provisions concerning political offences, although of course the concept of "political offence" did not in itself preclude proceedings and penalties under international laws and regulations.

6. He was convinced that, in view of the quality of the discussions held and of the open-mindedness demonstrated by delegations, the Committee would be able to reach solutions which would be in keeping with the interests of all.

7. Mr. OMAR (Libyan Arab Jamahiriya) said he was of the opinion that paragraph 2 of document A/AC.188/L.22 did not faithfully reflect all the concerns of Working Group I. For example, that paragraph did not refer to the definition of the taking of hostages as being one of the most difficult questions, whereas, in fact, it was a particularly complex one which had not yet been thoroughly studied.

8. Mr. SCIOLLA LAGRANGE (Italy) said that his country had always attached a great deal of importance to the drafting of legal instruments which would strengthen international co-operation in the prevention of criminal acts. Since such co-operation could not, for obvious political and legal reasons, be provided for in instruments of a general nature applying to all types of criminal acts, it was quite natural to elaborate specific instruments designed to punish the most odious crimes. That was why his country had taken an active part in the drafting of the Hague a/ and Montreal b/ Conventions, in particular, and why it took such great interest in the Committee's work, which had been constructive and fruitful. In that connexion, he was grateful to the delegation of the Federal Republic of Germany for having submitted a draft which, on the whole, appeared to be satisfactory. A particularly commendable feature of that draft was that it was patterned on previous conventions; that was the most satisfactory solution from the point of view both of international law and of the internal law of States.

a/ United States Treaties and Other International Agreements, vol. 22, part 2 (1971), p. 1664.

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

9. The fact that the authorities of States were offered a free choice between extraditing and prosecuting an alleged offender, as provided for in article 7 of the Hague and Montreal Conventions, ensured respect for national laws which provided that, in certain specific cases, extradition could be refused and at the same time, guaranteed the effectiveness of penal sanctions. Because of its internal law, Italy attached particular importance to that solution and was glad to see that it had once again been adopted. The main advantage of that solution was that it was consistent with the principle of the right to asylum, for the fact that a State might be bound to institute criminal proceedings if it decided to refuse extradition was, in law, not inconsistent with the granting of political asylum to persons who fulfilled the necessary requirements.

10. The problem of the relationship between the future convention and certain specific situations occurring in time of armed conflict had been of particular concern to the Committee, and many delegations had endeavoured to find a solution which would be acceptable to all. His country considered the taking of hostages to be a barbarous act which was unjustifiable in any circumstances, and it was undeniable that recourse to such acts in time of conflict was condemned by international law and, in particular, by humanitarian law. His country had, moreover, signed the 1977 Protocols, which, in its opinion, represented progress towards better protection of human rights in time of conflict. It would therefore be unacceptable for the international community to take a step backwards, in the new convention, by weakening or eliminating some of the guarantees acquired within the framework of humanitarian law. On the other hand, any initiative designed to strengthen such guarantees warranted the closest attention and, if it gave rise to difficulties for some delegations, Italy was prepared to consider, in a spirit of co-operation, any solution designed to meet the concerns of all. Moreover, the interests of all were, in the final analysis, the same, since the concern of the international community was to protect itself against criminal acts.

11. Mr. ROSENSTOCK (United States of America) said that, in his opinion, the convention must represent a major step forward in ensuring respect for human life and freedom in all circumstances. Certain cases of hostage-taking could therefore not be excluded from the scope of the convention only because those responsible for them happened to have the support of public opinion. Whatever their motives, acts of hostage-taking were unacceptable.

12. Referring to the comment made by the Libyan representative concerning paragraph 2 of document A/AC.188/L.22, which his own delegation also considered to be unsatisfactory, he suggested that the first sentence of that paragraph should be replaced by the following text: "The Chairman of the Working Group identified the following issues as being among those on which Working Group I should focus its attention:".

13. Mr. MARIN BOSCH (Mexico) said he was surprised that the draft reports of the two Working Groups had not been patterned on the same model. He noted, for example, that, unlike the report of Working Group II (A/AC.188/L.23), the report of Working Group I (A/AC.188/L.22) contained no reference to the working papers which had been submitted at the 1977 session and considered at the present session; that omission should be rectified.

14. His delegation had some reservations concerning the beginning of the second sentence of paragraph 3 of the report of Working Group I, which read "Even the proponents of the rights of national liberation movements". He wondered whether that sentence and perhaps even paragraph 3 as a whole should not be deleted. He

also pointed out that paragraph 5 related to a working paper (A/AC.188/L.20) which had been submitted on 15 February, in other words, after the submission of the proposal referred to in the following paragraph, namely, paragraph 6. Lastly, in paragraph 8, mention was made of an "overall agreement" which Working Group I had not discussed since it had been given specific terms of reference. His delegation was of the opinion that the first sentence of paragraph 8 should be retained and that the text should then skip directly to paragraph 9.

15. Mr. JELIĆ (Yugoslavia) supported the statement made by the representative of Algeria and said that, whereas the 1977 session had been sterile, the 1978 session had been fruitful. Only one problem remained to be solved, namely, that of the position of national liberation movements. The non-aligned countries had submitted a proposal for a compromise based on international law, and agreement had rapidly been reached on its substance, but not on its wording. Some delegations were refusing to refer by name to the national liberation movements and wanted to avoid the problem by referring to the 1977 Additional Protocols to the Geneva Conventions - a reference which would be understood only by humanitarian law experts. Since the United Nations had never been afraid of calling those movements by their names, his country hoped that the delegations which were still reluctant to do so would ultimately be able to agree to wording that was clear and understandable to all.

16. In that connexion, his delegation was of the opinion that the second sentence of paragraph 3 of document A/AC.188/L.22 and, in particular, the words "Even the proponents of the rights of national liberation movements ..." did not faithfully reflect the two different sets of opinions expressed in Working Group I with regard to the question of national liberation movements.

17. Mr. OMAR (Libyan Arab Jamahiriya) supported the comments made by the representatives of Mexico and Yugoslavia concerning paragraphs 3, 8 and 9 of the report of Working Group I.

18. The CHAIRMAN said he thought that the best course would probably be to consider the draft report of Working Group I paragraph by paragraph and invited the Committee to proceed in that way.

Draft report of Working Group I (A/AC.188/L.22)

Paragraph 1

19. Mr. SIMANI (Kenya) said it should be indicated in paragraph 1 that Working Group I had been supposed to report to the plenary Committee, as had been agreed upon at the time of the decision to set up the two working groups. Moreover, he would prefer the words "most difficult questions" in the English version to be replaced by "thornier questions", since the latter expression was that used in the summary record of the twenty-fifth meeting (A/AC.188/SR.25, para. 1).

20. The CHAIRMAN said that, if there were no objections, the text of paragraph 1 would be amended as indicated by the Kenyan representative.

21. It was so decided.

Paragraph 2

22. The CHAIRMAN recalled that the United States representative had proposed an amendment to paragraph 2 in order to take into account the criticisms made by the

representative of the Libyan Arab Jamahiriya concerning the list of questions considered to be the most difficult.

23. Mr. ATTAF (Algeria) said that if the draft report was faithfully to reflect the proceedings in Working Group I, all the questions discussed should be mentioned, including the definition of the taking of hostages, political offences and the general condemnation of acts of hostage-taking, including any such acts committed by States.

24. Mr. AL-KHASAWNEH (Jordan) said that his delegation could accept a compromise formula half-way between the Libyan and United States proposals. It might be possible, for example, to adopt the United States amendment, while adding to the three questions mentioned in the draft report the problem of the definition of hostage-taking, which was among the matters that the Working Group had agreed to consider at the beginning of its work.

25. Mr. DICKSON (Canada) said that, in his view, the wording of the United States proposal indicated clearly that the list of questions in paragraph 2 was not exhaustive; on the other hand, the Jordanian proposal was a reasonable one. The Canadian delegation could therefore support both proposals.

26. Mr. MACAULAY (Nigeria) observed that the definition of the taking of hostages was a very complex matter. He thought that it would be useful if the Secretariat drew up a list of the cases which had occurred throughout the world in order to help the Committee to formulate a definition of that offence. In any case, the question was quite different from that of the scope of the convention. He wondered whether it would not be possible to speak in paragraph 2 of "problem areas".

27. Mr. KHOURY (Syrian Arab Republic) said he shared the views of the representative of Algeria and thought that in paragraph 2 all the questions raised during the session should be mentioned, including those which had been discussed in plenary meetings and on which no agreement had been reached.

28. Mr. VALDERRAMA (Philippines) stated that his delegation could accept both the United States and the Jordanian proposals. Generally speaking, the Philippine delegation would wish to have a convention that was effective and universally acceptable. It was in no way its intention to deny the right of self-determination to peoples under colonial domination. That was a right which the Philippines had always supported and would continue to support.

29. Mr. ZVIRBUL (Union of Soviet Socialist Republics) said that he also considered that all the questions discussed by Working Group I should be mentioned in paragraph 2 of the report; the work of the present session would thus be recorded for the benefit of the delegations which would attend the following session and for which the report of the Working Group would serve as a basis for discussion.

30. Mr. ROSENSTOCK (United States of America), supported by Mr. ONDA (Japan), said that he could agree to adding the question of the definition of the taking of hostages to the list in paragraph 2. On the other hand, if all the questions discussed were to be listed, it would be necessary to state that certain delegations considered particular questions to be more difficult than others, while other delegations attached more importance to other points; the result would be to complicate matters.

31. The CHAIRMAN said that there were two alternatives: either simply to add the question of the definition of the taking of hostages to the present list, or to give a complete list of the most difficult questions with details concerning the positions of the various delegations.

32. Mr. ROSENSTOCK (United States of America) said he preferred the first solution.

33. Mr. ATTAF (Algeria) said he was in favour of the second formula.

34. Mr. de GOUTTES (France), supported by Mr. ZVIRBUL (Union of Soviet Socialist Republics), suggested that the Committee should defer a decision until it had before it the new version of paragraph 2, amended in accordance with the second proposal.

35. It was so decided.

Paragraph 3

36. Mr. MARIN BOSCH (Mexico) proposed that the whole of paragraph 3 should be deleted. He considered the second sentence and, in particular, the use of the word "Even" to be unacceptable.

37. Mr. CHAMBERLAIN (United Kingdom) said he thought it would be difficult to delete the whole of paragraph 3, since that paragraph showed that there had been agreement on certain points, particularly the principle that the taking of hostages was an act prohibited under international law, and also stated that the delegations wishing the convention to guarantee the rights of national liberation movements had asserted that they were in no way suggesting that such movements should be granted an open licence to take hostages. If the word "Even" at the beginning of the second sentence was unacceptable to certain delegations, it could be deleted.

38. Mr. MACAULAY (Nigeria) proposed that the second and third sentences of paragraph 3 should be replaced by the following text: "It was generally accepted that no self-respecting national liberation movement advocated giving an open licence to its members for taking hostages".

39. Mr. ATTAF (Algeria) said he thought it would be enough to state that the taking of hostages was an act prohibited under international law. He therefore suggested that the second and third sentences of paragraph 3 should be deleted and that only the first sentence should be kept, as it rendered the other two unnecessary.

40. Mr. DICKSON (Canada) said that, on the contrary, the second and third sentences of paragraph 3 were important in so far as they reflected the discussions which had taken place in the Working Group. Like the representative of the United Kingdom, he would be agreeable to deleting the word "Even" at the beginning of the second sentence if that word seemed unacceptable to certain delegations.

41. Mr. OMAR (Libyan Arab Jamahiriya) said he supported the Mexican proposal to delete the whole of paragraph 3.

42. Mr. ZVIRBUL (Union of Soviet Socialist Republics) said he was in favour of deleting the second and third sentences of paragraph 3. If that was not done, the wording should be amended, as it could lead to confusion; in any event, however, it was necessary to draw a distinction between genuine activities of national

liberation movements and the acts of terrorist groups which had nothing in common with such movements.

43. Mr. HOFSTEE (Netherlands) said that since the members of the Committee had in fact agreed that national liberation movements should not be granted an open licence for taking hostages, that fact should be mentioned in the report.

44. Mr. JELIĆ (Yugoslavia) said he supported the Mexican proposal to delete paragraph 3.

45. Mr. SGIOLLA LAGRANGE (Italy) said that, on the contrary, he thought that paragraph 3 was indispensable in order to show Governments that no delegation had supported the idea of granting liberation movements an open licence for taking hostages.

46. Mr. CHAMBERLAIN (United Kingdom) said that he could agree to accept the deletion of the second and third sentences of paragraph 3 on condition that the words "under any circumstances" were inserted after the words "the taking of hostages" in the first sentence of the paragraph.

47. Mr. DICKSON (Canada) said that a compromise solution would be to keep the first sentence and to replace the second and third sentences by the following text: "In this respect, it was generally agreed that no one should be granted an open licence for taking hostages".

48. Mr. BRACKLO (Federal Republic of Germany) said that he was able to support the Canadian proposal, although he preferred the existing text.

49. Mr. SIMANI (Kenya) said that he would have been able to accept the deletion of paragraph 3; however, as certain delegations were opposed to that, he suggested that the paragraph should be replaced by the following text: "The negotiations revolved around the question whether the struggles of liberation movements could be covered under the present draft convention or excluded from its scope, since it was generally agreed that the taking of hostages was an act already prohibited under international law applicable to armed conflicts. The delegations were at one in agreeing that no one advocated a carte blanche for liberation movements to take hostages".

50. Mr. ROSENSTOCK (United States of America) said that he would have no difficulty in accepting the United Kingdom proposal or that of Canada. He was also able to accept the Kenyan proposal subject to a small drafting change - the replacement of the words "a carte blanche for liberation movements to take hostages" by the words "permitting the taking of hostages under any circumstances".

51. Mr. HOFSTEE (Netherlands) said that he found the Kenyan proposal acceptable, but wished to point out that the subject of the draft convention was not the struggles of national liberation movements but rather, the taking of hostages. He was also able to support the United Kingdom proposal, but preferred that of Canada.

52. Mr. VALDERRAMA (Philippines) said that, although not opposed to the United Kingdom proposal, he also preferred that of Canada, which seemed to him to be more straightforward and more acceptable for most delegations.

53. Mr. OMAR (Libyan Arab Jamahiriya) said that he still preferred the Mexican proposal, but was able to accept the Canadian proposal on condition that the words "and no State" were added after the words "no one".

54. Mr. DICKSON (Canada) said that he was unable to accept the Libyan suggestion but was willing to agree to the United Kingdom proposal.
55. Mr. AL-KHASAWNEH (Jordan) said that he preferred the United Kingdom amendment to that of Canada which, in fact, simply repeated what was already said in the first sentence.
56. Mr. SIMANI (Kenya) said that, he too, could agree to the United Kingdom amendment, but suggested that the words "applicable in armed conflicts" should be added at the end of the first sentence.
57. The CHAIRMAN observed that the taking of hostages was prohibited by international law generally, and not only by international law applicable in armed conflicts.
58. Mr. ATTAF (Algeria) said he considered that the United Kingdom amendment introduced an element of confusion at the present stage of the Committee's work. The Canadian amendment unnecessarily repeated the general prohibition stated in the first sentence. He therefore continued to favour maintaining the first sentence in its present form and simply deleting the other two sentences.
59. Mr. CHAMBERLAIN (United Kingdom) said that he maintained his amendment because the expression "under any circumstances" covered the case mentioned by the Libyan representative.
60. Mr. de GOUTTES (France) said that, in his view, the most acceptable amendment was that of Canada, because it was a straightforward text to which the representative of Kenya had agreed and which the representative of Algeria, too, could no doubt accept in that he considered it unnecessary but not dangerous.
61. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished to adopt the Canadian amendment to paragraph 3 of document A/AC.188/L.22.
62. It was so decided.

The meeting rose at 1.10 p.m.

29th meeting

Friday, 24 February 1978, at 3.40 p.m.

Chairman: Mr. Leslie O. Harriman (Nigeria)

A/AC.188/SR.29

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 AND PARAGRAPH 2 OF GENERAL ASSEMBLY RESOLUTION 32/148 (agenda item 5) (concluded)

Draft report of Working Group I (A/AC.188/L.22) (concluded)

Paragraph 2 (concluded)

1. The CHAIRMAN drew attention to an informal document setting out an amended version of paragraph 2 which took into account the comments and suggestions made at the previous meeting. The revised text would read:

"The Chairman of the Working Group identified the following issues as being among those on which Working Group I should focus:

- The scope of the convention and the question of national liberation movements;
- The question of the definition of taking of hostages;
- The question concerning extradition and right of asylum;
- The respect for the principles of sovereignty and territorial integrity of States with regard to the release of hostages.

Some delegations considered that the concept of political offence as well as the general condemnation of the taking of hostages including by States should be added to that list. Other delegations considered some of these aspects as irrelevant.

"The deliberations within the Group focused mostly on the first of the issues identified by the Chairman."

2. Paragraph 2, as amended, was approved.

Paragraph 4

3. Paragraph 4 was approved.

Paragraphs 5, 6 and 7

4. The CHAIRMAN recalled that, at the previous meeting, the Mexican representative had suggested that the chronological order of events would be more accurately reflected if paragraph 6 appeared before paragraph 5.

5. Mr. de GOUTTES (France) said it was true that the proposal referred to in paragraph 5 had been submitted after the text mentioned in paragraph 6, albeit at the same meeting. In order to meet the concern expressed by the representative of Mexico while at the same time avoiding extensive redrafting and the risk of disturbing the balance of the Working Group's report, his delegation proposed that the words "and presented at the meeting held on 16 February" should be added after the words "in document A/AC.188/L.20" in paragraph 5, and that the words "at the beginning of the meeting held on 16 February" should be inserted after the word "informally" in the second sentence of paragraph 6.

6. Mr. MARIN BOSCH (Mexico) said that, although he did not wish to raise difficulties at the present late stage of the Committee's work, he continued to think that it would be more logical if paragraph 6 was placed before paragraph 5, thus reflecting the actual sequence of events.

7. The CHAIRMAN said that one solution might be to place paragraphs 6 and 7 before paragraph 5, since the suggestions referred to in paragraphs 6 and 7 had a somewhat different status to the French proposal, which had been formally submitted in a document (A/AC.188/L.20) and discussed in plenary.

8. After a discussion in which Mr. de GOUTTES (France), Mr. HOFSTEE (Netherlands), Mr. MACAULAY (Nigeria), Mr. RIOS de MARIMON (Chile), Mr. MARIN BOSCH (Mexico), Mr. ROSENSTOCK (United States of America) and Mr. SCIOLLA LAGRANGE (Italy) took part, the CHAIRMAN suggested that paragraph 6 should be placed before paragraph 5, in order to reflect the chronological order of events, and that the Secretariat should be requested to make such drafting changes as were necessitated by that modification.

9. It was so decided.

10. The CHAIRMAN recalled that, at the previous meeting, the Chairman had announced a number of changes to the last sentence of the present paragraph 6. Subsequent consultations had revealed that some members would like that sentence to be further modified, so as to read: "This suggestion, which reflected a spirit of conciliation on the part of the said group, was well received by a number of members of the Working Group, who regarded it as containing a constructive approach for negotiations." If there was no objection, he would take it that the Committee agreed to that change.

11. It was so decided.

12. Mr. ATTAF (Algeria), referring to the French text of the present paragraph 6, said that the word "énoncé" contained in the quotation should be replaced by "consacré" in order to conform to the original English text.

13. The CHAIRMAN said that the Secretariat would be requested to amend the French text accordingly. It would also be requested, if the Committee had no objection, to note in the text - possibly as a paragraph 4 bis - that the Working Group had also before it the documents contained in the annexes to the report of the Committee on its first session (A/32/39) a/, and to include a foot-note listing the document symbols concerned.

14. It was so decided.

a/ Official Records of the General Assembly, Thirty-second Session, Supplement No. 39.

15. Paragraphs 5, 6 and 7, as amended, were approved.

Paragraphs 8 and 9

16. The CHAIRMAN, referring to paragraph 8 of document A/AC.188/L.22, recalled the suggestion made at the previous meeting by the representative of Mexico to the effect that the second and third sentences should be deleted, as relating to informal negotiations which had not taken place within the framework of Working Group I.

17. Mr. SIMANI (Kenya) noted that a statement concerning the negotiations had been made to Working Group I by the representative of the Federal Republic of Germany. However, the negotiations had been conducted on an informal basis, outside Working Group I as such.

18. The CHAIRMAN said he thought that the prolonged nature of the discussions and the strenuous efforts made to reach an agreement should be a matter of record. He wondered whether the Committee would agree to the insertion, at the beginning of the first sentence, of the words "As a result of intensive and prolonged negotiations,". Speaking as the representative of the Federal Republic of Germany, he said that he would nevertheless not insist on a full reference to the statement made to the Working Group by his delegation.

19. Mr. MARIN BOSCH (Mexico), supported by Mr. SIMANI (Kenya), said that the text of paragraph 8 should reflect the efforts made but that the statement in question should not appear in an official document.

20. Mr. ROSENSTOCK (United States of America), referring to paragraph 8, said that the gap between the negotiating groups had indeed been narrowed but that some delegations, including his own, had been unable to go further. At the request of another delegation, he had given an indication of what, in his view, the remaining issues were and what form an over-all agreement should take. However, one key delegation had stated, two and a half days before the end of the meetings, that it had no instructions to discuss further issues until the scope of the future convention had been defined. Following an exchange of views, during which his delegation had expressed strong feelings, it had been agreed to consider the matter further.

21. The United States delegation had no objection to an abbreviated text for paragraph 8, but felt that the text as it stood truly reflected what had taken place.

22. The CHAIRMAN said that, if it was decided to retain the second sentence of paragraph 8, the words "the desired results" might be replaced by the words "an agreed solution".

23. Mr. MARIN BOSCH (Mexico) said that he would prefer the second and third sentences of paragraph 8 to be deleted and the words "As a result of intensive and prolonged negotiations" to be inserted at the beginning of the first sentence, as suggested earlier by the Chairman. Concerning the remarks made by the United States representative he wished to go on record as stating that, when his delegation participated in an informal contact group, it did not wish the fact to be reflected in the official records.

24. Mr. KAWAMURA (Japan) said that, if the second and third sentences of paragraph 8 were deleted, the reader would be left in the air. In some form or other, the results of the negotiations would have to be indicated.

25. Mr. OMAR (Libyan Arab Jamahiriya) suggested that paragraphs 8 and 9 should be combined.

26. Mr. MACAULAY (Nigeria) said that he agreed with the representative of Mexico that there should be no report on negotiations in informal contact groups. It was pointless to say that delegations were not ready to take a definitive stand. "Definitive stands" were taken by Governments in an official forum and not by members of informal contact groups. It could be said that the negotiations had led to no agreed solution since that was a purely factual statement.

27. The CHAIRMAN said that, if paragraphs 8 and 9 were combined, a bridging sentence would be required.

28. Mr. DICKSON (Canada) proposed a combined paragraph consisting of the first sentence of the existing paragraph 8; a new sentence to read: "Although the negotiations did not lead to an agreed solution at this stage, it was particularly stressed at the last meeting of the Working Group that considerable progress had been made."; and the second sentence of the existing paragraph 9.

29. The Canadian proposal was adopted.

30. Paragraphs 8 and 9, as amended, were approved.

31. The CHAIRMAN reminded the Committee that a reservation clause would be inserted either in the Committee's report or in both the reports of the Working Groups to read: "This report reflects informal discussions which do not prejudice the final decisions of States."

32. The draft report of Working Group I (A/AC.188/L.22) as a whole, as amended, was approved.

Draft report of Working Group II (A/AC.188/L.23)

33. The CHAIRMAN invited the Committee to consider the draft report paragraph by paragraph.

Paragraph 1

34. Mr. de GOUTTES (France) proposed that the words "that were not controversial" in the first sentence of paragraph 1 should be replaced by the words "which raised only legal problems".

35. Mr. SIMANI (Kenya) said that the French proposal was unacceptable, since the wording of paragraph 1 should reflect the mandate given to Working Group II (see 25th meeting, para. 1) and the words "that were non-controversial" formed part of that mandate.

36. To his recollection, it had also been specified that the Working Group would report regularly to the plenary Committee on the progress of its work.

37. The CHAIRMAN said that it had certainly been the general impression of members that the Working Group would report regularly to the plenary Committee, but no decision on that point had actually been taken.

38. Mr. MACAULAY (Nigeria) said that the mandate given to Working Group II referred to aspects of the draft convention "that were non-controversial or on which Working Group I had come to an agreement". He thought that the whole wording of the mandate should be inserted in paragraph 1.

39. Mr. VALDEVIT (Italy) proposed that the words "that were not controversial" be replaced by the words "that, although controversial, were of a technical and legal nature".

40. The CHAIRMAN said that the point to be decided was whether or not the exact wording of the Group's mandate was to be reproduced.

41. Mr. OMAR (Libyan Arab Jamahiriya) said he preferred the original wording of the sentence, since Working Group I had also dealt with legal matters.

42. Mr. de GOUTTES (France) suggested, as a compromise, that the word "generally" be inserted between the words "not" and "controversial".

43. Mr. OMAR (Libyan Arab Jamahiriya) said that some of the articles dealt with were definitely controversial and, consequently, the word "generally" was not very appropriate.

44. Mr. MACAULAY (Nigeria) said that the task entrusted to Working Group II had, in fact, been to deal with the drafting aspects of the proposed convention. The most appropriate solution would simply be to state what work it had done.

45. Count SCHIRNDING (Federal Republic of Germany) said that summary records, being summaries, did not necessarily reflect every shade of meaning. The Committee was entitled to interpret the mandate of Working Group II to the extent of inserting "generally".

46. Mr. MARIN BOSCH (Mexico) said that his delegation was able to accept the insertion of the word "generally" in paragraph 1 of the draft report of Working Group II, provided that the word was not used in the Committee's report to the General Assembly.

47. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished the phrase "that were not controversial" to be replaced by the words "which were not generally controversial or on which Working Group I had come to an agreement".

48. It was so decided.

49. Mr. CHAMBERLAIN (United Kingdom), referring to the remarks made by the representative of Kenya, said he did not think it essential to include a reference to the need for Working Group II to report to the plenary Committee, particularly as paragraph 11 of the Committee's draft report (A/AC.188/L.21) referred to reports made by the Chairmen of the two Working Groups to the Committee in plenary.

50. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished to keep the rest of paragraph 1 as it stood.

51. It was so decided.

52. Paragraph 1, as amended, was approved.

Paragraphs 2 to 4

53. Paragraphs 2 to 4 were approved.

Paragraphs 5 to 34

54. The CHAIRMAN said that the words "It was agreed" in paragraph 15 did not truly reflect the discussion on the opening sentence of article 5, paragraph 1, and should be corrected to read "There was a strong trend". Similarly, the opening words of paragraph 27 and paragraph 28 should be amended to read "In view of the trend towards the enlargement of ...". The latter part of those paragraphs would then read: "it would be necessary to make in article 8 the required consequential change".

55. Mr. de GOUTTES (France) said with reference to paragraphs 27 and 28 that to complete the changes suggested by the Chairman, the words "il a été décidé de modifier en conséquence ..." in the last line of the French version should be replaced by the words "il faudrait, le cas échéant, modifier en conséquence ...".

56. The CHAIRMAN said that, if there was no objection, he would take it that the Committee agreed to those changes.

57. It was so decided.

58. Paragraphs 5 to 34, as amended, were approved.

59. The draft report of Working Group II (A/AC.188/L.23) as a whole, as amended, was approved.

ADOPTION OF THE REPORT

Draft report of the Ad Hoc Committee (A/AC.188/L.21)

60. Mr. LOUKIANOVICH (Byelorussian Soviet Socialist Republic), Rapporteur, introducing the draft report of the Committee on its 1978 session (A/AC.188/L.21), said that the report was a factual statement of the Committee's work. It would incorporate the reports of Working Groups I and II, as amended and approved at the present meeting, which reflected the content and results of the Committee's deliberations in some detail. The report would also include any recommendation which the Committee might adopt concerning its future work in the light of the discussions held.

61. At its first session, the Committee had decided to annex to its report the summary records of its meetings. The same practice might be followed in the case of the present report.

62. Paragraph 10 of the report, which referred to the establishment of two Working Groups and described their mandates, should be amended in accordance with the decisions taken concerning the reports of the Groups.

63. He thanked the Secretariat, the representative of the Secretary-General and the Legal Counsel for their invaluable assistance in preparing the report.

64. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished to annex to its report the summary records of its meetings.

65. It was so decided.

66. Count SCHIRNDING (Federal Republic of Germany) said that his delegation wished to propose the following draft resolution, which was on the lines of the recommendation adopted by the Committee at its previous session (A/32/39, para. 14):

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

Recalling General Assembly resolutions 31/103 of 15 December 1976 and 32/148 of 16 December 1977,

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-third session should invite the Ad Hoc Committee to continue its work in 1979."

67. Mr. PETROUKHIN (Union of Soviet Socialist Republics) said that his delegation did not object to the proposed draft resolution, which was in keeping with the proposals made by the Soviet Union in the Sixth Committee at the thirty-second session of the General Assembly.

68. The CHAIRMAN said that, if there was no objection, he would take it that the draft resolution was adopted by consensus.

69. It was so decided.

70. The draft report of the Ad Hoc Committee (A/AC.188/L.21) was adopted, subject to the amendments and additions indicated.

CLOSURE OF THE SESSION

71. Mr. de GOUTTES (France) said that his delegation, which held the Chair of the Western group to the Sixth Committee of the General Assembly, wished to associate itself with the tribute paid to the officers of the Committee at the current session and to commend the delegation of the Federal Republic of Germany and others for the efforts they had made throughout the session to overcome the major obstacles that still remained and to make progress while avoiding useless confrontation and misunderstanding. As a result of that positive approach, the Committee had had a very favourable atmosphere in which to work at the current session. Much had been accomplished at the technical level, since a consensus had been reached on most of the provisions of nine articles of the draft convention. There were of course still a number of key problems to be resolved - the preamble, the definition of the taking of hostages and the scope of the convention - but the positions of delegations had been clarified in the course of the discussions and a number of misunderstandings had been dispelled. His delegation hoped that, in submitting its amendments, it had made an effective contribution to the work of clarification.

72. Mr. ZVIRBUL (Union of Soviet Socialist Republics) delivering a statement prepared by Mrs. Z. V. Mironova, Head of the USSR delegation, said that, as the Committee had decided to recommend that it should be invited to hold a further session, his delegation wished to express its views regarding the prospects for the Committee's future work. At the present session, delegations had achieved a rapprochement in their views as a result of intensive work, but despite all the efforts made to reach an acceptable compromise, especially in Working Group I and in the informal consultations held, the desired results had not been obtained and questions of principle had had to be left unagreed. As all representatives were anxious to take part in the drafting of the future convention, his delegation wished to stress that the success of their efforts would largely depend on how far they were prepared to take the realities of the present-day world into account. The work done in the Committee had narrowed the differences between legal systems and some positive results had been achieved, but the experience gained should be applied to solving the more acute political issues as well. In considering other aspects of the future convention, the Committee should not forget general issues relating to the taking of hostages, which was one of the manifestations of international terrorism. His country was opposed in principle to terrorism, since it disrupted normal diplomatic activities and contacts, as well as international transport and meetings. Its position had been expounded by Mr. Gromyko, the Foreign Minister of the USSR, at the General Assembly in 1972 and his delegation had been guided by those same principles in the work of the Committee.

73. It would be advisable for the Committee to try to encourage more States to accede to or ratify the conventions that already existed and to be scrupulous in fulfilling the corresponding obligations as a way of helping to solve some of the basic problems.

74. At the present session, attention had been given to the proposed scope of the convention and the question of national liberation movements. His delegation was opposed to attempts to assert the right of such movements to take hostages in the struggle for their legitimate causes, and the representatives of non-aligned countries had convincingly refuted such assertions. The Committee had achieved a measure of success in that respect too, which had been one of the main obstacles to the preparation of the convention. His delegation supported the non-aligned countries' proposal to mention the question of national liberation movements in the future convention, as being a basis for compromise. His delegation also considered that the convention should establish clear provisions forbidding any attempts to involve States in the taking of hostages and obliging States to take measures to bring the offenders to book. If the members of the Committee continued to work constructively together, some progress could be made in that direction, provided the Committee was equally constructive in its approach to general provisions of a legal and political nature relating to the taking of hostages. Efforts should also be made to ensure that the convention could not be used as a pretext for infringing the territorial integrity and sovereignty of States.

75. Mr. MACAULAY (Nigeria) said that, as a member of the non-aligned group and also in his capacity as representative of Nigeria, he wished to thank the delegation of the Federal Republic of Germany and others for their untiring efforts at the present session. He was glad to see that the question of hostage-taking and of liberation movements was now recognized to be a world-wide phenomenon instead of one peculiar to certain countries only. That new recognition had

conditioned the discussions at the present session which, unlike those at the first session of the Committee, had been distinguished by the absence of polarization. He hoped that the same atmosphere would prevail at the third session, so that certain countries would no longer feel themselves to be singled out for reprobation.

76. All the delegations to the Committee were exercised by the problem of how to convey their ideas successfully to Governments - as well as to the press, which might use its powers to mislead public opinion. He hoped that those members of the press who had been following the work of the Committee would appreciate its difficulties and realize that it was in the best interests of all countries for the facts to be made known plainly to Governments.

77. Although not all the important matters that required attention had been dealt with at the present session, in view of the spirit of give and take that had prevailed he was confident that it would be possible at the next session to complete a convention that would be generally acceptable and would dispel for ever the fear of national liberation movements.

78. Count SCHIRNDING (Federal Republic of Germany) said that a remarkable spirit of compromise had prevailed at the present session of the Committee. The Committee had nevertheless been unable to accomplish its task, but that was no reason for discouragement, since it was now apparent that the legal problems presented by the future convention could be settled without undue difficulty, although the Committee's achievements in that respect depended essentially on the solution of the political problems involved. Progress had been made on what had seemed to be the most thorny issue of all - that of the relationship between the future convention and the situation of liberation movements that were recognized as such by the United Nations and its regional organizations, and the differences had been narrowed to such an encouraging extent that it seemed likely that the remaining issues could be cleared up early in the next session, if, as the representative of Algeria had said at the previous meeting, the spirit of untiring dedication and the readiness to compromise apparent at the present session continued to prevail.

79. Mr. OLSZOWKA (Poland) said that his delegation wished to associate itself with others in expressing its deep appreciation of the spirit of compromise that had prevailed during the session, and which had enabled delegations to narrow their differences on various important matters, thereby achieving some positive results and making it possible for the Committee to embark upon its third session on a new and better basis.

80. He wished to explain his delegation's position on certain matters of principle. His delegation considered that the taking of hostages was part of the broader problem of international terrorism and, as such, should be condemned. In many cases, however, the taking of hostages was directly connected with specific political and social conditions: consequently, a comprehensive solution could be devised only if the problem were dealt with on the political plane as well. His delegation also considered that there should be nothing in the future convention that would prejudice the inalienable right of peoples to strive for their freedom against colonialism and foreign domination. It might be easier for the Committee to achieve results with regard to the most difficult aspect,

that of the scope of the convention, if it were to adopt an approach that had proved successful in the case of some existing international instruments. In that connexion, he referred in particular to paragraph 4 of General Assembly resolution 3166 (XXVIII) of 14 December 1973 and to article 1, paragraph 4, of the Additional Protocol b/ to the Geneva Conventions of 1949 regarding the protection of victims of international armed conflicts. His delegation had pointed out in the Committee that, in its view, the essential thing was to reach agreement on the definition of the taking of hostages and of the term "hostage" itself. In a spirit of compromise it had accepted a different approach and had not objected when the Committee had begun by taking up less important issues, but it wished to stress that the crux of the matter lay in the definitions themselves.

81. The Polish delegation was ready to do all in its power to further the work of the Committee and bring it to a successful conclusion at the following session.

82. The CHAIRMAN declared closed the 1978 session of the Ad Hoc Committee.

The meeting rose at 5.55 p.m.

b/ See A/32/144, annex I.

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