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Draft articles concerning crimes against persons entitled to special protection under international law - Working paper prepared by Mr. Richard D. Kearney

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

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QUESTION OF THE PROTECTION AND INVIOABILITY OF DIPLOMATIC AGENTS AND OTHER PERSONS ENTITLED TO SPECIAL PROTECTION UNDER INTERNATIONAL LAW (PARA. 2 OF SECTION III OF GENERAL ASSEMBLY RESOLUTION 2780 (XXVI))

[Agenda item 5]

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Draft articles concerning crimes against persons entitled to special protection under international law
Working paper prepared by Mr. Richard D. Kearney

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ARTICLE 1

1. It shall be an international crime to:

(a) Murder, kidnap, or inflict grievous bodily harm upon a person entitled to special protection under international law; or

(b) Extort anything of value, or affect governmental actions or decisions in any State, through the commission of or threat to commit any of the acts described in subparagraph (a); or

(c) Attempt to commit any of the acts referred to in subparagraphs (a) and (b); or

(d) Participate in any of the acts referred to in subparagraphs (a), (b) and (c) as an accessory or an accomplice.

2. An act described in paragraph 1 of this article shall not constitute a crime under the present articles if:

(a) The person against whom the act is committed, attempted or threatened is a national or permanent resident of the State wherein the act is committed, attempted or threatened; or

(b) Both the perpetrators of the act and the person against whom the act is committed, attempted or threatened, are nationals of the same State and persons entitled to special protection under international law.

ARTICLE 2

An international crime described in article 1 shall not be considered as a political offence or as an act connected with such an offence.

ARTICLE 3

1. For the purposes of the present articles the phrase "person entitled to special protection under international law" shall mean:

(a) A Chief of State;

(b) A Head of Government;

(c) Any other public official holding at least cabinet rank or its equivalent; whenever the official is in any foreign country, as well as members of his family who are accompanying him.

2. The phrase shall also mean any person:

(a) Who is entitled to personal inviolability under articles 29 or 37 of the Vienna Convention on Diplomatic Relations.¹

(b) Who is entitled to protection under article 40 of the Vienna Convention on Consular Relations² as well as members of the family of any such person who form part of his household;

(c) Who is entitled to personal inviolability under articles 29, 36 or 39 of the Convention on Special Missions;³

(d) Who is entitled to personal inviolability under articles . . . of the Convention on the Representation of States in their Relations with International Organizations;⁴

(e) Whose name has been made known to Members of the United Nations or members of a specialized agency of the United Nations as an official in accordance with article V of the Convention on the Privileges and Immunities of the United Nations⁵ or article VI of the Convention on the Privileges and Immunities of the Specialized Agencies⁶ as well as members of the family of any such person who form part of his household;

¹ United Nations, *Treaty Series*, vol. 500, p. 95.

² *Ibid.*, vol. 596, p. 261.

³ General Assembly resolution 2530 (XXIV), annex.

⁴ For the draft articles on the representation of States in their relations with international organizations, see *Yearbook of the International Law Commission, 1971*, vol. II (Part One), p. 284, document A/CN.4/8410/Rev.1, chap. II, D.

⁵ United Nations, *Treaty Series*, vol. I, p. 15.

⁶ *Ibid.*, vol. 33, p. 261.

(f) Whose name has been made known to Members of the United Nations as an expert performing a mission for the United Nations as well as members of the family of any such person who accompany him on his mission;

(g) Who is present within the territory of a State for the performance of official business of another State or of an international organization and who is being accorded by agreement or otherwise personal inviolability, or protection of the character described in article 40 of the Vienna Convention on Consular Relations, and members of his family who are being accorded such personal inviolability or protection;

provided that the person is within the receiving State or the host State, or is passing through or is in the territory of a third State, which has granted him a passport visa if such visa was necessary while such person is proceeding to take up or to resume his functions or is returning to his own country.

3. For the purposes of the present articles the phrase "accused person" shall mean a person as to whom there are reasonable grounds to believe that he has committed an international crime described in article 1.

4. The present articles shall be applied by each of the Parties whether or not it is party to any of the conventions referred to in paragraph 2 of this article.

ARTICLE 4

1. Any State wherein an accused person may be found shall have jurisdiction to try him for the international crimes described in article 1.

2. Each Party shall enact such legislation as may be necessary to permit the trial of persons subject to its jurisdiction under paragraph 1 of this article.

ARTICLE 5

There shall be no limitation as to the time within which prosecution may be instituted for international crimes described in article 1.

ARTICLE 6

In order to further the prevention of the international crimes described in article 1 of the present articles the Parties shall:

(a) Take measures within their respective territories to prevent preparation for or the commission of crimes described in article 1 whether they are to be carried out in their own territory or in the territory of another State;

(b) Exchange information and co-ordinate the taking of effective administrative measures to prevent such crimes.

ARTICLE 7

Each Party undertakes to make the international crimes described in article 1 punishable by severe penalties.

ARTICLE 8

Each Party shall search for an accused person who it has reason to believe is within its territory.

ARTICLE 9

1. A Party in whose territory an accused person may be found shall, if the circumstances warrant, either detain him or take such other measures as may be necessary to ensure his presence for trial or extradition. Such State shall immediately inform the appropriate authorities of the State in which the offence occurred, the State of which the protected person was a national, and the State of nationality of the accused person.

2. Any accused person who is detained pursuant to paragraph 1 of this article shall be permitted to communicate immediately with the nearest representative of the State of which he is a national and to be visited by a representative of that State.

ARTICLE 10

A Party in whose territory an accused person is found shall bring him promptly before its courts in accordance with the procedure applicable in the case of an offence of a serious nature under the law of that State. If the State where an accused person is found is not the State where the alleged international crime occurred, the obligation of the former State to bring the accused before its courts is terminated if he is duly extradited to the State where the offence was committed, to the State whose protected person was the object of the international crime, or to any other Party.

ARTICLE 11

1. A Party in whose territory an accused person is found shall, upon request, extradite him to the State where the alleged offence was committed, to the State of which the protected person who was the subject of the international crime was a national, or to any other Party, unless paragraph 2 of this article applies.

2. A Party in whose territory an accused person is found may decline to comply with a request for extradition if it proceeds promptly to bring him before its own courts.

3. The present articles shall constitute the legal basis for extradition in States that make extradition conditional on the existence of a treaty.

4. The procedures for extradition shall be carried out in accordance with any extradition treaty in effect between the Party in whose territory an accused person is found and the requesting State, or in the absence of such a treaty, the legislation regarding extradition in force in the Party in whose territory the accused person is found.

5. An extradition request from the State in which the international crime was committed shall have priority if made within three months of the receipt of notification of the location of the alleged offender. Upon expiration of that period the extradition request first received by the State in whose territory an accused person has been found shall have priority.

ARTICLE 12

The State in which an accused person is extradited shall promptly proceed to bring him before its courts for the international crime or crimes of which he is accused in accordance with the procedure applicable in the case of an offence of a serious nature under the law of that State.

ARTICLE 13

An accused person shall at all stages in proceedings carried out with respect to an international crime under the present articles be guaranteed fair and impartial administration of justice.

ARTICLE 14

The result of the court proceedings regarding the international crime described in article 1 and of any appeals therefrom shall be communicated by the State within whose territory they are conducted to the Secretary-General of the United Nations, who shall transmit the information to the other Parties.

ARTICLE 15

The obligations of Parties under articles 9, 10 and 11 shall terminate when the accused person has been tried for the international crime or crimes of which he has been accused and either acquitted or convicted.

ARTICLE 16

The Parties undertake to deal as expeditiously as possible with requests for extradition concerning the offences defined in article 1.

ARTICLE 17

The Parties shall afford one another the greatest measure of assistance in connexion with criminal proceedings brought in respect of the offences defined in article 1.

ARTICLE 18

1. Any dispute between the Parties arising out of the application or interpretation of the present articles that is not settled through consultations may be brought by any State Party to the dispute before a conciliation commission to be constituted in accordance with the provisions of this article by the giving of written notice to the other State or States Party to the dispute and to the Secretary-General of the United Nations.

2. A conciliation commission will be composed of three members. One member shall be appointed by each party to the dispute. If there is more than one party on either side of the dispute they shall jointly appoint a member of the conciliation commission. These two appointments shall be made within two months of the written notice referred to in paragraph 1. The third member, the Chairman, shall be chosen by the other two members.

3. If either side has failed to appoint its member within the time-limit referred to in paragraph 2, the Secretary-General shall appoint such member within a further period of two months. If no agreement is reached on the choice of the Chairman within five months of the written notice referred to in paragraph 1, the Secretary-General shall within the further period of one month appoint as the Chairman a qualified jurist who is not a national of any State party to the dispute.

4. Any vacancy shall be filled in the same manner as the original appointment was made.

5. The commission shall establish its own rules of procedure and shall reach its decisions and recommendations by a majority vote. It shall be competent to ask any organ that is authorized by or in accordance with the Charter of the United Nations to request an advisory opinion from the International Court of Justice to make such a request regarding the interpretation or application of the present Convention.

6. If the commission is unable to obtain an agreement among the parties on a settlement of the dispute within six months of its initial meeting, it shall prepare as soon as possible a report of its proceeding and transmit it to the parties and to the Secretary-General. The report shall include the commission's conclusions upon the facts and questions of law and the recommendations it has submitted to the parties in order to facilitate a settlement of the dispute. The six months time-limit may be extended by decision of the commission.

7. This article is without prejudice to provisions concerning the settlement of disputes contained in international agreements in force between States.