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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

CONTENTS

	<u>Page</u>
B. Observations of Member States (cont.)	
Norway	1
Sweden	2
United States of America	4

NORWAY

[Original: English]

[18 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 - and on several occasions resulting 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 possibly submit proposals for a new 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 Vienna Convention on Diplomatic Relations, of 18 April 1961, and article 40 of the Convention on Consular Relations of 24 April 1963. 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 manoeuvres 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 which could entail certain consequences as far as the question of political asylum and extradition is concerned.

SWEDEN

[Original; English]

[12 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 1961 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 29 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 does 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.

UNITED STATES OF AMERICA

[Original: English]

[21 April 1972]

The Government of the United States of America fully supports the request of the General Assembly 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 the 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 party 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.