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Summary record of the 1185th meeting

Topic:

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

Extract from the Yearbook of the International Law Commission:-

1972, vol. I

Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971,[7] which stated: "Any person commits an offence if he unlawfully and intentionally...". The list of the acts in question would then follow.

53. The CHAIRMAN said that the difficulty appeared to be due to the fact that the French term "*acte de violence*" did not entirely correspond to the English term "violent attack". The element of intention implicit in the term "violent attack", as used in English law, was perhaps not present in the French term "*acte de violence*".

54. Mr. REUTER said he had an insufficient knowledge of the criminal law of the common law countries to give a firm opinion on the point, which was one which should be settled by the Drafting Committee. It seemed to him, however, that the acts covered by the draft might imply something more than intention, possibly an element of premeditation.

55. Mr. SETTE CÂMARA said he agreed with Mr. Reuter that the idea of intention should be included, but not premeditation, since not all the acts in question implied premeditation.

The meeting rose at 1 p.m.

[7] See *International Legal Materials*, vol. X, p. 1151 (ICAO DOC. 8966).

1185th MEETING

Thursday, 22 June 1972, at 3.10 p.m.

Chairman: Mr. Richard D. KEARNEY

Present: Mr. Alcívar, Mr. Bartoš, Mr. Bedjaoui, Mr. Bilge, Mr. Castañeda, Mr. Elias, Mr. Hambro, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, 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 to 5; A/CN.4/L.182 and L.186)

[Item 5 of the agenda]

(continued)

DRAFT ARTICLES ON THE PREVENTION AND PUNISHMENT OF CRIMES AGAINST DIPLOMATIC AGENTS AND OTHER INTERNATIONALLY PROTECTED PERSONS

ARTICLES 1 and 2 *(continued)* [1]

1. The CHAIRMAN invited the Commission to continue consideration of articles 1 and 2 of the draft submitted by the Working Group (A/CN.4/L.186).

2. Mr. BEDJAOUI asked whether the words "under its internal law" in article 2 were to be construed as meaning that States would have to adapt their law or merely take it into consideration.

3. The CHAIRMAN said that the problem mentioned by Mr. Bedjaoui arose mainly in connexion with the concluding clause of the article: "whether the commission of the crime occurs within or outside of its territory". He believed it was true to say that, in nearly all countries, special legislation would be required to confer jurisdiction on the domestic courts to try an offence committed abroad by an alien against an alien. Jurisdiction over offences committed abroad by a national or by an alien against a national, was, of course, known to many legal systems. In the present draft, as in such existing international treaties as the 1961 Single Convention on Narcotic Drugs [2] and the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft,[3] provision was in fact made for the prosecution in a State Party of certain offences, even if committed abroad by an alien against an alien. Some kind of legislation would therefore have to be enacted in almost every State to extend its jurisdiction to cover such cases. As far as the actual offences were concerned, each State would have to consider whether any new legislation would be required to bring the substantive provisions of its internal criminal law into line with the requirements of the draft articles.

4. Mr. BILGE asked whether the violent attack referred to in sub-paragraph (*a*) of article 2 was in itself of a particularly grave nature justifying a severe penalty, as seemed to be suggested by the words "which take into account the aggravated nature of the offence", or whether the attack had to be committed with intent, as Mr. Reuter maintained.

5. Mr. USHAKOV said that the gravity of the attack did not change, but the fact that it was directed against a person enjoying international protection was an aggravating circumstance for the purposes of determining the penalty. The words "*à raison de la gravité particulière de l'acte*" in the French text would have to be amended to give clearer expression to that idea, which was better conveyed by the English text.

6. The translation of the expression "violent attack" raised problems in both Russian and French; it might perhaps be better to alter the English text and replace the word "attack" by "act". Apart from those drafting points article 2 was perfectly acceptable.

7. The CHAIRMAN said that replacement of the word "attack" by the word "act" in the English text might have the effect of bringing an unintentional act, such as the causing of a traffic accident, within the scope of the draft.

8. Mr. SETTE CÂMARA agreed with Mr. Ushakov that the part of the French text dealing with the aggravated nature of the offence would have to be amended to bring it more closely into line with the English. The intention was clearly to indicate that the fact of the victim

[1] For text see 1182nd meeting, para. 18.

[2] United Nations, *Treaty Series*, vol. 520, p. 204.

[3] *International Legal Materials*, vol. X, number 1, January 1971, p. 133.

being a diplomat or other protected person would be regarded as an aggravating circumstance for purposes of determining the penalty.

9. Mr. REUTER said he could not express an opinion on problems of drafting, which were very difficult because what the Commission was drafting was the international definition of an offence. In some countries an offence could perhaps be created direct by an international instrument, whereas in others it would be necessary to enact legislation applying it, even in respect of the definition. But all countries would obviously have to enact legislation in respect of the penalties, since they were not laid down by the Commission.

10. It was also obvious that the draft convention required States to apply two different standards to one and the same offence, the severity of the penalty varying according to the status of the person against whom the act, or rather the misdeed, had been directed. For according to the English text it was the penalties, not the offences, which were differentiated according to whether the victim was or was not a diplomat. Such a provision was reminiscent of the Salic law and the Middle Ages. While he appreciated the significance of the draft convention, he doubted whether parliaments would agree to introduce such discrimination into their national law.

11. The CHAIRMAN, speaking as a member of the Commission, pointed out that the criminal law of many countries already drew distinctions based on the functions exercised by the victim of an offence. In most countries, the murder of a policeman in the performance of his duties attracted a heavier penalty than the murder of another person, the underlying principle being that of upholding the public authority. Similarly, in the draft at present under discussion, an attempt was being made to protect persons who exercised some form of international authority.

12. Mr. RAMANGASOAVINA said that article 2 was too imprecise to be acceptable. First, the term "*acte de violence*" in the French text did not exactly correspond to the English expression it was intended to translate. The Working Group had wished to use a fairly broad term to cover all kinds of violence, but there were degrees of violence. Secondly, the intention was that the offences listed in sub-paragraphs (*a*), (*b*), (*c*) and (*d*) should all be regarded as constituting crimes punishable by severe penalties, irrespective of their gravity. In criminal law, however, there were different kinds of attack upon the person, with different degrees of gravity. Lastly, it was not clear from the article whether the aggravated nature of the offence derived from the attack itself or from the status of the victim.

13. Mr. USHAKOV explained that the Working Group's idea had been that the penalty imposed would have to be the maximum penalty, the fact that the victim was a diplomat being an aggravating circumstance. Perhaps that idea could be expressed more clearly by redrafting the article and giving explanations in the commentary.

14. Mr. ALCÍVAR said that the Spanish rendering of the expression "violent attack"—"*atentado violento*"—was perfectly satisfactory.

15. Internal criminal law generally specified maximum and minimum penalties for each offence; that was certainly true for all serious offences in most countries. Thus, the actual penalty imposed by a court in a specific case varied according to whether the court found that extenuating or aggravating circumstances had attended the commission of the offence.

16. The purpose of the provision under discussion was therefore to specify that the fact that the victim was a diplomat or other protected person would constitute an aggravating circumstance. The language used, however, did not convey that idea sufficiently clearly and should be improved.

17. Mr. TSURUOKA (Chairman of the Working Group), replying to the last point made by Mr. Ramangasoavina, said that, as the Working Group saw it, the aggravating element lay in the nature of the attack rather than in the status of the victim. The proposed text left the authorities of the country concerned free to take all the circumstances into account. Some consideration could therefore be given to the rank of the person to be protected or the degree of danger to which he was exposed in order to ensure proper functioning of the diplomatic machinery.

18. Mr. BARTOŠ said he interpreted the provision as meaning that States must either create a special offence to cover the case of a criminal act directed against a person enjoying international protection, or invoke aggravating circumstances. In French law, for example, the murder of a police officer in the performance of his duties was a special offence, and even if it were not, the status of the victim and the fact that he had been attacked in his official capacity would add to the gravity of the offence. The same applied to diplomats and persons assimilated to them. There were many countries in which a physical attack on certain classes of person constituted a special offence. In the United States of America, for example, attacks on the President, the Vice-President or a candidate in a presidential election were excluded from the jurisdiction of state courts and came under that of the federal courts. As drafted, article 2 gave States the choice of creating a special offence or invoking aggravating circumstances. He therefore found the article acceptable.

19. Mr. REUTER said he wished to emphasize that national parliaments, which would have to take a decision on the text of the convention, were hostile to privileges, which should therefore be reduced to the minimum. All attacks which might be made on a diplomat were not necessarily directed against him because of the nature of his duties, and there was no justification for asking for the maximum penalty in all cases. A form of words such as "violent attack directed against a person because of his official position" might perhaps overcome that objection.

20. Mr. BEDJAOUI said that he understood Mr. Reuter's concern, but the wording he had proposed would conflict with the provisions of article 1, paragraph 1 (*a*) of which referred to a Head of State and a Head of Government, whenever they were in a foreign State, even when not performing official functions.

21. He did not share Mr. Reuter's fear that, because of the inclusion of the words "regardless of motive", even manslaughter resulting from a road accident might come within the scope of article 2. In such cases, if there was no intention, there was no motive. Since the Working Group had in fact intended to cover all possible motives —political, vile and other—the idea could perhaps be better conveyed if the words "The Commission, regardless of motive" were replaced by "The deliberate commission".

22. Mr. TSURUOKA (Chairman of the Working Group) said he agreed that the Working Group would have to amend the drafting of article 2, but he wished to point out that, to determine what offences did or did not come within the scope of the draft, it was sufficient to consider the object and purpose of the future convention.

23. Mr. QUENTIN-BAXTER said that article 2 raised three major issues which were largely interconnected. The first was the definitions of the acts covered by the draft articles, the second was the aggravated nature of the offence, and the third was the use of the expression "regardless of motive".

24. As to the first of those issues, the neutral wording of the definitions in article 2 seemed to him to be satisfactory. In extradition treaties, particularly those signed between two States having different legal systems, it was quite common to give a neutral description of the content of an offence, rather than a technical definition which could raise difficulties because of the non-concordance of national definitions. The present text would cover the well-known concepts of murder, kidnapping and bodily assault, which were crimes under the laws of virtually all the countries of the world.

25. States subscribing to the international instrument that would emerge from the draft would thus not be asked to create new crimes. The purpose of the instrument would be to require them to assume jurisdiction in the case of certain crimes even when not committed in their own territory. The problem which arose was that diplomats, precisely because of the special protection due to them, might become the target of politically-motivated crimes. It was not that countries failed to treat certain acts of violence as serious offences, but simply that diplomats constituted a special risk.

26. On the question of the aggravated nature of the offence, he shared some of the doubts expressed by other speakers. In many countries, including his own, there was no special law concerning attacks on foreign diplomats or indeed on Ministers of the Crown or even the Prime Minister. That being so, many countries would find it difficult to assume an obligation to make new special offences of such attacks, or to legislate for heavier penalties against certain existing crimes if committed against a particular class of persons. Moreover, so far as he knew, the question was not one of any practical importance. The real problem was not that of imposing heavier penalties, but simply of ensuring that the authors of certain offences were brought to justice. The inclusion of a reference to the aggravated nature of the offence would be politically and psychologically counter-productive. In many countries, it would be very difficult to persuade parliament that crimes which were in any case regarded as very serious should be treated in a special way because the victims belonged to a privileged class of persons.

27. The expression "regardless of motive" was unsatisfactory because it would have the effect of bringing within the scope of the draft the normal risks of life at any place and time—risks which affected diplomats no more than anyone else. The wording of the provision made it clear that there must be a motive for the offence, but did not make it at all clear that the criminal must be aware of the victim's status as a diplomat or other protected person. The machinery of the convention might thus be brought into play in respect of an offence of which a diplomat or other protected person was a purely accidental victim. At the very least the text should be amended to make it clear that the alleged offender must have been aware of the status of his victim. Ideally, as Mr. Reuter had suggested, the offences defined in the article should be related to a knowledge of the victim's official position.

28. In conclusion, he stressed the need to re-word the article so as to make it clear to parliaments that they were not asked to create new offences or to set up a special category of persons comprising diplomats and other protected persons, but merely to extend the jurisdiction of their national judicial authorities to the acts mentioned in the draft.

29. Mr. HAMBRO said he agreed that care should be taken to avoid giving the impression that a new, specially privileged class of persons was being established. It was necessary to bear in mind the need to obtain a sufficient number of ratifications for the international instrument that would emerge from the draft articles, if that instrument was to serve a useful purpose. That was particularly important, since the class of protected persons would be a very large one: by virtue of the provisions of article 1, not only broad categories of officials, but also all members of their families, would be entitled to special protection.

30. He believed that it would be easier to obtain ratifications if the unduly blunt formula "regardless of motive" was dropped from article 2. He also suggested that, in sub-paragraph (*a*) the words "as such" (in French "*comme telle*") should be inserted after the words "protected person", in order to convey the idea that the act must be an attack committed against a protected person in that person's capacity as Head of State or Government or as an official of a foreign government or international organization.

31. He was not at all shocked at the suggestion that an offence should be deemed to be of an aggravated nature because of the class of persons to which the victim belonged. As had already been pointed out, under United States law an attack on the President or Vice-President, or even on a presidential candidate, was treated as a special kind of offence of a particularly grave character and came under the jurisdiction of the federal, not of the state courts.

32. Mr. ALCÍVAR said that the more he considered article 2, the more difficulties it appeared to present.

33. Under international law, diplomats enjoyed special protection; and the internal law of States also contained the necessary provisions to deal with any attack against them. In the draft under discussion, however, an attempt was being made to combat politically motivated attacks against diplomats or other protected persons. But that attempt would lead to serious difficulties in internal law. To take one example from the criminal law of his own country, manslaughter (*homocidio simple*) in Ecuador was punishable by a maximum penalty of 12 years' imprisonment. Murder (*asesinato*) was legally defined as homicide with aggravating circumstances and was punishable by the heaviest penalty known to Ecuadorian law, namely, the most rigorous form of imprisonment (*reclusion mayor*) for a term of 16 years. No murderer could be sentenced to a term of imprisonment exceeding 16 years under any circumstances; it would therefore be impossible for Ecuador to apply a provision of an international instrument requiring it to regard the murder of a diplomat as an aggravated case of murder.

34. Mr. RAMANGASOAVINA said that the phrase "regardless of motive", which was meant to cover political motives, went further than the authors had intended by making punishable by severe penalties acts committed without intent against protected persons. He therefore proposed that, in order to bring out the idea of intent and to make it clear that the offender must have been fully aware of the victim's status, the words "The commission, regardless of motive", at the beginning of article 2 should be replaced by the words "The commission, knowingly". Thus the commission of a violent attack upon a diplomat, because he was a diplomat, would be an aggravated offence.

35. Mr. USHAKOV said he found it difficult to believe that any country would agree to introduce into its criminal law a provision under which, irrespective of the circumstances, the status of a person enjoying international protection aggravated the nature of any offence which might be committed against him. The offender would not even be able to plead ignorance, since no one was presumed to be ignorant of the law. The courts would therefore have to impose the maximum penalties in all cases. That requirement was excessive and went beyond the Commission's competence. It was a matter for each country to decide "under its internal law", as specified in article 2.

36. Mr. USTOR said that in drafting a convention, it was always necessary to strike a balance between two extremes. It was necessary, on the one hand, to avoid making the rules in the draft too rigid, because rigidity would deter States from ratifying the future instrument, and on the other, to avoid watering down the rules to such an extent that the instrument became ineffective. He thought that, in the present instance, it was desirable to submit the draft in such a form that it would be left to a future conference of plenipotentiaries to strike that balance, if need be by watering down some of the proposed provisions. That being said, he was opposed to the suggestion that the words "regardless of motive" be deleted from the opening sentence of article 2; those words constituted an important element of the whole article.

37. Mr. ELIAS said he agreed with Mr. Ustor that the Commission should be careful not to water down the draft articles to such an extent that they would become virtually ineffective. The rules should not be formulated merely with a view to securing the approval of national parliaments. Many of the conventions prepared by the Commission in the past had contained elements which had represented progressive development of international law and which had been accepted by governments; the Commission should not be afraid to lay down a new standard of international behaviour. Governments would have an opportunity of commenting on the draft articles and the final decision would be taken by them at an international conference.

38. The definition of an "internationally protected person" in article 1 included two categories of person. With regard to the first category, defined in paragraph 1 (*a*), in many cases a Head of State and a Head of Government were one and the same person. That paragraph should, therefore, begin with the words "a Head of State or a Head of Government" rather than "a Head of State and a Head of Government". He fully agreed that the phrase in square brackets in paragraph 1 (*b*) should be deleted. There was no justification for distinguishing between officials of international organizations of a universal character and officials of other international organizations. By referring to the performance of official functions, the definition in paragraph 1 (*b*) supported the point made by Mr. Quentin-Baxter that the offender should be aware that the victim was a diplomat or an official of an international organization.

39. Article 2 was concerned with three areas of jurisdiction relating, first, to the persons who would be brought before the courts; secondly, to the type of offence committed; and thirdly, to the extension of the territorial jurisdiction of the national courts. In all those areas, the provisions in article 2 involved some degree of innovation.

40. Under that article, each State party to the convention was required to make such modifications as might be necessary in its internal law. He found that provision perfectly normal, since, in the course of time, conventions of the type drawn up by the Commission generally led to a modification of existing national law, even where such conventions, once ratified, did not automatically become part of the law of the State, as they did in the United States of America. Moreover, in the present case, there was nothing in the language of article 2 to suggest that a new crime was being created, since in almost all countries the offences listed were already punishable by law. The purpose of the article was to make such offences aggravated offences under the internal law of countries, when they were committed against the persons specified in article 1. He did not think that the provisions of article 2 would become more acceptable to governments if some other word were substituted for "aggravated".

41. Some members of the Commission were perhaps reading too much into the phrase "punishable by severe penalties", which might be interpreted as signifying double punishment. It would perhaps be preferable to say "a crime under its internal law that is punishable by a severe penalty", even though the offender might be liable to a

fine or imprisonment, or both. All that was being asked of States was that they should impose the severest penalties provided for in their internal law on anyone who committed an offence listed in article 2 against one of the persons specified in article 1.

42. The last clause of article 2 required each State party to take such measures as might be necessary to establish its jurisdiction over the crimes listed in paragraph 1. That provision would normally entail an extension of national jurisdiction, since in most countries the courts had jurisdiction only over offences committed within the national territory or partly within the territory and partly outside it.

43. In his view, the problems raised by the phrase "regardless of motive", in paragraph 1, were closely linked with the question of extradition and extraditable and non-extraditable offences, dealt with in articles 6 and 7. While he had some sympathy with Mr. Bedjaoui's suggestion that the phrase should be deleted, since the idea had already been covered in article 1, he would suggest that it should be retained until the Commission had considered articles 6 and 7, and that articles 1 and 2 should be referred back to the Working Group, which could take account of the criticisms and suggestions made for their improvement.

44. Mr. SETTE CÂMARA said he thought it important to retain the expression "regardless of motive" in article 2. In recent years there had been many examples of the crimes dealt with in the draft articles, and in most cases the authors of those crimes had remained untried and unpunished because their motives had been political. Mr. Alcívar had said that the individuals who committed such acts very rarely sought refuge in a foreign country,[4] but such cases had occurred; most of those responsible for kidnapping the three ambassadors in Brazil, for example, had sought asylum in other countries and had not been tried or imprisoned. One of the main innovations introduced in the draft articles was that in such cases political motivation would no longer be accepted as a reason for not bringing the offenders to trial and punishing them. If the words "regardless of motive" were dropped, as Mr. Bedjaoui had suggested, the article was likely to be given a more restricted interpretation.

45. For that reason, he fully agreed with the view expressed by Mr. Ustor: the words should be retained and it should be left to a future conference of plenipotentiaries to strike the necessary balance, if need be by watering down some of the proposed provisions.

46. Mr. REUTER said he disagreed with Mr. Ustor and Mr. Sette Câmara. He had originally hoped that the text would contain enough variants for States to choose those they preferred. The Commission now appeared to be headed towards such extreme solutions that he was obliged to re-state his reservations on the whole draft.

47. The CHAIRMAN, speaking as a member of the Commission, said that the insertion of the words "as such" after the words "protected person", or the use of any other wording that would require a knowledge by the alleged offender of his prospective victim's special status, would place an undesirable burden on the enforcement authorities.

48. An example would illustrate that point. In New York City, one of the permanent missions to the United Nations had recently been subjected to long-distance high-power rifle fire. Fortunately no one had been injured. If someone had been killed, however, and the offender had escaped and been found in a third State, the existence of a provision of the kind proposed would mean that, before that State could punish or extradite the offender, it would be necessary to establish, as part of the case for bringing the provisions of the convention into effect, that he knew that the windows at which he was firing from a great distance were the windows of the foreign mission concerned. It would be placing an extremely heavy burden on any prosecutor to require proof of such knowledge, because it would mean proving something that was really known only to the offender himself. If the offender remained silent, probably all that could be established would be the fact that he had fired the shot and that the shot had gone through the window of a particular mission. So far as knowledge on the part of the offender was concerned, possibly all that could be done would be to draw some inference from the fact that he belonged to an organization opposed to the policies of the country represented by the mission.

49. Mr. YASSEEN observed that the rules of evidence were much less strict in criminal law than in civil law. In criminal law, circumstantial evidence might determine the judge's conclusions. In the matter referred to by the Chairman, it would not, for example, be possible to call witnesses, but other evidence would be admissible. It was therefore essential to specify that the violent attacks must be intentional and knowingly directed against diplomats or other persons assimilated to them.

50. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission agreed to refer articles 1 and 2 back to the Working Group for review in the light of the discussion.

It was so agreed.[5]

ARTICLE 3

51. *Article 3*

States Party shall co-operate in the prevention of the crimes set forth in article 2 by, in accordance with their internal law:

(*a*) taking measures to prevent the preparation in their respective territories of the crimes set forth in article 2 when they are to be carried out in the territory of another State;

(*b*) exchanging information and co-ordinating the taking of administrative measures to prevent the commission of those crimes.

52. The CHAIRMAN, speaking as a member of the Commission, said that only a brief explanation of article 3 was required. The text was based on two sources. The first was article 8 of the 1971 OAS Convention to

[4] See previous meeting, para. 13.

[5] For resumption of the discussion, see 1191st meeting, para. 1.

Prevent and Punish Acts of Terrorism,[6] which, in essence, contained the requirements set forth in sub-paragraphs (*a*) and (*b*). The Working Group had also taken account of the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation,[7] and particularly of article 10, paragraph 1, of that Convention; but the text of the draft article under discussion was more akin to the provisions of article 8 of the OAS Convention.

53. Sub-paragraph (*a*) related solely to the prevention by States of the preparation in their territories of the crimes specified in article 2, when such crimes were to be carried out in the territory of another State. The suggestion had been made in the Working Group that States parties should also be required to take all the necessary measures to prevent any of the crimes in question taking place in their own territories. That suggestion had not been followed up, mainly because States were already under such an obligation by virtue of existing general international law and in particular of the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations.

54. Mr. SETTE CÂMARA said he nevertheless thought that sub-paragraph (*a*), as at present worded, gave the impression that States were not required to take preventive measures where the crimes in question were to be committed in their own territory. In his view, the text should be amended to clarify that point.

55. Mr. USTOR said that he too had misgivings about the wording of sub-paragraph (*a*). The present wording seemed to restrict the obligation to co-operate to States other than the one in whose territory the crime was to be carried out. What was clearly intended was that whenever a State received information that certain persons in its territory were planning to carry out such crimes in the territory of another State, it was obliged to co-operate with that State and to pass on the information. The obligation to co-operate should, however, be reciprocal, and the second State should also be obliged to co-operate with the first. In his view, the sub-paragraph could stand without the phrase "when they are to be carried out in the territory of another State" and perhaps even also without the words "in their respective territories".

56. Sub-paragraph (*b*) ended with the words "those crimes": it was not clear whether the reference was to the crimes specified in article 2 in general, or only to those crimes when they were to be carried out in the territory of another State. That point, too, should be clarified.

57. Lastly, he questioned whether the phrase "in accordance with their internal law", in the first sentence of the article, was really necessary. That phrase had been used in other conventions and, in his experience, its interpretation could give rise to difficulties. It went without saying that States should act in accordance with their internal law and the inclusion of the phrase seemed to imply some limitation of the obligation to co-operate.

58. Mr. TSURUOKA (Chairman of the Working Group) referring to Mr. Ustor's suggestion on sub-paragraph (*a*), said it had been the Group's intention to cover both cases, in other words, to lay down an obligation for States to co-operate in their own territory and in that of the other State. The Working Group would perhaps be able to improve the wording of the provision.

59. The CHAIRMAN, speaking as a member of the Commission, said there had been no intention to limit the obligation of the State in which the preparations were taking place to mere notification of the other State. The first State was also obliged, if any of the preparations in question constituted unlawful acts under its own internal law, to prosecute the persons involved at that stage in order to break up the preparations.

60. Mr. TABIBI said he thought the introductory statement in article 3 was broad enough to cover all the points contained in sub-paragraphs (*a*) and (*b*). The two sub-paragraphs seemed, in effect, to weaken the rule stated at the beginning of the article. It appeared from sub-paragraph (*a*) that preventive measures need be taken only when the crime was to take place in the territory of another State, and sub-paragraph (*b*) seemed to limit the measures to administrative measures only. It would be much better merely to say that States should co-operate in the prevention of the crimes set forth in article 2, in accordance with their internal law.

61. Mr. RAMANGASOAVINA said it would have been preferable to use the verb "*empêcher*" rather than "*prévenir*" in the French text of sub-paragraph (*a*). But since even with that change certain points would remain obscure, he suggested that the sub-paragraph be entirely redrafted on the following lines: "taking measures to prevent the use of their territory for the preparation of the crimes set forth in article 2".

62. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission agreed to refer article 3 back to the Working Group for review in the light of the discussion.

It was so agreed.[8]

The meeting rose at 6 p.m.

[6] *International Legal Materials*, vol. X, number 2, March 1971, p. 257.

[7] *Ibid.*, number 6, November 1971, p. 1151.

[8] For resumption of the discussion, see 1191st meeting, para. 59.

1186th MEETING

Friday, 23 June 1972, at 10.15 a.m.

Chairman: Mr. Richard D. KEARNEY

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Bedjaoui, Mr. Bilge, Mr. Elias, Mr. Hambro, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Ruda, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.