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**Summary record of the 1151st meeting**

Topic:  
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## 1151st MEETING

Thursday, 4 May 1972, at 10.15 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. Tsurooka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldoock, Mr. Yasseen.

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

(A/CN.4/253 and Add.1 ; A/CN.4/L.182)

[Item 5 of the agenda]  
(continued)

1. The CHAIRMAN invited the Commission to continue consideration of item 5 of the agenda.
2. Mr. TAMMES said he shared the doubts expressed by other speakers as to whether it would be possible to prepare draft articles on crimes against protected persons at the present session with due reflection, despite the valuable preparatory work done by the Chairman. There were far too many issues of general international law involved in the topic for the Commission to have all the relevant material before it at the present stage and to carry out its work of progressive development of international law in the manner required by the provisions of article 16 of its Statute.
3. The first, and perhaps the most important issue, was that of the concept of a "political offence", which had survived all past attempts to narrow its scope. It had appeared in a number of conventions hastily formulated in the nineteenth and early twentieth centuries but now almost totally forgotten. It had reappeared in modern international instruments since the Second World War, in particular in the Universal Declaration of Human Rights.<sup>1</sup> The Commission should therefore exercise the greatest caution before making even tentative suggestions to States as to what should be considered a political offence, or what offences should be excluded from the scope of that concept.
4. In the covering letter he had sent to members with his working paper (A/CN.4/L.182), the Chairman had recognized that very serious problems arose, in particular the need to reconcile the right of asylum with protection of the proper functioning of the international machinery, but had arrived at the conclusion that the latter consideration should prevail over the former.
5. Exactly the opposite conclusion, however, was embodied in the Convention to prevent and punish acts of terrorism signed at Washington on 2 February 1971 by

the member States of the Organization of American States.<sup>2</sup> Article 6 of that Convention read: "None of the provisions of this Convention shall be interpreted so as to impair the right of asylum".

6. He also noted that in the Chairman's draft articles it was in effect proposed to depart from the principle of the unilateral qualification of the State in whose territory the alleged offender was found. That principle, however, had been accepted unanimously in a resolution of the General Assembly and was embodied in many national laws, such as the Extradition Act of the Netherlands.

7. He had made those brief references to certain delicate questions not in a spirit of criticism, but only to stress that the subject-matter was much too complex for the Commission to undertake the preparation of merely tentative draft articles. It was true that the Commission had adopted that course for the topic of relations between States and international organizations, but the precedent was not a valid one because those relations were a relatively minor problem compared with the protection of diplomats and assimilated persons. Not only was the former topic of less importance in itself, but it did not involve the same volume of legal material.

8. He sympathized with the view that the draft was rather too narrow in its definition of the protected persons. In another sense, however, it was much too wide, in that article 3, paragraph 1 included Heads of State and other high-ranking persons within the scope of the phrase "person entitled to special protection under international law". In fact, those persons were in a different position from diplomatic agents and the other persons entitled to personal inviolability mentioned in paragraph 2 of the same article. A Head of State or other high-ranking persons would often be the end of a political offence, whereas the whole purpose of the draft was to prevent diplomatic agents and assimilated persons from being made the means of a political offence. He was not in favour of treating the two categories in the same way and thought that, on the contrary, an "attentat clause" would have helped.

9. At the previous session, during the discussion on the Survey of International Law<sup>3</sup> in connexion with the review of the Commission's long-term programme of work, he had recommended that the Commission consider resuming the study of a code of offences against mankind and extending the scope of its work to offences of international concern other than those against the peace and security of mankind as conceived in 1949.<sup>4</sup> The present position was that various kinds of offence of international concern were being dealt with piecemeal, with all the undesirable consequences that followed. For example, such piecemeal treatment tended to deprive governments of their necessary freedom of action and ultimately had an effect which was the opposite of that intended.

<sup>2</sup> See *International Legal Materials*, vol. X, number 2, March 1971, p. 255.

<sup>3</sup> A/CN.4/245.

<sup>4</sup> See *Yearbook of the International Law Commission*, 1971, vol. I, p. 364, para. 39.

<sup>1</sup> General Assembly resolution 217 (III).

10. Mr. CASTAÑEDA said he had the most serious misgivings about the proposed procedure. He could find no justification for departing from the Commission's normal practice. There was no particular urgency in the matter; the General Assembly had simply requested the Commission to prepare draft articles "as soon as possible". The Commission itself had stated in its 1971 report that it would prepare a set of draft articles at its 1972 session "if the General Assembly requested it to do so".<sup>5</sup> The fact was, however, that the General Assembly had not requested the Commission to prepare draft articles at the present session. By using the rather vague formula "as soon as possible" it had, if anything, indicated that the Commission was free to undertake that work at the present or at a later session.

11. In 1954 the General Assembly had specified that the draft articles on the law of the sea should be prepared for a particular session of the Assembly.<sup>6</sup> In the case of the codification of the law on diplomatic relations, however, following a complaint by a particular State regarding the ill-treatment of certain of its diplomats, the General Assembly had requested the Commission to undertake the codification of the topic of diplomatic intercourse and immunities "as soon as it considers it possible",<sup>7</sup> and the articles had taken many years to complete.

12. While there was thus no valid argument for adopting emergency measures, there were many good reasons for adhering to the Commission's normal methods of work, which had always produced good results. Those methods ensured that drafts were prepared after careful reflection and had good prospects of general acceptance by governments. In the very few cases, such as that of reservations to multilateral treaties, in which the Commission had prepared a draft at a single session, the result had been a failure. The reason was that those drafts had not been prepared with the necessary deliberation and consultation of governments.

13. There was another important reason for following the normal practice of appointing a special rapporteur responsible for submitting a report to the Commission to facilitate careful consideration of the topic: that was the highly political character of the topic, illustrated by the marked division of opinion in the General Assembly when it had been discussed. Further evidence of that political character was provided by the discussions in the Organization of American States, when certain countries, like Chile, had disputed the need for a treaty of the type proposed, on the grounds that national laws were sufficient for the prevention and punishment of the crimes in question.

14. The Commission had been careful hitherto to remain aloof from political controversies, a fact which partly explained the success of its work. He would urge the greatest caution before any departure was made from that wise practice.

15. The Chairman's draft articles (A/CN.4/L.182) centred round the concept of an "international crime", for which no satisfactory definition had yet been found. It would be difficult to build a set of draft articles on such uncertain ground.

16. Another intractable problem was that of the definition of a "political offence", not to speak of the problem of the acts connected with a political offence. The difficulty of those problems had been demonstrated by the discussions in the Organization of American States on the Convention on the right of territorial asylum. It should be remembered, moreover, that the traditional view was that attacks against Heads of States were considered as political offences and hence as non-extraditable.

17. In the Chairman's draft articles, it was proposed to make certain political offences expressly extraditable. A provision to that effect in an international instrument would constitute a departure from what was virtually a general principle of law; indeed, the law of a great many countries recognized the non-extraditable character of political offences. Certainly, the Commission could not recommend such a departure without first making a very thorough study of the question and canvassing the views of governments.

18. The provision of the 1971 OAS Convention to prevent and punish acts of terrorism, cited by Mr. Tammes, had been introduced on the proposal of the Mexican delegation, precisely in order to safeguard the right of territorial asylum. Respect for the right of territorial asylum was traditional in Latin America, but it concerned every State in the world. The problem was different from that of diplomatic asylum, in respect of which Latin American practice had its special features.

19. He wished to draw attention to another provision of the same OAS Convention, namely, article 3 which laid down that persons charged with or convicted of any of the crimes referred to in article 2 of the Convention should be subject to extradition under the provisions of the extradition treaties in force between the Parties. Since virtually all bilateral extradition treaties recognized that political offences were not extraditable, that provision had the effect of safeguarding the existing position.

20. In that connexion also, article 3 of the Chairman's draft proposed a totally different rule. The same was true of article 11. In both cases, the Commission should be careful not to depart from the existing rules of international law without very careful study on the basis both of a report by a Special Rapporteur and of government comments on the preliminary articles emerging from the first stage of its work.

21. The Chairman had prepared a very useful working paper, but the Commission should adhere to its normal methods of work.

22. Mr. AGO said he was sorry that members were calling in question conclusions on which agreement seemed to have been reached, namely, that the matter was urgent and that, as it lay rather outside the usual scope of the Commission's work, it called for a rather unusual procedure. At its previous session the Commission had itself decided that if the General Assembly

<sup>5</sup> Op. cit., 1971, vol. II, document A/8410/Rev.1, para. 134.

<sup>6</sup> General Assembly resolution 899 (IX).

<sup>7</sup> General Assembly resolution 685 (VII).

requested it to do so, it would prepare a set of draft articles on the subject at its 1972 session. The Assembly had responded positively, and its recommendation could not be interpreted otherwise than as an invitation to do precisely what the Commission had suggested doing. In any case, as Sir Humphrey Waldo had observed, the draft to be prepared would be merely a basis for discussion by the General Assembly, which would be entirely free to reject it, to transmit it to governments, or to ask the Commission to amend it on particular points.

23. Turning to the substance of the matter, he said that the very real problems involved were perhaps less complicated than had been made out. It was, moreover, typical that, with regard to the scope of the draft, those who were opposed to preparing a convention on the subject should adopt two conflicting positions: some held that even within the limits proposed such a convention would go too far, while others found that it would be too limited and wished to extend it to all cases of terrorism. He certainly appreciated the concern of the latter group, but he believed that there were special reasons for urgent action to protect diplomats, that term being understood in a broad sense.

24. Diplomats already enjoyed special protection in the State in which they resided; that was the whole tenor of the Conventions on diplomatic and consular relations. Thus, so far as the receiving State's obligations were concerned, the existing instruments were perfectly adequate; but could it be said at the present time that the safety of diplomats concerned only the receiving State and the sending State? He did not think so. It must be remembered that the diplomatic function had assumed greater importance with the increase in the number of States and the intensification of international co-operation, which was needed above all by the new States. The world community thus had a common interest in the harmonious development of diplomatic relations, and it was only to be expected that, faced with the increasing number of acts of terrorism against diplomats, it should wish to take steps to provide them with more general protection than they had enjoyed hitherto.

25. Of course, there was no question of passing a political judgment on the movements which were working against the established régime in some countries; one could even sympathize with all those who were fighting for freedom. But that did not mean accepting the use, for internal political struggles, of methods which injured persons who had nothing to do with those struggles and which were detrimental to diplomatic relations all over the world.

26. Since it was in the interests of the international community to prevent the kidnapping of diplomats, inter-State solidarity must come into play; and that was why there were certain similarities—which were brought out in the draft articles submitted by the Chairman—between the measures for protecting diplomats and those for preventing certain activities such as piracy and the slave trade. In that connexion, while it was true that in the nineteenth century piracy, for example, had been called *crimen juris gentium*, he thought that that term should be avoided in the draft under consideration. The

term "*infractio internationale*" ("international crime"), used in the French text, suggested at the present time the notion of an internationally wrongful act by a State, in other words a violation of international law at the inter-State level. But there was no wrongful act by a State if a diplomat was kidnapped on its territory without that State having failed to fulfil any of its obligations. Hence the acts dealt with in the draft belonged solely to internal criminal law, and there was nothing international about them except the concern they caused. It seemed that that idea would be well rendered in English by the expression "crime of international concern".

27. The protection of diplomats took place at two levels, that of prevention and that of punishment; it was at those two levels that the receiving State's obligations normally came into play. Hence international solidarity, too, should come into play at those two levels. As to prevention, the rule should be that a State must ensure that its territory was not used by movements to prepare operations which they could not prepare in the territory of the State where they would ultimately be carried out. As to punishment, it was necessary to prevent the guilty person from escaping punishment by taking refuge abroad. In that matter third States should be left free to choose between two solutions: either to define the acts in question as punishable offences in their internal criminal law and to punish them themselves, or to resort to extradition.

28. That was a thorny problem, for there could be no doubt that the acts in question were political offences. But that was precisely where the value of the proposed convention lay; it must affirm that the fact that the acts in question were political offences was no obstacle to extradition, and that that principle prevailed not only over the provisions of internal criminal law, but also over those of existing bilateral extradition treaties between States.

29. It was, of course, important not to overlook another aspect of the problem: that of safeguarding human rights and ensuring that the guarantees of impartial judicial proceedings were universally and fully observed. There could be no question of exceptional proceedings or of prolonged detention pending a trial which never took place. It was only necessary to guard against measures for remission of the penalty, pardon or amnesty, which would amount to circumventing the convention and making it meaningless.

30. He stressed the need for a text which could be widely accepted by the members of the international community; for if potential offenders knew that there were countries in which they would be assured of impunity or even welcomed as heroes, all the Commission's work would have been useless, if not harmful.

31. He also thought it essential to provide in the convention for a procedure for the settlement of disputes; the idea of compulsory conciliation adopted in the Vienna Convention on the Law of Treaties<sup>8</sup> might usefully be adopted again.

<sup>8</sup> See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 298, article 66.

32. Mr. USTOR said that under present conditions States were compelled to broaden their co-operation and extend it to new fields, and to replace the traditional bilateral forms of co-operation by multilateral arrangements. That process appeared to be taking shape also in the field of criminal law, which States in the past had jealously regarded, and indeed still regarded, as falling within their sovereign and exclusive domain. The conclusion of an international convention concerning crimes against persons entitled to special protection under international law would meet a clearly felt need.

33. The inviolability of diplomatic agents and persons assimilated to them was one of the pillars of international law and an absolute necessity for the maintenance of peaceful relations between States. If that inviolability was placed in jeopardy, it was an absolute right of the international community and even an act of self-defence to devise ways and means of preserving such a basic institution.

34. The usefulness of a convention for that purpose would depend on many factors, the first being whether the Commission would be able to formulate rules which made good law. It would also depend on the political will of States to adopt a convention on that basis, on their willingness to ratify it in sufficient numbers, and on the implementation of its provisions by the parties in good faith. It was to be hoped that all those elements would be present.

35. The draft submitted by the Chairman (A/CN.4/L.182) was a very helpful document. It was largely based on the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft,<sup>9</sup> but there was a striking difference in the terminology used in the two texts. What was simply called an "offence" in the Hague Convention became an "international crime" in the Chairman's draft. It was open to question whether the adjective "international" was appropriate.

36. Article 7 of the draft, which corresponded to article 2 of the Hague Convention, called upon the contracting Parties to make the crimes described in article 1 punishable by severe penalties. Article 4 recognized the jurisdiction of the State in whose territory the crime was committed. The underlying idea of the draft was therefore that the Parties to the convention would bring the crime described in article 1 under their criminal law. The actual penalty to be applied and the criminal procedure to be followed would be governed by the internal law of the country concerned. It could therefore be argued that it would be advisable to follow the example of the 1970 Hague Convention and omit the adjective "international" before the word "crime".

37. There was another matter in which it was desirable to follow the precedent of the 1970 Hague Convention: the use of such controversial expressions as "political offence" should be avoided. Similarly, the problems of territorial and diplomatic asylum should be avoided, in

the interest of achieving the necessary consensus and producing a convention that might prove generally acceptable.

38. Mr. YASSEEN said that the question referred to the Commission by the General Assembly appeared to be urgent because certain political groups seemed to have chosen attacks on diplomatic agents as a means of drawing international attention to the cause they advocated.

39. The preliminary draft articles submitted by the Chairman showed how thorny and controversial was the topic the Commission was called upon to consider. The draft introduced two main concepts: that of an international crime and that of a political offence. An international crime seemed to mean, not a crime committed by a State, in other words a breach of inter-State criminal law, but a crime which, although committed by a private person or persons, constituted a grave danger for the international community, such as piracy or the slave trade.

40. Crimes of that kind came within "universal jurisdiction", which meant that persons committing them were tried in the country in which they were arrested. It was open to question whether there were good grounds for extending universal jurisdiction to crimes committed against diplomatic agents, but the Commission could not take any decision on that point until it knew what the international community thought about it. It would therefore have to wait until it had learned the views of States on the matter.

41. As to the political nature of such crimes, which was often undeniable, the question arose whether it did or did not place them in the class regarded as exceptions to the principle of extradition. There, again, the Commission could not decide without knowing the views of States.

42. In the contemporary world, ideological differences produced different attitudes regarding the reprehensible nature of certain acts; moreover, the problem which the Commission had to study touched on certain fundamental principles of the legal order of several States, such as the right of asylum. The Commission must therefore exercise the greatest discretion if its draft was to be generally acceptable.

43. The Commission was not bound to follow its usual method of work in all circumstances, and in the case in point it would be better to adopt a more flexible attitude in view of the urgency of the work requested of it. He was therefore in favour of making an exception, for once, to the practice of appointing a special rapporteur, and setting up a working group instead. There was every reason to believe that, with the help of the basic documents already before it, the Commission would be able to prepare some provisional general rules on the protection of diplomatic agents at its present session. Since the subject was so controversial it would be advisable, as Mr. Reuter had suggested at the previous meeting, to produce alternatives for submission to governments for comment; but in any event the Commission would have to review the draft at its next session in the light of the comments of governments and of the discussions on

<sup>9</sup> See *International Legal Materials*, vol. X, number 1, January 1971, p. 133.

the subject in the Sixth Committee of the General Assembly.

44. Mr. REUTER said he thought that in referring the question under consideration to the Commission, the General Assembly had approached it as a body of experts, and it was in that capacity that the Commission should respond. But there could be no doubt that the General Assembly had been induced to act in that way because it was faced with a very serious political problem. The difficulty was that, although there were imperative reasons for action, certain States had extensive reservations, for various highly respectable reasons, some believing that a convention would be ineffective, others fearing that it would conflict with certain rules of their criminal law, and yet others, which had perhaps so far escaped the current affliction, being anxious to retain the greatest possible freedom of action. Nevertheless, the General Assembly had entrusted a task to the Commission in terms that brooked no discussion, so the Commission must complete that task without prejudging the results and seek a compromise solution acceptable to the greatest possible number of States.

45. Without going into detail, he would like to stress a few important points. First, the fundamental element of the draft articles, on which there could hardly be any compromise—what might be called the “hard core”—was an old principle of the law of international responsibility: “either punish or surrender”. If that principle were infringed, the draft would lose its character of a legal instrument and become merely a pious declaration. It would be for States to decide, but the Commission, as a legal body, was bound to stress that point.

46. Once that principle was accepted, its application must be restricted to the categories of persons listed in the Chairman’s draft. It should be clearly understood that the basis was not the international protection of human rights; for if it were, fighters in modern civil wars, whose methods it was desired to outlaw, would claim protection under the conventions on the laws of war on the same footing as regular combatants, and there was every reason to believe that governments would not agree to recognize as regular combatants the fighters of revolutionary movements, whatever their nature.

47. If it became involved in such dialectics, the Commission would only increase the political tensions underlying the draft, which would be doomed to failure. On the other hand, the bold, neutral concept going beyond international law, which should dominate the whole draft was that the category of persons to be protected was that which constituted the only human machinery capable of preserving peace; for war had become so terrible that it was no longer possible to allow such persons to be involved.

48. As few additions as possible should be made to the list of crimes in article 1 and it should be strictly limited to political crimes. There were some crimes which the article seemed to refer to, but which should probably not be covered by the draft, for instance, the abduction of a diplomat’s child by gangsters or the murder, by a jealous husband, of a diplomat who had committed adultery. States should be asked to make a sacrifice for

the sake of a great idea, and the Commission should not hesitate to say so.

49. Incidentally, he wondered whether it was really necessary to lay down that there should be no negative prescription. It could happen that the authors of crimes covered by the draft articles succeeded in their enterprise and came into power, so that what had been a crime became a great deed. In such cases, how would a third State be able to punish, by virtue of a rule of international law, an act which had become glorious?

50. Lastly, with regard to the safeguards to be granted to persons to be tried, the author of the draft, being unable to accept the notion of an international court, had opted for an impartial tribunal. He himself doubted whether there was such a thing as a truly impartial political tribunal. It would therefore be better to lay down specific rules on the rights of the defence and leave it at that. In any event, the only real obligation on which States would have to take a decision lay in the alternative “either punish or surrender”.

51. Mr. TABIBI, after thanking the Chairman for his valuable working paper, said that members appeared to be in general agreement that the Commission should take some positive steps in pursuance of General Assembly resolution 2780 (XXVI). That resolution, however, as Mr. Sette Câmara had observed, was couched in flexible terms, particularly its request that the Commission study the question “as soon as possible, in the light of the comments of Member States”, so that there was obviously no intention that item 5 should take priority over the other items on the Commission’s agenda.

52. He himself agreed with Mr. Tammes and Mr. Castañeda that the concept of an “international crime” was not entirely clear and seemed to overlap at many points with other traditional concepts of international law, such as extradition and the right of asylum. Hence the Commission should not take any hasty decision in the matter; any draft it might produce at the present session should be submitted to governments for their comments, thoroughly discussed in the Sixth Committee, and then returned to the Commission for final revision.

53. More preparatory work by the Secretariat would also seem to be indicated; in particular, a compilation of the decisions of national courts in cases involving offences against diplomats would be very useful.

54. The concept and definition of an “international crime” seemed to vary widely between jurists and between governments. What might be regarded as an international crime in some States might in others be considered an act of political necessity. In fact, the term so often had political connotations that the Commission should proceed very cautiously in regard to its use.

55. Among other things, the Commission might have to consider whether it was desirable or necessary to revive the idea of establishing an international criminal court to try offences against the peace and security of mankind. It should also be remembered that some of the provisions of the Vienna conventions on diplomatic and consular relations were being violated, even by States which had ratified those conventions.

### Yearbook of the International Law Commission

56. The CHAIRMAN drew the attention of the Commission to a memorandum from the Executive Secretary of the Publications Board concerning the printing costs for volume I of the 1972 *Yearbook of the International Law Commission* and of volume II of the 1971 *Yearbook*. He suggested that the matter be referred to a group consisting of the officers of the Commission, the Special Rapporteurs and the former Chairmen of the Commission, and that the Secretariat prepare a paper showing printing costs for the documents to be published in volume II of the 1971 *Yearbook*.

*It was so agreed.*<sup>10</sup>

The meeting rose at 1.5 p.m.

<sup>10</sup> See also 1157th meeting, paras. 43 *et seq.*

### 1152nd MEETING

Friday, 5 May 1972, at 10.25 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.

### Tribute to the memory of the late Sir Kenneth Bailey

1. The CHAIRMAN said he regretted to have to announce the death of Sir Kenneth Bailey, the distinguished Australian jurist. He suggested that the Commission ask the Secretariat to send a telegram of condolence to Sir Kenneth's family.

*It was so agreed.*

*On the proposal of Mr. Tsuruoka, the members of the Commission observed a minute's silence in tribute to the memory of Sir Kenneth Bailey.*

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

(A/CN.4/253 and Add.1 and 2; A/CN.4/L.182)

[Item 5 of the agenda]

(*resumed from the previous meeting*)

2. The CHAIRMAN invited the Commission to resume consideration of item 5 of the agenda.

3. Mr. USHAKOV said that at its twenty-third session the Commission had unanimously decided to place item 5 on the agenda for its present session and had later decided, exceptionally, to break with its usual practice and set

up a working group to prepare a set of draft articles. There was no deed, therefore, to revert to those two points.

4. The substance of the question was, strictly speaking, the indirect protection of diplomatic agents, since the rule of direct protection had existed in international law for centuries, and after having long been applied in customary law had now been formally laid down in the provisions of various instruments, such as article 29 of the 1961 Vienna Convention on Diplomatic Relations<sup>1</sup> and article 28, and paragraph (3) of the commentary thereto, of the draft articles on the representation of States in their relations with international organizations,<sup>2</sup> which the Commission had adopted at its twenty-third session. Those instruments laid down the principle of the host State's obligation to take all appropriate steps to prevent any attack on the person of diplomatic agents or persons of similar status; so what the Commission was now called upon to provide was additional measures designed to help States perform that duty.

5. The draft articles should be based on the principle that there was an obligation to prosecute and punish the perpetrators of crimes committed against diplomatic agents. They should accordingly provide, first, for the obligation of the State on whose territory the crime was committed to prosecute its authors and punish the crime with the penalties applicable under ordinary law; secondly, for extraterritorial jurisdiction or, in its default, extradition; thirdly, for mutual assistance between States in preventing such crimes; and fourthly, for the exchange of information on plots, conspiracies and the like. Such steps might perhaps, as some feared, give rise to political difficulties, but, in the case in point, it was the common interest that should prevail.

6. With regard to the method of work, the Commission had undertaken at its last session to prepare a set of draft articles at its 1972 session if the General Assembly requested it to do so, and it must honour that undertaking. It had been right in deciding to depart from its usual practice by entrusting the drafting of the articles to a working group, for that would enable it to proceed with its other work at the same time. To enquire what would become of a draft which did not yet exist was premature. It would be time to consider the best procedure to follow when the draft had been completed. In any case, that was a matter for the General Assembly to decide.

7. The text submitted by the Chairman (A/CN.4/L.182) offered a sound basis for the Working Group to start on.

8. Mr. BARTOŠ said that from time to time the course of international relations was disturbed by outbreaks of terrorism, which claimed as its victims—sometimes with the connivance of governments, as had been alleged, for example, in the case of the disturbances in China caused by the Boxer Rebellion—the agents responsible for conducting international relations and protecting the interests of the international community. The State

<sup>1</sup> United Nations, *Treaty Series*, vol. 500, p. 110.

<sup>2</sup> See *Yearbook of the International Law Commission, 1971*, vol. II, document A/8410/Rev.1, chapter II, section D.