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Observations of Member States on the question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law

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

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ANNEX

Observations of Member States on the question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law, transmitted to the International Law Commission in accordance with section III of General Assembly resolution 2788 (XXVI) *

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NOTE

For the text of the conventions referred to in the present observations, see the following sources:

<p>Convention on Consular Relations (Vienna, 24 April 1963)</p>	<p>United Nations, <i>Treaty Series</i>, vol. 596, p. 261.</p>
<p>Convention on Diplomatic Relations (Vienna, 18 April 1961)</p>	<p><i>Ibid.</i>, vol. 500, p. 95.</p>
<p>Convention to Prevent and Punish the Acts of Terrorism taking the Form of Crimes against Persons and Related Extortion that are of International Significance (Washington, 2 February 1971)</p>	<p><i>OAS Official Records</i>, OEA/Ser.A/17 (Washington D.C., OAS General Secretariat, 1971), p. 6.</p>
<p>Convention on the Privileges and Immunities of the Specialized Agencies (New York, 21 November 1947)</p>	<p>United Nations, <i>Treaty Series</i>, vol. 33, p. 261.</p>
<p>Convention on the Privileges and Immunities of the United Nations (New York, 13 February 1946)</p>	<p><i>Ibid.</i>, vol. 1, p. 15.</p>
<p>Convention on Special Missions (New York 8 December 1969)</p>	<p>United Nations General Assembly resolution 2530 (XXIV), annex.</p>
<p>Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 23 September 1971)</p>	<p>ICAO, document 8966, p. 1.</p>
<p>Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague, 16 December 1970)</p>	<p>ICAO, document 8920, p. 1.</p>
<p>Single Convention on Narcotic Drugs (New York, 30 March 1961)</p>	<p>United Nations, <i>Treaty Series</i>, vol. 520, p. 204.</p>

* The observations contained in this annex were originally distributed as documents A/8710/Add.1 and A/8710/Add.2.

Argentina

[Original text: Spanish]
[29 June 1972]

1. It is a principle of conventional and customary international law that States are obliged to take effective steps to ensure the personal inviolability of diplomatic agents and other official foreign representatives. This obligation to treat them with due respect and to take all appropriate steps to prevent any attack on their persons, freedom or dignity has been expressly provided for in article 29 of the Convention on Diplomatic Relations, article 40 of the Convention on Consular Relations and article 29 of the Convention on Special Missions.

2. With regard to national legislation, it seems appropriate to refer to the relevant part of the following articles of the Argentinian Constitution:

"Article 100. The Supreme Court and lower courts of the nation shall exercise jurisdiction and pronounce judgement in all cases involving matters governed by the Constitution and laws of the nation, except for the reservation made in article 67, paragraph 11 . . . ; in cases concerning ambassadors, Ministers, and foreign consuls. . .

"Article 101. In these cases the Supreme Court shall exercise appellate jurisdiction according to the rules and exceptions prescribed by the Congress; but in all matters concerning ambassadors, Ministers and foreign consuls and those in which any province is a party, the Court shall exercise original and exclusive jurisdiction."

The above constitutional provisions are quoted as proof of the guarantees accorded by the State of Argentina to foreign diplomats in matters to which they are "party" and without prejudice to the following.

3. It should be added that article 221 of the Penal Code, as amended by Act No. 17567, provides as follows:

"A sentence of six months' to three years' rigorous imprisonment shall be imposed on:

"(1) Any person who violates the immunities of the Head of a State or the representative of a foreign Power.

"(2) Any person who offends the dignity or self-respect of any of the said persons while they are in Argentine territory."

Finally, it should be stated that, when the victim of a crime is a diplomatic or consular agent, the Supreme Court shall have original and exclusive jurisdiction to deal with such cases.^a

^a *Fallos de la Corte suprema*, vol. 272*, p. 87; *ibid.*, vol. 277, p. 69; recently [19 July 1971], *ibid.*, vol. 280, p. 164.

Australia

[Original text: English]
[25 April 1972]

Existing conventions already require a large number of the nations of the world to afford protection to diplomats. It is questionable whether yet another set of draft articles would prove more acceptable to nations outside this group than existing conventions. By these are meant the Vienna Conventions on Diplomatic and Consular Relations which require States Party thereto to treat a diplomatic agent or consul "with due respect" and take "all appropriate steps to prevent any attack on his person, freedom or dignity".

By "other persons entitled to special protection under international law" presumably is meant persons associated with inter-

national organizations e.g. representatives attending meetings, officials etc. The draft articles on the representation of States in their relations with international organizations^a deal with representatives attending meetings of international organizations in similar terms to diplomats. It would seem that in respect of protection this reflects such instruments as the United Nations and the Specialized Agencies Conventions on Privileges and Immunities. On the other hand we know of no instrument applicable to an international organization which requires States parties thereto to provide protection to officials. The reverse is usually the situation in that officials are protected from the activities of the State itself e.g. immunity from arrest.

In this situation there may not be much value in the International Law Commission's preparing yet another set of draft articles dealing with offences against diplomats, consuls, representatives attending meetings etc. What could be of value would be for the Commission to investigate and provide a guide as to how States might implement the requirements of the Conventions. The Commission could examine the various ways in which States have implemented these requirements and produce a code of desirable practice. There would seem to be nothing in this proposal contrary to the Commission's function of encouraging "the progressive development of international law and its codification".

As to protection of "other persons entitled to special protection under international law" not covered by existing or proposed conventions already drafted, the extent of the problem—if any—is not clear. Perhaps this is something further that the United Nations itself could investigate. It would seem that in the normal situation such people would not be the focus of political activists as are the representatives of States. In the abnormal situation the effectiveness of a convention is debatable in any case. This could of course change if the power and influence of international organizations continue to grow.

^a See *Yearbook of the International Law Commission, 1971*, vol. II (Part One), pp. 284 *et seq.*, document A/8410/Rev.1, chap. II, D.

Belgium

[Original text: French]
[2 June 1972]

The observations made below are of a preliminary nature and relate mainly to public and private international law. Belgium intends to make more extensive comments at a later stage of the preparation of the draft convention, particularly with reference to international penal law.

I. GENERAL OBSERVATIONS

A. Significance of the convention

1. The convention should be drawn up in such a way as to secure the widest possible agreement.
2. The aim is to ensure the safety of persons who are threatened with, or are victims of, kidnapping. Its deterrent effect should be of capital importance.

B. Responsibility of the receiving State

3. The point of departure should be the obligation of the receiving State to ensure appropriate protection for diplomats accredited to it. It would then be possible to take the position that the receiving State would be presumed to be in fault whenever it failed to meet a request by a diplomat for reasonable protection. The protective

measures incumbent upon the receiving State should therefore be specified in the convention.

4. The basis of protection resides in the special legal status of diplomats and, secondarily, of the members of their families, as laid down in the Vienna Convention on Diplomatic Relations in 1961.

C. Judicial measures

5. Effective judicial co-operation must be established between States as soon as an attempt has been made against a diplomat. It should, in particular, include the duty of the Government of the receiving State to provide the Government of the sending State with all the information available to it.

6. One of the purposes of the draft convention should be to qualify certain offences affecting international relations as international crimes, so that the perpetrators can be tried by the competent authorities of any State on whose territory they are found, unless extradition proceedings have been started against them.

D. Reparation for damages

7. Reparation for offences which engage the responsibility of receiving States with respect to the resultant damages would appear to be of particular importance, since this responsibility is not at present reflected in any legal obligation.

It would be desirable to require the Government of the State in whose territory the crime was committed to pay compensation to the victim or the victim's family.

II. SPECIFIC OBSERVATIONS

The draft articles submitted by the United States of America (A/CN.4/L 182)^a call for the following observations:

Article 1, paragraph 2

Subparagraph (a) would have the effect of creating a lacuna;

Subparagraph (b) is concerned with rather unlikely cases.

The two subparagraphs remove the obligations of third States, which would no longer be bound to extradite the presumed perpetrators of the offence, although they are likely to seek refuge in the territory of such States.

Article 3, paragraphs 2 and 4

The drafting of paragraph 2 and of paragraph 4 might create certain difficulties. A State cannot be bound by a convention which it has not signed.

The drafting of subparagraphs (a), (b) and (c) should be amended and based on the wording of subparagraph (g). Paragraph 4 could thus be deleted.

Articles 4, 5, 6 and 7

Logically, article 7 should be the third paragraph of article 4, which should become article 6.

Instead of referring to "severe penalties" (article 7), minimum penalties should be fixed.

Article 6 should be article 4.

Article 9, paragraph 2

Care should be taken not to give the perpetrators of the crimes in question special privileges by comparison with the normal system of remand in custody.

Brazil

[Original text: English]
[15 March 1972]

The issue of offences or crimes committed against persons with the right to special protection, such as diplomatic or consular representatives, is only one aspect of a wider question, i.e., international treatment of all offences or crimes committed by terrorists. With reference to the adoption of an adequate judicial remedy to be applied in the struggle against terrorism, the Brazilian Government has stressed the need for multilateral co-operation in the prevention, sanction and repression of acts of terrorism, since it is an undercover activity, organized on a world-wide basis, in order to undermine the structure of States, violating the most legitimate rights of man. In the forum of OAS Brazil defended the point of view that terrorist acts, kidnappings and corresponding demands for ransom should be categorized as grave common crimes against humanity and accordingly stressed the need for international regulations defining such crimes, especially for purposes of extradition. The perpetrators of acts of terrorism should be denied the right of asylum, which, however, must be maintained intact as far as its basic principles are concerned, particularly as to the faculty of the authority offering asylum to define the nature of the crime which gave rise to the request for asylum. This position is intended solely to prevent the institution of asylum from being distorted in order to serve in erroneous application as protection for common criminals.

During the third extraordinary session of the General Assembly of OAS (January 1971), Brazil favoured a broad draft convention covering the prevention of terrorism as a whole, since the approval of a limited convention, i.e., one dealing only with cases involving the kidnapping of diplomats, consuls and other persons with the right to special protection, would be of little use in achieving the purposes it is intended to serve. The persons whom such a restricted convention would cover already enjoy sufficient international protection in the field of law.

Canada

[Original text: French]
[25 April 1972]

Security and the absence of coercion are the two essential elements in inter-State and international relations. It is for this reason that one of the oldest institutions of international law is the inviolability of ambassadors and their staff, an inviolability which imposes on the receiving State the obligation to protect them from any attack against their person, freedom or dignity. This rule of inviolability is still as essential today as ever for the proper conduct of international relations. The attacks of a new kind against diplomatic and consular inviolability which we have been witnessing in recent years must be countered in an appropriate way. It is the Canadian Government's opinion that an international convention to ensure the inviolability traditionally accorded by international law to those professionally engaged in international relations is highly desirable.

The Vienna Conventions on Diplomatic Relations (1961) and on Consular Relations (1963) have already affirmed and codified the principle of inviolability. The convention now under consideration should contain measures for prevention and punishment calculated to deter from their purpose any person or group of persons who may be tempted to use representatives or agents of foreign States or international organizations as instruments for political pressure against a government or for publicity on the international scene. If its work is to be useful, the International Law Commission should embody in its draft convention, above all, the

^a See p. 201 above.

elements most likely to have a deterrent effect with regard to crimes against foreign representatives. In the opinion of the Canadian Government, this deterrent effect is the most important feature of any convention intended to ensure the security of international relations through better protection of diplomats, consuls and other agents concerned with international relations.

The Canadian Government also hopes that the convention to be drafted will be relatively simple and limited in scope, for the following reason: such a convention will necessarily touch on certain areas of international law which are still ill-defined and which the International Law Commission will eventually have to study, such as political asylum, State responsibility and non-territorial criminal jurisdiction. Any incursion going too far into these areas might give rise to controversies which would make the convention unacceptable to some countries. For the purpose of deterrence mentioned above, it may be preferable to aim at a convention of limited legal scope, but acceptable to a majority of States. The Canadian Government's main suggestion is, therefore, that a restrictive approach should be adopted to the classes of person covered and the crimes to which the convention will apply.

The Canadian Government has examined with great interest the Convention to Prevent and Punish the Acts of Terrorism, adopted by OAS (1971), and the draft conventions on the protection of diplomats and other persons submitted by Uruguay^a and the United States of America (A/CN.4/L.182)^b as well as the Rome draft.^c The International Law Commission will certainly find constructive elements in them which it can combine in a universal instrument. The Canadian Government, for its part, has drawn on the above-mentioned work to define its present position on the constituent elements of the future convention, as presented below.

The persons to be protected

The above-mentioned texts use the expression "persons entitled to special protection under international law" or some similar wording. The Rome draft lists a number of examples; the United States draft establishes a limitative list by reference to other international instruments. This procedure introduces a doubtful element into the convention. Since the meaning of the expression "persons entitled to special protection" is ill-defined in international law, contracting States would be undertaking to fulfil an obligation whose precise scope remains unknown. Even taken in its narrowest sense, the expression may cover a multitude of persons, and this considerably increases the burden of the obligation placed on contracting States, the scope of which is unduly extended. Experience in recent years shows that those chosen as instruments for political pressure are mainly persons having an obvious representative function and an important post. The essential purpose of the convention would be to provide protection against crimes committed because of the victims' official status; and if the convention is to be made applicable without too many abuses it must, as far as possible, avoid sanctioning crimes in which the special status of the victim did not enter into consideration. If the convention covers a large number of foreign nationals, its effect will be to sanction mainly crimes which are of no international significance except for the status of the victim, which is merely incidental. This result could be avoided by restricting the application of the convention to cases in which the presumed offender was aware of the victim's special status; but such a condition would make the convention harder to enforce by providing the criminal with an easy pretext for evading its application. The persons who should be protected are foreign dignitaries (Heads of State, Heads of Government and ministers or persons of ministerial rank);

^a Document A/C.6/L.822.

^b See p. 201 above.

^c See p. 335 below.

diplomats and consular officials and persons entitled to the same inviolability as diplomats or consular officials under the Vienna Conventions on Diplomatic Relations and on Consular Relations; high officials of important international organizations and representatives of States to those organizations. The persons covered by the Convention on Special Missions should not enjoy the protection of the future convention: owing to the frequency of their movements and the absence of publicity regarding them, they are far less exposed to dangers of the kind that threaten permanent missions. Moreover, the lack of enthusiasm with which this convention has been received so far testifies to the danger of a convention extending the frontiers of international law too quickly.

In most cases persons other than dignitaries and the representatives or agents of foreign States or international organizations will be sufficiently protected by virtue of the general responsibility of States for the protection of foreign nationals resident on their territory.

Crimes

Only crimes constituting a serious infringement of the inviolability of the persons protected by the proposed convention should be taken into consideration, such as murder, kidnapping, illegal restraint and serious assault. It would be preferable not to create crimes that are new to the domestic law of contracting States. The Canadian Government would, however, be in favour of a provision imposing heavier penalties for crimes committed against persons protected by the convention. It also suggests that, in view of the special circumstances and the international repercussions of these crimes, the contracting States should recognize that they cannot be classed as political crimes; they should consequently be regarded as common crimes which leave the way open for extradition. Nor should the perpetrators of these crimes enjoy political asylum. Without these restrictions the deterrent effect of the convention would be seriously impaired. The Canadian Government hopes that States which are attached to the institution of political asylum will accept this restriction in regard to crimes of violence that are universally censured. Crimes committed against foreign representatives should be distinguished from crimes committed directly against the security or the government of a State by one of its own nationals. Unless some reasonable limit is set to the institution of political asylum, foreign representatives will continue to be the innocent victims of internal political strife in receiving States for a long time to come. Unless it sets such a limit, the proposed convention will have little justification. Some States will perhaps maintain that no limit should be set to the concessions which the receiving State may agree to in negotiations in such circumstances, and will accept the principle that it should be given full latitude. But it is not necessary for the extraordinary measures which a State may be led to adopt in special circumstances to be expressly provided for in a convention. International law can tolerate some breaches of treaty obligations when the higher interests of national defence and security of the State are involved.

Extradition

If the future convention recognizes that crimes against diplomats are not to be regarded as political offences, the extradition of those responsible for them will become possible in several cases under already existing treaties. In order to increase the convention's deterrent effect, however, it is none the less necessary to include at least some provisions stressing the need for extradition in accordance with the national laws and treaties governing it. It should be considered whether it would be advisable to follow the provisions of The Hague Convention for the Suppression of Unlawful Seizure of Aircraft, which imposes on States the obligation to include the crimes mentioned in that Convention in their existing or future extradition treaties, or to adopt the less rigorous terms of the Single Convention on Narcotic Drugs, which states that it is

desirable that the offences referred to be included as extradition crimes in any extradition treaty which has been or may hereafter be concluded between any of the parties.

The choice of terms imposing heavier or lighter obligations on the parties to the future convention depends on a balance to be established between two equally desirable objects: that of an effective convention and that of a convention acceptable to a large majority of States. Lastly, criminal prosecution in a State other than that in which the crime was committed should be provided for as an exception and only in cases in which there is no possibility of extradition, either because there is no applicable law or treaty or because the presumed criminal is a national of the State from which extradition is requested.

As to the reservation covering extradition for political crimes, it should be remembered that several extradition treaties already contain a clause on outrages which provides for extradition for certain particularly serious political crimes.

Responsibility of the receiving State

The Vienna Conventions on Diplomatic Relations and on Consular Relations are silent on the method of determining the receiving State's responsibility for infringements of the inviolability of foreign representatives. Thus, the receiving State does not have to show that it has taken "appropriate steps" to protect foreign representatives; the nature and extent of the receiving State's obligations remain ill-defined; there is no provision for compensation for damages suffered. These are gaps which should be filled in order to avoid disputes liable to disturb harmonious relations between States or between States and international organizations.

Where a representative or agent of a foreign State or an international official has been the victim of a crime, the receiving State has a duty to restore the lost inviolability as soon as possible and to prosecute the guilty persons. The receiving State may then find itself in a dilemma: for instance, in a case of kidnapping, the most direct and surest means of restoring the victim's inviolability may be to yield to his kidnappers' demands, regardless of the consequences for the maintenance of order, the security of the State and other domestic interests. On the other hand, to refuse the demands may endanger the victim's physical integrity and even his life. International law does not impose any rule of conduct on the receiving State in such cases, and it is better not to do so. In such a situation the receiving State should remain free to act according to the circumstances and the conflicting interests at stake. It cannot be accepted that because of its duty to provide special protection a government must give way to every demand made by the kidnappers of a foreign representative. No social system could tolerate an obligation carried to that length.

It is, however, important, in the interests of international relations, to guarantee fair reparation in every case. The difficulties involved in determining responsibility are practically insuperable. It might therefore be advisable to consider a system of reparation based not on responsibility, but on the principles of hospitality and courtesy. Rather than engage in an awkward discussion or make an embarrassing admission of responsibility, the receiving State would undertake in all cases to compensate the sending State for any damage to property or injury to persons, in accordance with scales to be established. This obligation to make reparation would also have the advantage of inducing the receiving State to pay more attention to preventive measures. In this sphere of preventive measures and diligence in protecting foreign representatives, the receiving State must be allowed to exercise its discretion freely. Certainly the receiving State must exercise the necessary vigilance and take any special measures required to provide foreign representatives with adequate protection; but it should not be thought that in order to honour this obligation it must accede to requests for protection which it considers unfounded or spend sums on protection which place an undue burden on the national budget. Conversely, protective measures should not be imposed on foreign

representatives against their wishes or unduly restrict their freedom of action.

Canadian law

There are at present no special provisions in Canadian criminal law concerning crimes against foreign representatives. Those responsible for kidnapping the United Kingdom Trade Commissioner at Montreal in 1970 were not prosecuted on criminal charges, because they obtained a safe conduct to go abroad when the Commissioner was released. It is still possible that they may be tried on charges of criminal abduction and illegal restraint if they fall into the hands of Canadian justice.

As regards extradition, a treaty recently concluded between Canada and the United States of America contains a provision (article 4) under which the State to which application is made can refuse extradition if the offence in question is of a political nature; it is, however, also expressly provided that this clause shall not apply to serious crimes against a person enjoying special protection under international law.⁴ Such a provision has the advantage of allowing the States concerned to grant political asylum, while at the same time excluding from the class of political offences proper those indirect and specially grave political offences whose victims are innocent foreigners, and whose effects go far beyond the framework of domestic politics and threaten international relations as a whole.

Conclusion

The Canadian Government is in favour of an international convention designed to increase the stability of international relations by protecting the inviolability of foreign representatives. It wishes to assure the International Law Commission of its willingness to collaborate in this project. It suggests that in order to achieve the proposed purpose effectively, a convention of this sort should be limited in scope and contain mainly deterrent elements, such as severity of punishment and refusal of political asylum; it should contain as few innovations and obligations as possible, so that a large majority of States may quickly accede to it.

⁴ Articles 3 and 4 of the treaty and list of offences reproduced in *International Legal Materials*, Washington (D.C.), vol. XI, No. 1 (January 1972), pp. 22 *et seq.*

Colombia

[Original text: Spanish]
[7 February 1972]

Colombia has not yet adhered to the Vienna Convention on Diplomatic Relations of 18 April 1961, or the Conventions on the privileges and immunities of the United Nations and the specialized agencies, adopted respectively by the General Assembly of the United Nations on 13 February 1946 and 21 November 1947, and, in their absence, Decree No. 3135 of 1956 has been applied.^a

Article 10^b of this Decree specifies the essential prerogatives,

^a Colombia, *Diario Oficial* (Bogotá), 5 February 1957, XCIIIrd Year, No. 29275, p. 281.

^b In addition to article 10 Legislative Decree 3135 contains the following articles which the Secretariat feels may be of relevance:

Article 2. The granting of prerogatives and exemptions of a diplomatic nature shall always be understood to be subject to the observance of a system of the strictest international reciprocity.

Article 3. If the reciprocity that is invoked in order to obtain

(Continued on next page.)

which, according to practice and custom, have been granted to diplomatic personnel, namely:

1. Inviolability of the person;
2. Inviolability of the home and of correspondence;
3. Immunity from criminal jurisdiction; and
4. Immunity from civil jurisdiction with the following exceptions:

- (a) Whenever the diplomatic official renounces his immunity, as plaintiff;
- (b) In the case of actions *in rem*, including actions *in personam* relating to an item of real or personal property located within the national territory; and
- (c) In case of acts relating to a professional activity extraneous to the functions of the diplomatic official.

There are no established legal opinions or judicial precedents on the subject.

(Foot-note ^b continued)

any privilege not covered in this decree is not based on a convention, the Government may or may not grant it, according to whether it coincides with its interests. Legislative rather than *de facto* reciprocity may be required.

Article 4. The application of the system of international reciprocity pertains solely to the Ministry of Foreign Affairs which, through its Protocol Division, may broaden or restrict specific prerogatives, in those cases when the Government deems it necessary, and settle any question which may arise over the interpretation of provisions contained herein.

Article 5. Commitments entered into by the Republic under agreements on points identical or similar to those covered in this decree shall not be affected by the provisions contained herein, and, shall therefore continue in force for the term specified in each agreement. When an extension is under discussion or a new agreement is to be concluded, the provisions governing the matter must be applied.

Article 6. No official of the Colombian Foreign Service may demand in the country in which he resides greater privileges or immunities than those granted to diplomatic or consular agents accredited in Colombia.

Article 7. The granting of any kind of prerogatives, exemptions or immunities requires that the recipient shall meet the following conditions:

- (a) He is a duly accredited official;
- (b) He is a national of the State that appoints him and is paid by its Government;
- (c) He does not engage in activities other than his official functions, for which he has not been accredited.

Article 8. The following classification is established for persons who under the preceding article may enjoy prerogatives, privileges and immunities:

(a) *Accredited diplomatic personnel*, including: Nuncio and Ambassador Extraordinary and Plenipotentiary; Internuncio, Envoy Extraordinary and Minister Plenipotentiary, Chargé d'Affaires by appointment, Chargé d'Affaires *ad interim*, Minister-Counsellor, Legal Adviser, Counsellor, First Secretary, Second Secretary, Third Secretary, Military, Naval, Air, Civil and Specialized Attachés.

(b) *Unaccredited diplomatic personnel*, including any of the above-mentioned officials in transit through the national territory or on a temporary visit to the Republic, without being accredited in Colombia.

(c) *Consular personnel*, including any of the following officials; Consuls General, Consuls of first and second class, Vice-Consuls and Consular Agents.

(d) *International technical personnel*, including non-Colombian officials belonging to international or technical assistance organizations assigned to Colombia or contracted by the National Government. For the granting of prerogatives the chief of a technical office or representative of an international organization shall have the same rank as the personnel enumerated in (a) above, and the others, that of (e) below.

(e) *Official personnel*, consisting of non-Colombian office employees in the official service of a diplomatic or consular

Cuba *

[Original text: Spanish]
[22 August 1972]

1. Far from considering this a question of urgency and importance, the Revolutionary Government of Cuba considers it unnecessary, self-defeating and impractical, for the following reasons:

(a) It would be superfluous to undertake the study of a new convention on diplomatic inviolability, since this question is amply covered by other international conventions, under which it is the host Government that is responsible for the proper protection of diplomats accredited to the country.

(b) A convention containing nothing more than repressive measures could not deal with or remove the economic, social and political causes which give rise to the type of violence that it is intended to eliminate.

(c) Taking the question from another angle, any convention that might be adopted would have the opposite effect to what is intended and would be quite useless. It would have the opposite effect because its repressive tenor would stimulate violence instead of repressing it; and it would be useless because few States would be in a position to ratify it, some because they do not wish to prejudice the institution of asylum, which they consider just and suitable, and others because they do not wish to diminish the internal jurisdiction of the State, since it is the State which is responsible for upholding the rule of law.

2. Furthermore, it is obvious that, once established authority begins to crack under the irresistible onslaught of a revolutionary violence, a new convention will be quite useless; it will be simply a deplorable attempt to gain the sanction of international law for policies of terror unleashed against the national liberation movements by tyrannical régimes that are alien to the people and are the lackeys of imperialism.

3. For the reasons set out above, we categorically deny the importance and urgency of this question, and we shall oppose the adoption of any kind of repressive convention that may be submitted to the General Assembly.

* These comments were received after the closure of the Commission's twenty-fourth session.

Czechoslovakia

[Original text: English]
[25 April 1972]

Having in mind the ever more frequent criminal acts committed against persons entitled to special protection under international law and infringing thus in a flagrant manner upon the inviolability

(Foot-note ^b concluded)

mission paid by the State to which the mission belongs and engaged exclusively in its service.

(f) *Service personnel*, consisting of non-Colombian employees in the domestic service of any of the members of a diplomatic mission.

Article 9. Privileges and immunities are in general extended to the family of the holder, defined as the wife, unmarried daughters and sons under 21 years of age who reside with the official and who do not engage in private activities for profit.

Article 18. For reasons of courtesy to the occupants, and at the request of the chief of mission, a free police guard service may be assigned to the headquarters of each foreign diplomatic mission.

of such persons, taking into consideration that such criminal acts prevent persons against which they are committed from discharging their functions and affect normal relations among States, having in mind the progressive development of international law and its codification in accordance with the Charter of the United Nations, the Czechoslovak Socialist Republic considers it appropriate that the International Law Commission should deal with the question of protection and inviolability of diplomatic agents and other persons entitled to special protection under international law as specified in section III, paragraph 2 of resolution 2780 (XXVI) adopted by the United Nations General Assembly on 3 December 1971.

At the same time, it considers it appropriate that the International Law Commission itself should decide when it includes, within the possibilities, this complex of problems in its programme of work.

Denmark

[Original text: English]
[18 April 1972]

1. It is the opinion of the Danish Government that the obligations of States as to the protection of diplomats and others are adequately established in international law as codified in existing conventions, such as the 1961 and 1963 Conventions on Diplomatic and on Consular Relations.

2. For this reason, the present need seems to be not so much for further emphasis on this obligation as for covering the situation where the author of such crimes is apprehended in a third country. In the Danish view there is a similarity of purpose in this respect with the purposes of the Conventions concluded in The Hague in 1970 and in Montreal in 1971 on seizure of aircraft and on unlawful acts against the safety of civil aviation, respectively.

3. Firstly, it would seem that there is the same "international element" in both types of cases. In the aviation conventions, the object of protection is the unimpaired communication between countries and peoples. In the present convention, the object is the communications and relations between governments.

4. Secondly, there seems to be the same need for the major elements contained in the aviation conventions, namely:

(a) The establishment of a system of international co-operation with a view to preventing or counteracting such crimes or to safeguarding the victims;

(b) The establishment of a set of legal rules which will ensure the punishment of the authors of the crime, either by way of extradition or through criminal proceedings in the State in which they are apprehended. In other words, rules which widen the possibility of effecting extradition and oblige a State to adopt rules for international jurisdiction in such matters;

(c) The establishment of a basis for international condemnation of such crimes and the creation of legal platform for moral (or political) pressure on other States or organizations which might be condoning the crimes.

5. In the light of the above considerations, representatives of a group of States (including Denmark) meeting in Rome in February 1971, elaborated a draft convention, generally referred to as "the Rome draft", of which the English text is enclosed.^a In the view of the Danish Government this draft, which closely follows the Hague and Montreal Conventions, will constitute a suitable basis for elaboration of a final draft convention, especially because the provisions therein regarding extradition, punishment and jurisdiction must be considered the maximum results obtainable by consensus among a majority of States. The following examples would serve to illustrate this:

(a) During the Hague Conference it was amply demonstrated that for various reasons a majority of States would not be able to accept provisions for mandatory extradition. The balanced system of extradition or punishment adopted by the Hague Conference and likewise accepted in Montreal should be considered as the optimum of what can be accomplished at an international conference.

(b) The question whether the political motive behind the crime should be disregarded and the act considered as a "common crime" was a most controversial one in The Hague. A solution was found by the words "without exception whatsoever" in article 7 of that Convention (and of the Montreal Convention).

(c) A provision that a State which makes extradition conditional on the existence of a treaty shall consider the convention as sufficient legal basis could not find acceptance. The actual wording (in article 8, paragraph 2) reads: "may at its option . . .".

6. The Hague Convention was adopted by 74 votes, with none against, and 2 abstentions. On the last day of the Conference it was signed by 50 States and has since been widely adhered to. In consequence hereof and of considerations such as those mentioned above, the Montreal Conference generally agreed to adopt without further discussion the rules on extradition, punishment and jurisdiction set out in the Hague Convention. It would seem, therefore, that if the Hagues rules were to be disregarded in the preparation of a new convention, this would tend to create unnecessary difficulties on issues to which a widely acceptable solution has already been found.

7. It has been said that the Hague Convention differs from a convention on the protection of diplomats in that in the case of hijacking it is inherent in the crime that the author moves out of the country where the crime is committed or initiated to some other country, whereas it is typical of crimes against diplomats that the authors stay within the territory. In the Danish opinion this is not a pertinent distinction, because the Hague Convention also covers the case of an author being apprehended later in a third country, i.e. a State which has had no formal connexion with the actual crime. Further, it should be borne in mind that the Montreal Convention typically covers exactly the situation where the authors will stay behind (but may at a later stage seek refuge in a third country).

8. Some States have particularly stressed that a convention should be formulated in a manner that would not impede a State in attempts at obtaining the release of the victim through negotiations with kidnappers or otherwise rather than securing the arrest of the kidnappers. It is the Danish opinion than, irrespective of the wording of a convention, a State would by virtue of the law of necessity be free to take such action. If, however, it were possible to include in the formulation of the convention text a satisfactory provision to that effect, the Danish Government would be ready to support it.

9. While, as stated above, the Danish Government finds the Rome draft a suitable basis for the drafting of a convention, some doubt is felt about the advisability of allowing for the coverage of persons under protection to be so wide as attempted in the draft.

WORKING PAPER

The States Parties to this Convention ("Rome draft")

Considering that acts of assault against persons of a certain status seriously jeopardize the safety of these persons and may disturb peaceful relations between States,

Considering that the occurrence of such acts is a matter of grave concern,

Mindful of their obligations according to international law to protect by all appropriate means foreign persons of a certain status present in their territories,

^a See "Working paper" below.

Considering the urgent need for co-operation among States to prevent such acts of assault and to punish the offenders wherever they may be present,

Have agreed as follows:

Article 1

This Convention applies, in the case of offences directed against persons who are nationals of a Contracting State or offences which have taken place in the territory of a Contracting State, to kidnapping, murder and other assaults against the life or physical integrity of those persons to whom the State has the duty, according to international law, to give special protection and in particular:

- (a) Members of permanent or special diplomatic missions and members of consular posts;
- (b) Civil agents of States on official mission;
- (c) Staff members of international organizations in their official functions;
- (d) Persons whose presence and activity abroad is justified by the accomplishment of a civil task defined by an international agreement for technical co-operation or assistance;
- (e) Members of the families of the above-mentioned persons.

Article 2

Each Contracting State shall take all appropriate measures in order to prevent and punish the offences described in article 1.

Article 3

1. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over the offences described in article 1 not only when they are committed in its territory, but also when they are directed against a person who is a national of that Contracting State, irrespective of where the offences are committed.

2. Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offences in the case where the alleged offender is present in its territory and it does not extradite him pursuant to article 5 to any the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 4

The Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offences were committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.

Article 5

1. The offences described in article 1 shall be deemed to be included as extraditable offences in any extradition treaty existing between Contracting States. Contracting States undertake to include the offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a Contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. Contracting States which do not make extradition conditional on the existence of a treaty shall recognize the offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. The offences shall be treated, for the purpose of extradition between Contracting States, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with paragraph 1 of article 3.

Article 6

1. Contracting States shall afford one another the greatest measure of assistance in connexion with criminal proceedings brought in respect of the offences described in article 1. The law of the State requested shall apply in all cases.

2. The provisions of paragraph 1 of this article shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

... (final clauses).

Ecuador

[Original text: Spanish]
[5 May 1972]

The Government of Ecuador, aware of the United Nations' interest in devising appropriate measures to prevent the kidnapping of diplomatic agents and to ensure adequate punishment of the guilty when such offences occur, considers that there is a need for an international convention on the subject as a first step towards the development of an international penal code which will one day have to be prepared in the permanent interests of universal justice.

France

[Original text: French]
[2 May 1972]

1. The French Government considers that it should first recall its reservations on the actual principle of the possible preparation of a new convention on the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law.

As the French delegation to the twenty-sixth session of the General Assembly pointed out during the debate in the Sixth Committee devoted to consideration of the report of the International Law Commission on the work of its twenty-third session, the protection of diplomatic missions and consular posts and members of their staff seems to be properly provided for in international law.^a Such protection is primarily the responsibility of the receiving State or State of residence. Thus article 29 of the Convention on Diplomatic Relations provides that the person of a diplomatic agent is inviolable and that the receiving State "shall take all appropriate steps to prevent any attack on his person, freedom or dignity". Similar provisions concerning consular officers are contained in article 40 of the Convention on Consular Relations and it goes without saying that in this matter the Vienna Conventions are merely the expression of general international law, so that the obligations and responsibility of States are no different in the absence of binding treaty provisions.

^a See *Official Records of the General Assembly, Twenty-sixth Session, Sixth Committee*, 1258th meeting.

Thus the legal obligations of States are well established, and the problem is that of their effective application. It seems advisable not to weaken the effect of existing rules by attempting to formulate new ones.

2. The French Government has noted that the drafts submitted so far for consideration by the International Law Commission (working paper prepared by Mr. Richard D. Kearney (A/CN.4/L.182);^b working paper submitted by the delegation of Uruguay to the Sixth Committee^c) relate more to international judicial co-operation than to diplomatic law.

In this connexion too, the French Government has serious doubts about the necessity and the advisability of a convention of this kind. For the problem is very different from that with which States are confronted in cases of hijacking of aircraft. For these cases it was necessary to define a new offence since the hijacking of aircraft was not covered by the law of most States. However, there can be no doubt that kidnapping and illegal restraint are severely punished everywhere, whoever the victims may be. Moreover, the activities of aircraft hijackers are, in nearly all cases, international, since they move from country to country, which justifies the existence of special rules on jurisdiction and necessitates strengthened and specific international judicial co-operation. The case of kidnappers of diplomats is quite different, since these criminals do not usually take asylum in another State except as the outcome of negotiations to free their victims.

3. If it were nevertheless considered that there is a need—which the French Government does not at present perceive—to prepare a convention on the kidnapping of diplomats, in order to be effective, the new instrument should be acceptable to a large majority of States. It would therefore be essential, first, that the scope of the proposed convention should be well defined, secondly, that the solutions adopted should not be in conflict with the law of the States invited to become parties to it, and lastly, that the solutions should take account of the fact that the object in view is primarily to ensure the safety of persons who are threatened with kidnapping or have been kidnapped and that, consequently, the freedom of action of States to protect such persons should not be hampered by carrying legal logic too far.

4. As regards the first of the above-mentioned points, the International Law Commission should first try to define the categories of persons who would be entitled to special protection for the purposes of the proposed convention. In the opinion of the French Government, since such a text will have implications for criminal law, this definition should be extremely precise. There can be no question here of referring, without further particulars, to international law or to the duty of States to give special protection to important persons who are not expressly mentioned. Nor can States be required to apply the convention to persons protected by treaties to which those States are not parties. Finally, even in the case of persons who have a special status under a convention to which the State concerned is a party, it is not certain that that status gives them an inviolability similar to that to which diplomats are entitled and therefore justifies the adoption of similar rules where they are concerned.

In addition, the Commission should take particular care in defining the acts to which the convention would apply. In the opinion of the French Government, no attempt should be made to define a new offence. Kidnapping, murder and illegal restraint are, as has already been pointed out, perfectly well known to national law, and States might be reluctant to accept a text which created special categories for such crimes according to the status of the victim. Hence no reference should be made to the concept of an "international crime", which is, moreover, difficult to pin-

point and to apply. In other words, the purpose of the definition should be only to specify the offences for which the mutual judicial assistance it is intended to establish would come into play. Its effect must not be to make the penalties for these offences different from those imposed when the victim has no special status. Moreover, if the Commission decides to study texts submitted, it will probably consider it advisable to verify that all the acts mentioned as requiring the application of the convention are in fact treated as criminal acts by the law of all States Members of the United Nations. It will also, no doubt, consider that it is unnecessary to bring international machinery of any kind into play for trifling infringements of diplomatic inviolability.

5. With regard to the actual substance of the proposed convention, the French Government wishes to make the following remarks:

(a) Since, as has already been stated, the offence is not in itself of an international nature and since persons committing it are only exceptionally found on the territory of a foreign State, usually after the commission of the act, there are far fewer reasons than in the case of aircraft hijacking to make exceptions to the basic principle of the territoriality of criminal law. In addition, account must be taken of the fact that the courts of a State other than that in which the crime was committed will have less information and evidence at their disposal in the case of a crime against a diplomat than in the case of unlawful seizure of an aircraft. If it were intended to request States to establish their jurisdiction over such acts—a point on which the French Government makes every reservation—it would obviously not be possible to create as many cases subject to jurisdiction as are provided for in the Hague Convention.

(b) The French Government could not accept a text which did not reserve the principle of the expediency of prosecution. The only obligation which could possibly be considered is that of referring the case to the authorities competent to institute criminal proceedings.

(c) The convention should also, in the provisions relating to extradition, respect the principle that the political or non-political nature of the offence may be taken into account for extradition purposes. Any convention which precluded the possibility of refusing extradition for a political crime would be contrary to the basic principles of the law of many States and, for that reason, would not secure a significant number of ratifications.

(d) It is quite clear that if States which do not make extradition conditional on the existence of a treaty had to extradite for the acts referred to in the proposed convention (subject to the reservations indicated in the preceding paragraph), the convention would have to serve as an extradition treaty for States which make extradition conditional on the existence of such a treaty.

(e) The French Government considers that if there are to be provisions relating to mutual assistance in the sphere in question, they can relate, as in all conventions on international judicial co-operation, only to punishment and not to prevention.

6. Finally, the French Government believes the Commission will be aware of the fact that this is a very delicate matter which sometimes calls for the adoption of solutions that emerge only at the time of the event. It should therefore be careful not to cast its draft in inflexible terms which might tend to defeat the object in view.

Iran

[Original text: French]
[15 March 1972]

^a See p. 201 above.

^c Document A/C.6/L.322.

1. Consideration of the question of the protection of diplomats by the International Law Commission and the Sixth Committee of the General Assembly has made it possible to reaffirm the importance of the basic rule of diplomatic law, namely that con-

cerning the inviolability of diplomatic premises and the respect due to the person of the diplomat.

2. Demonstrations of violence against diplomats might paralyse the smooth operation of inter-State relations. In order to perform his functions, the diplomat must be protected from any hostile act by any person whatsoever.

3. The Imperial Government of Iran endorses the idea that the International Law Commission should prepare a draft international convention designed to strengthen the means of protection provided for under international instruments now in force.

4. It seems advisable to leave it to the International Law Commission to reconcile the need to complete the study of the questions to which it has already accorded priority and, given the importance of preparing a draft convention on the protection of diplomats, the need to submit such a draft to the General Assembly at the earliest possible date.

Israel

[Original text: English]
[29 March 1972]

In its broader context, the protection of missions—whether permanent or temporary—to international organizations cannot be separated from the problem of the protection of diplomatic missions in general. Although details may vary in accordance with the particular stipulations of “headquarters agreements” and analogous instruments, the basic elements of the law are common for all the representatives of a foreign State—diplomatic or consular—on the territory of the host State with its knowledge and consent. The Government of Israel is constrained to emphasize this at the outset, since several of its missions abroad have been the objects of deliberate and politically motivated attacks, and likewise several members of its foreign service or their spouses have been killed or injured as the result of those attacks. Others have been the victims of criminal attacks which were probably on the whole devoid of particular political motivation.

In this connexion the Government of Israel has noted that the International Law Commission in 1971, after a series of fatal attacks on diplomats had taken place in different parts of the world, has reaffirmed in strong terms the obligation of the host State to respect and to ensure respect for the person of individuals concerned and to take all necessary measures to that end, including “the provision of a special guard if circumstances so require” (draft articles on the representation of States in their relations with international organizations, article 28, commentary, para. 3^a). It is necessary to recall from time to time in unambiguous terms the fundamental character of this rule, which is and must be the dominant principle. The possible weakening of it, implicit in the doctrine advanced in section 5, chapter VI, of the working paper prepared by the Secretary-General entitled *Survey of International Law*^b seems to go too far in its search after “even-handedness”. Some of its propositions must, therefore, be subject to very close scrutiny before they can be accepted as positive international law.

In its appreciation of the position in law, the Government of Israel proceeds from the view that it is an uncontroversial rule of public international law that States have a primary and fundamental obligation to secure the safety of all alien persons or property within their territory, and to do so both by preventive and repressive action, and that this rule applies with even greater cogency to foreign diplomatic personnel, considering that it is

mainly through the medium of diplomatic contacts that a peaceful coexistence of nations is possible.

The first obligation of the receiving State obviously relates to the taking of preventive measures, and its responsibility is engaged whenever it has neglected to take all reasonable measures for the prevention of offences and damaging action. Such preventive action presupposes appropriate bilateral contacts and a sympathetic consideration of complaints, particularly those that are made after warnings or threatening communications are received, or prior attacks on nationals of the sending State, its institutions or any object symbolic of its international presence (exhibitions, ships, emblems, etc.) have taken place. The authorities of the receiving State will have to inform foreign representations of any advance knowledge they may have in this respect. In a number of countries the shortage of police and security personnel and the risks which this entails are frequently to a large extent overcome through modern technical means of crime prevention and of security for persons and premises. Although it would seem obvious, it appears that it would be timely to recall to host Governments that they are under a general obligation to facilitate the installations of technical devices of this kind should a diplomatic mission consider this necessary for its own security. This is not a matter which can be left to the exclusive initiative of the authorities of the host State.

As matters depend on local conditions, it is difficult to generalize as to the nature of the preventive measures to be taken; they may range from police screening of the surroundings of diplomatic offices and living quarters, protection of diplomats and members of their families therein and when moving about the receiving State, to the control of mail deliveries to their address, up to permitting diplomatic personnel to carry arms for their personal defence or allowing their protection by armed guards on their premises. Attention is drawn to certain local provisions for the establishment of security zones around foreign diplomatic or consular offices. The instances set out in this paragraph are, of course, illustrative only.

Obviously, police measures of protection must not interfere with bona fide visitors approaching and entering diplomatic premises.

No less important are deterrent measures, including the maintenance of a system of law adequate to deter acts of violence, and of police and other forces adequate for the protection required. Failure to exercise due diligence to afford protection, is wrongful. Part of deterrent action is penal retribution for criminal interference with diplomatic or consular activities, either on permanent or on special mission, including verbal or gestured insult. An appropriate punishment based on general guidelines and without giving consideration to the plea in attenuation that the act was a political crime, is part of doing justice in these matters, the object being not only to inflict on the accused a punishment commensurate with the fate of the individual victim of his crime but also to ensure the security of the service. Here too justice must be done, and, moreover, it must be patent to the public that justice is being done. It is an obligation of the public prosecutor—whatever otherwise the procedure in penal matters—to watch from the beginning and until the exhaustion of means of appeal, that the perpetrators of crimes against foreign States, the diplomatic and consular representations thereof, and the staff attached thereto, be prosecuted without delay, and any sentence duly imposed and carried out.

In case the perpetrator of a crime of this kind is not a national of the receiving State, a case for extradition may arise, and the insertion of an appropriate regulation in terms of international obligation is urgently called for. It might be useful if the International Law Commission were to draw up minimum standards of penal retribution to indicate in this way too the standards of responsibility of the receiving State and its providing for diplomatic security.

^a *Yearbook of the International Law Commission, 1971*, vol. II (Part One), pp. 284 *et seq.*, document A/8410/Rev.1, chap. II, D).

^b *Yearbook of the International Law Commission, 1971*, vol. II (Part two), p. 1, document A/CN.4/245.

This Government has noted that the International Law Commission proposes taking up the subject of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law at its twenty-fourth session (1972). It is looking forward with interest to the progress which the Commission will report.

Jamaica

[Original text: English]
[23 March 1972]

It is an established principle of international law that the person on a diplomatic agent is inviolable. This principle was codified by the Vienna Convention on Diplomatic Relations, article 29 of which provides as follows:

“The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.”

In recent years the conscience of the world has been indignantly aroused by the frequent violations of this principle within the particular context of the kidnapping, violent assault, murder, and other outrages directed at the person of diplomatic agents or other representatives within the international community having special protection under international law. So far, the means by which the principles codified by article 29 of the Vienna Convention are translated into practical effect, have been left entirely to the host State within which a diplomatic representative may for the time being be present. Events have proved that there exists a very serious hiatus in the protective arrangements affecting diplomatic representatives, so far as these arrangements derive from existing international instruments and are translated into national legislation. It is well known that, so far as violations have in the past been directed against diplomatic agents, the offenders have, in the majority of cases, escaped with impunity by the simple device of getting away from the jurisdiction within which the acts took place.

It is the view of the Government of Jamaica that any study which the International Law Commission may give to the matter, with a view to affording wider protection to diplomatic agents, etc., must include the possibility or feasibility of concluding an international instrument which should have the widest possible application among the nations of the world; which instrument would have, *inter alia*, the following basic features:

1. Declaring as an offence under international law the kidnapping, murder, violent assault or other serious acts directed against the person of a diplomatic agent;
2. Making it an obligation for contracting parties to the instrument to extradite an offender to the jurisdiction where the offence was committed; failing extradition, for the contracting party concerned, to have the offender appropriately tried and punished in accordance with its own laws; and
3. It should be possible for all States to become parties to the instrument.

Japan

[Original text: English]
[25 April 1972]

The Government of Japan shares the concern expressed by many States in various forums of international organizations over recent incidents involving offences against the person of diplomatic agents and other persons entitled to special protection under international law and international conventions. Such offences

will seriously affect not only the friendly relations among States concerned but also the interests of the international community as a whole. The Government of Japan believes that some effective international measures should be taken to prevent the recurrence of such acts. It welcomes the action taken by the General Assembly of the United Nations. A thorough study of the question by the International Law Commission could be very useful, and it supports in principle that the Commission prepare a set of draft articles dealing with offences committed against diplomats and other persons entitled to special protection under international law. The Government of Japan is prepared to give its full cooperation to the work of the Commission.

The Government of Japan transmits herewith some of its preliminary comments on the question which the Commission is invited to take into account in considering a future draft convention.

1. Persons to be protected

In studying the contents of an international instrument on the subject, careful consideration should be given to the definition of persons for special protection under a future international instrument. It must be decided whether the persons who would be given special protection should include persons other than diplomats and consular agents and, if so, what other persons should be included.

The Government of Japan is of the view that the list of persons for special protection should be restrictive. The list should be decided in the light of recent trends which show that the offences against diplomatic and consular agents have been, in the main, politically inspired or for extortion purposes. A future convention should therefore deal only with those persons who are to be considered especially valuable for political extortion and for publicity purposes, namely, Heads of State or Government, members of imperial or royal families, members of Cabinet, and other high ranking government officials of ministerial rank, diplomats and consular agents.

2. Offence

(a) Acts, such as murder or kidnapping of diplomatic agents and other persons entitled to special protection under international law, if committed with the intention of extorting anything of value, of releasing offenders or alleged offenders, or changing important governmental actions or policies, should be made offences and punishable.

(b) Attempt to commit above-mentioned acts and participation as an accomplice should also be made punishable.

(c) It is considered to be necessary that a contracting State shall make the offence punishable if the offence is committed within its territory, or when its national committed the offence. Serious study should also be made of the necessity of making an offence punishable of which its national is victim.

(d) It is believed to be necessary that a provision be included in the draft to the effect that the offence should be made severely punishable.

(e) Careful study should be made whether it is advisable to qualify the offence as an “international crime”, or a “crime against the law of nations” in view of the various concepts attached to the terms.

3. Jurisdiction

A contracting State should be obliged to take such measures as may be necessary to establish its jurisdiction over the offence when: (a) the offence is committed in its territory, (b) its national has committed the offence and, subject to the comment in paragraph 2 (c) above, its national is the object of the offence. It should also be permitted to establish its jurisdiction when the alleged offender is in its territory and it does not extradite him to

any State exercising its jurisdiction under (a), (b) and (c) of the present paragraph.

4. Political offence

The Government of Japan does not believe it necessary to include in the draft articles a provision to the effect that the offence shall not be considered as a political offence.

On the other hand, it is considered essential that a future convention on the subject should include a provision requiring a contracting State in whose territory an alleged offender is found to extradite him, or, if it does not extradite him and *if it has established its jurisdiction*, to submit the case to its competent authorities for the purpose of prosecution.

Kuwait

[Original text: English]
[5 April 1972]

Diplomats enjoy the special status of being representatives of foreign sovereign Governments in the receiving State, and this special status has been granted to them by custom and by international law. The receiving State, by accepting the appointment of the diplomat in its territory, is under a duty at the same time to provide him with the necessary protection in order that he may exercise his functions as a representative of a sovereign State.

The duty to protect accredited diplomats has been implemented in the Vienna Convention on Diplomatic Relations, and article 22, paragraph 2, of the said Convention imposes upon the receiving States the special duty to take all appropriate steps to protect the premises of the mission, etc., while article 29 of the same Convention provides that the receiving State shall take all appropriate steps to prevent any attack on the freedom or dignity of the diplomatic agent.

Although these articles may seem comprehensive in providing the necessary protection for the premises of the mission and the person of the diplomatic agent, they nevertheless contain ambiguous terms which are open for different interpretations. The major ambiguity lies here in the term "appropriate steps". What is meant by "appropriate steps"? Who decides what is "appropriate", the receiving State or the sending State? A protection may seem appropriate in the opinion of the receiving State. On the other hand, it may seem inappropriate in the opinion of the sending State. Is the receiving State bound to conform with what the sending State may regard as an appropriate step for the protection of its mission or its diplomatic agent in the receiving State?

Owing to the recent escalation of unjustified acts of violence committed by political groups in various capitals against certain identified diplomatic missions and the kidnapping of their personnel for the purpose of holding them as hostages in furtherance of political demands (which has often resulted in their humiliation if not their murder), the International Law Commission should give this matter its urgent consideration in order that a first phase solution could be achieved through the Commission while the second phase could be achieved with the willingness and co-operation of the Member States of the United Nations.

The Government of the State of Kuwait is of the view that the International Law Commission should endeavour to provide a clear interpretation to the above-mentioned articles, namely, article 22, paragraph 2, and article 29 of the Convention on Diplomatic Relations so that adequate protection will be constantly ensured by the receiving State.

Furthermore, the International Law Commission will be well advised to request or invite Member States of the United Nations to provide adequate legislation in their internal laws for a more severe punishment of offenders who are guilty of committing any

acts of violence or humiliation against diplomatic personnel or interference with or destruction of diplomatic premises. In addition, rewards should be offered to any person giving any information leading to the arrest and conviction of the offenders. Such rewards will encourage citizens of the receiving State to co-operate with the authorities in the apprehension of such offenders.

In conclusion, the Government of the State of Kuwait would like at this stage to pledge the continuance of its maximum ability of protection of diplomatic premises and personnel on its territory whenever human and economic resources are available, on the condition that Kuwait missions and diplomats in foreign States enjoy the same standard of protection on a reciprocal basis. Furthermore, the State of Kuwait is pleased to note that during its 10 years of independence, not a single incident has ever occurred in Kuwait against any diplomatic mission or personnel accredited to it. The sense of security enjoyed by diplomats in Kuwait stems from our belief that diplomats should not be denied the right of self-security which they are entitled to, nor the necessary freedom to exercise their duties in order that peace and security shall prevail in international diplomatic relations.

Madagascar

[Original text: French]
[2 May 1972]

1. The Vienna Conventions on Diplomatic Relations and Consular Relations—to which Madagascar has acceded—require the receiving State to take all "reasonable" or "appropriate" steps to prevent any attack on the person, freedom or dignity of a diplomat or on his private residence, property or correspondence.

In the matter of offences against diplomats, with which we are concerned, Malagasy criminal law contains two kinds of provisions:

(a) The special provisions of article 38 of Law No. 52-29, of 27 February 1959, as amended, make offences committed in public against an ambassador, minister plenipotentiary, envoy, chargé d'affaires or other accredited diplomatic agent liable to the same penalties as offences against, or insults to, the President of the Republic or the Government. Diplomatic agents thus enjoy special protection.

(b) The general provisions of the Penal Code and the special criminal laws punish all such offences committed on Malagasy territory, though the fact that the victim has the status of a diplomatic agent does not constitute an aggravating circumstance.

The application of these rules, which are adequate in internal law, has not given rise to any difficulty so far.

2. A new form of criminality has recently made its appearance in some States: the taking of diplomats as hostages for the payment of a ransom, the release of political prisoners or the execution of an order given to the Government of the receiving State.

The Governments thus attacked have found themselves in a most embarrassing position. They have been faced with the choice of yielding to blackmail and so violating their own laws and the constitutional principle of the separation of powers, or refusing to make any concession and coming into conflict with the sending State of the diplomat concerned, especially where the threat has been carried out.

The decisions taken have differed from State to State, but are based either on considerations of pure expediency, or on a position of principle in which domestic policy takes precedence over foreign policy or vice versa.

The problem is obviously of a political nature and any solution must depend on a number of factors (the constitutional system, the strength or weakness of the receiving Government, the inten-

sity of the economic and political pressures on it, etc.); it seems open to question whether an international convention on the subject would have any practical value.

3. States have two possibilities open to them:

(a) To provide that in all circumstances the protection accorded to diplomats is absolute and must take precedence over all other considerations. This thesis is untenable, for its application would lead to a recurrence of attacks on diplomats, their purpose being assured of success.

(b) Conversely, to declare that no Government will yield to blackmail. This would certainly provide a deterrent calculated to discourage the perpetrators of attacks and, indirectly, to promote the protection of diplomatic agents. In the present state of international society, however, it must be expected that many States will prefer to uphold the principle of freedom of action, if only in order to have more influence on the action of their neighbours.

4. What, then, would be the content of the new international convention?

It could, of course, recommend that measures be taken for the preventive protection of diplomatic agents. That is a matter for the authorities responsible for security and the administrative police.

It could also establish, on the lines of the Hague Convention for the Suppression of Unlawful Seizure of Aircraft, an international jurisdiction, each State undertaking to punish serious offences against diplomatic agents wherever committed, subject to extradition where appropriate.

Lastly, it could define the category of persons for whose benefit exceptional measures would be taken.

These are relatively minor points compared with those set out in paragraphs 2 and 3 above.

They might usefully be submitted to the International Law Commission for consideration, however, since in its work on State responsibility it will in any case have to state an opinion on the question of the international responsibility of States which give their constitutional and legislative rules precedence over the principle of absolute protection of diplomatic agents. This seems, in fact, to be the real heart of the matter.

Netherlands

[Original text: English]
[20 April 1972]

1. The Netherlands Government has carefully considered the problems involved in the preparation of a draft convention on the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law. It may be recalled that, in a letter to the President of the Security Council of 5 May 1970,^a the Netherlands Government expressed its concern at the increasing number of attacks on diplomats, stating as its view that attacks involving the person, freedom or dignity of diplomats could lead to situations which might give rise to disputes which in turn might even constitute threats to international peace and security. On that occasion the Netherlands Government observed that from ancient times peoples of all nations have recognized the status of diplomatic agents, whose immunity and inviolability have clearly been established by time-honoured rules of international law.

2. The latter point is one of major importance. During the discussions on the subject in the Sixth Committee of the General

Assembly at its twenty-sixth session,^b many delegations drew attention to the existing codification of the host State's duty to protect the inviolability of foreign diplomats who are on official missions in its territory (see article 29 of the Convention on Diplomatic Relations, article 40 of the Convention on Consular Relations, article 29 of the Convention on Special Missions; see also articles 28, 59 and M of the International Law Commission's draft articles on relations between States and international organizations^c). The very fact of its codification underscores the existence of the obligation of host States under international law to take "all appropriate steps" to protect foreign diplomats on official missions in their territories against attacks involving their person, freedom or dignity. This obligation entails the responsibility for host States to take all reasonable measures to prevent and punish such acts.

3. It may be wondered whether it is necessary, or indeed feasible to lay down any further rules and to draft a special convention under which States (not only the host States of threatened diplomats) agree either to *prosecute* or to *extradite* persons in their territory who have committed such acts of violence against foreign diplomats. The Netherlands Government has carefully considered the matter. There are two sides to the medal: the question is not only how to *prevent* threats to the freedom and security of diplomats, but also how to bring a diplomat to a place of safety with the least delay once an *actual* attack involving his freedom and security has occurred. In this respect two conflicting responsibilities rest upon the host State of a "kidnapped" diplomat which is a party to a new convention establishing the obligation in principle either to prosecute or to extradite a diplomat's captors. Its obligation under the new convention envisaged may come into conflict with its *primary* obligation as a host State under general international law to take "all appropriate steps" to protect the diplomats on official missions in its territory. It may be opportune for the State to negotiate with the captors and agree to their conditions (e.g. payment of ransoms, free conduct out of the territory) to secure the diplomat's release. This should be left to the discretion of the State, and to the Netherlands Government it seems essential that any new convention of the kind envisaged clearly leave to the State parties the option to negotiate with and agree to the demands of the captors if they deem such a course advisable. In this respect the following text of article 7 of the draft convention submitted by Uruguay

"The course to be followed in dealing with acts of extortion in connexion with the kidnapping or detention of one of the persons referred to in article 1 of this Convention shall be left to the discretion of the State concerned and shall in no case give rise to international responsibility."^d

would seem misleading: the responsibilities of host States under existing general international law should on no account be lessened, so any new convention should offer certain possibilities of "escape" in respect of the obligation "to prosecute or to extradite".

4. If a convention were to be drawn up under which States were obliged in principle either to prosecute or to extradite persons in their territory who have committed offences against foreign diplomats, the Netherlands Government holds the view that it should satisfy the following conditions:

^b See *Official Records of the General Assembly, Twenty-sixth Session, Sixth Committee*, 1256th-1264th meetings.

^c Articles 28 and 58 of the draft articles on the representation of States in their relations with international organizations: *Yearbook of the International Law Commission, 1971*, vol. II, (Part One), pp. 284 *et seq.*, document A/8410/Rev.1, chap. II, D; article M of the draft articles on observer delegations to organs and to conferences: *ibid.*, p. 61 (*ibid.*, document A/8410/Rev.1, chap. II, annex).

^d Document A/C.6/L.822.

^a See *Yearbook of the International Law Commission, 1970*, vol. II, p. 273, document A/8010/Rev.1, chap. I, sect. F.

(a) The convention should be of a world-wide nature and should be open to all States to ensure the widest possible participation.

(b) The subject matter of the convention should not include all possible acts of "terrorism", but should be restricted to acts of violence (e.g. kidnapping, murder, assault resulting in serious bodily injury) against persons protected under international law. The group of persons protected (foreign diplomats, their families and staff), as well as the basis of the jurisdiction of the State parties in respect of the offenders, should be clearly defined.

(c) As stated above, a convention of this kind should in no way weaken the existing obligation of host States under international law to protect the foreign diplomats on official missions in their territories. Contracting States should retain the option to negotiate with kidnapers of a diplomat and to agree to their demands to ensure the diplomat's safety and obtain his release.

(d) The rules effectuating the "either prosecute or extradite" system in the convention envisaged should not differ to any great extent from those laid down in two recently established conventions in this field, i.e. the Hague Convention for the Suppression of Unlawful Seizure of Aircraft of 1970 and the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971, which after long deliberation have proved acceptable to a large number of States. Under these Conventions the "offence" is considered as an "ordinary offence of a serious nature" for purposes of *prosecution* (article 7), but for purposes of *extradition* the conditions in extradition treaties and in the national laws of the contracting States prevail (article 8). Consequently, a State like the Netherlands, whose Extradition Act does not allow extradition in cases of "serious misgivings whether the government requesting the extradition would not prosecute the accused for reasons of his race, religion, nationality or political conviction"^e would retain the option not to extradite the offender in such an event, and the Netherlands Government deems this an essential condition in any convention of this kind.

(e) A clause should be added under which the States parties agree to submit any dispute arising from the interpretation and application of the convention to arbitration or to the International Court of Justice.

5. To summarize, the Netherlands Government believes that the convention envisaged should perforce offer certain possibilities of "escape". Though this may cause one to wonder whether such a convention would constitute a really effective remedy against attacks on diplomats, the Netherlands Government would not in principle oppose the drafting of a convention, provided that the conditions put forward in the foregoing are fulfilled.

^e Netherlands, *Staatsblad van het Koninkrijk der Nederlanden* (The Hague), 1967, No. 139.

Niger

[Original text: French]
[22 February 1972]

The Government of the Niger has noted with deep concern the events which in recent years have endangered the lives of diplomats and consuls of several countries, and which have in some cases had tragic consequences. It totally condemns such acts, which violate a tradition that is universally respected, even in time of war. Accordingly, it approves any initiative which may be taken by the international community to ensure the safety of diplomats on assignments and affirms its readiness to sign any convention prepared for this purpose. However, it has no specific suggestions or proposals to make in this regard to the International Law Commission.

Norway

[Original text: English]
[14 April 1972]

The Norwegian Government has viewed with grave concern the deteriorating situation during the past few years with regard to such crimes as assaults upon and kidnapping of diplomats and consular officials in certain countries. These crimes against persons entitled to special protection under international law—which on several occasions resulted in a tragic loss of life—constitute a serious threat to normal diplomatic activities and a considerable curtailment of the freedom of movement of these persons.

The Norwegian Government has therefore noted with satisfaction that the United Nations General Assembly, in its resolution 2780 (XXVI) of 3 December 1971, has requested the International Law Commission to study this important problem and submit proposals for an international convention regarding crimes against diplomats and consular officials.

However, since it is of the opinion that these crimes are in most cases closely connected with the internal political, economic and social conditions prevailing in the countries concerned, the Norwegian Government is somewhat doubtful as to whether such criminal activities can be effectively counteracted by means of a new international instrument. It should be recalled in this connexion that international rules aiming at the protection of diplomats and consular officials already exist. Among the most important of these rules are article 29 of the Convention on Diplomatic Relations and article 40 of the Convention on Consular Relations. Moreover, such crimes against persons entitled to special protection under international law are in most countries considered serious breaches of the law. It seems that much could be achieved through a more vigorous and strict law enforcement in each country when such crimes occur.

Should the International Law Commission, after further study of this question, reach the conclusion that a new convention is called for, the Norwegian Government would suggest that this convention be formulated in such a way that it will ensure the largest possible international support and approval. For this purpose, the convention should not include rules which are too comprehensive and detailed as regards the obligations incumbent upon receiving countries as well as third countries which might conceivably become involved. Each individual country should to the largest extent possible be free to solve the problem in its own way and be given the opportunity to complete the often delicate negotiations and manœuvres which such crimes necessitate.

On the other hand, the categories of persons entitled to protection should not be too restrictive. The development of international co-operation since the Second World War—especially in the technical and economic fields—makes this necessary. A wide definition of the categories of persons entitled to protection would also help ensure a larger measure of international support for the convention.

Furthermore, the Norwegian Government considers that serious attacks on diplomats should probably not be viewed as a political crime, for this could entail certain consequences as far as the question of political asylum and extradition is concerned.

Rwanda

[Original text: French]
[4 May 1972]

Under the Vienna Convention on Diplomatic Relations, particularly articles 29 to 40, the receiving State must take appropriate steps to ensure the protection of diplomats so that they may dis-

charge their functions efficiently. Actually, it would be difficult for a diplomatic agent to exercise his functions if he were subjected at any moment to measures incompatible with the diplomatic privileges and immunities that he should enjoy in the territory of the State in which he resides.

In this connexion, the Government of Rwanda wishes to draw the attention of the States Members of the United Nations to the distressing subject of the abduction of diplomats. This highly regrettable situation, which is prevalent in certain countries, may well spread throughout most of the world unless the States parties to the Convention on Diplomatic Relations which experience cases of abduction mete out exemplary punishment to the offenders.

In addition to the abduction of diplomats and other acts incompatible with diplomatic privileges and immunities, the Government of Rwanda wishes to draw attention here to another important question that may arise in the event of the severance of diplomatic relations. The Governments of receiving States should bear in mind that, where relations between States are severed, the principles of respect for the human person and the right to life continue to apply none the less to diplomatic agents. They should therefore ensure the protection of the persons concerned as far as the point of departure from the State of residence to the sending State. Appropriate steps should also be taken to protect the premises of the former mission. Furthermore, the ransacking of such premises which, in certain countries, follows the decision to sever diplomatic relations is a matter of great concern to sending States, because, in the final analysis, there can be no justification for such acts.

In conclusion, the Government of the Rwandese Republic considers that respect for, and the application of, the principles set forth in the Convention on Diplomatic Relations would solve the problem of the protection of diplomats, since that Convention sets forth both the obligations and the rights of diplomatic agents, the sending State and the receiving State.

Sweden

[Original text: English]
[10 April 1972]

The Swedish Government, which is concerned about the increasing rate of acts of violence directed against diplomats and other official representatives, recognizes the importance of examining ways and means to prevent such acts. It welcomes therefore the initiative taken within the United Nations to study this matter. It is generally recognized that States, according to international law, are obliged to afford special protection to diplomats and certain other official representatives. This principle of general international law is reflected, for instance, in article 29 of the Vienna Convention on Diplomatic Relations which imposes upon States the duty to take all appropriate steps to prevent any attack on a diplomat's person, freedom or dignity. If this obligation is not fulfilled, the State may be held responsible under international law. The obligation to protect is thus clearly laid down in article 29 of the Vienna Convention. The problem is that, particularly during the last few years, the protective measures taken have not always been sufficient to prevent tragic acts of violence against diplomats, the root cause of which is often to be found in the political, economic and social situation in the countries concerned.

It was under the impact of such events that the General Assembly adopted resolution 2328 (XXII) on 18 December 1967, in which the Assembly recalled, *inter alia*, that the unimpeded functioning of the diplomatic channels for communication and consultation between Governments is vital to avoid dangerous misunderstanding and friction. By the same resolution, States were urged to take every measure necessary to secure the implementation of the rules of international law governing diplomatic relations and, in

particular, to protect diplomatic missions and to enable diplomatic agents to fulfil their tasks in conformity with international law.

In view of the continued violence of this kind, it is natural to look for further ways and means. One way might be to deal with the matter in a binding international instrument. Without expressing at this stage an opinion as to whether a new convention is likely to contribute to improving the protection in this field, the Swedish Government is gratified that the matter has been taken up in the United Nations and will be considered, in the first place, by the International Law Commission. The Swedish Government is confident that the International Law Commission in its work will take into consideration also drafts and studies on this subject which have already been elaborated within other international organizations and by individual States.

As to the contents of a possible convention the Swedish Government feels that it would be premature to make any detailed proposals. It wishes, however, to present the following preliminary suggestions of a general character.

The categories to be covered by the convention should not be too limited. They should include all persons who already enjoy special protection under international law. Experience shows, however, that other categories might also be in need of special protection against kidnapping and other acts of violence and the possibility of including such categories in the convention ought to be further examined.

An important question is whether the convention should contain provisions regarding the extradition of offenders. On this point, the Swedish Government wishes to observe that in any case extradition should not be made compulsory. A State should be free to choose between prosecuting an offender or extraditing him to the country where the offence was committed. In this connexion the question of asylum has also to be considered carefully.

The Swedish Government considers it important that a convention of this kind should not unduly restrict the freedom of action which any Government should enjoy when dealing with individual cases of kidnapping or other acts of violence. Moreover, it is essential that the convention should be so drafted that it can be expected to obtain universal acceptance which would considerably strengthen its deterrent effect.

Ukrainian Soviet Socialist Republic

[Original text: Russian]
[21 April 1972]

The question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law, which, in its resolution 2780 (XXVI), the General Assembly has requested the International Law Commission to study, is a pressing matter of great importance.

Criminal acts against diplomats, which have become increasingly frequent of late, are incompatible with the basic principles of international law, create difficulties in relations between States and increase international tension. In the interests of co-operation and the development of friendly relations, States should use every means of preventing attempts on the life, health and dignity of diplomats.

At the same time, the Ukrainian SSR deems it necessary to emphasize that in preparing draft articles on the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law, the International Law Commission should take account of the relevant generally accepted rules of international law in force, which have been confirmed, in particular, by articles 29 and 37 of the Vienna Convention on Diplomatic Relations, and whose importance the Commission

should be careful not to impair. Moreover, in its work on these draft articles, the Commission should bear in mind its programme of work and the order of priorities laid down therein.

If the draft articles referred to are to serve as a constructive basis for an appropriate instrument of international law, they should spell out the obligations of States to ensure, under domestic law, the effective prosecution of persons who have committed criminal acts against diplomats.

Such acts should be regarded as international crimes interfering with peaceful and friendly relations between States.

For the prevention and suppression of such crimes, co-operation between States should play an important part in securing the extradition and punishment of the perpetrators pursuant to international agreements on extradition or in accordance with domestic law. In order to develop such co-operation, States should provide legal assistance and keep each other informed for the purpose of preventing and suppressing such crimes or of punishing those who have committed them.

Union of Soviet Socialist Republics

[*Original text: Russian*]
[18 April 1972]

The question of the protection and inviolability of diplomats and other persons entitled to special protection under international law is an urgent one of great importance. In this regard the General Assembly's proposal that the International Law Commission should study this question with a view to preparing a set of draft articles dealing with offences against diplomats and other persons entitled to special protection under international law deserves serious attention.

It should be borne in mind, however, that the preparation of special draft articles on the protection of diplomats and persons entitled to special protection under international law must not in any way detract from the existing international legal norms in this matter, more particularly articles 29 and 37 of the Vienna Convention on Diplomatic Relations, under which the receiving State is obliged to treat diplomatic agents and their families with due respect and to take all appropriate steps to prevent any attack on their person, freedom or dignity. At the same time, work on special draft articles should not be detrimental to the International Law Commission's work on other important international legal questions in its programme.

As regards the possible content of the draft articles, the following points should be incorporated:

1. Recognition of offences against the life, health and dignity of persons entitled to special protection under international law as being serious international crimes detrimental to relations between States.

2. The obligation of States to co-operate in preventing and suppressing such offences.

3. The obligation of States, for the above purposes and in accordance with their law, to prosecute as criminals persons who have planned, attempted to commit or committed such offences, and also their accomplices.

4. The obligation of States, in cases where the offender is found to be in the territory of a third State, to hand the offender over, in accordance with extradition treaties or domestic law, to the State in whose territory the offence was committed. In the case of failure of a State to hand over one of its own nationals, or in the absence of obligations in respect of extradition, States must prosecute the offender under domestic law, irrespective of the place where the offence was committed.

5. The obligation of States to afford legal assistance in the investigation of offences and other necessary legal aid for the purpose of exposing the offender and elucidating other attendant circumstances.

6. The obligation of States to provide reciprocal information on matters relating to the prevention and suppression of such offences and to the prosecution of the offenders.

United Kingdom of Great Britain and Northern Ireland

[*Original text: English*]
[30 March 1972]

1. International law has for many centuries regarded the persons of ambassadors as inviolable and has imposed on States to which they are accredited a special duty of protection. Thus article 29 of the Vienna Convention on Diplomatic Relations provides that the receiving State shall treat a diplomatic agent with due respect and shall take all appropriate steps to prevent any attack on his person, freedom and dignity.

2. The kidnapping of diplomats and other serious offences against them have become in recent years a grave problem. The Government of the United Kingdom fully support appropriate measures which would be likely to reduce this danger.

3. The Government of the United Kingdom have therefore followed closely the course of international discussion of this question. OAS has prepared the Convention to Prevent and Punish the Acts of Terrorism (Washington, February 1971) and the United Nations General Assembly, in section III of its resolution 2780 (XXVI), has requested the International Law Commission to study this matter. Further drafts for a convention on the subject have now been submitted to the International Law Commission by the delegation of Uruguay at the twenty-sixth session of the General Assembly^a and in a working paper prepared by Mr. Richard D. Kearney (A/CN.4/L.182).^b These are all important events.

4. At present the United Kingdom Government have not formed a definitive view on the question whether the adoption of a convention would in fact and in practice be likely to deter those who commit such crimes. This is a matter on which they will take a position in the course of further consideration of this question and in the light of the views of other Governments.

5. However, there are a number of important factors which arise in connexion with any such draft convention; and the attitude of the Government of the United Kingdom to such a convention will be influenced by the extent to which due account is taken of these factors.

6. First, the convention should respect the principle of independence of the competent authorities in connexion with powers of arrest, and the independence of prosecuting authorities in deciding whether an accused person should be brought before the courts. These very points were discussed at great length and satisfactory wording for giving effect to these principles is to be found in articles 6 and 7 of the Convention for the Suppression of the Unlawful Seizure of Aircraft (The Hague, 1970), and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 1971). On these points those Conventions represent satisfactory precedents and it is recommended that any future convention on the present subject should

^a Document A/C.6/L.822.

^b See p. 201 above.

follow closely the wording then adopted, with a view to assisting prompt and wide acceptance.

7. Secondly, experience has shown that it is very desirable that, in consultation together, the Governments concerned should be able to exercise a reasonable freedom of action in handling specific cases and the convention should be drawn up in terms sufficiently flexible to make this possible.

8. Thirdly, the generally accepted principles concerning extradition and, in particular, the treatment of political offences in connexion with extradition should be recognized and applied. Extradition must take place in accordance with the requirements of the requesting State and subject to any limitations customary in extradition treaties. The United Kingdom would see no objection to a provision providing an option whereby States whose extradition arrangements normally depend on extradition treaties could elect to treat the future convention as a basis for extradition to contracting States with which they have no extradition treaty. Such a provision is included in the Hague Convention (1970). The Government of the United Kingdom, however, reserve the position fully as to what action would be taken in relation to such an option.

9. Fourthly, the offences covered and the persons protected by the convention should be sufficiently and satisfactorily defined. The offences should be of a sufficient gravity to merit such exceptional treatment as would be involved in the convention and thus should include not only murder and kidnapping, but also assaults occasioning grievous bodily harm. Furthermore, it seems reasonable that the convention should apply when these offences are committed against the protected person with knowledge that he falls within the class protected. The justification for the convention lies in the internationally recognized status of diplomats and other protected persons, and it might be open to criticism if it applied to offences which had no connexion with that status.

10. The class of persons to be protected by the convention should also be satisfactorily and sufficiently defined. Obviously, it should extend beyond the field of diplomats in the traditional sense of the word. But, in preparing a definition, it should be borne in mind that States would have difficulty in according the protection of the convention to persons whose international status arises in connexion with organizations of which those States are not members or conventions to which they are not parties. If these problems cannot be satisfactorily resolved during the drafting of the convention, this might significantly reduce the number of States which were able to become parties and thus its effectiveness as an international instrument.

11. Accordingly, a central element of a convention, if there is general international support for one, would consist of a provision requiring that a State in which a person reasonably suspected of an offence within the convention is found, should either permit his extradition to the country where the offence occurred, or else should submit the case to its prosecution authorities with a view to his prosecution.

12. In addition, the convention could usefully provide for appropriate consultation among the countries concerned in order to deal with questions arising out of the convention.

13. The Government of the United Kingdom welcome this opportunity of indicating in outline their views on certain important aspects of the question. It is also hoped that the International Law Commission will so arrange its handling of this question that a further opportunity is given to Governments to comment on its proposals before the Commission comes to give final consideration to them.

United States of America

[Original text: English]
[17 April 1972]

The Government of the United States of America fully supports the request of the General Assembly (resolution 2780 (XXVI),

sect. III) that the International Law Commission study as soon as possible the question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law. The United States Government trusts that the International Law Commission will find itself able to prepare a set of draft articles dealing with offences committed against such persons during the course of its twenty-fourth session in 1972 in view of the urgent need to take all available steps to deter the commission of such offences.

With respect to the substance of such a set of draft articles the United States Government considers that the articles should provide a basis for the detention and prosecution of those accused of committing serious offences against diplomats and other persons entitled to special protection under international law wherever those accused persons may be found throughout the world. Consequently, it would be appropriate to include in any such set of articles provision to the effect that all States parties to any eventual convention shall have jurisdiction to try individuals accused of serious crimes against persons entitled to special protection under international law.

A major purpose of such a convention should be to eliminate to the greatest extent possible "safe havens" for persons who commit crimes of this nature. It would be desirable therefore that the draft articles impose an obligation upon a State where any person accused of such offence may be found, either to take steps to bring him before its own courts or to extradite him pursuant to the request of an interested State which proposes to prosecute him. It is the view of the United States that there are certain advantages to permitting the State where the accused may be found to decide whether it prefers to initiate legal action itself or to extradite the accused to another State. This freedom of choice would tend to reduce or eliminate the difficulties which could arise in certain circumstances such as when the accused individual is a national of the State in which he is found and the offence has been committed elsewhere.

There are a number of difficult problems to be faced in formulating a set of draft articles that will make a substantial contribution to the reduction of serious crimes against persons who are entitled to special protection under international law.

The United States trusts that in dealing with problems of this nature the Commission will bear in mind the essential importance of the maintenance of international channels of communication. International co-operation for peace, for economic development, for the improvement of living conditions, indeed for achievement of all the purposes and principles of the Charter of the United Nations, demand that persons specially selected by their States or by international organizations to promote such objectives be able to carry out their responsibilities without being subjected to the threat of murder, kidnapping or similar serious crimes.

The world has witnessed in the past several years a mounting tide of offences committed against diplomats and other officials engaged in carrying on international activities solely because of their diplomatic or official character. Such offences constitute serious common crimes which should be prosecuted as such; in addition they strike at the heart of international activity. In selecting the measures necessary to reduce such dangers, care must be taken to ensure that the perpetrators are not able to escape just punishment on the basis that they committed the offences for political ends. It is the view of the United States that the selection of diplomats and others entitled to special protection of international law as the objects of serious crimes for the purpose of obtaining political ends is so disruptive of the international order that the individuals who commit such offences should be prosecuted without reference to the validity or merit of the political ends concerned.

Yugoslavia

[Original text: English]
[5 May 1972]

The Government of the Socialist Federal Republic of Yugoslavia attaches great importance to the question of the protection of staff members of diplomatic missions which, as of late, is becoming more urgent. The number of crimes committed against diplomatic representatives and persons entitled to special protection under international law has increased in many States. Yugoslavia, in this respect, has undergone a particularly trying experience. The Yugoslav representatives in some countries have been subjected to attacks and acts of terrorism committed by individuals or groups, the evidence of which is the brutal murder of an Ambassador of the Socialist Federal Republic of Yugoslavia in 1971. Having in mind the need to prevent such crimes and acts of violence and to ensure normal discharging of duties by diplomatic representatives and other persons engaged in activities of international interest, the Yugoslav Government considers that it is essential to immediately prepare a set of draft articles relating to the question of the protection and inviolability of persons entitled to special protection under international law.

In this respect, the Government of the Socialist Federal Republic of Yugoslavia is of the opinion that the rules relating to protection and inviolability of persons entitled to special protection under international law should include, in particular, the following:

1. An obligation of host States to undertake preventive measures with a view to deterring the preparations of attacks, attempts at committing or participation in committing crimes against persons entitled to special protection under international law, including members of their families.

2. Grave offences and serious crimes should not be treated as political criminal acts even in those cases where motivations for committing such acts are of a political nature.

3. Sanctions should be undertaken against all perpetrators of such criminal acts, irrespective of whether or not they enjoy the same citizenship as their victim.

4. States are obliged in cases of attacks upon diplomatic representatives to take urgent measures against the perpetrators of such acts and to render more severe the existing punishments to this end.

5. A request for extradition may be refused, provided that the State in whose territory the crime was committed and the culprit was found institutes without delay legal proceedings against the said person.

6. When several States at the same time claim the right to extradition, the extradition should be granted to the State to which the victim of the crime belongs (especially in case of death).

7. States are obliged to mutually co-operate with a view to preventing and combating such crimes, especially with respect to undertaking preventive measures.

8. If the perpetrators of criminal acts belong to an organization which instigates, organizes, assists or participates in the execution of these criminal acts, each State is obliged, in addition to punishing the culprits, to undertake effective measures and to dissolve such an organization.

9. The rules under consideration would not apply to criminal acts committed in the territory of a State if both the culprit and the victim were the citizens of the said State.

The Government of the Socialist Federal Republic of Yugoslavia is of the opinion that the question of the protection of diplomats and other persons discharging duties of international interest, as well as of diplomatic missions, merits the full attention of the international community and hopes that the International Law Commission will give priority to the consideration of this question in conformity with General Assembly resolution 2780 (XXVI).