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Summary record of the 1150th meeting

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themselves with the Secretary-General's preoccupations and policies is undoubtedly a matter for them to decide, the Secretary-General trusts that they will wish to assist him in attaining objectives which, in his view and in present circumstances, are in the best interest of the Organization."

The meeting rose at 5.15 p.m.

1150th MEETING

Wednesday, 3 May 1972, at 11.20 a.m.

Chairman: Mr. Richard D. KEARNEY

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Bilge, Mr. Castañeda, Mr. Hambro, Mr. Nagendra Singh, Mr. Quentin-Baxter, Mr. Reuter, Mr. Rossides, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Organization of Work

1. The CHAIRMAN said that at the previous meeting it had been decided that the officers of the Commission, together with the special rapporteurs and former chairmen, should meet to discuss the organization of work, in particular the method of dealing with item 5 of the agenda, the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law. As a result of their discussion, it was suggested that a working group consisting of Mr. Ago, Mr. Hambro, Mr. Sette Câmara, Mr. Thiam and Mr. Ushakov, with Mr. Tsuruoka as Chairman, should be set up to review the problems involved and prepare proposals for submission to the Commission. He himself would attend meetings of the working group as required and give any explanations that might be requested regarding the draft articles he had prepared (A/CN.4/L.182). If there were no objections, he would take it that the Commission accepted that suggestion.

It was so agreed.

2. The CHAIRMAN said that with regard to the immediate work of the Commission it was proposed that a general discussion be started at once on item 5. That discussion might take up another two meetings, following which the Commission could begin to consider item 1 (a), succession of States in respect of treaties. It would continue consideration of that item until it had reviewed all the draft articles prepared by the Special Rapporteur. That would take approximately five weeks, so that the Commission could defer, for the time being, any further discussion of the organization of its work on the other items on the agenda.

3. There was a strong feeling that those other items, which were important topics of international law, should not be neglected, but that ways and means should be found of giving them some attention. If the Commission was going to achieve the results expected of it, however,

serious thought would have to be given both to the idea of simplifying its methods of work to some extent and to the possibility of holding longer sessions or extraordinary sessions.

4. Mr. CASTAÑEDA said that the Commission should so organize its work as to be able to allocate at least two weeks to the discussion of item 2, the important topic of State responsibility, and at least one week to item 1 (b), succession of States in respect of matters other than treaties. Some attention should also be given to item 6 (a), review of the Commission's long-term programme of work. That would mean speeding up the work on item 1 (a), perhaps by holding two meetings a day.

5. The CHAIRMAN said that all possible methods of speeding up the work of the Commission would be explored. Members could help by exercising the utmost restraint and keeping their statements as brief as possible.

Question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law

(A/CN.4/L.182)

[Item 5 of the agenda]

6. The CHAIRMAN invited the Commission to begin a general discussion of item 5 of its agenda, the question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law, which it was called upon to consider under section III, paragraph 2, of General Assembly resolution 2780 (XXVI).

7. He had prepared a working paper on the subject (A/CN.4/L.182) containing a set of draft articles concerning crimes against persons entitled to special protection under international law. For the purposes of the general discussion, members might find it convenient to consider the various problems raised by item 5 in the order in which they were treated in those draft articles.

8. Mr. SETTE CÂMARA said that the topic had been defined in General Assembly resolution 2780 (XXVI) and the Commission would, of course, have to abide by the terms of that resolution. Nevertheless, he felt obliged to place on record his views on the limitation of the topic to diplomatic agents and other persons entitled to protection under international law. Such persons were already the subject of a series of provisions assuring them of special protection, such as the provisions on personal inviolability in the 1961 Vienna Convention on Diplomatic Relations,¹ whereas the acts of terrorism which had unfortunately become so frequent in recent years were directed against other persons as well. Many innocent persons had been the victims of kidnapping, and even in some cases of cold-blooded murder, without the international community being able to take any action.

9. It was worth noting that under the Hague Convention of 16 December 1970,² the unlawful seizure of

¹ United Nations, *Treaty Series*, vol. 500, p. 110, articles 29 *et seq.*

² See *International Legal Materials*, vol. X, number 1, January 1971, p. 133.

aircraft had been made an international crime. Any such seizure constituted a crime against the peace of mankind and endangered the lives of innocent persons. The same applied to other acts of terrorism, all victims of which were entitled to consideration.

10. He could speak with some authority on the question because his country had had very sad experience in the matter. The concern of the Brazilian authorities for the life and freedom of diplomatic agents had been so great that they had been prepared to do anything to protect them. Although there had been four major cases of kidnapping of diplomatic agents in Brazil, not one of the victims had suffered any harm, because the Brazilian authorities had gone to the extreme length of negotiating with the kidnappers in order to save them.

11. He was not making any reservation on the discussion of the topic, but wished to place on record his regret that the whole problem was not going to be discussed on a wider basis.

12. Mr. TSURUOKA said he wished to express his appreciation to the Chairman for the valuable working paper he had submitted, which, although not an actual basis for discussion, would be of great assistance to the Commission in dealing with the present topic.

13. He felt some sympathy for the ideas expressed by the previous speaker, but considered that the Commission would be performing a valuable service to the international community by starting work immediately on the question of the protection of diplomatic agents and certain other persons, as requested by the General Assembly.

14. Concern had been rightly expressed by many States regarding recent incidents involving offences against such persons, who included those entitled to special protection both under general international law and under international conventions. Such offences affected not only friendly relations between States, but also the interests of the international community as a whole. Effective international measures should be taken to prevent them, and the action taken by the General Assembly would therefore be welcomed.

15. He supported the principle of preparing a set of draft articles dealing with offences against diplomatic agents and other persons entitled to special protection, but would like, first, to comment on a few important points regarding the contents of the draft.

16. It was essential first to decide who should be entitled to special protection. Should the list include persons other than diplomatic and consular agents and if so, what other persons? His own view was that the list should be restrictive. Recent events showed that offences against diplomatic and consular agents were in the main politically inspired or committed for purposes of extortion. Any future convention should therefore deal only with persons who were especially valuable for purposes of political extortion or publicity, namely, Heads of State or government, members of imperial or royal families, members of the cabinet and other high-ranking government officials of ministerial rank, and diplomatic and consular agents.

17. The offences to be made punishable under the convention should include such acts as the murder or kidnapping of such persons if committed with the intention of extorting anything of value, of forcing the release of offenders or alleged offenders, or of changing important government actions or policies. Any attempt to commit such acts or any participation in them as an accomplice should also be made punishable.

18. Any future international instrument on the subject should require contracting States to make the offence punishable if committed within their territory or by one of their nationals. Contracting States should also give serious consideration to making the offence punishable whenever one of their own nationals was the victim.

19. A provision should be included in the draft to the effect that severe penalties should be imposed for all such offences.

20. The question of the advisability of qualifying such offences as "international crimes" should be given very careful thought in view of the variety of meanings attached to that term; his own feeling was that it was preferable not to introduce that concept into the draft.

21. On the question of jurisdiction, a contracting State should be required to take the necessary measures to establish its jurisdiction over the offence in three cases: first, when the offence was committed in its territory; secondly, when one of its nationals had committed the offence; and, thirdly, when one of its nationals was the object of the offence. A contracting State should also be permitted to establish its jurisdiction when the alleged offender was in its territory and the State did not extradite him to another State with jurisdiction over the offence.

22. He had some doubts about the desirability of including a provision to the effect that the offence should not be considered as a political offence. On the other hand, it was essential to include a provision requiring a contracting State in whose territory an alleged offender was found to extradite him or, if it did not extradite him and if it had established its jurisdiction, to submit the case to the competent authorities for prosecution.

23. Mr. ROSSIDES said he agreed with the view that all victims of terrorism should be afforded protection. The fact was, however, that the General Assembly had restricted the topic to diplomatic agents and other persons entitled to special protection under international law, and it had done so not merely out of a desire to underline the privileges those persons enjoyed; there were sound reasons for concentrating on the problem of offences against them.

24. The first reason was that the free use of diplomats, and of such persons as emissaries of the United Nations, was essential to the progress of international understanding. Those persons played a very important part in the furthering of international relations.

25. The second was the practical reason that such persons had unfortunately become a special target of terrorist attacks. A diplomatic agent representing a country which had nothing to do with the real or imaginary injustices complained of by the terrorists might be kidnapped or even murdered by them. He was an easy prey

because he was often less well guarded than local dignitaries. Again, terrorists believed that the local authorities would attach importance to securing the release of a diplomatic agent and he was therefore regarded as a useful bargaining counter.

26. Mr. BILGE said that the set of draft articles prepared by the Chairman met a pressing need of the international community, which for some years had been the victim of a new form of piracy, at first committed against aircraft in flight, but more recently on the ground as well. Since the international community had already tried to protect itself against piracy in the air by its recent adoption of the Convention for the Suppression of Unlawful Seizure of Aircraft, on which the Chairman had drawn in preparing his draft, a similar instrument for the suppression of piracy on the ground would be timely. The special feature of that new form of piracy was that it was always carried out by a clandestine organization, so the draft articles should take that into account.

27. The Chairman has restricted the application of his draft articles to diplomatic and consular agents and persons with a similar status, but it should perhaps be extended at least to privileged foreigners, in other words, to foreigners enjoying a special status under a treaty.

28. It would also be desirable to add to the motives for the international crimes listed in article 1 attempts to influence public opinion, since the purpose of the acts committed against the persons whom the draft was designed to protect was generally to arouse public opinion against the government in power.

29. The reference in article 1 to the notion of complicity should be supplemented by adding that of membership of a clandestine organization.

30. In article 6, while it was right to invite States to cooperate in preventing international crimes, the draft should go further and invite them to refrain from giving any assistance to clandestine organizations.

31. He would also be in favour of providing, in article 10, for an accelerated procedure for prosecuting international crimes, not merely the procedure applicable in the case of an offence of a serious nature under the law of the State concerned, and of referring, in article 13, to the appropriate covenant on human rights.

32. Lastly, it would be useful for the Commission to know whether any action on the matter had been taken by other international bodies, in particular the Council of Europe, and, if so, what progress they had made.

33. The CHAIRMAN said that the subject had been discussed at some length at a recent meeting of the European Committee on Legal Co-operation; perhaps the Secretariat could provide a summary of that discussion.

34. A Latin American conference had also been convened under the auspices of the Organization of American States to prepare a draft convention on the subject. At that conference, there had been considerable differences of opinion as to the scope of the proposed convention, which, in the view of some Latin America States, should not be limited to the protection of diplomats, but should cover all victims of terrorism.

35. Mr. HAMBRO said that, to begin with, he wondered whether it was usual or proper for the Commission to discuss the question whether a convention of that kind was necessary. If it was proper for the Commission to discuss that question, he could say that he himself doubted whether the proposed convention would serve any useful purpose.

36. Mr. Sette Câmara had raised the interesting question whether protection against terrorism should be provided only for diplomats. Mr. Rossides had rightly pointed out, first, that the General Assembly had requested the Commission to prepare a set of draft articles on the question of the protection and inviolability of diplomatic agents and, secondly, that diplomatic agents came within a special category of persons.

37. On 16 November 1937 the League of Nations had adopted in due form a Convention for the Prevention and Punishment of Terrorism;³ but that Convention had not been ratified by a single State and had never entered into force. He wondered, therefore, whether it would not be correct and useful for the Rapporteur to state in his report that some members had doubted whether it was proper to ask the Commission to prepare an entirely new treaty on that subject. He feared that if the Commission were to undertake that task at the present session, it would be unable to work with the care and sound scientific method which had made it so useful an organ of the United Nations.

38. Lastly, he suggested that the Chairman should include, in the long list of definitions contained in his working paper, a definition of the term "international crime".

39. Sir Humphrey WALDOCK, speaking on a point of order, said that to expand the scope of the proposed convention to include acts of terrorism in general would be going beyond the Commission's terms of reference, which, as laid down by the General Assembly, referred essentially to the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law.

40. On the question of the utility of a convention on that subject, he would point out that the Commission had been canvassed at its last session and that its decision to draft a convention was not a sudden inspiration. The question of the utility of such a convention was one which could not be discussed until a text was available.

41. Mr. CASTAÑEDA asked whether the text prepared by the Organization of American States was available.

42. The CHAIRMAN said he agreed with Sir Humphrey Waldock that the Commission was working under a mandate from the General Assembly and that it was therefore no longer proper to discuss the question of the utility of the proposed convention.

43. In reply to Mr. Castañeda's question, he said that the Secretariat had already circulated, at the previous session, the draft convention prepared by the Organiza-

³ See Hudson, *International Legislation*, vol. VII, p. 862.

tion of American States⁴ and the document should still be available.

44. Mr. ALCÍVAR said that the mandate given to the Commission by the General Assembly was absolutely definite; the General Assembly had requested it to study the question "as soon as possible", with a view to preparing a set of draft articles.

45. Mr. SETTE CÂMARA said that he had been impressed by the doubts expressed by Mr. Hambro concerning the utility of the proposed convention. Owing to lack of time, the question had not been discussed by the Commission at its previous session. It had not been on the Commission's agenda, but had merely been mentioned in its report,⁵ it had been on that basis that the General Assembly had issued its mandate.

46. Since the General Assembly had not set any deadline for the production of the draft articles, but had only asked the Commission to study the question "as soon as possible", the Commission should not proceed too hastily. Before beginning to draft a text, it should consider the observations of Member States; it should also discuss, in the working group, the points raised by Mr. Hambro.

47. Mr. USTOR said he must point out that paragraph 134 of the Commission's report on the work of its twenty-third session stated that: "In considering its programme of work for 1972, however, the Commission reached the decision that, if the General Assembly requested it to do so, it would prepare at its 1972 session a set of draft articles on this important subject with a view to submitting such articles to the twenty-seventh session of the General Assembly". That was a decision by the Commission and it would be very awkward if a contrary decision were taken at the present session.

48. Mr. SETTE CÂMARA said that the Commission's decision to prepare a set of draft articles had been contingent on its being requested to do so by the General Assembly. What the General Assembly had requested it to do, however, was "to study as soon as possible, in the light of the comments of Member States, the question... with a view to preparing a set of draft articles... for submission to the General Assembly at the earliest date which the Commission considers appropriate".⁶ The General Assembly had not set any deadline and it was not necessary for the Commission to complete the work at the present session.

49. Mr. AGO said that the Commission was not a political, but a technical body and it was for the General Assembly to decide on the utility of a convention. What the Commission had to do was to prepare, as quickly as it could, a technical draft—the best draft possible—so that the political bodies could take a decision with all the material before them.

50. Mr. USHAKOV said that the utility of preparing a set of draft articles was no longer open to discussion since the Commission had already decided to place the item on its agenda.

51. Mr. REUTER said he endorsed Mr. Ago's remarks. Since the matter gave rise to wide differences of political opinion, it would be well to produce alternatives, without spending time on discussing the merits of each one of them.

52. Mr. SETTE CÂMARA said that the only question to be decided by the Commission was the degree of priority to be accorded to item 5.

53. Mr. BARTOŠ said that the question of the utility of a draft convention should not be discussed, since the item was already on the agenda. Nor was there any need to discuss its urgency, which had been recognized both by the majority of the Commission and by the General Assembly. Of course, the Commission was not called upon to give an opinion on the advisability of concluding a convention, but when presenting its technical legal opinion to the General Assembly as requested, it could not in good faith refrain from informing that political body of its views on the matter.

54. He himself was convinced that a convention would be useful. Since the Commission, at its twenty-third session, had recognized the importance and the urgency of the matter, it only remained to prepare the best possible text without delay. In doing so, it should draw on all other existing texts, such as the 1937 Convention for the Prevention and Punishment of Terrorism, in other words, on any precedent based on the notion of international responsibility and the need for international collaboration in that field, which were well brought out by the draft prepared by the Chairman.

55. Mr. NAGENDRA SINGH suggested that the Commission discuss the question first in plenary, then in the Working Group, and then once again in plenary. Since the General Assembly obviously regarded the matter as urgent, the Commission should produce something for its consideration; the General Assembly could then take whatever further steps it thought fit. In point of procedure, they would be following all the necessary stages traditional with the Commission, except that there would be no Special Rapporteur for the subject and two or three years would not be spent in submitting preliminary reports.

56. The CHAIRMAN, referring to the doubts expressed by Mr. Hambro about the utility of the proposed convention, said he would not like to think that there were no legal means which the Commission could devise for providing the necessary protection for diplomatic agents. He was convinced that there would be real value in such an attempt and that the Commission ought to do what it could to strengthen international law in that respect.

57. Sir Humphrey WALDOCK said that the work on item 5 at the present session would not, of course, be definitive. The Commission would merely produce a set of draft articles for the General Assembly, which the latter would comment on and return to the Commission for completion at its next session.

The meeting rose at 12.50 p.m.

⁴ Convention to prevent and punish acts of terrorism; see *International Legal Materials*, vol. X, number 2, March 1971, p. 255.

⁵ See *Yearbook of the International Law Commission, 1971*, vol. II, part one, document A/8410/Rev.1, paras. 133 and 134.

⁶ General Assembly Resolution 2780 (XXVI), section III, para. 2.