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QUESTION OF THE PROTECTION AND INVIOABILITY OF DIPLOMATIC
AGENTS AND OTHER PERSONS ENTITLED TO SPECIAL PROTECTION
UNDER INTERNATIONAL LAW

Observations of Member States

GE.72-13030

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BELGIUM

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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 1961 Vienna Convention on Diplomatic Relations.

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 to the victim's family.

II. SPECIFIC OBSERVATIONS

The draft articles submitted by the United States call for the following observations:

Article 1

paragraph 2:

- sub-paragraph (a) would have the effect of creating a lacuna;
- sub-paragraph (b) is concerned with rather unlikely cases.

The two sub-paragraphs 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

paragraph 2 and paragraph 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 sub-paragraphs (a), (b) and (c) should be amended and based on the wording of sub-paragraph (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", 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.