be extended to those offences when they involved diplomats and not monarchs or Heads of State. Furthermore, the phrase "severe penalties which take into account the aggravated nature of the offence" in article 2, paragraph 2, would be a direct attack upon the discretionary powers of judges, which Jamaica was determined to preserve.

33. As to the question of universal jurisdiction, the convention should merely stipulate that, subject to internal law, the State in which the offence was committed or the State of which the victim was a national should be entitled to have the alleged offender extradited when he was apprehended in a third State.

34. In the English version of article 2, the word "offence" was used in paragraph 2 whereas the word "crime" was used in the rest of the article. The terminology should be made consistent, preferably by using the word "offence" throughout.

35. Mrs. ULYANOVA (Ukrainian Soviet Socialist Republic) considered it necessary to take into account not only the amendments which had been submitted formally but also all the views expressed during the debate.

36. Generally speaking, article 2 was acceptable and constituted a good basis for discussion. With regard to paragraph 1 (a), her delegation supported the Belgian amendments (A/C.6/L.904), which would list the crimes covered. The amendments of Argentina (A/C.6/L.919) and the Soviet Union (A/C.6/L.906) would make the text even more precise. In particular, her delegation fully supported the amendment of the Soviet Union to paragraph 1 (a), which was based on the principle of diplomatic inviolability, already embodied in the Vienna Conventions on Diplomatic Relations and on Consular Relations, and which encompassed the concept of personal dignity. It should be noted that the amendments to paragraph 1 (a) submitted by Belgium, the Soviet Union, Spain and Argentina contained common features which could serve as the basis for a consensus.

37. With regard to the Spanish amendments, her delegation had objections to the use of the word "unlawfully" in the proposed new paragraph 1 and to the new structure suggested for article 2, as the original structure seemed preferable.

38. Concerning the last sentence of paragraph 1 of article 2, her delegation supported the amendment of the Soviet Union whereby the word "grave" would be inserted before the word "crime" in order to specify the character of the crimes concerned.

39. On the other hand, her delegation was opposed to the amendments of Japan and the Netherlands (A/C.6/L.912/Rev.1). In particular, it considered that the reference in the amendment to national law was restrictive. Moreover, the deletion of the words "whether the commission of the crime occurs within or outside of its territory" at the end of paragraph 1 of article 2 could not be agreed to without detriment to the principle of universal jurisdiction which was precisely one of the basic aims of the convention.

40. The CHAIRMAN said that the consultations he had held with the various regional groups had shown that there was still disagreement about methods of work. The Committee would have to choose one of two solutions. The first was to follow the procedure described in paragraph 6 of the note by the Secretariat on the methods of work and procedures followed by the Committee in the preparation of the Convention on Special Missions (A/C.6/L.898), whereby substantive amendments reflecting unbridgeable divergencies of view would be put to the vote and the text adopted sent to the Drafting Committee. The second solution was to refrain from taking a vote on the proposed amendments to each article and to refer them to the Drafting Committee, which would be instructed to find a compromise solution, taking into account the main trends which had emerged during the Committee's debate.

41. The Chairman invited the sponsors of amendments to article 2 to hold consultations with a view to harmonizing their opinions.

The meeting rose at 5 p.m.

1417th meeting

Wednesday, 17 October 1973, at 11.05 a.m.

Chairman: Mr. Sergio GONZÁLEZ GÁLVEZ (Mexico).

A/C.6/SR.1417

AGENDA ITEM 90


1. The CHAIRMAN said that the Committee should decide on the method of work it wished to follow once it had concluded the general debate on the individual articles of the draft convention. As a result of consultations he had held on the matter, he suggested that the Committee should take an indicative vote for guidance on the following two alternatives: (a) to adopt a procedure similar to that outlined in paragraph 6 of document A/C.6/L.898, or (b) to transmit all the proposed amendments to the Drafting Committee, on the understanding that whenever the latter could not reach an agreement on a given text, it would refer back all the alternative versions proposed in order that the Committee might reach a decision. The sponsors
of some of the amendments to article 2 had held consultations which had made it possible to combine certain amendments.

2. Mr. VAN BRUSSELEN (Belgium) said that as a result of consultations by the sponsors of amendments to article 2, it should now be possible for the delegations of Argentina, Spain and Belgium to agree on a single text that would incorporate their amendments relating to paragraph 1, subparagraphs (a) and (b).

3. Mr. TSUTSUMI (Japan) said that the revised amendments which appeared in document A/C.6/L.912/Rev.1 reflected the results of consultations between his delegation and that of the Netherlands, which had agreed to sponsor his delegation’s amendments. The new text included the subamendment of the Netherlands contained in document A/C.6/L.915.

4. He felt it would be very useful if amendments could be limited to matters relating to jurisdiction. His delegation therefore had withdrawn those amendments in document A/C.6/L.912 which would have qualified the attempt and would have required the element of knowledge of the official status of the victim. The majority of members of the Committee had stressed in the debate that the latter amendments were unnecessary because the beginning of the article clearly covered that requirement by the word “intentional”. He took that to be an almost established interpretation of the article.

5. He did not believe the amendment on jurisdiction was restrictive. That amendment could be more easily incorporated into the countries’ internal legal systems and would therefore be more effective. It specified the types of States having primary jurisdiction, namely, the State where the crime was committed, the State of the alleged offender’s nationality, and the State on whose behalf the victim exercised his functions. The offender should be tried in the State primarily concerned. His delegation was not proposing by the amendment any change affecting the substance of article 6, which established the obligation to extradite or prosecute the alleged offender. Japan agreed to and accepted that obligation, which should remain intact.

6. The CHAIRMAN suggested an indicative vote on the procedure to be followed for article 3 and the remaining articles of the draft convention; the case of article 2 was merely the exception that proved the rule. The Committee might vote on the two alternatives he had already outlined, for the guidance of the Drafting Committee.

7. Mr. KASEMSRI (Thailand) asked whether the indicative vote suggested by the Chairman would preclude the presentation of further amendments. His delegation had had some difficulty with the expression “violent attack”, which was subject to different interpretations. His delegation felt that the emphasis should be placed on the consequence or effect of the attack rather than on the type of offence committed. Having held consultations with other delegations, he proposed (see A/C.6/L.931) that article 2, paragraph 1 (a) should be amended to read as follows: “A. murder, kidnapping and other attacks upon the person, causing death or serious bodily harm, or seriously affecting the liberty of an internationally protected person;”. He asked the representatives of Belgium and Spain and others who might be involved in the formulation of a joint amendment to bear the amendment of Thailand in mind.

8. Mr. FEDOROV (Union of Soviet Socialist Republics) said he did not think it would be appropriate as yet to vote on questions of procedure. The question of method of work had already been considered and the Committee had agreed (1407th meeting) to follow the method used in the preparation of the Convention on Special Missions. Experience on that occasion had showed that such a procedure was justified. It would not be advisable to attempt to speed up artificially a procedure which was normal and sound. If the Committee had difficulty with a particular article, it should be referred to the Drafting Committee. If the latter was unable to reach a consensus, it should return the article to the plenary for a decision. It was very important to follow a flexible procedure, as the Chairman had promised to do.

9. If the Committee, however, departed from its original decision, it would be faced with the problem of deciding which amendments should be taken up first, whether they were substantive or drafting amendments, and whether or not they should be put to the vote. A great deal of time would be wasted on purely procedural matters, to the detriment of the debate on substantive questions. His delegation was willing to consider the question of procedure, but the Committee must take into account that the draft convention presented very serious issues which could not be settled hastily; article 2 in particular was extremely complex and raised a whole series of problems. The draft convention represented an innovation in the area of international law and an attempt to create universal jurisdiction.

10. The Committee should follow the usual United Nations procedure. The experience with article 1 had been fruitful; article 2 could be considered the second exception which proved the rule.

11. Mr. JOUANNEAU (France) said that his delegation was prepared to vote for the second alternative proposed by the Chairman, namely, to send the amendments en bloc to the Drafting Committee. It would be difficult and arbitrary to attempt to separate the amendments according to whether they were formal or substantive in nature. If the Drafting Committee received all the amendments together, it could clarify matters and incorporate the views presented in the text to be subsequently considered by the Committee, thus greatly simplifying its work.

12. Mr. BETTFAUER (United States of America) said he had understood that the Committee would be following the procedure used in the preparation of the Convention on Special Missions. That was the standard procedure in every codification exercise. He urged the Committee to take a decision shortly.

13. The CHAIRMAN said he must insist on the indicative vote he had requested at the beginning of the meeting. Such a vote would not in any way prejudice
any negotiations that might be carried on with regard to article 2, nor would it detract from the flexibility of the Committee’s work. He announced that the voting procedure had begun.

14. Mr. FEDOROV (Union of Soviet Socialist Republics) said he wished to speak before the vote.

15. Mr. BETTAUER (United States of America), speaking on a point of order, said that the Chairman had already announced that the voting had begun. Under rule 130 of the rules of procedure of the General Assembly, delegations could only speak on a point of order regarding the form of voting.

16. The CHAIRMAN said that the voting had indeed begun. Several representatives, including the representative of the Soviet Union, had already stated their views on the matter to be voted. He therefore ruled that the representative of the Soviet Union could only speak on a point of order regarding the voting as such.

17. Mr. FEDOROV (Union of Soviet Socialist Republics) said he would abide by the Chairman’s ruling. Since the Chairman had announced that the Committee was about to begin the vote, and had given him the floor, he was speaking on the conduct of the voting. A proposal by the Chairman should surely be considered before being put to the vote. He questioned whether the Chairman had followed the correct procedure.

18. The CHAIRMAN said that the USSR had in fact been the first delegation to speak on his suggestion. He could not accept the Soviet Union representative’s argument. He put the procedure outlined in paragraph 6 of document A/C.6/L.898 to the vote.

19. Mr. FEDOROV (Union of Soviet Socialist Republics), speaking on a point of order, asked whether it was the intention that the procedure proposed by the Chairman should be applied from the discussion of article 3 to the end of the draft articles or whether it would be applied also in the case of article 2. As to the Chairman’s ruling, he wondered how the legal right of a delegation to explain his vote before the voting began could be exercised in the light of that ruling.

20. The CHAIRMAN replied that the procedure would be applied to the consideration of article 3 and those following it. The Committee had still to decide on its procedure with regard to article 2. Concerning the question of statements in explanation of vote, he observed that the USSR representative had explained his delegation’s vote already; he was, however, free to make a further statement after the voting had been completed. He invited the Committee to vote on the proposal that it apply to its consideration of the draft articles the procedure outlined in paragraph 6 of document A/C.6/L.898, namely that followed by the Sixth Committee in the preparation of the Convention on Special Missions.

The proposal was adopted by 47 votes to 30, with 26 abstentions.

21. The CHAIRMAN said that the Committee’s decision was to be understood merely as a guideline. The USSR representative’s comments regarding the need for flexibility in the Committee’s procedures were still relevant. He invited the Committee to consider article 3 of the text submitted by the Commission.

22. Mr. BUTOW (Federal Republic of Germany), introducing the amendments submitted by his delegation (A/C.6/L.917), pointed out that subparagraph (a) of article 3 embodied the well-established principle of international law that every State must ensure that its territory was not used for the preparation of crimes committed in another State. Co-operation was required to render the measures taken by each State effective and to safeguard the inviolability of internationally protected persons. The obligation regarding such special protection was not stipulated in the draft convention but it had been established in other conventions and before that it had existed under general international law.

23. The second of his amendments was intended to bring the wording of article 3 into line with the language of article 10 of the Montreal Convention on the safety of civil aviation. The insertion of a reference to “international and national law” would make article 3 more precise and indicate that there must be certain reasonable limits to the measures envisaged, in addition to such justified limits as might be imposed by national law. The insertion of the words “all practicable” before “measures” in subparagraph (a) would take into account the more factual limitations on such measures. The text of subparagraph (b) might give rise to doubt as to the scope of measures envisaged in article 3. The term “administrative” could be limiting; it might even exclude police measures. The text should cover all appropriate measures, regardless of their description under national law.

24. His delegation agreed with the Commission that the draft, having stated general principles, should not go into the implementation of obligations deriving therefrom. It felt, however, that an exception should be made in cases of kidnapping, and in the third of its amendments it had proposed the addition of a new paragraph to cover that contingency. After a kidnapping had been perpetrated, any information regarding the whereabouts of the victim was precious. Quick action, possibly concerted action by several countries, might be necessary to save his life. The victim’s family should also be informed as soon as possible. The Government best suited to concentrate information and efforts was the one on whose behalf the victim had been exercising his functions, and that Government should therefore be given a privileged position. On humanitarian grounds, and in the interest of the Government or international organization concerned, there should be a clear-cut obligation to give the fullest possible information in cases of kidnapping in order to eliminate any doubt which could cause delay and increase the risk. The matter could best be dealt with in a separate paragraph.

25. Mrs. SLÁMOVÁ (Czechoslovakia), introducing her delegation’s amendment to article 3 (see A/C.6/L.910), pointed out that the obligation in subparagraph
3 (a) was already contained in article 29 of the Vienna Convention on Diplomatic Relations, under which the host country had a duty only to prevent an attack but also to prevent preparations for such a crime. If that obligation was to be met, there must be increasing cooperation between States to that end, and her delegation’s amendment would emphasize that need by making it clear that article 3 was not restrictive and provided for cooperation among States in other ways.

26. Mr. FEDOROV (Union of Soviet Socialist Republics), introducing the amendment of his delegation to article 3 (see A/C.6/L.906), said that subparagraph (b) was close to that of the Federal Republic of Germany (see A/C.6/L.917). It should be possible in the Drafting Committee to formulate wording acceptable to both delegations. The new paragraph proposed by the Federal Republic of Germany might perhaps be more appropriately considered in conjunction with article 5, which was concerned with the same issue.

27. Mr. SETTE CÂMARA (Brazil) observed that the obligations embodied in article 3 were to be found in article 8 of the Convention of the Organization of American States of 1971 which set forth the obligation regarding cooperation in rather broad terms and left it to the parties to devise ways of making the cooperation as effective as possible in the light of their own national legislation.

28. With regard to the amendments of the Federal Republic of Germany, he did not believe that the addition of the words “in accordance with international and national law” would add anything to a text which was already broad and extended implicitly to both international and national law. Similarly, he doubted the value of referring to “all practical” measures, although he did appreciate the desire to align the text with the Montreal Convention. Any measures taken could only be measures which were feasible. He therefore opposed that amendment.

29. The Commission had been right, in article 3 (b), to leave it to the discretion of a State to decide what administrative measures should be taken. The word “administrative” was important and he supported the USSR and Czechoslovak amendments in that connexion.

30. Mr. BUTOW (Federal Republic of Germany) agreed with the USSR representative that it should be possible to merge the amendments of their delegations in a mutually acceptable text.

31. Mr. STARČEVIĆ (Yugoslavia) referring to the amendment by the Federal Republic of Germany to subparagraph (a) agreed that the addition of the word “all” would be useful; “practicable” might perhaps be changed to “necessary” to emphasize the importance of the measures in question.

32. In subparagraph (b), the expression “the taking of administrative measures” was unnecessarily limited and should be changed to “all measures”. The convention should obviously extend to all measures necessary to prevent the commission of the crimes in question. The amendment of the Federal Republic of Germany to subparagraph (b) lent itself to that approach. The Czechoslovak and Soviet amendments to article 3 would help greatly, and the Yugoslav delegation could support both.

33. Mr. GODOY (Paraguay) wondered whether the Chairman’s proposal to refer article 3 and the amendments thereto to the Drafting Committee without a vote was consistent with the procedural decision the Committee had just taken.

34. Mr. WEHRY (Netherlands) said that the Chairman’s proposal was entirely in order, since the amendments to article 3 were not substantive and therefore did not require a vote by the Committee.

35. The CHAIRMAN said he had based his proposal on the assumption that the amendments to article 3 did not raise important questions of principle, within the meaning of paragraph 6 of document A/C.6/L.998. He certainly had no objection if the Committee wished to continue its discussion of article 3 before referring it to the Drafting Committee.

36. Mr. CASTILLO ARRIOLA (Guatemala), commenting on the amendments of the Federal Republic of Germany (A/C.6/L.917), said that he had no objection in principle to inserting the words “... in accordance with international and national law...”; however, the draft would be less restrictive if it retained the language of the Commission. With regard to the amendment adding a new paragraph 2, he agreed that it should be a duty of States to provide information concerning internationally protected persons who had been kidnapped, but felt that an effort should be made to improve the wording of the proposed text, which gave the impression that a right was being created for States to demand information from other States. If that was indeed the case, such a right might conflict with the provisions of national law and possibly infringe State sovereignty. He endorsed the suggestion to broaden the scope of the measures to be taken by States under article 3; mere administrative measures were not sufficient.

37. Mrs. ULYANOVA (Ukrainian Soviet Socialist Republic) expressed reservations with regard to the addition of the phrase “... in accordance with international and national law...”; however, the draft would be less restrictive if it retained the language of the Commission. The formulation worked out by the Commission was sufficiently broad and flexible, and should be retained.

38. Mr. CEATUS (Romania) said that the new paragraph 2 proposed by the Federal Republic of Germany would be more acceptable to his delegation if it began “In the case of preparations for the kidnapping”.

39. Mr. BHATTY (Pakistan) expressed concern that the reference to “national law” in the amendment of the Federal Republic of Germany might be construed as limiting the scope of the draft convention. He hoped that the intention was that national law should be brought into conformity with the convention and not that the convention should be applied only in so far as national law permitted.

40. The CHAIRMAN said that, if there was no objection, the Committee might close its debate on
article 3 and decide to refer it, together with the amendments thereto, to the Drafting Committee for further consideration. . .

41. Mr. FEDOROV (Union of Soviet Socialist Republics) said that he would prefer to continue the discussion in the Committee of the amendments of the Federal Republic of Germany, particularly since the first and second amendments to paragraph 1 which it proposed appeared to raise questions of substance. The reference to "national law", for example, might be interpreted as making the application of the convention dependent upon the provisions of national law. That would of course defeat the purpose of the convention.

42. Sir Vincent EVANS (United Kingdom) said that, in his delegation's view, none of the amendments put forward so far raised important questions of principle within the meaning of paragraph 6 of document A/C.6/L.899. He therefore supported the Chairman's proposal.

43. Commenting on the amendment of the Federal Republic of Germany on the addition of a new paragraph 2, he stressed the importance of an exchange of information between States in cases of kidnapping. In his view, that amendment came well within the scope of article 3.

44. Mr. BUTOW (Federal Republic of Germany) said that as the sponsor of the amendments in document A/C.6/L.917, he would take into consideration all the suggestions that had been put forward.

45. Mr. CASTILLO ARRIOLA (Guatemala), recalling his delegation's misgivings with regard to the amendment of the Federal Republic of Germany on the addition of a new paragraph 2, proposed the following text to replace that amendment:

"A State which has information concerning an internationally protected person who has been kidnapped shall make such information fully and promptly available to the State party or international organization on whose behalf the person exercised his functions."

46. Mr. FEDOROV (Union of Soviet Socialist Republics) proposed that the discussion of article 3 and the amendments thereto should be continued at the following meeting.

47. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) supported the USSR motion. The new paragraph 2 proposed by the Federal Republic of Germany raised questions of substance, not merely of form, which must be carefully considered. He wondered, in particular, whether that paragraph might not more appropriately be placed in article 5 rather than article 3.

48. Mr. ROSENSTOCK (United States of America) agreed with the Chairman that the amendments to article 3 were of a drafting nature and could most fruitfully be discussed in the context of the Drafting Committee. The Committee should decide immediately whether to vote on particular amendments, if certain delegations wished to insist on that procedure, or to refer all amendments to the Drafting Committee.

49. Mr. CASTRÉN (Finland) welcomed all the amendments, which were useful and represented an improvement over the original text, and supported the proposal that they should be referred to the Drafting Committee.

50. The CHAIRMAN said that, if there was no objection, he would take it that the Committee agreed to the USSR motion to continue the discussion of article 3 and the amendments thereto at the following meeting.

It was so decided.

The meeting rose at 12.55 p.m.

1418th meeting
Wednesday, 17 October 1973, at 3.25 p.m.

Chairman: Mr. Sergio GONZÁLEZ GÁLVEZ (Mexico).

AGENDA ITEM 90

1. Mr. SANCHEZ GAVITO (Mexico) said that he hoped that it would be recommended to the Secretariat to improve the Spanish text of article 3 (a) by reconsidering the use of the word "ellos" and of the expression "en su propio territorio como en el de otros".

2. The CHAIRMAN suggested that article 3 should be referred to the Drafting Committee, which would take into account the comments made in the course of the debate.

It was so decided.

3. Sir Vincent EVANS (United Kingdom) recalled that, as the Commission pointed out in its commentary on article 4 of the draft articles under consideration (see A/8710/Rev.1, chap. III), that article was the first of a series of provisions setting up the system of notifications to facilitate the apprehension of the alleged offender and to make it possible to bring him to justice. However, to require of the "State Party in which one or more of the crimes set forth in article 2" had been committed that it should "communicate to all other States Party all the pertinent facts regarding the crime committed and all available information regarding the identity of the alleged offender" would be imposing on it a more onerous obligation than was justified for the purposes of the convention. It should be borne in mind that the convention would