CRIMES AGAINST PERSONS ENTITLED TO SPECIAL PROTECTION UNDER INTERNATIONAL LAW : PERSPECTIVES AND PROBLEMS

Dissertation submitted to the Jawaharlal Nehru University
in partial fulfilment of the requirements for the
award of the Degree of
MASTER OF PHILOSOPHY

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1988

ACKNOWLEDGEMENTS

I record my deep gratitude and indebtedness to my supervisor Dr.B.S.Chimni, who inspite of his busy engagements took keen interest in timely completion of this dissertation with his expert advice, suggestions and guidance. His frequent interference and encouragement gave me inspiration in completing this work. Encouragement from Professor R.P.Anand, Prof.Rahmatullah Khan and Dr.Yogesh Tyagi has always helped me in keeping up requisite morale for this task. I cannot forget to record here the contribution of materials and help made available to me by the staff of the libraries of Jawaharlal Nehru University, Delhi University, Indian Law Institute, Indian Council of World Affairs and United Nations Information Centre.

Last but not the least, I thank all those friends, who have been helpful in carrying out this study. Needless to mention, I owe a debt of gratitude to Mr.Chand Sharma for having typed this work with speed and considerable skill.

Sudhi Ranjan Mishra

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New Delhi

15th July 1988

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Chapter - 1

INTRODUCTION

I. THE SETTING

The question of special protection for diplomatic agents and other internationally protected persons assumed urgency in the late sixties in view of the numerous cases of kidnapping of officials of foreign states and even of their assassination by private persons. The toll of deaths and kidnappings of diplomats or attacks against their persons activated the concern of the international community of states which, although divided on the overall problem of terrorism, evidenced particular interest in curbing terroristic incidents against such persons. To deal effectively with terrorist activity of committing crimes against diplomatic envoys and diplomatic missions the General Assembly of the United Nations adopted on 14th December 1973, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents.[1] The Convention entered into force on 20th February 1977.[2] India acceded to the Convention

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1 International Legal Materials, vol.13 (1974), p.41.

2 United Nations : Multilateral Treaties in respect of which the Secretary-General performs depository functions, list of signatures, Ratifications, Accessions, etc. as at 31 December 1977. (United Nations Publications, New York, 1978), p.76.

on 11 April, 1978.[3] The Convention outlines a legal regime for the special protection of a head of State or government, foreign minister, diplomatic agents of a state, or officials and other agents of an inter-governmental character including members of their family accompanying them to a foreign country.

Earlier, during the 1960's, the pioneering work of the International Law Commission on the questions of legal status, privileges, immunities, and facilities of diplomats and consular officials resulted in the adoption of the landmark Vienna Convention on Diplomatic Relations (1961)[4] and the Vienna Convention on Consular Relations (1963).[5] Still later there followed the Convention on Special Missions (1969).[6] At the same time the international aviation community, led by the International Civil Aviation Organization, was fighting terrorist activities in the form of hijacking of aircraft and other

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3 Ibid. status at 31 December 1978. (United Nations Publications, New York, 1979), p.76.

4 United Nations Treaty Series, vol.500, p.95.

5 United Nations Treaty Series, vol.596, p.261.

6 United Nations General Assembly Resolution 2530 (XXIV) of 8 December, 1969.

forms of unlawful interference with international civil aviation and its facilities. Here the states were faced with a problem that was definable, if not capable of full solution. They were able to develop a measure of control over the activities of common criminals, political refugees, and out and out terrorists through a series of conventional provisions in the field of civil aviation. Thus, as early as 1963 the Tokyo Convention on offences and certain other Acts committed on Board Aircraft[7] contained a provision on the unlawful seizure of aircraft. Later, the aviation community, faced with an escalation of activity in the hijackers field, developed, and adopted in 1976, the Hague Convention for the Suppression of Unlawful Seizure of Aircraft,[8] which goes into considerable detail on the question of hijacking. Lastly, in view of the increase in incidents of bombing and other kinds of interference with aircraft and civil aviation facilities, the states developed in great haste, and adopted in 1971 the Montreal Convention for the

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7 International Legal Materials, vol.2 (1963) p.1052.

8 International Legal Materials, vol.10 (1971), pp.133-136.

Suppression of Unlawful Acts Against the Safety of Civil Aviation.[9] To date, all the three Conventions have been widely accepted and ratifications and adherence continue to increase. Also relevant in the context of diplomatic protection were a number of texts which had been before the ILC : the Convention to Prevent and Punish the Acts of Terrorism taking the forms of crimes against persons and related Extortion that are of International Significance, done at Washington on 2 February 1971.[10] (the "OAS Convention"); a draft convention concerning crimes against diplomats elaborated by representatives of a group of states meeting in Rome in February 1971,[11] (the Rome draft); a draft convention concerning crimes against diplomats submitted to the twenty-sixth session of the General Assembly by the delegation of Uruguay,[12] ("the Uruguay Working Paper"); and draft articles concerning crimes

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9 Ibid., pp.1151-1156.

10 International Legal Materials, vol.X (1971) p.255.

11 International Law Commission Report, 1972, pp.114-115.

12 United Nations Document No.A/C.6/L.822.

against persons entitled to special protection under international law, contained in a working paper prepared by Mr.Kearney, the Chairman of the Commission.[13]

Following the example of the aviation experience of developing conventions as a solution for specific problems, the United Nations decided even though early in the 1970s, it was showing signs of wishing to engage in an attack on the problem of terrorism generally that its first priority should be to deal with the specific question of violent attacks against diplomatic agents and other persons entitled to special protection under international law. It was realised that because of the traditionally protected status of diplomats in international law, a convention focussing on the diplomatic victim would be more successful than one which attempted to protect mankind generally from terrorist attacks.[14] It had become beyond doubt that a special legal regime effectively protecting international officials was indispensable, particularly for

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13 United Nations Document No.A/C.N.4/L.182.

14 International Law Commission Report (1972) p.90.

two reasons : first, due to their prominent and sensitive position international officials had become an easy target of organized groups of terrorists who thus attempted to attract the interest of public opinion in the cause of their protest, or to gain a negotiating leverage through the retention of hostages or threat of murder. Second, it appeared that the existing regime under Vienna Conventions on protection of international officials was inadequate for coping with the specific needs that terrorism had brought to the surface. The basic drawbacks of this law, which constitutes part of the law on privileges and immunities, appeared to be the fact that there were ambiguities as to exact scope of the persons covered under the shield of protection and the nature of measures which need to be taken by the individual states to ensure compliance with that law. Thus, it did not cover all circumstances where protection against terrorism was needed. Finally, states were not, by and large, under the obligation to provide special internal laws making crimes against international agents more severely punishable than the corresponding crimes committed against common individuals. Among other things, the deficiencies in the legal regime under the Vienna

Conventions underlined the need for the adoption of effective international and internal measures. There was thus scope for an independent convention to deal with certain grave crimes against internationally protected persons. The most appropriate method appeared to be a carefully drafted general treaty, specifying the obligations of the states-parties with respect to the protection of international officials. This was precisely the intention behind the drafting of the articles on "Prevention and Punishment of Crimes against Diplomatic Agents and other International Protected Persons" which has become the first general treaty comprehensively dealing with the protection of international officials from certain crimes. In the view of the International Law Commission, these crimes "not only gravely disrupt the very mechanism designed to effectuate international cooperation for the safeguarding of peace, the strengthening of international security and the promotion of the general welfare of nations but also prevent the carrying out and fulfilment of the purposes andprinciples of the Charter of the United Nations".[15] The Convention was designed

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15 International Law Commission Report, vol.1, (1972), p.91.

to strengthen and supplement the rules of international law in force and also to act as an indispensable element for the maintenance of international peace and security.

II. OBJECTIVE OF THE STUDY

The chief purpose of the study will be to analyse the United Nations Convention on Prevention and Punishment of Crimes against Internationally Protected Persons and Diplomatic Agents, 1973 with a view to assessing its value as a legal vehicle providing comprehensive rules to protect international officials against terrorist attacks. The Convention which represents the most serious effort to date, will be analysed in detail in order to see if it does establish an effective legal regime for aiding protection. In this context, certain provisions of the Convention including inter alia, questions relating to the persons entitled to protection, the crimes covered by the Convention, jurisdiction, obligations regarding international cooperation, the right of asylum, the extradition provisions, and the mode of settlement of disputes will be given special attention. The endeavour will be to

evaluate as to how far and to what extent the Convention has tackled these issues effectively, and on this basis to make some recommendations.

III. SCOPE OF THE STUDY

The study deals with, as would be sufficiently evident, the system of diplomatic protection under the Convention on Prevention and Punishment and is strictly limited thereto. Therefore, it does not deal with the protection of persons who are not "internationally protected persons" under the 1973 Convention on Prevention and Punishment, the taking of hostages in general, provided for in 1979 Convention against taking of Hostages, the fight against terrorism in general, etc.

The plan of work is as follows : In the immediately following chapter there is a discussion of the primary theoretical basis of inviolability as found in doctrine of international law and practice of states. It also describes albeit briefly and assesses existing international measures as found in such instrument as the Vienna Convention on Diplomatic Relations (1961), the Vienna Convention on Consular Relations 1963, and

the Convention on Special Missions (1969), with a view to ascertaining the extent to which these Conventions remedy deficiencies in customary international law and practice and highlighting additional problems not adequately dealt with by the Conventions. It also examines the debate over the need for a Convention on the Prevention and Punishment. It also discusses the meetings during which the special convention was discussed. The main part of the dissertation is the lengthy Chapter III which undertakes a critical analysis of the important provisions of the Convention on Prevention and Punishment of Crimes Against Internationally Protected Persons including Diplomatic Agents, 1973. In this chapter, each of the major provisions of the Convention like the persons entitled to protection, the crimes covered by the Convention, question of jurisdiction, obligations regarding international cooperation, the right of asylum, the extradition provisions, and the mode of settlement of disputes have been discussed. It is while examining the settlement of disputes provision that reference is made to the case United States V. Iran. The study concludes with a set of appropriate recommendations towards making the existing international legal regime more effective.

Chapter - 2

THE LEGAL REGIME UNDER CUSTOMARY LAW AND VIENNA CONVENTIONS : THE NEED FOR A SPECIAL CONVENTION

The U.N.Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents takes on its full meaning only if viewed against the background of other theoretical principles and the then existing international legislation on the same topic; and the inadequacies which marked it. By long custom the diplomatic agent sent by one state to another have been regarded as possessing a peculiarly sacred character, in consequence of which they have been accorded special privileges and immunities. The ancient Greeks regarded an attack upon the persons of an ambassador as an offence of the gravest nature. The same was true in ancient India and Rome. In the context of Indian history; the sacred character of a diplomatic agent was recognised in most organised communities from ancient times. One observer has noted that, "the moral maxims of the Mahabharat consign to hell for eternity the king who kills a "Rajadootha".[1] This concept of special protection

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1 P.A.Menon, "Immunities and Privileges of Diplomatic Agents", Eastern Journal of International Law (1969), p.237.

of officials of foreign states was also recognised under Roman law, which stated that if any one has struck an enemy sent even by an enemy, he was thought to have thereby violated the law of nations, because envoys were considered sacred.[2] Grotius wrote that there were "two points with regard to ambassadors which are everywhere recognized as prescribed by the Law of Nations, first, that they be admitted, and then that they be not violated."[3] The principle of inviolability in respect of the person of the diplomatic agent originally arose out of the concept that the diplomat represented the person of his sovereign and that any insult to him constituted an affront to the king who had sent him. In course of time, however, it also came to be recognised that it was essential to ensure inviolability of the person of the ambassador in order to allow him to perform his functions without any hindrance from the government of the receiving state, its officials and

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2 Hugo Grotius, The Law of War and Peace, L.R. Crooms trans (New York, 1949), p.199.

2 Huge Grotius, De Jure Belli ac Paris, Eng. Trans (Cambridge, Endowment edition 1853), Book II, Chap XVIII, p.4.

even private persons.

The term "inviolability" means that the envoy shall be immune from any form of arrest or detention, and that the receiving state shall, apart from treating him with due respect take all appropriate steps to prevent any attack on his person, freedom, or dignity. In other words, the receiving state is obliged to afford a higher degree of protection to the person of the diplomatic agent than is accorded to a private person. This obligation is not afforded even by the breaking out of war between his country and that to which he is accredited. In respect of acts of private persons resulting in violation of the person or dignity of an ambassador, the receiving state is bound to take all reasonable steps to bring the offenders to justice. Failure to do so would amount to a breach of duty on the part of the receiving state for which reparation may be claimed. The receiving state is also under a duty to take proper steps to prevent such acts on the part of private persons by providing for adequate police protection in times of need taking into account the exigencies of the situation. Any negligence on the part of the receiving state could call for protest from the home

state of the envoy. These obligations of the receiving state are recognised by the doctrine of international law and concretised by the practice of states, and are codified in the Vienna Convention on Diplomatic Relations[4], the Vienna Convention on Consular Relations[5], and the Convention on Special Missions.[6]

I. The Doctrine of International Law

Most writers dealing with this question point out that the receiving state has the duty of protecting officials of foreign states against all acts on the part of private individuals infringing upon their personal inviolability. It is, of course, obvious that in a law abiding state every person enjoys personal inviolability and legal protection. However, it is pointed out that the protection of the personal inviolability of officials of foreign states should be

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4 United Nations Treaty Series, vol.500, p.110.

5 Ibid., vol.596, p.296.

6 United Nations Juridical Year Book (1969).

particularly increased because they find themselves in the territory of the receiving state not on their personal business, but to ensure the efficient performance of their functions on behalf of their respective states. Accordingly, officials of foreign states are entitled to a higher degree of protection than private individuals. As Vattel observed, "the sovereign is bound to protect every person within his domains, from violence, but this attention is higher degree due to a foreign minister."[7] Other writers similarly formulate this duty of the receiving state towards officials of foreign states.[8] For instance, Phillimore asserts that the duty of the receiving state to care for and protect officials of foreign states is higher than the general duty of that to protect all persons on its territory whether natives or foreigners.[9] One author explains that a higher duty of the receiving state to protect officials of foreign state include a specific obligation "to

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7 E.de Vattel, The Law of Nations, J.Chitty trans. (Philadelphia, 1879), p.465.

8 E.Satow, A Guide to Diplomatic Practice (London, Longman & Co., 1957), p.176.

9 R.Phillimore, Commentaries Upon International Law (London: Butterworths, 1871), vol.2, p.178.

take legal action against any person who insult or scorns a diplomat, whereas no such obligation arises in the case of any private alien visitor."[10] According to some authors, the inviolability of the foreign officials imposes upon the government of the receiving state the duty to protect officials of foreign states, by especially severe penal legislation against any offence or violation on the part of the private person and it should have laws providing appropriate punishment for offences committed against such officials.[11] Eagleton has observed that the first duty of the receiving state in this regard "is to provide municipal laws which will enable it to discharge its obligations under international law,"[12] since a state must be armed with the legal power to punish offenders against officials of foreign states.[13] As to the

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10 D.P.O.Connell, International Law (London, Stevens & Sons, 1965), vol.2, p.964.

11 Satow, n.8, p.178.

12 C.Eagleton, "The Responsibility of States for the Protection of Foreign Officials", American Journal of International Law, vol.19, 1925, p.310.

13 Ibid.

fulfilment of the duty of the receiving or host state to punish the perpetrators guilty of violating the personal inviolability of officials of foreign states, it should be noted that the writers on international law dealing with this question agree that in the case of violation of the inviolability of officials of foreign states, the government of the receiving state has the duty of punishing the persons guilty of such violations.[14] Since the final formation and formulation of the duty of the receiving or host state to cooperate with other states in order to prevent the commission of offences against officials of foreign states and in the appropriate punishment of the perpetrators of such offences is the result of recent development, unlike the other duties of the receiving state towards such officials, so far this duty has been dealt with only marginally in the doctrine of international law.[15] However, some aspects of this

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14 L.Oppenheim, International Law (London, Longmans & Co., 1967), vol.1, p.789.

15 L.M.Bloomfield and G.F.FitzGerald, Crimes Against Internationally Protected Persons : Prevention and Punishment (New York, Praeger, 1975), p.87.

duty have been mentioned, namely, the duty of the state to prevent its territory from being used to commit any acts against foreign states. For example, writes Oppenheim that, "States are under a duty to prevent and suppress such subversive activity against foreign governments as assumes the form of attempts to commit common crimes against life of officials of foreign states".[16] Likewise, Lauterpacht has affirmed that international law obliges the state to repress and discourage attempts against the life of officials of foreign states.[17] From what has been stated above, it is clear that the doctrine of international law recognises that the doctrine of international law recognises that the receiving state has the duty to afford to officials of foreign states appropriate and special protection.

II. The Practice of States

The duty of the receiving state of preventing the commission by private individuals of acts violating

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16 Oppenheim, n.14, p.292.

17 H.Lauterpacht, "Revolutionary Activities by Private Persons Against Foreign States", American Journal of International Law, vol.22, 1928, p.126.

the personal inviolability of officials of foreign has been confirmed by the judicial decisions and practices of various countries. One of the oldest cases in which this duty appears to have been consecrated is in the famous case of Res Publica V. De longchamps (1784) wherein the U.S.Chief Justice McKean held that officials of foreign states are under the particular protection of the law of nations.[18] One of the earliest instances in modern diplomatic practice wherein this duty of the receiving state towards officials of foreign states was expressly recognised was the case of Libel of Mr.Hammord, the British Minister at Philadelphia (1794) In connection with that case, the U.S. Secretary of State E.Randalph stated that the Law of Nations "secures the minister a peculiar protection".[19] In November 13, 1851 the Secretary of State D.Webester wrote to C.de La Borca, the Spanish Minister, in connection with the attack on the Spanish Counsel at New Orleans, expressly recognizing that officials of foreign states were "especially

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18 R.N.Swift, International Law : Current and Classic (New York, 1969), p.424.

19 M.D.Redlich, International Law as a Substitute for Diplomacy (Chicago, 1928), p.125.

entitled to protection".[20] Similarly, on 2 December 1851, referring to the same case, President M.Fillimore told the Congress that officials of foreign states "are objects of special respect and protection."[21] Mention should also be made of the decision of the United States Circuit Court of Appeals, fifth circuit, of August 23, 1938, in Transworth V.Zerbst, wherein J.Sibley held that officials of foreign states are to be treated with peculiar consideration and their persons "carefully guarded".[22] In the same year, this duty found its expression in Trend et al V. United States, wherein the Court of Appeals of the District of Columbia held on October 31, 1938, that in peace, officials of foreign states are entitled to "special respect and protection".[23]

In the case of Freeborn V. Fan Peikov (1949), a French Court likewise recognized that the inviolability of a diplomatic agent involves "the protection of his

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20 J.B.Moore, A Digest of International Law, vol.6, (Washington, U.S. Printers Press, 1906), p.812.

21 Ibid., p.813.

22 Annual Digest of Public International Law Cases (1938-40), p.431.

23 Ibid., p.413.

persons".[24] Reference must also be made to the position taken by Ch.Chanmount, the representative of the French Government at the meeting of the ICJ on the Advisory Opinion concerning the question of reparation for injuries suffered in the services of the United Nations on March 8, 1949. Ch.Chanmont said that "the person of the diplomatic agent should be subject to special vigilance by the authorities of the receiving state".[25] Similarly, on March 8, 1949, at the same meeting of the ICJ, A.H.Feller, the Principal Director of the Legal Department of the Secretariat of the United Nations, stated that "a right to special protection for those persons, occupying official positions is universally recognised in international law.[26] In 1959, in three cases, viz. Cassirer and Geheeb V. Japan, Tietz Et. Al. V. Peoples Republic of Bulgaria and Bennett and Ball V. People's Republic of Hungary, the Supreme Restitution Court

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24 Ibid., p.287.

25 ICJ Reports (1949), p.103.

26 Ibid., p.77.

for Berlin of the Federal Republic of Germany held in identical terms, that "it is indisputably a rule of law in all civilized countries that the individual persons who are called diplomats are entitled to receive from the legal sovereign a very high degree of personal protection of their peace.[27]

In contemporary diplomatic practice reference should be made to the statement by Secretary of State D.Rusk issued on December 9, 1964 in connection with several violent mob assault on American Embassies to the effect that "under international law and practice, a host state has a special duty to protect the persons of foreign missions."[28] Similarly, in connection with a violent demonstration against the American Embassy in Moscow on February 9, 1965, President, L.B.Johnson declared that American officials abroad must "be given the protection which is required by international law and practice".[29] On 4 March, 1965

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27 International Law Reports (1963), vol.28, at pp.380, 396 and 409.

28 M.M.Whiteman, Digest of International Law (Washington, U.S.Printing Press, 1970), vol.7, p.386.

29 Ibid.

Mr.Kohler, the American Ambassador in Moscow requested the Soviet government to afford the American Embassy and its personnel the protection required by international law.[30] The duty of the receiving state to guarantee special protection to foreign officials was strongly asserted by the sending state when the West German Ambassador to Guatemala, K.Spreti was kidnapped on March 31, 1970, by members of rebel armed forces in Guatemala city, and was slain by his abductors on April 5, 1970. On April 5, 1970, W.Brandt, the then Chancellor of the Federal Republic of Germany, broadcasted a message in which he stated that the Government of Guatemala had been incapable of assuring the protection necessary to diplomatic agents accredited to it.[31] Finally, in the case, United States V. Iran, the ICJ, in its order of December 15, 1979, concerning the indication of provisional measures, held that the Government of Islamic Republic of Iran should "afford to all the diplomatic and consular personnel of the United States the full protection to which they are

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30 Bloomfield and Fitzegerald, n.15, p.7.

31 Ibid., p.10.

entitled under the treaties in force between the two states, and under general international law.[32] Similarly in its judgement of May 24, 1980 in the same case, the Court declared that Iranian authorities had the duty "under the Conventions in force to take appropriate steps to protect United States diplomatic and consular staff from any attack and from any infringement of their inviolability, and to ensure their security."[33] It follows from this brief review that the duty of the receiving state to afford special protection to officials of foreign states has been recognized by judicial decisions of the national courts and the diplomatic practice of various countries as well as by the International Court of Justice.

III. Legal Regime Under Vienna Conventions and its Drawbacks

The customary international law principle of diplomatic inviolability was developed and codified with great care by the Vienna Conventions. However, as is shown below, subsequent experience with incidents involving criminal attacks on diplomats and

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32 ICJ Reports (1979), p.21.

33 ICJ Reports (1980), p.32.

diplomatic premises revealed certain deficiencies; the legal regime established under Vienna Conventions and Customary International Law was inadequate for coping with prevention and punishment of serious crimes against diplomats. The basic drawbacks of this law which constitutes part of the law on privileges and immunities seemed to be the fact that it was not always uniform general law equally applicable to all states, and that part of the law on protection did not enjoy a customary status basing its binding character upon particular international agreements.[34] Under customary international law and practice, the range of persons entitled to special protection was not sufficiently clear. Under this law, one may distinguish two large categories of persons entitled to special protection. The first category covers the head of state or government, the permanent diplomatic personnel and the second category consists of international officials whose privileged status was mainly

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34 Rozakis L.Christos, "Terrorism and the Internationally Protected Persons in the Light of the ILC Draft Articles", International and Comparative Law Quarterly, vol.23 (1974), p.33.

determined through bilateral or multilateral treaty law. The emergence of personal of international organizations and adhoc diplomats had not allowed the creation of a uniform general law determining the exact limits of their privileges and immunities and their status as specially protected persons.[35] An examination of the content and degree of the special protection applying to first category shows that the customary international law provides a greater degree of protection to head of state or government than enjoyed by other diplomatic agents.

The range of individuals who are entitled to special protection by a receiving state was not well clarified by customary international law. After the codification of diplomatic law by the Vienna Convention, little doubt is left as to the exact identity of the persons protected and their particular qualifications. Article 21(1) of the U.N.Convention on Special Mission, 1969, provides that the head of the sending state, when he leads a special mission shall enjoy in the receiving state the facilities,

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35 Ibid., p.34.

privileges, and immunities accorded by international law to heads of state on an official visit. Also, Article 21(2) provides that the head of government, the minister for foreign affairs, and other persons of high rank, when they take part in a special mission of the sending state, shall enjoy in the receiving state, in addition to what is granted by the Convention, the facilities, privileges, and immunities accorded by international law.

Under Vienna Convention on Diplomatic Relations 1961, however, any differentiation based on the class to which a diplomatic agent belongs has practically disappeared save in the case of their precedence. Article 14(ii) of the Convention on Diplomatic Relations states that,:

> Heads of mission divided into three classes, namely :
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> (a) that of ambassadors or nuncios accredited to Heads of State, and other heads of mission of equivalent rank;
> (b) that of envoys, ministers and internuncios, accredited to Head of State;
> (c) that of charge'd' affairs accredited to ministers for foreign affairs.

It clearly provides under clause 2 of Article 14 that: "Except as concerns precedence and etiquette, there shall be no differentiation between Heads of Mission by reason of their class". Apart from a "diplomatic agent", who according to article 1(e) of the Vienna Convention on Diplomatic Relations 1961, is "the Head of mission or a member of the diplomatic staff of a mission", the provisions of the Convention stipulate that "the members of the family of a diplomatic agent forming part of his household" enjoy the same kind of protection as the agent does, provided that they are not nationals of the receiving state. The same protection also applies to the members of the administrative and technical staff of the mission together with members of their families forming part of their household". The obligation of a state to offer special protection to diplomatic agents, the members of their immediate family and the persons related to a mission as prescribed in article 37 of the Vienna Convention on Diplomatic Relations is dependent upon the accreditation of thsse or their acceptance by the receiving state as the case may be. In consequence, these persons do not enjoy special protection on the

part of a state if they simply pass through it or visit for recreational or other unofficial purposes.

The right of special protection as a part of the privileges to be enjoyed by consuls was not very clear before the 1963 Vienna Convention on Consular Relations.[36] Unlike diplomatic law which had originally developed by custom, ruler governing consular relations were predominantly of a Conventional character. Consular relations were basically determined by bipartite agreements between states but differences were often to be found among the individual arrangements, especially with respect to the accorded privileges and immunities which prevented the creation of a uniform, binding law. According to article 40 of the Vienna Convention on Consular Relations, "the receiving state shall treat consular officers with due respect and shall take all appropriate steps to prevent any attack on their person, freedom or dignity". Accordingly, the receiving state is obliged to offer the same special protection which is due to the diplomatic agents. The only significant difference between the law of special protection under the Convention on Diplomatic

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36 United Nations Treaty Series, 596, p.261 came into force in 19 March 1967.

Relations and that of Consular Relations is that in the latter the protection applied only to a "Consular officer", who is "any person, including the head of a Consular post, entrusted in that capacity with the exercise of consular functions", it does not extend to the members of their family. Another category of international officials whose status of protection is mainly determined by conventional law consists, as it already has been mentioned, of two group of persons, the officials of international organizations and the adhoc (itinerant) diplomats. "Officials of international organizations" broadly refers to : (a) the members of the permanent missions of states-members of an organization; (b) the representatives of states-members at the sessions of the various organs of the organizations, and (c) the functionaries of the organizations and their personnel. They all share the common characteristics that they contribute to the realisation of the goals of the organization. Their privileges on the international plane are determined by the particular agreements concluded between the member-states and an organization. In the absence of such agreement, the status of protection of an organization itself is very doubtful in international

law. Ad hoc diplomacy on the other hand is the offspring of the fast growing and ever increasing volume of international relations which, due to their complexity and multifariousness, can no longer be satisfied by the mere existence of permanent diplomatic missions. There are urgent questions of a political, technical or scientific nature which must be settled by international cooperation. Traditional diplomacy being insufficient in this respect due to its rather inflexible nature, such complex tasks are assigned to adhoc diplomatic mission. There is, however, a characteristic common to all : the fact that the persons of these missions represent their state abroad in an official capacity for the purpose of fulfilling an assigned task. It is this characteristic that should entitle them to a special treatment on the part of a host state or state of transit.

In comparison with all the former descriptions of the notion of the personal inviolability of officials of foreign states, the Vienna Convention on Diplomatic Relations, the Convention on Special Missions and Vienna Convention on Consular Relations took a step forward towards a more exhaustive elaboration of the

essence of that inviolability. Article 29 of the Vienna Convention on Diplomatic Relations, article 29 of the Convention on Special Missions and article 40 of the Vienna Convention on Consular Relations define the personal inviolability of officials of states in the following terms with slight terminological changes : "An official of a foreign state 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". As to the implementation of the provisions on special protection contained in the mentioned Conventions, the major ambiguity lies in the term "appropriate steps". What is meant by "appropriate steps"? Who decides whether the "steps" taken by the receiving state in a particular case are "appropriate" or not, the receiving state or the sending state? The steps which are considered appropriate by the receiving state may seem inappropriate in the opinion of the sending state. It is clear that the nature and extent of the receiving state's obligations denying from the special protection of officials of foreign states are

not defined precisely. However, what constitutes appropriate state may be judged only in relation to the circumstances.

Similarly, as to punishment of persons who attacked diplomats, the receiving state was under an obligation to use due diligence to apprehend the offender and to set in motion the administrative and judicial machinery that normally deals with the prosecution and punishment of offenders. It was, however, debatable whether the receiving state was also under an international obligation to try the offender and punish him. States were also not, by and large, under an international obligation to provide special internal laws making these crimes against international agents more severely punishable than the corresponding crimes committed against common individuals.

Further, the regime established by the Vienna Convention was particularly inadequate in cases, where the attack against the diplomat as committed in one state, and the actor flees to another state seeking safe heaven. Here the effort to suppress and punish acts of international terrorism ran into problems arising from the complex matrix of asylum, extradition,

and the concept of political offense. Although Grotius was of the opinion that natural law required states either to punish fugitive offenders found within their territories or to surrender them to the other state,[37] no such legal obligations has developed. On the contrary, extradition is the prerogative of the requested state, and in the absence of a bilateral treaty between the requesting and the requested state. There is no international legal duty to extradite. Even where there is an applicable extradition treaty, the scope of the duty to extradite may be narrow. First, extradition may be requested only for offenses listed in the treaty. Second, and most important even as to these offenses, political offense exception may determine whether the alleged offender will be returned to the requesting state or granted asylum by the requested state. In all cases the decision whether to grant extradition rests with the executive of the requested states and attacks on diplomats may be classified by some of them as a political offense. Again, the regime established by the Vienna Conventions did not consider the possible problem of asylum. Under

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37 Hugo Grotius, n.2, p.527.

traditional law and practice, there has been a long tradition of extraterritorial asylum in Latin American states.[38] The Caracas Convention on Territorial Asylum 1954 provides that each state, in the exercise of sovereignty, has the right to admit into its territory persons whom it may consider appropriate without any other state being able to claim such persons. The state of asylum is not obliged to deliver up or expel those prosecuted for political motives or crimes. There is no extradition when the state of asylum characterizes the offenses as being political. But the perpetrators of the crimes against diplomatic agents should not be given political asylum, no such legal obligation had developed. Finally, both customary and conventional international law lacked established procedures for international cooperation in preventing and punishing violations of diplomatic inviolability. These problems pointed to the need for a special Convention for the protection of all categories of diplomatic agents from the growing threat and crimes against their persons.

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38 Convention on Asylum (Havana, 1928); Convention on Political Asylum (Montenideo, 1933), Caracas Convention on Diplomatic Asylum (Caracas, 1954), Convention on Territorial Asylum (Caracas, 1954) See International Law Association Report of the 53rd Conference (1968), p.253.

IV. Debate Over Need for Special Convention

In May 1970, the ILC received from the President of the Security Council a letter transmitting the text of a letter addressed to him by the representative of the Netherlands to the United Nations concerning the need for action to ensure the protection and inviolability of diplomatic agents in view of the increased number of attacks on them.[39] At its 23rd session, in 1971, the ILC agreed that it should consider the possibility of producing draft articles regarding such crimes as the murder, kidnapping, and assaults upon diplomats and other persons entitled to special protection under international law.[40] Later in 1971, at the 26th session of the U.N. General Assembly, the Sixth Committee debated the question as to whether the ILC should be requested to submit such articles to the General Assembly at its 27th session. At that time the arguments for and against having a Convention on the

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39 UN Doc.S/9789 United Nations Security Council Letter of the Representative of the Netherlands to the United Nations.

40 Year Book of International Law Commission, vol.I (1971), p.3.

topic in question were considered. Some representatives recognized the importance and urgency of the problem. Diplomatic agents and other persons entitled to special protection under international law were increasingly becoming the victims of such crimes as murder, kidnapping, and assault. Moreover, the numerous kidnappings of diplomatic agents that had been committed in recent years had been used for the purpose of political blackmail or in order to put pressure on the receiving state. These attacks could, it was pointed out, even endanger the maintenance of international peace and security.

Some of those who favoured the preparation of such a convention nevertheless pointed out that the project would not be without difficulties as various complex questions were involved. Others, while skeptical of a need for, or possibility of, draft articles on the subject, nevertheless considered that the ILC should study the problem. In their view it was doubtful whether it would be possible to prepare draft articles that would have any real practical value, but an unequivocal declaration by the firm determination to punish offenders would have value as a deterrent. However, the majority of the comments favoured the

formulation of some sort of convention to punish and prevent terrorist crimes against diplomats.[41] By Resolution 2780 (XXVI) of December 3, 1971, the United Nations General Assembly requested the ILC to prepare a set of draft articles dealing with offenses committed against diplomats and other persons entitled to special protection under international law. At its 24th session in 1972, the ILC did not discuss the question of need for a convention, but rather the manner in which it could study the question and the scope of its work. However, it reiterated that a Convention was needed because attacks on diplomatic agents and other internationally protected persons affected not only the personal safety and freedom of innocent persons, but also the exercise by them of their official functions, thus hampering the normal course and safety of international relations, the communications between one

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41 There were, however, several states, such as Franceand Australia, who felt that existing mechanisms, utilized to their maximum extent, could control the problem. The basis for this position was a feeling that the key to the protection of diplomatic agents lay in the effectiveness of the protective measures undertaken on their behalf by the host country. And they held that all that was needed was more effective enforcement of the applicable provisions of the Vienna Convention.

government and another and between governments and international organizations, friendly relations and cooperation between states, and in general the promotion of the purposes and principles of the U.N. Charter. The increase in number, frequency, and seriousness of attacks on diplomatic agents and other internationally protected persons in the last few years and the new forms taken by such attacks, required the adoption of effective international measures.[42] It was further submitted that, inspite of the more general study being conducted on the question of terrorism, there was scope for an independent convention along the lines of the draft articles prepared by the ILC. It was argued that the diplomatic law under Vienna Conventions presented a number of gaps which needed to be filled. What was required was international cooperation directed towards preventing attacks on diplomatic agents and other internationally protected persons, prosecuting those who had committed such crimes and ensuring that they did not escape punishment by taking refuge in other countries, and in general, creating conditions in which the perpetrators of such acts would have

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42 UN Doc.A/8892 UNGH 27th session, 6th Committee, p.42.

nothing to gain thereby.[43]

V. Negotiating History

Before embarking on the analysis of the U.N. Convention, it will be useful to indicate in summary form the various U.N. meetings at which work on the preparation of the Convention was carried out. At its 24th session in 1972, the ILC had before it the written observations received from 27 member states[44] and certain draft Conventions.[45] The ILC considered the

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43 U.N.Doc.A/8892 UNGA, 27th Session, 6th Committee, p.44.

44 These nations were : Brazil, Columbia, Iran, Israel, Jamaica, Kuwait, Niger, Great Britain, Norway, Sweden, the United States, Australia, Canada, Czechoslovakia, Denmark, Japan, Netherlands, USSR, France, Madagascar, Yugoslavia, Ecuador, the Soviet Union, Belgium, Argentina, Cuba and Rwanda.

45 There were three proposed draft conventions : the "Uruguay Working Paper", which had been submitted to the 26th session of the General Assembly by the delegation from Uruguay, U.N. Doc.A/C.6/1.822(1971); the "RomeDraft" submitted by Denmark with its comments, U.N.Doc.A/CN.4/253 Add.2(1972); and a working paper prepared by Richard Kearney, the Chairman of the ILC; U.N. Doc.A/CN.4/L.182(1972) also reprinted in vol.11, International Legal Materials (1972),p.493.

question at the 1150th to 1153rd, 1182nd to 1186th, 118th, 1189th, and 1191st to 1193rd meetings.[46] By the end of its session the International Law Commission had prepared Draft Articles for submission to the 27th session of the United Nations General Assembly.[47] By the latter part of 1972 the discussions of the Sixth Committee of the United Nations General Assembly on the Draft Articles, in the light of the comments of states that had previously been placed before the International Law Commission, resulted in a fairly lengthy report on the topic.[48] By Resolution 2926 (XXVII) of November 28, 1972, the General Assembly, having considered of the report of the International Law Commission on the work of its 24th session, which contained Draft Articles on the Prevention and Punishment of crimes against Diplomatic agents and other Internationally Protected Persons,[49] decided to include in the provisional agenda

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46 Year Book of International Law Commission, vol.1, (1972), p.3.

47 International Law Commission Report (1972), pp.88-102

48 UN Doc.A/8892 UNGA, 27th Session, 6th Committee (1972), pp.41-46.

49 International Law Commission Report (1972), pp.88-102.

to its 28th session an item entitled "Draft Convention on the Prevention and Punishment of Crimes against Diplomatic Agents and other Internationally Protected persons" with a view to the final elaboration of that Convention by the General Assembly. The item was included in the agenda of the 28th session of the United Nations General Assembly at the 2123rd Planning Meeting, on September 21, 1973.[50]

The Sixth Committee of the 28th Session of the United Nations General Assembly considered the provisions of the draft Convention in two stages. In the first stage, it considered all the Draft Articles and the new articles proposed as well as the Preamble and the final clauses. In the second stage, the Sixth Committee considered and adopted the texts recommended by the Drafting Committee. The Sixth Committee embarked on the final stage of its work on the Draft Convention at its 1451st meeting on December 1, 1973. It considered and adopted the text of its recommendations to the General Assembly at its 1455th and 1457th meetings on December 5 and 6, 1973. At the 28th session of the

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50 UN Doc.A/9407 UNGA, 28th session, 6th committee (1973), p.3.

United Nations General Assembly, the Sixth Committee had before it not only the Draft Articles prepared by the International Law Commission, but also the comments and observations of member states, non-member states, and the Secretariat of the Specialized Agencies, International Atomic Energy Agency, and other inter-governmental organizations concerned.[51] By Resolution 3166 (XXVIII), the United Nations General Assembly adopted by consensus, at its 2202nd meeting on December 14, 1973, the Convention on the Prevention and Punishment of Crimes against internationally Protected Persons, including Diplomatic Agents.[52]

VI. Appraisal

The above discussion shows that the legal regime of protection of diplomatic agents and other international officials under the Vienna Conventions had been inadequate for coping with the rising problem of terrorism. At the same time, the international community

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51 U.N.Doc.A/9127 UNGA Sixth Committee (1973)

52 Official Records of the General Assembly, 28th session, Supplement No.30 (A/9030), p,146.

had a duty to effectively protect its diplomatic agents. The most appropriate method of improvement of that law appeared to be a carefully drafted general treaty which filled the gaps in the existing regime and specified particular and effective obligations with respect to the protection of international officials. This was precisely the intention behind the drafting of the articles on "Prevention and Punishment of Crimes against Diplomatic Agents and other Internationally Protected Persons", which later became the first general treaty comprehensively dealing with the protection of international officials with respect to modern crimes of terrorism. It is time, therefore, to turn to the text of the Convention in order to see to what extent they realize the desirable improvement of the law of protection and may therefore be used as a potential weapon to prevent and punish acts against international officials.

Chapter - 3

ANALYSIS AND EVALUATION OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF CRIMES AGAINST INTERNATIONALLY PROTECTED PERSONS, INCLUDING DIPLOMATIC AGENTS

This chapter will focus only on the key provisions of the Convention like persons entitled to special protection, the crimes covered by the Convention, jurisdiction, obligations regarding cooperation, the right to asylum, the extradition provisions and the settlement of disputes, in an attempt to evaluate its strengths and weaknesses as an international legal instrument designed to prevent, suppress, and punish attacks on diplomats.

I. Persons Entitled to Protection

With respect to the range of persons covered by its provisions, the 1973 Convention on Prevention and Punishment introduces a new concept into international jurisprudence : "the internationally protected persons". It's significance is that it affords special protection to a wide range of international officials and diplomats. It is defined as follows in Article I :

> 1. "Internationally Protected Persons" means:
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> (a) a Head of State, including any member of a collegial body performing the functions of a Head of State under the Constitution of the state concerned, a Head of Government or a

> Minister for Foreign Affairs, whenever any such person is in a foreign state, as well as members of his family who accompany him;
>
> (b) any representative or official of a State or any official or other agent of an international organization of an inter-governmental character who, at the time when and in the place where a crime against him, his official premises, his private accommodation or his means of transport is committed, is entitled pursuant to international law to special protection from any attack on his person, freedom or dignity, as well as members of his family forming part of his household.

Article I(1)(a) covers a head of state or a head of government on account of the exceptional protection that, under international law, attaches to such person. According to the ILC the subparagraph is intended to emphasize the special status of a head of state or head of government when he travels abroad and the status extends to members of his family who accompany him. The term "head of state or head of government" includes members of an organ that is functioning in that capacity in a collegial fashion. The purpose is to ensure fullest protection to all persons who have the quality of head of state or government.[1] The protection

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1 American Journal of International Law, vol.65 (1971), p.92

also extends to a minister for foreign affairs when he acts on behalf of the head of state.[2] It appears that the mere presence of the persons contemplated by sub-paragraph (a) in a foreign state, irrespective of the reasons for their presence therein, would be enough to attract the application of the Convention.[3] The members of the family also come under the umbrella of protection, provided they accompany them, but not if they travel on their own. Apparently the members of the suites of the heads of state and the other persons contemplated by sub paragraph (a) would to the extent that they would be considered as representatives or officials of states, would be provided protection afforded by subparagraph (b) of Article 1(1). Thus family members would certainly be protected for whatever reason if they represent the head of state or carry in themselves some significance as part of the international communication system.

Subparagraph 1(1)(b) specifies the requirements in order that certain persons may be regarded as "internationally protected persons". The ILC decided in favour

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2 UN Doc.A/9407 UNGA-23-R6C (1973), p.7.

3 International Law Commission Report (1972), p.92.

of a general formulation for subparagraph (b), instead of an enumeration of the classes specified in particular conventions, as being the best means of effectuating the stated desire of the UN General Assembly for the broadest possible coverage. In formulating subparagraph (b) the ILC found inspiration in Article 2 of the OAS Convention which refers to "those persons to whom the state had the duty to give special protection according to international law". The ILC included in its draft the expression "any official of a state" and did not restrict itself to the expression "diplomatic agent". It pointed out that among the officials who could be regarded as "internationally protected persons" by virtue of their entitlement to special protection under international agreement, the following could be mentioned by way of example : diplomatic agents and members of the administrative and technical staff of the mission within the meaning of the Vienna Convention on Diplomatic Relations, and Consular Officers within the meaning of the Vienna Convention on Consular Relations.[4] At the Sixth Committee of the 27th session of the UN General Assembly in 1972, doubt was

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4 Ibid.

expressed as to whether protection should be extended to members of special missions, or to all such members. Members of special missions, it was pointed out, were less exposed to dangers of the kind that threatened members of permanent missions. On the other hand, it was stated that protection should be extended to representatives of national liberation movements visiting or residing in foreign countries, particularly representatives of movements recognized by the United Nations and by regional political organizations.[5] At its 28th session the Sixth Committee inserted a reference to a "representative" of a state in addition to an "official" of a state.[6] Additionally, the ILC listed the words "any official or other agent of an international organization of an intergovernmental character", among the officials who, in the circumstances provided for in subparagraph (b), could be regarded as "internationally protected persons" by virtue of their entitlement to special protection, officials of the United Nations within the meaning of Articles V and VII of the Convention

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5 UN Doc.A/8892, UNGA-27-R6C (1972), p.54.

6 UN Doc.A/9407 UNGA-28-R6C (1973), pp.9-10.

on the Privileges and Immunities of the United Nations,[7] experts on mission for the United Nations within the meaning of Article VI of the Convention on Privileges and Immunities of the United Nations, and officials of the specialized agencies within the meaning of Article VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies.[8] The ILC recommended that in enacting legislation to put the draft articles into effect it would be appropriate for states, in determining the extent of coverage, ratione personae, to take account of the need to afford a wide range of foreign officials protection against terrorist activities. This point was particularly well taken in relation to officials of inter-governmental organizations because they do not, under Conventions on Privileges and Immunities, qualify for the whole range of diplomatic privileges and immunities, nor obviously have they been entitled by custom to the same degree of protection as would be given to representatives and officials of states, especially those who are diplomatic agents.[9] The United Kingdom representative in

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7 United Nations Treaty Series (vol.1), p.15.

8 Ibid., vol.33, p.261.

9 International Law Commission Report (1972), p.93.

General Assembly summed up the content of Article 1(1)(5) in the following terms :

> as regards article 1(1)(b), and as the language of the provision itself makes clear, we understand that the persons who, in the circumstances specified in that subparagraph, are within the ambit of that subparagraph are those who fall within any of the following categories of persons, that is to say : persons who are entitled to the benefit of Article 29 of the Vienna Convention on Diplomatic Relations, Article 40 of the Vienna Convention on Consular Relations or article 29 of the New York Convention on Special Missions, persons who are high officials or agents of international organizations and who, under the relevant international agreements are, as such, entitled to the like benefit; and persons who, under customary international law or by virtue of some other specific international agreement are entitled to special protection from any attack on their person, freedom or dignity. The subparagraph, of course, also covers members of the families of such persons, forming part of their household.(10)

As to the extent of protection, the words "who, at the time when and in the place where a crime against him, his official premises, his private accommodation or his means of transport is committed," help to broaden the circumstances where special protection would apply not only in respect of his official premises and his private accommodation, but also to his means of transport,

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10 UN Doc.A/PV.2202 (1973), p.112.

This would give the official protection not only while he is at his office or his home, but also when travelling, However, unlike the head of state or government or ministry of foreign affairs, a diplomatic agent on vacation would not normally be entitled to special protection. There do not appear to be valid reason for making this distinction. Since the purpose of the Convention is to reduce the incidence of attacks upon internationally protected persons, as such the Convention should apply whether they are in a foreign country on official business or on a holiday. This is because a kidnapping could as well be committed in one place as the other for the purpose of bringing pressure on a host government of the sending state. Moreover, as Rozakis has pointed out, in view of the present mobility of diplomatic agents, they should be afforded protection wherever they might be.[11] In fact, Rozakis has questioned on this basis the classification of "internationally protected persons" contained in Article 2(1). He has suggested the classfication of

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11 Christor Rozakis, "Terrorism and the Internationally Protected Persons in the Light of the ILC Draft Articles", International and Comparative Law Quarterly, vol.23, (1974), p.46.

"internationally protected persons" in to permanent and non-permanent officials. According to him, permanent diplomatic and consular officials would then enjoy the same scope of protection that the Convention accords to a head of State or government, while non-permanent officials who represent their state abroad in a temporary fashion would only be protected as long as they actually represented that state and on the basis of such representation on the international plane.[12]

II. Crimes Covered by the Convention

Article 2(1) specifies the crimes to which the Convention will apply. It includes notonly the "intentional commission" of the "murder, kidnapping or other attack" upon the person of the internationally protected person, but also threat, attempt, or involvement as an accomplice in the act, as well as a violent attack on that person's premises. The definition is wide enough to include most if not all acts of terrorism directed towards diplomats. The reference to "intentional" commission of the attacks, threats, attempts, and complicity

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12 Ibid., p.47.

needs to be elaborated at the outset. The ILC pointed out that the word "intentional", which is similar to the requirement found in Article 1 of the Montreal Convention for the Suppression of Unlawful Acts against the safety of Civil Aviation was used to make it clear that the offender must be aware of the status as internationally protected person enjoyed by the victim.[13] It would appear that the word "intentional" covers two distinct ideas : the act must be committed intentionally and not merely negligently; and the offender must know that the victim belongs to one of the categories covered by the definition of "internationally protected persons" i.e. he must know that the victim holds a certain position.[14] The extent to which mention should be made of the motive or knowledge of the offender was much discussed during the elaboration of the Convention. On the one hand, it was proposed that the Convention should apply only to crimes "where one of the determining motive is the status of the victim". At the other extreme, some considered that the ILC's requirement of knowledge was undesirable. A number of intermediate positions were suggested, but ultimately

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13 International Law Commission Report (1972), p.95.

14 International Legal Materials, vol.11 (1972), p.984.

the Commission's proposal was retained. Principle might have suggested that the Convention should apply only where the motive had some connection with the victim's status, but the practical consequence of having such a connection may have been to deprive the Convention of much of its effectiveness in view of the difficulty of proving motive.

In the introductory part of Article 2(1) of the ILC's draft there occurred the expression "regardless of motive". Here the intent of the ILC was to restate what it styled as being the universally accepted legal principle that it is the intent to commit the act and not the reason that led to its commission that is the governing factor. The ILC pointed out that such an expression is found in Article 2 of the OAS Convention on Prevention and Punishment 1971. As a consequence of the use of the words "regardless of motive", the requirements of the Convention was to be applied by a state party even though for example, the kidnapper of an ambassador might have been inspired by what appeared to the kidnapper or was considered by State Party to be the worthiest of motives.[15] However, the Sixth Committee

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15 International Law Commission Report (1972), p.95.

deleted the words "regardless of motive".[16] The inference that could be drawn from the deletion of the words "regardless of motive" is that the extradition provisions of the Convention would be weakened since the motive, for example, a political motive could be invoked as a reason for the non-extradition of the alleged offender.

Article 2(1)(b) of the Convention refers to "a violent attack". This expression was used by the ILC in order both to provide substantial coverage of serious offenses and at the same time to avoid the difficulties that arise in connection with a listing of specific crimes in a Convention intended for adoption by a great many states. ILC noted that there could be a difference in definitions of murder, kidnapping, or serious bodily assault that might be found in a hundred or more varying criminal systems if the method of listing individual crimes were to be used. It would be difficult to incorporate into internal law a precise definition of such crimes and it appeared to the ILC that agreement upon such specific definition might not be possible. Consequently, the ILC decided to leave open to each individual State

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16 UN Doc.A/9407 UNGA-28-R6C (1973), p.18.

Party to the Convention the ability to utilize the various definitions existing in its internal law for the specific crimes comprised within the concept of violent attack upon the person or liberty and upon official premises or accommodation, or to amend its internal law, if necessary in order to implement the articles.[17] Like the Hague and Montreal Conventions, the UN Convention refers to threats, attempts, and complicity.[18] Subparagraph (c) and (d) refer respectively to a threat and an attempt to any of the attacks referred to in subparagraph (a) and (b) of Article 2(1). But O.A.S. Convention on the other hand does not contain such words like threats or attempts. Article 2(1) avoids an ambiguity present in the O.A.S. Convention by clearly including within its coverage not only actual attacks on diplomats but also threats or attempts to commit, and participation as an accomplice in such attacks. The coverage of Article 2(1) will vary somewhat depending on the domestic laws of states parties to the Convention

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17 International Law Commission Report (1972), p.94.

18 Article 1(1), (c), (d), (e) of UN Convention 1973.

because the precise definition of the offenses may differ under individual system of law. However, the requirement under Article 2(1) that the acts covered by the Convention "shall be made by each State Party a crime under its internal law" should not require much modification in the substantive criminal law of most State Parties. Under the domestic law of most countries, the crimes set forth in Article 2 are already "punishable by appropriate penalties which take into account their grave nature". Subparagraph (e) refers to participation as an accomplice in any such attack. In the view of the ILC, the threat, attempt, and participation as an accomplice are well defined concepts under most systems of criminal law and therefore did not require any detailed explanation.

Article 2(2) of the Convention states that, "Each State Party shall make these crimes punishable by appropriate penalties which take into account their grave nature". This implies that penalties should be imposed by reference to the nature of the victim as well as the nature of the offense. Article 2 of the Hague Convention and Article 3 of the Montreal Convention also contains expressions "severe penalties". The reason was that there should be a curb on violent attacks directed against

those persons who constitute a grave threat to the channels of communication upon which states depended for the maintenance of international peace and order. Article 2(3) states that paragraph 1 and 2 of this article in no way derogates from the obligations of State Parties under international law to take all appropriate measures to prevent other attacks on the person, freedom or dignity of an internationally protected person. The words "derogation from obligations of States Parties under International Law" provided in Article 2(3) means that while the U.N. Convention is intended to deal with specifically with the attacks described in Article 2(1), the specific rules in the Convention should in no way derogate from the general obligations of States under internal law to prevent other attacks, i.e., attacks outside the Convention, on the person, freedom or dignity of an internationally protected person.[19]

III. The Right of Self-Determination and Independence and the Convention

This provision -- a paragraph in the resolution adopting the Convention -- had its origin in certain

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19 UN Doc.A/9407 UNGA-28-REC (1973), p.18.

comments made in the Sixth Committee where some representatives emphasised that the adoption of effective and equitable measures in keeping with the spirit and letter of the U.N.Charter and the Universal Declaration of Human Rights involved an examination of the causes of attacks against diplomatic agents and other internationally protected persons. Only the identification and eradication of these causes, among which were mentioned imperialism, colonialism, neo-colonialism, racism, apartheid, and regimes of terror, would make it possible for states, active in cooperation with one another in conformity with the principle of sovereign equality, to eliminate their effects; and, it was said, any measures adopted must be such as did not in any way restrict the exercise of the right of self-determination.[20] Paragraph 4 of the resolution was the result of a draft additional article submitted to the Sixth Committee by a large group of Third World states.[21] It reads :

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20 UN Doc.A/8892 UNGA-27-R6C (1972), p.43.

21 These states were : Afghanistan, Algeria, Nurmoli, Cameroon, Congo, Egypt, Kenya, Morocco, Togo, Uganda, etc. UN Doc.A/9407 (1973), p.50.

> "The General Assembly...recognizes also that the provisions of the annexed convention could not in any way prejudice the exercise of the legitimate right to self-determination and independence, in accordance with the purposes and principles of the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations by Peoples struggling against colonialism, alien domination, foreign occupation, racial discrimination and apartheid."

The movement to have this statement attached in some form to the Convention arose from the fear on the part of the developing nations that the provisions of the Convention could be used to prevent all acts of revolution or liberation against "colonialism, alien domination, foreign occupation, racial discrimination and apartheid". The resolution, however, makes clear the view of the General Assembly that there is not, and indeed could not be, any conflict between the obligations imposed on states by the Convention and lawful activities in the exercise of the right to self-determination in accordance with the purposes and principles of the Charter and the Declaration on Friendly Relations. In one view, "it made clear that the sort of crimes with which the Convention deals, that is to say, crimes in violation of the fundamental rule of international law cannot

constitute lawful activities in the exercise of the right of self-determination". Other delegates taking this position additionally pointed out that paragraph 4 deliberately invoked the United Nations Charter, which prohibits the use of force other than in expressly limited circumstances.[22]

What is however the legal status of the resolution of which it forms a part. Operative paragraph 6 of the resolution provides that the resolution, "whose provisions are related to the annexed Convention, shall always be published together with it". On the one hand, the resolution is not part of the Convention, even if it is by its terms related to it and to be published with it. Also, the language of paragraph 4 seems merely to state the "self-evident fact" that the Convention cannot in any way prejudice the right of self-determination, and not to affect the legal obligations set out in the

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22 Article 2, paragraph 4 of the United Nations Charter prohibits the use of force generally by member states. Article 51 provides the only exception to this mandate, that a member state may use self-defense if an "armed attack" occurs against a member of the United Nations.

Convention itself.[23] On the other hand, in the General Assembly some countries argued that the effect of paragraph 4 was the same when included in the accompanying resolution as it would be were it included in the Convention.[24] It would however appear that the crucial issue regarding paragraph 4 of the resolution does not seem to be its legal effect, if any, on the obligations of States Parties under the Convention. Rather, it seems to be the effect the paragraph may have on the willingness of states to ratify the Convention and to ensure that the Convention realizes its full potential as a measure towards the protection of diplomats. Moreover, the substantial support received by the draft article exempting wars of national liberation movement from the provisions of the Convention may indicate that paragraph 4, regardless of its status as a legal proposition, within the Convention enjoys more support than that formally expressed during the debates in the General Assembly. However, with regard to the legal effect of a

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23 Michael Wood, "The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents", International and Comparative Law Quarterly, vol.23 (1974), pp.787-98.

24 Ibid., p.727.

provision being incorporated in a resolution rather than in the body of a Convention, paragraph 4 of the accompanying resolution can certainly be given considerable weight in any interpretation of the Convention as a whole.

IV. Jurisdiction

Article 3 sets out the circumstances in which a State Party is obliged to establish its jurisdiction over the crimes set forth in the Convention. According to Article 3 paragraph (1) all state parties which have some connection with the crime, are obliged to establish their jurisdiction over the crimes. This may be described as "primary jurisdiction". Under paragraph 2, any other state party has to establish its jurisdiction in cases where the alleged offender is present in its territory and it does not extradite him pursuant to Article 8 to any of the States mentioned in paragraph 1 and this may be described as "secondary jurisdiction". Paragraph 3 provides that the Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

The ILC text had provided that the crimes set forth in Article 2 should be made by each party crimes under its internal law, "whether the commission of the

crime occurred within or outside of its territory" and that each state party should "take such measures as may be necessary to establish its jurisdiction over these crimes". It had thus sought to bring these crimes into that very limited class of offences in respect of which there is universal jurisdiction. The ILC pointed out that for the purposes of jurisdiction such a provision would provide for cooperation in the prevention and suppression of offenses that are of concern to the international community as a whole, such as slave trade and traffic in narcotics.[25] But the words "whether the commission of the crimes occurs within or outside its territory" were deleted from the Article 2(1) in the Sixth Committee of the 28th session of the UNGA on the proposal of Japan, the Netherlands, and the Philippines.[26] The effect of this deletion was to weaken considerably the concept of universality in article 2(1), although it could be argued that the remaining words "shall be made by each State Party a crime under its internal law"

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25 United Nations Treaty Series, vol.520, p.252.

26 UN Doc.A/9407, UNGA-28-R6C (1973), p.17.

will suffice to promote universality and that, in this view, the deleted words would have been redundant if retained.

The obligation in article 3 is an obligation to establish jurisdiction, i.e. the article requires states parties to ensure that the rules of their municipal law concerning jurisdiction in criminal cases permit trial of an alleged offender under the indicated circumstances. Article 3(1)(a) covers criminal jurisdiction taken upon the basis of the territorial principle and the generally accepted extension of the territorial principle to include ships and aircraft registered in the state concerned is expressly covered. Article 3(1)(b) requires the state of nationality of the alleged offender to establish jurisdiction, and is likewise a basis of criminal jurisdiction well-founded in customary international law. The extratorial effect of the assumption of jurisdiction by each state is contemplated in subparagraph (c) of article 3(1) and there is no restriction as to the locus of the alleged offender or the victim at the time of the crime. Article 3(2) requires a state party to establish jurisdiction where the alleged offender is in its territory and is not

extradited. Article 3(2) is concerned solely with jurisdiction and does not affect extradition. But the fact tnat jurisdiction is only to be taken in the absence of extradition suggests that extradition will be the normal procedure, and jurisdiction under article 3(2) will only come in to play in those exceptional cases where extradition is not possible.

The effect of article 3(3) is that inspite of the obligation recited in article 3(1) of a state party to the Convention to take such measures as may be necessary to establish its jurisdiction over the crimes contemplated in the Convention, there would nevertheless exist other criminal jurisdictions exercised in accordance with national law whether those jurisdictions were established or not. This is in order to fill any possible gap in the case of a state that not yet taken such measures. Hence the alleged offender could find himself faced with a whole host of concurrent jurisdictions and not just a restricted group of jurisdictions mentioned in the Convention.

V. Obligations Regarding Cooperation

The Convention contains a number of provisions requiring states parties to engage in cooperative efforts towards the prevention, suppression, and punishment of attacks against diplomats. With respect to prevention, states parties are required to cooperate in order to prevent preparations in their territories for attacks on diplomats within or outside their territories, and to exchange information and to coordinate the taking of administrative measures against such attacks. The state party where the alleged offender is found is also obliged to take measures to ensure his presence for purposes of extradition or prosecution and to inform interested states and international organizations of the measures taken. Finally states parties are to cooperate in assisting criminal proceedings brought for attacks on diplomats including supplying all evidence at their disposal that is relevant to the proceedings.

A. Prevention of Crime

The provisions concerning the duty of states to cooperate among themselves contained in the Convention may thus generally be divided into two groups, namely :

(1) those relating to the prevention of the commission of crimes against officials of foreign states, and (2) those relating to the punishment of the persons guilty of such crimes. Article 4, which spells out obligations relating to the first group, places on the contracting states the duty to (a) take all practicable measures to prevent preparations in their respective territories for commission of those crimes within or outside their territories; and (b) exchange information and coordinate the taking of administrative and other measures as appropriate to prevent the commission of those crimes. This provision is intended to establish more effective measures for the prevention of specified crimes against officials of foreign states through international cooperation. In this era of rapid transport and communication this requirement is of great significance in the prevention of crime, because very often preparation are made in one state for committing an offense in another.

This objective is to be achieved as is seen by establishing a "double obligation" : on the one hand, to take measures to suppress the preparation in their territories of those crimes, irrespective of where they are

to be committed, and, on the other hand, to exchange information and coordinate the taking of these administrative measures which could lead to preventing such crimes from being carried out. The first obligation has for its basis the well-established principle of international law that every state must ensure that its territory is not used for the preparation of crimes to be committed in other states. To be sure, the concerned provision also places an obligation on every state party to take preventive measures when the crimes in preparation are intended to be committed on in its own territory, which is in compliance with the requirements to ensure inviolability and protection as set forth in appropriate provisions of the various Vienna Conventions and the Convention on Special Missions.[27] The second obligation has its roots in the principle of cooperation.

In so far as the manner of implementation of the obligations imposed on the contracting states is concerned, it was explained in the ILC that both the nature and the extent of the measures established should be determined

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27 United Nations Treaty Series, vol.596, p.296.

by states on the basis of their particular experience and requirements.[28] It is obvious, however, that such measures would include both police and judicial actions, as the different circumstances might require. But it is left to the discretion of each individual state to solve the manner of implementation of the obligations imposed in this respect on the state party in its own way. If, however, a state party neglects to take all reasonable measures for prevention of offences and damaging action against officials of foreign states, its international responsibility would be engaged.

B. Punishment of Crime

The Convention also contains some provisions imposing the duty to cooperate in the punishment of the perpetrators of crime against officials of foreign states. Article 5 establishes a system of notification as the necessary means for effective implementation of the obligation. According to this article, if the

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28 Yearbook of International Law Commission, vol.2, (1972), p.317.

offender flees from the territory of the state where the crime was committed, the state in which the crime was committed is under an obligation to communicate to all other states concerned, directly or through the Secretary-General of the United Nations, all the pertinent facts regarding the commission of the crime and identity of the alleged offender. Further, whenever any of the crimes set forth in article 2 has been committed against a foreign official, any state party which has information concerning the victim and circumstances of the crime shall endeavour to transmit the same, under the conditions provided for in its internal law, fully and promptly to the state party on whose behalf the official was exercising his or her functions.[29] The obligations embodied in article 5 does not have an equivalent in the OAS Convention on Prevention and Punishment. One reason behind enacting the provisions appears to flow from the provisions of article 2 and 3 which imposed an obligation on each state to punish a crime against an official of a foreign state,

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29 United Nations Juridical Year Book (1973), p.77.

irrespective of the place of the commission of the offence or nationality of the offender. Accordingly, if such an obligation were to be imposed on the states it could effectively be carried out only if information was available from the state where the crime was committed regarding the commission of the offence and the identity of the offender.

Article 6 of the Convention lays down what action is to be taken when the offender is found on the territory of a state party following the commission of any of the crimes set forth in its article 2. This provision places on the state party in whose territory the alleged offender is present an obligation to take appropriate measures to prevent his escape pending that states decision on whether the persons should be extradited or the case submitted to its competent authorities for a prosecution as provided in article 7.[30] Such measures by that state are to be notified without delay, directly or through the Secretary-General of the United Nations, to: (a) the state where the crime was committed; (b) the state of which the

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30 Ibid., p.79.

perpetrators is a national, or if he is a stateless person, in whose territory he permanently resides; (c) the state of which the foreign official concerned is a national or on whose behalf he was exercising his functions; (d) all other states concerned; and (e) the international organizations of which the foreign official concerned is an official or agent.

C. Assistance With Criminal Proceedings

Article 10 envisages cooperation between states parties in connection with criminal procedures brought in respect of the crimes specified in article 2 of the Convention. It imposes an obligation to afford one another the greatest measure of judicial assistance for the proceeding. It is obvious that if the offender is to be tried in a state other than that in which the crime was committed, it will be indispensable to make testimony available to the court dealing with the case in such a form as the law of that state requires. Moreover, someof the evidence required may be located in a third state; therefore the obligation in this respect is imposed upon all contracting states.[31] This

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31 Yearbook of International Law Commission, vol.II (1972), p.321.

article is of considerable significance, and in keeping with the general objectives behind the provisions of this nature.

D. Communicating Outcome

Article 11 is the last one relating to the system of cooperation established in the UN Convention on Prevention and Punishment. It relates to the final outcome of legal proceedings concerning the alleged offender. The state party where an alleged offender is prosecuted is obliged to communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other states parties.[32] The provisions of this article became indispensable in the context of the concept that all states are entitled to prosecute and punish the alleged offender. But once the offender has been prosecuted and punished by a state, he or she should not be placed in jeopardy for a second time in respect of the commission of the same crime against an

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32 United Nations Juridical Year Book (1973), p.77.

official of a foreign state.[33] The provision is thus a guarantee that no state will proceed against such an offender a second time, either by requesting his extradition or by dealing with him when he is found in its territory. The notification to the other states of the final outcome of the legal proceedings regarding the offender guilty of the crime against a foreign official will also constitute an effective measure in ensuring that the states concerned have fulfilled the obligation under this Convention with regard to appropriate punishment of offenders of crimes specified in its Article 2. Thus, the notification provision is an effective means of assuring the protection of the interests of both states and individuals concerned.[34]

VI. The Right of Asylum

Asylum is the right of a state to give protection to refugees in its territory, and sometimes in its

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33 Article 14(7) of the International Covenant on Civil and Political Rights, U.N.J.Y.,1966, at 183.

34 Yearbook of International Law Commission, n.31, p.321.

diplomatic establishments, ships or military aircraft. Thus, asylum may be territorial, i.e. granted by a state on its territory, or it may be extra-territorial, i.e. granted for and in respect of, premises of the diplomatic mission or consular post, international headquarters, warships, vessels used for publis purposes, and military aircrafts to refugees from the authorities of the territorial state. The right to grant asylum belongs essentially to the competence of each state, which itself defines the conditions whereon this right is granted. As to international law, which gives every state' exclusive control over person on its territory, territorial asylum is a logical consequence of the state's territorial sovereignty. The granting by the state of asylum to political offenders or political refugees is a peaceful and humanitarial act and cannot, therefore, be regarded as unfriendly by any other state, including the state of which the offender or the refugee is a national.[35] The exclusion from asylum of a person accused of a common crime was one of the problems which were decided by the ICJ in the

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35 S.Oda, "The Individual in International Law", in M.Sorensen, Manual of Public International Law (Macmillans Co., New York, 1968), p.491.

Asylum case i.e. Columbia V.Peru. Judge Alvarez, in his dissenting opinion in this case, pointed out "asylum shall be granted only to political offenders and not to person guilty or accused of having committed a common crime", and he concluded that asylum could not be granted to "common criminals".[36] Similar positions had been taken by Judges Badni Pasha and Read in their dissenting opinion in the same case.[37] ICJ held in this case that it was not permissible for states to grant asylum to persons accused or condemned for common crimes.[38]

Although the Convention on Prevention and Punishment does not explicitly say that crimes against officials of states are common crimes, it follows from its origin, objective and character, that kidnapping, murder, and other assaults against the life or physical integrity of officials of foreign states are to be considered common crimes, not political offenses.

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36 ICJ Reports (1950), p.295.

37 Ibid., p.310.

38 Ibid., p.281.

Thus, the Convention does take a major step towards limiting the possible application of the doctrine of asylum to attacks on diplomats. But, article 12 of the Convention which deals with problem of asylum requires further discussion. It states : "The provisions of this Convention shall not affect the application of the Treaties on Asylum, in force at the date of the adoption of this Convention, as between the States which are parties to these treaties; but a State party to this Convention may not invoke these Treaties with respect to another state party to this Convention, which is not a party to those Treaties"

In the discussion of the draft articles within the ILC itself, several members felt that the principle of territorial asylum should be specifically reserved with regard to political crimes.[39] The general view of the ILC, however, was that crimes of the nature described in the draft article were not political crimes,[40] and therefore the issue of the right to asylum

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39 UN Doc.A/8892 (1972), p.48.

40 American Journal of International Law, vol.67, (1973), p.84.

between states observing this practice did not arise. For this reason, the right to asylum was not included in the draft convention. Several states, mostly Latin American, immediately protested this omission.[41] In support of their position, these countries recalled that the OAS Convention had specifically provided for the right of asylum in any country.[42] It was argued in opposition that to include a right of asylum within the draft would destroy its mandate to extradite or prosecute. The proponents of the draft articles felt that to be the best system of deterrence and punishment. In that connection, the ILC noted that article 14 of the Universal Declaration of Human Rights provided that the right to seek and enjoy asylum might not be involved in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.[43] The question of the inclusion within the draft convention of the right to asylum was thus open for discussion :

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41 UN Doc.A/8892(1972), p.49.

42 "Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance", 2 February 1971, O.A.S.

43 UN Doc.A/8892(1972), p.49.

on the one hand, there was tradition and precedent favouring the retention of asylum; on the other hand, the incorporation of such a concept in to the convention could well render its terms virtually meaningless. Because some Latin American states considered asylum to play a vital role in their foreign affairs capability, they were particularly alarmed by the possibility of its exclusion from the Convention. But if a nation could determine for itself whether or not a terrorist act against a diplomat was a "political crime"as opposed to an "ordinary" crime, and neither extradite nor prosecute on the basis of that determination, then there would be no real cohesiveness to the Convention. The enforcement of the Convention would thus depend on the open-ended and subjective determination of whether or not a crime was considered "political"[44] by the State in which the alleged offender was present.

Despite considerable disagreement, article 12 was eventually included in the final Convention. This provision was offered as an amendment by several Latin

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44 UN Doc.A/8892 (1972), p.48.

American delegations.[45] The right to invoke asylum as contained in article 12 is however limited to situations arising between states which are already parties to existing asylum treaties; a state party may not invoke the right of asylum in refusing to a state party not a party to an asylum treaty. Thus in order to promote Latin American support for the Convention, the ILC retained the right of asylum, atleast as between those states observing the practice. On the one hand, the right of a state party to determine that the act sanctioned by the Convention is political and therefore to provide asylum rather than to extradite or prosecute, is limited to situations arising between two states party, both of which are party to a pre-Convention asylum treaty. On the other hand, article 12 can be utilized to justify unilateral determination of political crimes, thereby allowing individual states to render this central feature of the Convention meaningless.

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45 The delegations of Columbia, Costa Rica, Ecuador, El Salvador, Honduras, Mexico, Nicaragua, Panama, Peru, Uruguay and Venzuela and Bolivia. UN Doc.A/C.6/L.943 (1973).

VII. The Extradition Provisions

Inasmuch as the enforcement jurisdiction of states is primarily territorial in nature, it is possible for offenders against diplomatic agents to avoid punishment, at least for a time, by escaping into the territory of another jurisdiction. In such cases, however, the common interest of the international community in the preservation of law and order has led to a certain amount of international cooperation for the promotion of justice in general and for the necessity of the punishment of a certain category of criminals in particular. The extradition of fugitive criminals, especially those who are guilty of crimes against diplomatic agents, is founded basically on the conviction that it is in the common interest of the international community that crimes of this kind be repressed by punishment as a means of deterring others.

Extradition may be defined as the surrender by one state to another of an individual accused or convicted of an offense committed outside its own territory and within the territorial jurisdiction of the other, which, being competent to try and punish

the offender, demand his surrender. Thus, extradition involves a demand by one sovereign upon another sovereign for the surrender of an accused or convicted person and the surrender of such person to the demanding sovereign. The usual object of extradition is to prevent the escape of persons accused or convicted of crime, and to secure their return for the purpose of trial and punishment to the demanding state. Grotius wrote that "the state in which the culprit lives should, on receiving the complaint, do one of two things, either punish him itself · he deserves or deliver him to the judgement of the complainant."[46]

Article 3 of the OAS Convention provides that persons who have been charged or convicted for any of the crimes referred to in article 2 of that Convention shall be subject to extradition. Article 2 of the said Convention states that kidnapping, murder, and other assaults against the life or personal integrity of officials of foreign states as well as extortion in connection with those crimes shall be considered common crimes. Article 8 of the UN Convention on

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46 H.Grotius, The Law of War and Peace (New York, 1949), p.236.

Prevention and Punishment which deals with extradition reads :

> 1. To the extent that the crimes set forth in article 2 are not listed as extraditable offenses in any extradition treaty existing between States parties, they shall be deemed to be included as such therein. State parties undertake to include those crimes as extraditable offenses in every future extradition treaty to be concluded between them.
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> 2. If a State party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State party with which it has no extradition treaty, it may, if it decides to extradite, consider this Convention as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the procedural provisions and the other conditions of the law of the requested state.
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> 3. State parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves subject to the procedural provisions and other conditions of the law of the requested state.
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> 4. Each of the crimes shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred also in the territories of the States required to establish their jurisdiction in accordance with paragraph 1 of article 3.

This article is closely connected with article 7 under which a state may, at its own option, decide to extradite the offender or to submit the case to its

competent authorities for the purpose of prosecution. Under current international practice, the majority of states extradite offenders only when an extradition treaty exists between the requested and requesting states, while certain other states are prepared to extradite offenders even in the absence of an extradition treaty. Article 8 served the purpose of providing a legal basis for extradition of the offenders against officials of foreign states in accordance with existing law and practice. It covers the legal basis for extradition of offenders against officials of foreign states in a variety of situations, so that the state in which the offender is present will be afforded a choice. Article 8(1) is applicable when the states concerned have an extradition treaty in force between them which does not include the offense for which extradition is sought. Under this provision, "to the extent that the crimes set forth in article 2 are not listed as extraditable offences in any extradition treaty existing between states parties, they shall be deemed to be included as such therein". States parties also undertake to include those crimes as extraditable offences in every future extradition

treaty to be concluded between them. This covers any possible case where any particular offense might not have been so listed in the existing treaties.

Article 8(2) covers the situation of states parties to the Convention which make extradition conditional on the existence of an extradition treaty. By virtue of this provision, in the situation that there is no such treaty, a state party may, if it decides to extradite, consider the Convention as the legal basis for extradition in respect of those crimes. Article 8(3)' includes the situation between those states which do not make extradition conditional on the existence of a treaty. They undertake to recognise those crimes as extraditable offenses between themselves subject to the procedural provisions, and the other conditions of the law of the requested state.[47] Finally, article 8(4) covers the general principle adopted in the Convention to the effect that every state has a right to prosecute and punish the offender irrespective of where the crime was committed. So under this provision,

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47 United Nations Juridical Year Book (1973), p.77.

each of the crimes shall, for the purpose of extradition between states parties, be treated as if it had been committed notonly in the place in which it occurred, but also in the territories of states required to establish their jurisdiction in accordance with article 3(1).[48] Article 8 would be inapplicable only in such a situation in which the offender would be punished by the state where he is found, and thus, he would not be extradited at all.

Under article 7, the State party in whose territory the alleged offender against the officials of a foreign state is present shall, if it does not extradite him, submit the case, without undue delay, to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that state.[49] Thus, the State party in whose territory the alleged offender is present is required to carry out at its will one of the two alternatives specified in the article. Although article 7 gives two alternatives to the State, in principle, in such a situation, judging from the

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48 Ibid., p.78.

49 American Journal of International Law, vol.65, (1971), p.899.

manner in which it has been worded it seems that the primary obligation of the state where the alleged offender against an official of foreign state is found is to extradite him. However, if that state decides not to extradite such offender, it must then submit the case to its competent authorities for the purpose of prosecution.

VIII. The Settlement of Disputes

The U.N.Convention on Prevention and Punishment contains provisions on settlement of disputes in article 13. According to that article, any dispute between two or more states parties concerning the interpretation or application of the Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration.[50] Article 13(1) provides that, any state party may file a reservation declining to be bound by this system of dispute settlement. Furthermore, article 13(1) provides

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50 United Nations Juridical Year Book (1973), p.78.

that if within six months from the date of the request for arbitration the parties are unable to agree on the organisation of such arbitration, anyone of the parties may refer the dispute to the ICJ by request in conformity with the statute of the Court.[51] However, article 13(1) gives priority to arbitration and ordinarily permits resort to the ICJ only if the parties have been unable to agree on the organization of the arbitration within a period of six months from the request of the arbitration. However, that limitation on the Court's jurisdiction could not have application in circumstances such as these where the party in whose favour the six months rule would operate has, by its own conduct, made it impossible as a practical matter to have discussions related to the organizations of arbitration, or indeed even to communicate a direct formal request for arbitration. When such an attitude has been manifested, an application to the ICJ might be made without regard to the passage of time. This had been done in the case United States V. Iran.

The brief facts of the case were as follows : On December 4, 1979 the United States Embassy compound

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51 Ibid.

in Tehran was captured by several hundred demonstrators, who, by force, invaded and occupied all of its premises. In the course of the attack all diplomatic and consular personnel present in the premises were seized as hostages, and detained in the Embassy compound. During the two hour attack on the Embassy no Iranian Security forces were sent to relieve the situation despite repeated calls for help from the Embassy to the Iranian Foreign Ministry. No attempt was made by the Government of Iran to clear the Embassy premises, to rescue the personnel held hostage, or to pursuade the invaders to terminate their action. The ICJ held Iran responsible for the acts of its nationals.[52] The Court found a clear and serious violations of Iran's obligation to the United States under international Conventions, as well as long established rules of customary international law. The jurisdiction of the ICJ in this case was based upon article 36(1) of the statute and the four Conventions in force, to which the United States and Iran were parties. Accordingly, the Vienna Convention

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52 ICJ Reports (1980), p.12.

on Diplomatic Relations 1961; the Vienna Convention on Consular Relations 1963; the Treaty of Amity, Economic Relations, and Consular Rights between the United States and Iran of 1955; and article 13 of the UN Convention on Prevention and Punishment were referred.[53] Each of these Conventions, as correctly indicated in the Memorial of the U.S. Government provided an independent and sufficient basis for the Court's jurisdiction.[54] Of relevance here is merely the last basis for the Court exercising jurisdiction.

Article 13(1), it has been seen given priority to arbitration and ordinarily permits resort to the ICJ only if the parties have been unable to agree on the organization of the arbitration within a period of six months from the request of the arbitration. However, this limitation on the Court's jurisdiction could not have application in circumstances such as in this case where Iran in whose favour the six month rule would operate had, by its own conduct, made it

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53 I.C.J., Application Instituting Proceedings, United States V. Iran, General List No.64, International Court of Justice Report (1979), p.3.

54 ICJ Report (1980), p.12; Memorial of the U.S. Government (12 January, 1980).

impossible as a practical matter to have discussions related to the organization of arbitration, or indeed event to communicate a direct formal request for arbitration. When such an attitude had been manifested, an application to the ICJ was justified without regard to the passage of time. Although the jurisdiction of the ICJ in the above mentioned case was based on four Conventions, even if it were based only on article 13(1) of the U.N.Convention on Prevention and Punishment, Iran, by her conduct, would still have forfeited her right to six month to hold off all judicial redress sought by the United States by her application to the Court.

In her claims against Iran contained in the application instituting proceedings and in the memorial of her government, the United States requested the ICJ to adjudge and declare, the violations by Iran of her duties towards officials of the United States. United States claimed that Iran had violated certain duties of the receiving state, i.e., the duties of abstention, special protection, punishment and cooperation. As to the duty of abstention, in addition to other provisions of the Vienna Conventions, the representative of the

United States observed before the Court that "Under article 2 ... of the Convention on Prevention and Punishment, it is a criminal act to participate as an accomplice in an attack on the person or liberty of an internationally protected persons or in a violent attack on official premises". The Memorial of the U.S.Government charged violation of Iran's duty of abstention as a receiving state towards officials of the United States; it stated that the Government of Iran "has failed to treat these persons with due respect."[55] The violation by Iran as receiving state of her duty to prevent the commission by private individuals of acts violating the inviolability of the officials of the United States was explicitly alleged, wherein it was stated that Iran had violated her international legal obligation to the United States to ensure that the persons of U.S. diplomatic agents be protected from any attack on their person, freedom, or dignity. "Under Article 4 of the U.S. Convention on Prevention and Punishment, every state party, including Iran, is required to prevent such crimes as have been committed against the members of the American Embassy in Teheran."[56] The U.S. application further pointed out

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55 Ibid., p.50.

56 ICJ Reports (1979), p.1.

that pursuant to Article 7 of the U.N.Convention on Prevention and Punishment the Government of Iran was "under an international legal obligation to the United States to submit to competent Iranian authorities for the purpose of prosecution all those persons who, since 4 November 1979, have been engaged in committing crimes against the official premises and the staff of the United States Embassy in Teheran."[57] In this case, the Iranian government not only failed in its duty to cooperate in the prevention of these crimes and in taking all practicable measures to prevent their preparation, but it actually sponsored and endorsed their commission. Accordingly, the United States requested the ICJ to adjudge and declare that the Government of Iran had violated its international obligations to the United States as provided by article 4 of the UN Convention on Prevention and Punishment.

The ICJ, in its judgement of 24 May, 1980, held that, "Iran has violated obligations owned by it to the United States of America under international conventions, as well as long established rules of customary

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57 Ibid., p.10.

international law, and the violations of these obligations engage the responsibility of Iran towards the United States of America under international law". The Court, thus, recognized implicitly the violation by Iran of its obligation under the Convention on Prevention and Punishment.

IX. Appraisal

The Convention on Prevention and Punishment presents a workable scheme for the prevention and punishment of criminal activities directed against diplomatic agents. It represents a distinct improvement upon previous existing regime under Vienna Conventions. With respect to the range of persons covered by its provisions, the Convention introduced a new concept into international jurisprudence, that of "internationally protected persons" It's significance was that it affords a wide range of foreign officials protection against terrorist activities, including officials of inter-governmental organization,

who did not under the then existing international agreements or Conventions qualify for the whole range of diplomatic privileges and immunities, nor obviously had been entitled by custom to the same degree of protection as would be given to representatives and officials of states especially to those who are diplomatic agents.

The definition of the crimes covered by the Convention include not only the intentional commission of the "murder, kidnapping or other attack" upon the persons of the internationally protected persons, but also threat, attempt, or involvement as an accomplice in the act, as well as a violent act on that persons premises. The definition is wide enough to include most if not all acts of terrorism directed towards diplomats. As certain crimes covered are specifically named, it may appear that problems may arise in extradition proceedings. Since a number of states will be involved, each with its own definition of "murder" and "kidnappings", and states which require similar definitions from the requesting state to extradite may delay the process. However, the basic nature of these crimes plus the statement of "or other

attacks" upon the persons or liberty of an "internationally protected person" seem to partially obviate this problem. The elimination of the phrase "regardless of motive" from the final definitions of the crimes poses a more serious problem. In its absence the provision provided in the Convention to extradite or prosecute could become ineffective, as the state in which the alleged offender is present can, if it deems the offense political, grant asylum.

If the state party in which the alleged offender is present is not the state in which the offense was committed, and neither the offender nor the victim is a national of that state, then that state is required under article 3 to either extradite the offender to one of the state party which does have primary jurisdiction, or, failing that, to take jurisdiction over the offender itself. In the jurisdictional scheme adopted by the Convention, those states having the most direct interest in prosecuting the offender would have the chance to do so by requesting his extradition if he was apprehended in a state having no real interest in the outcome. That state could of course refuse to extradite, but would then have to take jurisdiction itself. This system means that in theory one state or

another will be taking jurisdiction over the alleged offender once his whereabouts are determined. It might be argued theoretically that in the interest of respect for the rule of law, it would have been better to provide for the mandatory punishment of the offender by the state into whose jurisdiction he might come. But for the time being article 3 would seem to establish an adequate basis of jurisdiction.

The Convention contains a number of significant provisions requiring States parties to engage in cooperative efforts towards the prevention, suppression, and punishment of attacks against diplomats. With respect to prevention, states parties are required to cooperate in order to prevent preparations in their territories for attacks on diplomats within or outside their territories, and to exchange information and to coordinate the taking of administrative measures against such attacks. The State party where the alleged offender is found is obliged to take measures to ensure his presence for purpose of extradition or prosecution and to inform interested states and international organizations of the measures taken. Finally, states parties are to cooperate in assisting criminal proceedings

brought for attacks on diplomats, including supplying all evidence at their disposal that is relevant to the proceedings.

The Convention also takes a major step towards limiting the possible application of the doctrine of asylum to attacks on diplomats. The right of a state party to determine that the act sanctioned by the Convention is political, and therefore to provide asylum rather than to extradite or prosecute, is limited to situations arising between two states parties, both of which are party to a pre-convention asylum treaty. However, article 12 can be utilized to justify unilateral determination of political crimes thus allowing individual states to render this central feature of the Convention meaningless.

The principle aut dedre aut judicare is the key provision of the Convention which oblige the state in whose territory the alleged offender is present to submit the case to its competent authorities for the purpose of prosecution if that state does not extradite. But, it fails to eliminate a crucial weakness i.e. the absence of any limitations on absolute prosecutional discretion. Thus, the obligation of the state party in such cases will be fulfilled

even if the decision is not to commence criminal proceedings.

Under current international practice, some states extradite offenders only when an extradition treaty exists between the requested state and the requesting state, and other states extradite offenders even in the absence of a treaty. According to the U.N.Convention on Prevention and Punishment, a state may, at its own option either extradite the offender against officials of foreign states or punish him accordingly. If the states decides to extradite such an offender, this Convention covers the legal basis for all situations and especially for the states which make extradition conditional on an extradition treaty and no such treaty exists at the time the extradition is requested or when an extradition treaty in force between the states concerned does not include the crime for which extradition is sought.

The dispute settlement provisions of the Convention are adequate. These provisions set up a meaningful system of dispute settlement in that only one of the parties to a dispute need request that it be submitted to arbitration, or if the parties are

unable to agree on the organization of the arbitral tribunal, to judicial settlement, in order to activate dispute settlement procedures. However, under paragraph 2 of article 13, any state party may file reservation declining to be bound by this system of dispute settlement. The existence of numerous nations which are party to the Convention but which are not bound by any requirement to arbitrate will certainly weaken the effectiveness of the dispute settlement provision.

Chapter - 4

SUMMARY AND CONCLUSIONS

The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons and Diplomatic Agents, 1973 was adopted without objection by the United Nations General Assembly on 14 December, 1973. It was indicative of the fact that it was widely acceptable on the negotiating level. One reason in favour of the acceptability of the Convention was that it covers a restricted range of acts against specified persons, namely, internationally protected persons. As has been demonstrated by the success of the Tokyo, Hague, and Montreal Conventions in the aviation field, states are more and more inclined to accept a Convention that is narrow in scope and is aimed at solving serious and urgent problems.

The Convention represents a serious effort of international legislation to fill the vacuum previously existing under the Vienna Conventions in the field of the law of protection of diplomats. The drafters intention was to provide a specific law of general applicability, which can effectively deal with the serious problem of terroristic crimes against international officials. Indeed, one of the most difficult problems

confronting the Convention was to secure a wide and comprehensive participation of states including those states whose role can be particularly decisive for the effective application of the provisions. Yet, even a wide and comprehensive participation is not the end of the matter. What is further needed is the adoption of internal rules and practice that will effectively deal with the problem of terrorism.

According to the principles of international law, a state, by agreeing to receive the official of a foreign state, assumes the obligation not only to respect, but also to guarantee his personal inviolability. This means, on the one hand, the guarantee of non-application of any measures of legal constraint with respect to his person and, on the other hand, it imposes on the receiving state the special obligation not only to treat him with due respect and to have its organs refrain from any acts infringing upon his personal inviolability, but also to take all appropriate steps to prevent any attack on his person, freedom and dignity. An effective means of special protection is the enactment by the respective states in their internal law of special sanctions for crimes committed against

officials of foreign states. Under the United Nations Convention on Prevention and Punishment, each state party is obliged to introduce into its internal law provisions for the appropriate punishment of crimes committed against officials of foreign states and intergovernmental organizations. Before the conclusion of this convention, the states had no such duty, though many of them had provisions in their internal law providing for the appropriate punishment of offenders or crimes of this character. However, now there is a legal obligation to this effect. The duty of the state parties towards "internationally protected persons" also consists in taking all necessary steps to bring the offenders who committed crimes against such officials to justice and to punish them accordingly.

With respect to the range of persons covered by its provisions, the Convention introduced a new concept into international jurisprudence, that of "internationally protected persons". It's significance is that it affords a wide range of foreign officials and diplomats protection against terrorist activities, including officials of inter-governmental organization who did not under the then existing international agreements or

Conventions qualify for the whole range of diplomatic privileges and immunities, nor obviously had been entitled by custom to the same degree of protection as would be given to representatives and officials of states especially to those who are diplomatic agents. However, under the U.N. Convention diplomatic agent on vacation is not given special protection though on the other hand a head of state gets special protection whenever he is in a foreign country and whatever may be the nature of his visit, official, unofficial or private. As the purpose of the Convention is to reduce the incidence of attacks upon internationally protected person as such, the Convention should extend special protection to diplomatic agents whether they are in a foreign country for official business or on a vacation. This is because a kidnapping could as well be committed in one place as the other for the purpose of bringing pressure on a host government of the sending state. Moreover, in view of the present mobility of diplomatic agents, they should be afforded protection wherever they might be. In this context, the notion of "special protection" should be clearly defined in order to ensure the balanced and effective application of the Convention.

The crimes committed against "internationally

protected persons", particularly such crimes as kidnapping, murder and other assaults against their life or physical integrity, are very serious crimes of international significance. They can disrupt the international communication process and the smooth functioning of international relations. Since, under each penal code, such crimes are generally considered common crimes even when committed against ordinary persons, such crimes committed against "internationally protected persons" are and must be categorized as grave common crimes having international ramifications. Although the Convention on Prevention and Punishment does not explicitly specify the character of crimes committed against officials of foreign states, both the preparatory documents to the Convention and the objective of the Convention make it clear that such crimes are not to be considered as political offenses, but rather as common crimes. Since such crimes against officials of foreign states as kidnapping, murder, and other assaults against their life or personal integrity are common crimes rather than political offences, the perpetrators thereof, as common criminals, are not entitled to be granted asylum. According to the general principles of international law, the

perpetrators of common crimes are not eligible for asylum. These principles of international law have found expression in many multilateral treaties on asylum and extradition concluded among the Latin American states in the nineteenth and twentieth centuries. In other parts of the world, the principle that common criminals are not eligible for asylum is recognized under customary international law. Instead, offenders as common criminals are subject to extradition, which is the surrender by one state to another of an individual accused of a crime outside its territory, and within the territorial jurisdiction of the other state, which being competent to try and punish him, demands the surrender. Generally speaking, extradition may be accorded as a matter of comity or may take place under treaty stipulations between two or more states. Under current international practice, some states extradite offenders only when an extradition treaty exists between the requested state and the requesting state, while other states extradite offenders even in the absence of a treaty. The U.N. Convention on Prevention and Punishment greatly facilitates extradition by specifically providing that a state which extradites an offender can do so on the basis of

Convention which covers the legal basis for all situations and especially for states which make extradition conditional on an extradition treaty. But, as the crimes covered under the Convention are specifically named, problems may arise in extradition proceedings, because states which require similar definitions from the requesting state to extradite may delay the process. As has been mentioned earlier, the crimes against internationally protected persons are very serious crimes of international significance, these attacks on diplomats are under no circumstances to be construed as political offense. But at a minimum, however, the deletion of these words "regardless of motive" in the final convention would seem to raise a question about the extent to which the political offense doctrine may be applied by states parties to attacks against diplomats.

~~As already mentioned,~~ The Convention requires each state party to provide for criminal jurisdiction in cases where the alleged offender is present in its territory and if it decides not to extradite. It specifically mentions that the acts specified as crimes shall be made by each State Party a crime under its

internal law, whether the commission of the crimes occurs within or outside of its territory and that each state party shall take such measures as may be necessary to establish its jurisdiction over these crimes. The principle aut dedre aut judicare enumerated under article 7 is the key provision of the Convention and it contains the indispensable words, "without exception whatsoever", which oblige the state in whose territory the alleged offender is present to submit the case to its competent authorities for the purpose of prosecution through proceedings in accordance with the law of that state, if that state does not extradite. But, specifically, there is nothing whatsoever in the terms of the Convention that limits prosecutional discretion. It was pointed out by the ILC that the article, as drafted, created no obligation to punish or to conduct a trial. The obligation of the state where the alleged offender was present would be fulfilled once it had submitted the case to its competent authorities for the purpose of prosecution. It would be up to those authorities to decide whether to prosecute or not. Thus, according to the ILC, the obligation of the state party in such case would be fulfilled under the article even if the decision that

those authorities might take was not to commence criminal trial proceedings.

The Convention establishes an elaborate regime for cooperation. It requires States Parties to engage in cooperative efforts towards the prevention, suppression, and punishment of attacks againstdiplomats. With respect to prevention, states parties are required to cooperate in order to prevent preparations in their territories for attacks on diplomats within or outside their territories, and to exchange information and to coordinate the taking of administrative measures against such attacks. If an attack against a diplomat takes place, and an alleged offender has fled the country where the attack took place, states parties are to cooperate in the exchange of information concerning the circumstances of the crime and the alleged offender's identity and whereabouts. The State Party where the alleged offender is found is obliged to take measures to ensure his presence for purpose of extradition or prosecution and to inform interested states and international organizations of the measures taken. Finally, States Parties are to cooperate in assisting criminal proceedings brought for attacks on diplomats, including supplying all evidence at their disposal that is relevant to the proceedings.

The Convention, it may be mentioned, did not consider the issue of possible state liability for injury to diplomats. In so far as one can ascertain principles of state liability in this area, they seem to be based on a concept of "fault" on the part of the receiving state. If so, is it necessary to develop minimum standards of security for diplomats, which could serve as the basis of a finding of liability on the part of a receiving state? Could principles of no fault or strict liability be applied to the receiving state's protection of diplomats? What principles of liability, if any might apply to Third states that grant asylum to persons who attack diplomats, and how might they be enforced? These and related questions await definite answers.

There is little doubt that this Convention is a distinct improvement upon previous existing regime under Vienna Conventions. It contains a number of substantive provisions which can help effectively deal with the problem of special protection. The primary purpose is to recommend what action or actions the State Parties might take towards the prevention and punishment of attacks on diplomats. These actions might take a variety of forms. Internal policy changes with

respect to strategies used when dealing with terrorists, legislative changes that will enhance the government's liability to protect foreign diplomats and tighter law enforcement that are possible. Bilateral agreements, regional arrangements or multilateral actions are also means the states might utilize in its efforts to combat terrorism against protected persons. Arrangements can also be worked out to encourage the utilization of the U.N.Secretariat to exchange data and ideas concerning security measures for the prevention of attacks on diplomats and to urge other parties to the U.N.Convention to report to the Secretary-General on the steps they have taken to carry out their obligations under the Convention. The aim of these actions would be to enhance the prospects that the Convention will fully realize its potential as a measure for the protection of diplomats.

Thus, overall, the Convention provides a valuable first step in the vital process of establishing some form of international control over terrorist activities. What is needed, beyond the incidental tightening of policing measures, is a constant vigilance on the part of states, acting individually and collectively in an organized way, to prevent the occurrence of incidents.

This can be achieved through drastic internal measures and an international cooperation assuming an unhindered flow of information and other data necessary for the timely reaction of an individual state in the event of a pre-meditated attack or other terroristic activities in its territory. Finally, if the Convention is to play any role in the effort to protect diplomats, it is indispensable that it be ratified on a worldwide basis. Good faith adherence to the Convention by a large number of states with a view to preventing, suppressing, and punishing attacks on diplomats would go a long way towards resolving such issues. Hence state parties should undertake a worldwide diplomatic effort to convince as many countries as possible to become parties to the U.N.Convention. This would be in the interest of maximizing the effectiveness of this Convention.

APPENDIX

UNITED NATIONS RESOLUTION 3166 (XXVIII) AND ANNEX: CONVENTION ON THE PREVENTION AND PUNISHMENT OF CRIMES AGAINST INTERNATIONALLY PROTECTED PERSONS, INCLUDING DIPLOMATIC AGENTS

The General Assembly,

Considering that the codification and progressive development of international law contributes to the implementation of the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations,

Recalling that in response to the request made in General Assembly resolution 2780 (XXVI) of 3 December 1971, the International Law Commission, at its twenty-fourth session, studied the question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law and prepared draft articles on the prevention and punishment of crimes against such persons,

Having considered the draft articles and also the comments and observations thereon submitted by States and by specialized agencies and intergovernmental organizations in response to the invitation made in General Assembly resolution 2926 (XXVII) of 28 November 1972,

Convinced of the importance of securing international agreement on appropriate and effective measures for the prevention and punishment of crimes against diplomatic agents and other internationally protected persons in view of the serious threat to the maintenance and promotion of friendly relations and co-operation among States created by the Commission of such crimes,

Having elaborated for that purpose the provisions contained in the Convention annexed hereto,

1. Adopts the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, annexed to the present resolution;

2. Re-emphasizes the great importance of the rules of international law concerning the inviolability of and special protection to be afforded to internationally protected persons and the obligations of States in relation thereto;

3. Considers that the annexed Convention will enable States to carry out their obligations more effectively;

4. Recognizes also that the provisions of annexed Convention could not in any way prejudice the exercise of the legitimate right to self-determination and independence in accordance with the purposes and principles of the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations by peoples struggling against colonialism, alien domination, foreign occupation, racial discrimination and apartheid;

5. Invites States to become parties to the annexed Convention;

6. Decides that the present resolution, whose provisions are related to the annexed Convention, shall always be published together with it.

ANNEX

Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents

The States Parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and the promotion of friendly relations and co-operation among States,

Considering that crimes against diplomatic agents and other internationally protected persons jeopardizing the safety of these persons create a serious threat to the maintenance of normal international relations which are necessary for co-operation among States,

Believing that the commission of such crimes is a matter of grave concern to the international community,

Convinced that there is an urgent need to adopt appropriate and effective measures for the prevention and punishment of such crimes,

Have agreed as follows:

Article 1

For the purposes of this Convention:

1. "Internationally protected person" means:

(a) a Head of State, including any member of a collegial body performing the functions of a Head of State under the constitution of the State concerned, a Head of Government or a Minister for Foreign Affairs, whenever any such person is in a foreign State, as well as members of his family who accompany him;

(b) any representive or official of a State or any official or other agent of an international organisation of an intergovernmental character who, at the time when and in the place where a crime against him, his official premises, his private accommodation or his means of transport is committed, is entitled pursuant to international law to special protection from any attack on his person, freedom or dignity, as well as members of his family forming part of his household;

2. "alleged offender" means a person as to whom there is sufficient evidence to determine prima facie that he has committed or participated in one or more of the crimes set forth in article 2.

Article 2

1. The inten-tional commission of:

(a) a murder, kidnapping or other attack upon the person or liberty of an internationally protected person;

(b) a violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty;

(c) a threat to commit any such attack;

(d) an attempt to commit any such attack; and

(e) an act constituting participation as an accomplice in any such attack shall be made by each State Party a crime under its internal law.

2. Each State Party shall make these crimes punishable by appropriate penalties which take into account their grave nature.

3. Paragraphs 1 and 2 of this article in no way derogate from the obligations of State Parties under international law to take all appropriate measures to prevent other attacks on the person, freedom or dignity of an internationally protected person.

Article 3

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set forth in article 2 in the following cases:

(a) when the crime is committed in the territory of that State or on board a ship or aircraft registered in that State;

(b) when the alleged offender is a national of that State;

(c) when the crime is committed against an internationally protected person as defined in article 1 who enjoys his status as such by virtue of functions which he exercises on behalf of that State.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these crimes in cases where the alleged offender is present in its territory and it does not extradite hime pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

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

Article 4

States Parties shall co-operate in the prevention of the crimes set forth in article 2, particularly by:

(a) taking all practicable measures to prevent preparations in their respective territories for the commission of those crimes within or outside their territories;

(b) exchanging information and co-ordinating the taking of administrative and other measures as appropriate to prevent the commission of those crimes.

Article 5

1. The State Party in which any of the crimes set forth in article 2 has been committed shall, if it has reason to believe that an alleged offender has fled from its territory, communicate to all other States concerned, directly or through the Secretary-General of the United Nations, all the pertinent facts regarding the crime committed and all available information regarding the identity of the alleged offender.

2. Whenever any of the crimes set forth in article 2 has been committed against an internationally protected person, any State Party which has information concerning the victim and the circumstances of the crime shall endeavour to transmit it, under the conditions provided for in its internal law, fully and promptly to the State Party on whose behalf he was exercising his functions.

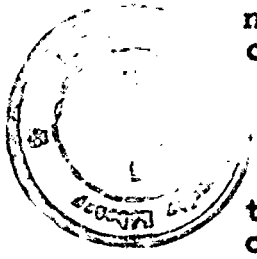
Article 6

1. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take the appropriate measures under its internal law so as to ensure his presence for the purpose of prosecution or extradition. Such measures shall be notified without delay directly or through the Secretary-General of the United Nations to:

(a) the State where the crime was committed;

(b) the State or States of which the alleged offender is a national or, if he is a stateless person, in whose territory he permanently resides;

(c) the State or States of which the internationally protected person concerned is a national or on whose behalf he was exercising his functions;



(d) all other States concerned; and

(e) the international organisation of which the internationally protected person concerned is an official or an agent.

2. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled:

(a) to communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to protect his rights or, if he is a stateless person, which he requests and which is willing to protect his rights; and

(b) to be visited by a representative of that State.

Article 7

The State Party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

Article 8

1. To the extent that the crimes set forth in article 2 are not listed as extraditable offences in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offenses in every future extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may, if it decides to extradite, consider this Convention as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the procedural provisions and the other conditions of the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves subject to the procedural provisions and the other conditions of the law of the requested State.

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

Article 9

Any person regarding whom proceedings are being carried out in connexion with any of the crimes set forth in article 2 shall be guaranteed fair treatment at all stages of the proceedings.

Article 10

1. States Parties shall afford one another the greatest measure of assistance in connexion with criminal proceedings brought in respect of the crimes set forth in article 2, including the supply of all evidence at their disposal necessary for the proceedings.

2. The provisions of paragraph 1 of this article shall not affect obligations concerning mutual judicial assistance embodied in any other treaty.

Article 11

The State Party where an alleged offender is prosecuted shall communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 12

The provisions of this Convention shall not affect the application of the Treaties on Asylym, in force at the date of the adoption of this Convention, as between the States which are parties to those Treaties; but a State Party to this Convention may not invoke those Treaties with respect to another State Party to this Convention which is not a party to those Treaties.

Article 13

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any

one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of this Convention or accession thereto declare that it deos not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 14

This Convention shall be open for signature by all States, until 31 December 1974 at United Nations Headquarters in New York.

Article 15

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 16

This Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 17

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 18

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect six months following the date on which notification is received by the Secretary-General of the United Nations.

Article 19

The Secretary-General of the United Nations shall inform all States, inter alia:

(a) of signatures to this Convention, of the deposit of instruments of ratification or accession in accordance with articles 14, 15 and 16 and of notifications made under article 18.

(b) of the date on which this Convention will enter into force in accordance with article 17.

Article 20

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at New York on 14 December 1973.

BIBLIOGRAPHY

Primary Sources

Convention for the Prevention and Punishment of Terrorism (Geneva) 1937.

Convention on the Privileges and Immunities of the United Nations, 1946.

Convention on Diplomatic Relations (Vienna), 1961.

Convention on Consular Relations (Vienna), 1963.

Convention on Offences and Certain Other Acts committed on Board Aircraft (Tokyo), 1963.

Convention on Special Missions (New York), 1969.

Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague) 1979.

Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons Related Extortion That are of International Significance (Washington 1971, O.A.S.)

Convention for the suppression of Unlawful Acts Against the Safety of Civil Aviation (Montreal) 1971.

Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons Including Diplomatic Agents (New York) 1973, 13 I.L.M.(1974), p.41.

Vienna Convention on the Representation of States in their Relations with International Organisations of a Universal Character, 1975.

The United Nations Convention Against the Taking of Hostages, opened for signature in December 1979, 34 UN Doc. A/34/819.

The International Court of Justice

___ Asylum Case, Judgement June 13, 1951, Rep 1951.

___ Reparation for Injuries Suffered in the Services of the United Nation, Advisory Opinion of April 11, 1949.

___ United States V. Iran, Judgement of May 24, 1980.

Kearney's Draft, Draft Articles Concerning Crimes Against Persons Entitled to Special Protection under International Law.

Uruguan Draft, A Working Paper on Convention on the Prevention and Punishment of Crimes Against Persons Entitled to Special Protection under International Law.

UNGA Resolution 2328 (XXII) of December 18, 1967 Diplomatic Privileges and Immunities.

UNGA Resolution 2926 (XXVII) of Nov. 28, 1972, Report of the International Law Commission on the work of its 24th Session.

UNGA Resolution 3166 (XXVIII) of December 14, 1973. Convention on the Prevention and Punishment of Crimes Against Internationally protected Persons, Including Diplomatic Agents.

International Law Commission

Diplomatic Intercourse and Immunities 1957 (U.N. Doc A/3623), 1958 (U.N.Doc.A/3859).

Consular Intercourse and Immunities 1960 (U.N. Doc. A/4425), 1961 (U.N.Doc. A/4843).

Special Missions 1965 (U.N. Doc. A/6009).

The Representatives of States to International Organizations 1968 (U.N. Doc. A/7209).

The Relations between states and International Organizations 1969 (U.N. Doc. A/76101)

The Representation of States in their Relations with International Organizations 1971 U.N.Doc A/8410.

The Prevention and Punishment of Crimes against Diplomatic Agents and other Internationally Protected Persons 1972 (U.N.Doc. A/8710).

State Responsibility 1973 (U.N.Doc A/9010).

United Nations: Sixth Committee Reports:-

Doc 8537 Nov 20, 1971. UNGA Official Records Agenda Item 88, Annexes. 26th Session (1971), Report of Sixth Committee, pp.20-21 (Paras.145-152).

A/8892 Nov 21, 1972. U.N.G.A 27th Session. Agenda Item 85: Report of the International Law Commission on the work of its 24th Session. (pp. 41-66).

A/9407 Dec. 10, 1973, UNGA 28th Session. Agenda Item 90: Draft Convention on the Prevention and Punishment of Crimes against diplomatic agents & other Internationally Protected Persons.

Secondary Sources

Books

Adair, A.R., The Exterritoriality of Ambassadors in the Sixteenth and Seventeenth Centuries (London: Oxford University Press, 1929).

Allen, E.W. The Position of Foreign States Before National Courts, chiefly in Continental Europe (New York, 1933).

Amerasinghe, C.F., State Responsibility for Injuries to Aliens (London: Oxford University Press 1967).

Anand, R.P., International Courts and Contemporary Conflicts (Bombay: Asia Publishing House, 1974).

Bartlett, R.J., The Record of American Diplomacy (New York; 1947).

Bassionni, M.C., International Extradition and World Public Order (A.W. Sijtloff-Leydon: Oceama Publications, 1974).

Baumann, C.E., The Diplomatic kidnappings: A Revolutionary Tactic of Urban Terrorism (The Hague, Netherlands: Martivs Nijloff, 1973).

Bemis, S.F., A Diplomatic History of the United States (New York: Holt Drydon, 1959).

Biren, H.C., The Law and Practice of Extradition (London: 1903).

Bishop, William., International Law, cases and materials (Boston: Little, Brown & Company, 1971).

Bloomfield, M and Fitz Gerald, G.F., Crimes Against Internationally Protected Persons: Prevention and Punishment (New York: Praeger, 1975).

Borchard, E.M., The Diplomatic Protection of Citizens Abroad or the Law of International Claims (New York: The Banks Law Publishing Co, 1928).

Bowett, D.W., Self-Defense in International Law (New York: 1958).

_____, Law of International Organisation (London: Stevens & Sons, 1975).

Brien, O: William., The New Nations in International Law and Diplomacy, (London: Stevens and Sons 1965).

Brierly, J.L., The Judicial settlement of International Disputes, the Basis of obligation in International Law and other Papers(London: Oxford University Press 1958).

_____, The Law of the Nations (London: Oxford University Press, 1963).

Briggs, H.W., The Punitive Nature of Damages in International Law and State Responsibility of failure to Apprehend, Prosecute or Punish, (London: Oxford University Press, 1937).

_____, The Law of Nations(New York:Appleton, Century, Crofts, 1952)

Brownlie, I. Principles of Public International Law (Oxford: Oxford University Press, 1966).

Bundy, G. Mc., The Dimensions of Diplomacy(USA: The John Hopkins Press, Baltimore, 1964).

Bynkershoek, C., The Jurisdiction over Ambassadors in both Civil and Criminal Cases (Oxford 1946).

Cahier, Philippe., Vienna Conventions on Diplomatic and Consular Relations, (New York: Carneige Endorsment ed, 1969).

Cheng, Bin. General Principles of International Law as applied by International Law Courts and Tribunal (New York: 1958).

Clarke, A., A Treaties upon the Law of Extradition (London: 1903).

Cobban, A., National Self-Determination (New York: 1945).

Cobbett, P.H., Leading Cases and Opinions on International Law (London: 1892).

Colegrove, K., International Courts of Amiation (Boston: 1930).

Corbett; P.E., Law in Diplomacy (USA: Princeton University Press 1957).

Denza, Eilean, Diplomatic Commentary on the Vienna Convention Diplomatic Relations(New York: 1965).

Eagleton. C., The Responsibility of states in International Law (New York University Press,Kraus Reprint, 1928).

Egan. CH;, The Law of Extradition (London 1846).

Fenwick, C.G., International Law (Indian Reprint, Prentice Hall, 1975).

Field,D.D., Extradition (New York, 1876).

Forgac, Albert A., New Diplomacy and the United Nations (New York: 1965).

Foster, John.Watson, The Practice of Diplomacy (Boston, 1906).

Freeman, A.V., The International Responsibility of States for Denial of Justice(London:Longmans, green & Co 1938).

Friedmann, W., The changing structure of International Law (New York: Columbia University Press 1964).

Green. L.C., International Law Through the Cases(London: Stevens & Sons, 1951).

Gross, Leo., The Future of the International Court of Justice (New York: Oceana Publications 1976).

Hall, William Edward., A Treaties on International Law (London: Stevens & Sons 1924).

Hardy, Michael., Modern Diplomatic Law (New York: Oceana Publications 1968).

Heatley, D.P., Diplomacy and the study of International Relations (Oxford 1919).

Hill, D.T., A History of Diplomacy in the International Development of Europe, (New York 1905).

Hill, Martin., Immunities of International Officials, (New York: Kraus Reprint & Co 1972).

Holland, T.E., Studies in International Law (Oxford, 1898).

Hurst, C., International Law (London: Stevens & Sons, 1950).

Jenks, C.W., International Immunities (London: Stevens & Sons, 1961).

Kanfmann, J., Conference Diplomacy, (New York, Oceana Publication 1968).

Kelren, Hans., Principles of International Law (New York: Holt Rinchart & Winston 1967).

Krishna Murthy. G.V.G., Dynamics of Diplomacy (India: Delhi National Publishing House 1968).

Langdon, W.P., Diplomatic Commentories: (Baltimore: The John Hobbling Press 1936).

Lauterpacht, H., Oppenheims International Law Vol.1 (London: Longman & Co 1955).

Mattingly, Garrett., Renaissance Diplomacy (London: Cok & Wyman Venguin 1955).

Moore, T.B., A Digest of International Law (Washington; U.S. Printers Press, 1906).

Mukherjee, P.B., The Modern Trends of Diplomatic Law (Calcutta, 1973).

O' Connell, D.P., International Law (London: Stevens & Sons, 1970).

Oppenheim, International Law (London: Longman & Co, 1967).

Panikkar, K.M., Principles and Practice of Diplomacy (Bombay, 1956).

Phillimore, R.J., Commentaries upon International Law (London: Butterworths, 1978).

Redlich, M.D., International Law as a Substitute for Diplomacy (Chicago, 1928).

Ronming, C.N., Diplomatic Asylum (The Hague, Netherlands 1965).

Satow, E., A Guide to Diplomatic Practice (London: Longman & Co., 1957).

Schwarzenberger, Geory., International Law (London: Stevens & Sons, 1957).

Sen, B., A Diplomatic Handbook of International Law and Practice (The Hague: Martins Nijloff, 1965).

Sinha, P., Asylumn and International Law (The Hague: 1971).

Sorensen, Max., Mannual of Public International Law (New York: Macimillan & Co, 1968).

Swift, R.N., International Law(New York 1969).

Watson, Adam., Diplomacy (London, Eyre Methun 1982).

Whiteman M.M., Digest of International Law and Practice (Washington: Dept of States 1967).

Wilson., Diplomatic Privileges humanities(1967).

Articles

Balbastro, A.E., "The Right of Diplomatic Asylum", Philippine Law Journal 1959, p.151.

Bassionmi, M.C., "Theories of Jurisdiction and their Application in Extradition Law and Practice", Calfornia Western Law Journal, 1974.

Becker, Joseph., "The State Department Whitelist Diplomatic Immunity", American Journal of International Law, Vol.47, 1953, p.704.

Brookfield., "Immunity of the Subordinate Personnel of a Diplomatic Mission", British Yearbook of International Law, 1938, p.151.

Bonne, C.L., "The National Boycott as an International Delinquency, American Journal of International Law, Vol.28, 1934, p.19.

Brierly, J.L., "The Theory of Implied State Complicity in International Claims", British Yearbook of International Law, 1928, p.42.

Brinton, J.Y., "Suits against foreign states" American Journal of International Law, Vol.25, 1931, p.50.

Brownlie, I. "Decision of British Courts during 1968 involving Questions of Public or Private International Law", British Yearbook of International Law, 1970, p.281.

Cardozo, Michael H., "Diplomatic Immunities Protocol and the Public", Journal of International Law Affairs, 1963.

Carter. P.B., "Sovereign Immunity Sustention of Claims", International and Comparative Law Quarterly, Vol.4, 1955, p.469.

Cohen, E.J., "Waiver of Immunity" British Yearbook of International Law, 1958, p.260.

Crockett, C.H., "Effects of Interim Measures of Protection in the International Court of Justice", California Western International Law Journal, 1977.

Deener, David R., "Some Problems of the Law of Diplomatic Immunity", American Journal of International Law, Vol.50, 1956, p.115.

Deere, L.L., "Political Offense in the Law and Practice of Extradiction", American Journal of International Law, Vol.27, 1933, p.247.

Duggard; J., "International Terrorism: Problems of Definition", International Affairs, 1974.

Eagleton, C., "Measures of Damages in International Law", Yale Law Journal, 1929.

_____., "Denial of Justice in International Law", American Journal of International Law, Vol.22, 1928, (p.538.

Evans, A.E., "Failure of Party to Appear; Jurisdiction of the Court", American Journal of International Law, Vol.69, 1975, p.154.

_____., "The Columbian-Peruvian Asylumn Case: Termination of the judicial phase", American Journal of International Law Vol.45, 1951, p.755.

_____, "Reflections upon the political offense in International Practice", American Journal of International Law, Vol.57, 1963, p.948.

Fitzmanrice, G., "The Law and Practice of International Court of Justice; General Principles and sources of Law", British Yearbook of International Law, 1953, p.1.

Franck, Thmand., "Preliminary Thoughts Towards an International Convention on Terrorism" American Journal of International Law, Vol.68, 1974, p.69.

Friedmann, W., "The Growth of state control over the individual and its effects upon the Rules of International State Responsibility", British Yearbook of International Law, 1938, p.118.

Garner, J.W., "International Responsibility of States for judgements of Courts and verdicts of Juries Amounting to Denial of Justice, British Yearbook of International Law, 1929.

Green, Allen, B., "Convention on the Prevention and Punishment of Crimes Against Diplomatic Agents and other Internationally Protected Persons", Virginia Journal of International Law, Vol.14, 1974, p.703.

Haney, W.A., "International Terrorism: The need for a fresh perspective", International Lawyer Vol.18, 1974, p.268.

Harris, Leo. J., "Diplomatic Privileges and Immunities: A New Regime is soon to be adopted by the United States," American Journal of International Law, Vol.62, 1968, p.98.

Hastrup, Abedokum A., "Diplomatic Relations and Reciprocity", Indian Journal of International Law Vol.5, 1965, p.194.

Hurst, Cecil., "Diplomatic Immunities: Modern developments", British Yearbook of International Law, 1929.

Hude. C.C., "Concerning Damages Arising from Neglect to prosecute", American Journal of International Law, Vol.22, 1928, p.140.

Kerley, E.L., "Some Aspects of the Vienna Conference on Diplomatic Intercourse and Immunities", American Journal of International Law, Vol.56, 1962, 0.88.

Korowicz, Morek S., "The Plight of Diplomatic Law", Indian Journal of International, Vol.3, 1963, p.413.

Mc Neil., "Aerial Hijacking and the protection of Diplomats", Harvard International Law, 1973.

Mishra, K.P., "The Second Convention on Diplomatic Relations in India", Foreign Affairs Report, 1965.

Morgenstern. F., "Extraterritorial Asylum" British Yearbook of International Law, 1948, p.225.

_____, "The Plight of Asylum" British Yearbook of International Law, 1949, p.327,

Reeves, T.S., "Extradition Treaties and the Death Penalty", American Journal of International Law Vol.18, 1924, p.298.

Rozakis, Christos, L., "Terrorism and Internationally Protected Persons in the light of ILC Draft Articles", International Comparative Law Quarterly, Vol.23, 1974, p.32.

Schwarzenberger, G., "Problems of International Criminal Law before the ICJ", Indian Yearbook of International Affairs, 1957.

Ward, N.P., "Expionage and the forefeiture of Diplomatic Immunity", International Lawyer, 1977.

Weis, P., "United Nations Declarations on Territorial Asylum" Indian Journal of International Law, Vol.6, 1966, p.173.

Wood, M.C., The Convention on the prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, International and Comparative Law Quarterly, Vol.23, 1974, p.791.