

Diplomatic Relations, were sufficient to cope with the problem. Fortunately that negative position was not to prevail.

The Canadian Government considered, on the basis of its experience, that a new convention, supplementing the existing relevant principles of international law, was needed. It was necessary to have a new regime of law that would guide international-law advisers in cases of kidnapping and other crimes against diplomats. From a strictly legal point of view, it was difficult, at the time of the Cross kidnapping, to determine exactly what action had to be taken.

The Vienna Convention on Diplomatic Relations merely says, in Article 29, that "the receiving State (...) shall take all appropriate steps to prevent any attack on the (diplomatic agent's) person, freedom or dignity". Obviously, that rule is not meant for kidnapping situations. It might be construed to mean that the receiving state must save the diplomat's life at all costs, and the sending state might insist that the host state live up to that obligation. But when the liberation of a kidnapped diplomat means that the security and safety of the host state is to be put in jeopardy, one is faced with a dilemma: on the one hand, whether the Vienna Convention obligations should be considered as absolute and all necessary measures, including giving in to all the kidnapers' demands, taken to save the diplomat's life, or, on the other hand, whether state security should be paramount to all other considerations and all measures taken to preserve it even if it means death for the kidnapped diplomat. Fortunately, in the Cross situation, Britain did not exert that kind of pressure, and the drama had a happy ending — Mr. Cross's life was saved and no demands regarding ransom or liberation of so-called political prisoners were met.

#### **Mechanisms of the convention**

The next question was what kind of mechanism should be established in the convention to deal with the problem. The hijacking conventions had been adopted after difficult and delicate negotiations, and a consensus had emerged on the basis of the rule that, when an alleged offender was found on one's territory, one either extradited him or prosecuted him. It was therefore agreed that this procedure should also form the core of the convention on the protection of diplomats.

For example, let us suppose that a French citizen kills an Italian diplomat in the United States, makes his way to Canada, and is arrested here. The United

States, because the crime took place on its territory, could seek his extradition. Italy could also seek his extradition because it was an Italian diplomat who was murdered; and France, because the alleged offender was of French nationality. Canada could accept any of those extradition requests. If Canada refused to extradite — and it had the option to do so — or if no extradition request was received, then Canada would, to quote Article 7 of the Convention, "submit (...) the case to its competent authorities for the purpose of prosecution".

#### **Crimes covered**

Instead of listing specific crimes, the International Law Commission, in its draft articles, had devised a general phrase — "violent attacks upon the person or liberty of an internationally protected person". The main reason for this was that specific crimes are defined differently in various criminal codes, and it would have been impossible to reconcile these definitions in an international convention. However, the Legal Committee considered that such a general phrase could be interpreted to cover different infractions in the implementing legislation of each state party and that this would pose even greater problems for extradition proceedings. Moreover the Legal Committee agreed that the complex mechanism of the convention should be triggered only when grave crimes such as murder and kidnapping were committed and not when minor ones occurred, such as slapping a diplomatic face during a heated discussion, which might be considered by some authorities as a "violent attack".

In the end, a compromise solution was found: the convention as adopted refers to "murder, kidnapping or other attacks upon the person", without defining these crimes. Under normal rules of legal construction, the words "other attacks" are to comprise infractions that are more or less of the same gravity as the listed crimes of murder and kidnapping. The Legal Committee did not attempt to define murders and kidnappings in the convention; and, in any event, these are usually not defined in extradition treaties.

Canada signed the convention on June 26, 1974, and intends to ratify it. To do so will clearly require implementing legislation, which will presumably take the form of amendments to the Criminal Code allowing essentially for prosecution in Canada of alleged authors of crimes against diplomats perpetrated outside of Canada. When the time comes to draft these amendments, it will have to be kept in mind

*Obligations  
of convention  
not absolute*