[Communicated to the Assembly, the Council and the Members of the League.]

Official No.: **A. 24.** 1936. V.

Geneva, September 7th, 1936.

LEAGUE OF NATIONS

INTERNATIONAL REPRESSION OF TERRORISM [1]

DRAFT CONVENTION FOR THE PREVENTION AND PUNISHMENT OF TERRORISM

DRAFT CONVENTION FOR THE CREATION OF AN INTERNATIONAL CRIMINAL COURT

OBSERVATIONS BY GOVERNMENTS

Series I

NOTE BY THE SECRETARY-GENERAL.

In execution of the Council's decision of January 23rd, 1936, [1] the Secretary-General invited the Governments to be so good as to forward to him, by July 15th, 1936, any observations they might desire to submit to the Assembly on the above-mentioned draft Conventions.

Down to the date of publication of the present document, the following Governments have submitted observations:

Australia.

August 24th, 1936.

His Majesty's Government in the Commonwealth of Australia agrees in principle to the former Convention, but does not favour the creation of an International Criminal Court.

Austria.

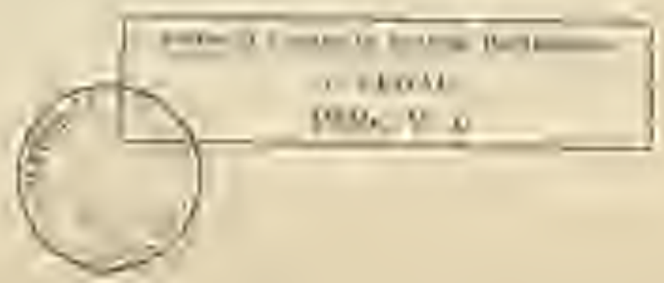
[*Translation.*]

July 2nd, 1936.

The Federal Government of Austria has the honour to submit the following observations with regard to the conclusion of a Convention for the Prevention and Punishment of Terrorism and of a Convention for the Creation of an International Criminal Court.

[1] See document A.7.1936.V.

S.d.N. 1200 (F.) 970 (A.). 9/36. Imp. Kundig.



The Federal Government greatly values the work done by the Committee for the International Repression of Terrorism and considers that the two draft Conventions which it framed could be suitably taken as the basis for the proceedings of a diplomatic conference to be summoned in 1937 with a view to the conclusion of the proposed Conventions.

The Federal Government ventures to add that, in its opinion, the provisions of the second Convention form an integral part of any measures to deal with the question of terrorism, so that it would appear to be necessary to bring both Conventions into force simultaneously.

As regards questions of detail, the Federal Government must make it clear that Austrian law does not permit of the extradition of an offender unless he is charged with an offence regarded as a crime *(Verbrechen)* in Austria itself, whereas the provisions of the first draft Convention also comprise other punishable offences. Were it to ratify this Convention, the Federal Government would therefore be obliged to enter a reservation to the effect that the extradition of an offender could not be granted by Austria for an offence not described as a *Verbrechen* by the Austrian Criminal Code. This reservation would, however, not be necessary if an appropriate clause were inserted in Article 9 of the first Convention. Such a clause might be modelled on the terms of Article 5, paragraph 4, of the draft Convention for the Suppression of the Illicit Traffic in Dangerous Drugs of 1934.[1] For its own part, the Austrian Government would nevertheless prefer a text authorising each of the contracting parties to define by a general rule which offences are to be regarded as sufficiently serious instead of the text above referred to, which provides that each individual case is to be judged on its merits.

As regards Article 2, paragraph 4, of the first Convention, it would be advisable to introduce a slight qualification by providing that the acts therein enumerated only fall within the scope of the Convention when the said materials and objects are *by their very nature* capable of being used for the doing of the acts specified by the Convention.

The provisions of Article 12 would appear to go beyond the purpose of the first Convention, as they deal with a matter unconnected with terrorism. In view of the difficulties involved in the insertion of this article in the Convention, the Austrian Government suggests its omission.

Belgium.

[*Translation.*] July 27th, 1936.

I have the honour to communicate herewith the Belgian Government's observations on the two draft Conventions framed by the Committee for the International Repression of Terrorism.

These observations relate more particularly to the draft Convention for the Prevention and Punishment of Terrorism, but they also govern the Belgian Government's attitude to the draft Convention for the Creation of an International Criminal Court, since, as is pointed out in document A.7.1936.V, page 2, the acceptance by a State of the latter Convention is conditional on its acceptance of the former.

* * *

Under Belgian law (Article 6 of the Law of October 1st, 1833), extradition may not be granted in respect of political offences or of acts related to such offences.

This principle is applied as follows:

1. In the case of *political offences proper*—that is to say, of offences which are directed solely against the political interests of a State and which do not cause prejudice to private interests—extradition is absolutely precluded.

2. As regards *related offences*—that is to say, ordinary criminal offences related to a politica offence, the principle of non-extradition is established by the Law of October 1st, 1833.

In the preparatory proceedings *(travaux préparatoires)* in respect of that law, the following were given as examples of such related offences: If on the occasion of a seditious rising or of an outrage designed to bring about the overthrow of the Government " the people were to seize the arms to be found in shops or arsenals, such acts would constitute theft. If, as often happens, there were also loss of life, it would be a case of murder." [2]

Such cases of theft and murder would be offences related to a political offence.

3. The second category of *quasi-political offences* consists of *complex offences*—that is to say, ordinary criminal offences which, without being related to a political offence, nevertheless have a political motive.

This is the subjective conception of political offences.

Under the Law of March 22nd, 1856, referred to by writers on international law as the " Belgian Clause ", the Belgian Legislature decided that this class of political offence was not to be immune from extradition. According to the preparatory proceedings, the law in question, which

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[1] This text was retained in the Convention signed on June 26th, 1936, as Article 9, paragraph 4, which reads as follows:

" The High Contracting Party to whom application for extradition is made shall, in all cases, have the right to refuse to effect the arrest or to grant the extradition of a fugitive offender if his competent authorities consider that the offence of which the fugitive offender is accused or convicted is not sufficiently serious. "

[2] *Translator's note.* — Throughout the present document " murder " is used to translate *meurtre* and " premeditated murder " to translate *assassinat.*

lays it down that " an outrage against the head of a foreign Government constituting either murder, premeditated murder or poisoning shall not be deemed to be a political offence or offence related thereto ", was designed solely to dispel uncertainty as to whether extradition could be granted in respect of an attempt on the life of a foreign sovereign as it would be if the victim of such a crime were merely a private person *(Pasinomie*, 1856, page 105, note in first column).

According to the preparatory proceedings *(Pasinomie*, 1856, pages 107 and 112) and to the " Records of the House of Representatives " of May 25th, 1871, page 1254, *attempts on the lives of human beings shall be judged under the ordinary criminal law, whatever their purpose or motive.*

Nevertheless, it should be observed that, according to these same documents, *acts of civil war* (that is to say, related offences as defined under 2 above) were to *continue to be non-extraditable;* so that, even if such acts were to lead to the death of the head of a foreign State, they would still be non-extraditable under Article 6 of the Law of October 1st, 1833.

* * *

These facts having been made clear, there would appear to be no doubt that the draft Convention does not apply to political offences *proper*.

It is, however, difficult to perceive to what extent the draft would alter the present position as regards *quasi*-political offences as defined under 2 and 3 above.

The draft had its origin in the assassination of the King of Yugoslavia at Marseilles in 1935 and relates mainly to political crimes.

From the *terms* of the draft (Article 2), however, the latter would appear to apply to offences under the ordinary criminal law " directed to the overthrow of a Government or an interruption in the working of public services or a disturbance in international relations ".

Are these terms to be interpreted as applying even to *related* offences as defined above under No. 2 ?

The present draft does not *expressly* exclude such cases, more particularly those arising out of civil war. (In any case, who is to determine when the state of civil war begins ?)

Does the draft exclude such cases by *implication*, by specifically referring to offences directed to bring about a change " dans le *fonctionnement* des pouvoirs ",[1] and not mentioning offences the purpose of which is to bring about a change " dans la *forme* des pouvoirs ".

If the draft is meant to embrace even the related offences defined in point (2) of Article 2, it would seem that the Belgian Government would be unable to accept it.

But, even assuming that the draft is to be interpreted as applying solely to cases in which the offence, though not related to a political offence, was nevertheless directed to bringing about one of the results enumerated in Article 2, paragraph 1, the Belgian Government is reluctant to bind itself to abandon the subjective conception of political offences in connection with extradition for the acts referred to in Article 2 of the draft, in the manner in which it was expressly ruled out by the Law of March 22nd, 1856 (see 3 above), in regard to attempts upon the life of the head of a State.

It is to be feared that, were it to give such an undertaking, the Belgian Government would risk being obliged to grant extradition in cases in which such action would be incompatible with a proper understanding of the principles of non-extradition in political matters.

This will at once be evident from consideration of the following case: Let it be supposed that the State whose interests " are affected " within the meaning of Article 2, paragraph 1, by offences falling within the scope of that article, subsequently undergoes a change of Government.

In the very nature of things the new Government—if it does not actually make heroes of those of its supporters by whom the offences were committed—will at least refrain from prosecuting them; more particularly, it will not request their extradition.

But, if the interests of the new Government happened in their turn to be " affected " by offences similar to those formerly committed by its own adherents, it would seek to punish the offenders and would request their extradition.

To hand over persons guilty of such acts either to the State requesting extradition or to the International Criminal Court which the second draft Convention proposes to set up might be contrary to a proper understanding of the principle of non-extradition in political matters.

The Belgian Government therefore desires, as far as possible, to retain the right to decide for itself in each particular case whether an offence under the ordinary criminal law is or is not of a political character such as would justify the refusal of extradition.

It is nevertheless willing to give the matter further consideration and its delegation to the League Assembly next September will be happy to proceed, with other delegations, to an exchange of views regarding the two draft Conventions, the examination of which has been placed upon the Assembly's agenda.

Bolivia.

April 2nd, 1936.

[*Translation.*]

The Ministry for Foreign Affairs . . . has pleasure in informing you that it is in entire agreement with the draft Conventions submitted to it.

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[1] *Translator's note.* — The corresponding phrase in the English text is: " directed to the overthrow of a Government . . . "

United Kingdom of Great Britain and Northern Ireland.

August 13th, 1936.

1. His Majesty's Government in the United Kingdom fully recognise both the importance and exceptional complexity of the proposals contained in the draft Convention for the Prevention and Punishment of Terrorism and, having regard to the difficulties inherent in the subject, have given the proposals the closest examination.

2. In general, the English criminal law is already sufficient to render criminal the acts mentioned in Article 2, though it deals with such acts in general terms without reference to the particular circumstances in which they are committed. English law is, however, based upon the broad principle that the English courts are only concerned wilh criminal offences committed and taking effect within the territory, and, although there are a few exceptions to this principle (for example, the English courts would take cognisance of a conspiracy in England to commit murder abroad), very grave consideration would be required before any proposal to extend these exceptions could be accepted.

3. As regards the proposed provisions relating to extradition, though His Majesty's Government in the United Kingdom are unable to surrender persons in respect of offences of a political character and their extradition treaties accordingly contain an exception in respect of such offences, the English courts place in this connection a very narrow construction upon offences of a political character. Subject to this narrow exception, the ordinary policy of His Majesty's Government in the United Kingdom is to surrender by way of extradition British subjects in respect of offences committed by them abroad. There is, however, a serious lack of reciprocity in this matter. Many States decline to surrender their own nationals to the United Kingdom. His Majesty's Government would welcome a greater measure of reciprocity in this matter.

4. His Majesty's Government consider that the draft Convention merits careful consideration, and they will give the closest attention to the views expressed by other Governments.

5. As regards the proposed Convention for the Creation of an International Criminal Court, His Majesty's Government in the United Kingdom have carefully and sympathetically considered the text prepared by the Committee of Experts; but they are of opinion that the time has not yet arrived for the creation of the proposed Court.

6. There would appear to His Majesty's Government to be no general analogy between the existing Permanent Court of International Justice and the proposed International Criminal Court. The existing Court applies recognised rules of international law to the settlement of international disputes and fulfils a function which no other judicial institution can perform. The proposed Court, on the other hand, would apply no single system of substantive law; its judgments would be dependent upon the national law to be applied in the particular case; and its decisions in similar cases would necessarily vary according to the particular national law. The method of trial, the procedure and the rules of evidence play a most important part in the administration of criminal justice, and it is felt that it would not be possible for the International Criminal Court to draw up rules in such matters which would be such as to command general acceptance by public opinion in the different countries. The administration of criminal justice reflects the national traditions and ideas of the different peoples, and it would not appear possible to bring them into unison at the present time. Further, it is thought that the work which the proposed Court would perform can generally be done with more efficiency by national courts. In these circumstances, His Majesty's Government do not see their way to participate in a scheme for an International Criminal Court.

7. His Majesty's Government would not, however, wish to oppose the creation of an International Criminal Court under the auspices of the League of Nations on the ground that they did not themselves propose to participate in the scheme if they were of opinion that the Court would be likely to serve a useful international purpose. So far, however, as His Majesty's Government can foresee, the Court would seldom be used, and, in view of the inherent difficulties of the proposal, they doubt whether the creation of an International Criminal Court would at the present time be conducive to improved international co-operation. Harm, in their opinion, is done to international institutions generally by the establishment of an institution which is not supported by the general assent of public opinion. His Majesty's Government accordingly consider that the time is not yet ripe for the creation of such a Court and suggest that the proposal should, for the time being at any rate, be abandoned.

8. In the event of the proposal being abandoned, Article 10 of the Terrorism Convention would consequentially be deleted. Should it, however, be decided to proceed with a Convention for the creation of an International Criminal Court, His Majesty's Government in the United Kingdom are of opinion that Article 10 of the Terrorism Convention should be amended so as to preclude a State from sending to the Court for trial a person who is the subject of a State which has not adhered to the Court Convention.

Estonia.

[*Translation.*] July 13th, 1936.

The Ministry for Foreign Affairs has the honour to express the complete agreement of the Government of Estonia with the principles laid down in these Conventions. In view, however, of the complexity of the problems involved, the competent authorities have not, down to the present moment, been able to reach their final conclusion as to the Conventions. The Ministry for Foreign Affairs proposes, therefore, to reserve for a later date the final expression of its opinion.

Finland.

[*Translation.*] May 28th, 1936.

The Finnish Government is of opinion that the adoption and application of conventions similar to the two draft Conventions for the international repression of terrorism would be likely to help the competent authorities to combat extremist movements dangerous to the State itself and to public order. The Finnish Government considers it necessary, however, that the said drafts should be supplemented by stipulations, including among acts punishable under the said Conventions the printing, conveyance and distribution of publications containing exhortations to overthrow by force the Government of any contracting country, or otherwise tending to promote activities with such a purpose. The effectiveness of the Conventions in question would also be considerably enhanced if the contracting parties could agree to prohibit in their respective territories the activities of any organisation aiming at the overthrow by force of the Government of any other country or otherwise promoting the achievement of such a purpose.

Lastly, the practical results of the proposed Conventions depend essentially on continuous co-operation between the competent authorities of the different countries. Such co-operation should be arranged direct between the said special authorities.

Hungary.

[*Translation.*] July 6th, 1936.

I. As regards the draft Convention for the Prevention and Punishment of Terrorism, the Hungarian Government has no observations to make except with reference to certain formal provisions of this draft, which are dealt with later under No. IV.

II. With reference to the draft Convention for the Creation of an International Criminal Court, the Hungarian Government wishes to recall the general attitude which it adopted at the outset, when it stated that it was not in favour of the creation of an International Criminal Court. It also ventures to refer to the objections put forward by the Hungarian member of the Committee for the International Repression of Terrorism in this connection during the general discussion which took place on this subject at the April 1935 session and at the second session from January 7th to 15th, 1936.

III. The Hungarian Government, while emphasising once again that it cannot see its way to accept the draft Convention for the Creation of an International Criminal Court and maintaining its general standpoint unaltered, is nevertheless anxious to reply to the request made to it on behalf of the Council and to submit some observations on certain provisions of the draft in question, on the understanding that these observations do not in any way imply that it considers the creation of an International Criminal Court and the conclusion of a Convention on this matter necessary or even desirable.

This being understood, the Hungarian Government submits the following observations:

Ad *Article 4.*

This text is in accordance with the provisions of Article 2 of the Statute of the Permanent Court of International Justice; in particular, it specifies the class of persons eligible as members of the International Criminal Court.

This article does not, however, contain any provisions ensuring the impartiality of the judges (see Article 16 of the Statute), nor does it provide for the solemn declaration which, in accordance with Article 20 of the Statute, the members of the Hague Court are required to make before taking up their duties.

There is no reason why similar rules should not be laid down for the members of the International Criminal Court, since impartiality is essential when they are trying persons accused of acts of terrorism.

Ad *Article 22.*

This article deals with the right to conduct the prosecution before the International Court and defines the States competent to conduct it.

It does not, however, make it clear that the International Criminal Court is not entitled to institute proceedings in the absence of a charge and that it must drop the proceedings if the charge is withdrawn. A formal provision to this effect should be inserted, as it is doubtful whether, according to Article 22, a charge is held to be an essential element of the procedure or whether the intention is simply to enable the charge to be upheld without making it a condition of judicial action.

To this lacuna in the draft must be attributed the fact that, contrary to the provisions relating to judges and counsel for the defence (Articles 4 and 29), the text does not define the class of persons from among whom the plaintiff State may appoint its representative.

Ad *Article 24.*

The counsel of the accused should be expressly mentioned as the person to whom the file of the case, including the statement of the *partie civile*, should be communicated. This appears to be necessary because the person sent to the Court for trial may not be living or staying at the seat of the Court; in such a case, if the documents are sent to him there may not be time for his counsel to study them properly.

Ad *Article 28.*

It is doubtless due to an oversight that the text omits to mention that the State which has brought the case before the International Criminal Court should be represented at the examination and hearing of witnesses and experts. The text refers to Article 21, which does not mention the State in question.

Ad *Article 30.*

There are two objections to point 2.

In the first place, only witnesses and experts are to be heard *in camera;* the Court should, however, be authorised to adopt this procedure in other circumstances, with the sole general restriction that the Court's judgment or order should in every case be read at a public hearing (Article 33).

Secondly, it appears to be necessary to stipulate that, even when the hearing takes place *in camera*, the provisions of Article 21 will continue to be applicable—that is to say, the States enumerated in that article and also the State which has brought the matter before the Court should in every case be invited to be present at the hearing, even if it takes place *in camera.*

Ad *Article 35.*

The jurisdiction of the International Criminal Court should not be extended to private law matters and the Court should not pronounce upon the restoration of property or decide questions relating to the payment of damages.

In the first place, as regards articles serving as proof of the crime and articles in general which are of some importance from the point of view of criminal procedure, the general principle recognised by extradition treaties is that each State, even if it agrees to extradition, cedes such articles only temporarily, and subject to their return, to the State making the application, because they may be claimed in the extraditing State by persons whose right of ownership or other rights are not affected by the proceedings.

Secondly, as regards damages at private law, it is not advisable to extend the jurisdiction of the Criminal Court beyond its natural limits or to authorise the Court to decide claims which are simply and solely a matter of private law and in respect of which States would have to be compelled to execute the judgment in their territory. Persons having claims of this kind should be requested to follow the normal procedure laid down by law—that is to say, to apply to the courts of the State competent to hear and determine such cases.

Ad *Article 36.*

No observation is called for in regard to Rule No. 1 to the effect that, in principle, the judgments of the Court shall be executed by the State whose substantive criminal law has been applied; this will usually be the State in whose territory the offence has been committed.

As regards the provision relating to the execution of sentences, the basic principle should be, on the one hand, that the case should be tried with the utmost impartiality and, on the other, that, if the State does not wish to take part in the judicial proceedings and desires to free itself from all responsibility, it can do so by handing over the offender to the International Criminal Court.

The whole Convention should bear the impress of this principle, and none of the provisions should conflict with it.

Impartiality is undoubtedly of the greatest importance, not only as regards the trial of the case, but also—and this point closely affects the accused person—as regards the execution of the sentence. This fundamental principle of the Convention should therefore be applied in full in respect of its execution also.

Consequently, the State which has brought the case before the International Criminal Court so as not to assume responsibility for the proceedings and to hold aloof from the consequences of the offence should not be called upon to execute the sentence unless it agrees to do so.

According to the report of the proceedings of the Committee of Experts, this appears to be the idea underlying Article 36; moreover, it was specifically mentioned in the text of Article 56 of the 1935 draft drawn up by the Belgian, French, Roumanian and Spanish members of the Committee (document C.184.M.102.1935.V), but is not clearly brought out in the new text.

Another defect is that the draft omits to mention the important rule that the State against which the offence has been committed can in no case be responsible for the execution of the sentence.

We need not stress the fact that, if it is the object of the Convention to set up an International Criminal Court to ensure that certain criminal acts will be tried impartially, the possibility that the judgment of this impartial Court may be executed by the injured State which is primarily concerned and incapable of impartiality should be precluded.

Ad *Article 39.*

Point 2 of this article leaves it to the Court (Article 42) to determine by its rules the cases in which an application for revision may be made.

The class of persons entitled to make an application for revision should be defined in the actual Convention, and in any case it should be expressly stated that the persons mentioned in Articles 22 and 29 will have this right.

Ad *Article 40.*

According to paragraph 1, the salaries of the judges are payable by the States of which they are nationals. As Article 6 does not require States to nominate candidates who are their nationals, the judges will not necessarily possess the nationality of the State by which they are nominated; they might even be nationals of States that have not acceded to the Convention. Consequently, the rule laid down in paragraph 1 of Article 40 is obviously incorrect; it should stipulate that the salaries of the judges are payable by the State which put forward their candidature.

In this connection, the Hungarian Government wishes once again to draw attention to a gap in the draft, which omits one of the most delicate questions of the International Criminal Court—namely, the question of language. In the Hungarian Government's opinion, this point is of such importance that it would be better not to leave it to be settled by the Court's regulations.

Ad *Article 42.*

It would be well to add (as part of the Convention) to the provision that the Court shall establish regulations to govern its practice and procedure the stipulation that the Court's procedure will naturally be governed by the principles of modern law relating to criminal procedure.

IV. As regards the provisions of the draft Convention for the Creation of an International Criminal Court relating to interpretation, ratification, accessions, colonies and protectorates, and also to the entry into force and denunciation of the Convention, the Hungarian Government ventures to point out that the text of document A.7.1936.V differs considerably from the Minutes of the meeting held by the Committee of Experts at Geneva on January 14th, 1936.

For instance, there are the following discrepancies:

In the third line of Article 44, after the words " direct negotiations ", the words " or by means of arbitration agreed upon between them " are missing.

According to the Minutes referred to above, this phrase should be inserted in the corresponding articles of the two Conventions, and it is, in fact, embodied in Article 19 of the draft Convention for Prevention and Punishment of Terrorism; but it has been omitted from the second draft, although it was adopted by the Committee for both these draft Conventions.

The same observation applies to the whole of the text of Article 52 of the second draft, which has also been omitted from the first draft.

Moreover, the second paragraph of this article has been drawn up in such a way to make it doubtful whether the amendment of the Convention, if adopted by the majority of the contracting parties, will or will not be binding on States which have not accepted it.

Should an article reproducing the text of Article 52 of the second draft Convention also be inserted, in accordance with the Minutes of the meeting of the Committee of Experts on January 14th, 1936, in the draft Convention for Prevention and Punishment of Terrorism, the Hungarian Government wishes to state forthwith that it regards as unacceptable any interpretation of paragraph 2 of Article 52 to the effect that amendments adopted by the majority of the contracting parties are binding upon all signatory States. In that case, the Hungarian Government would be obliged to request that the text of paragraph 2 should be made more explicit.

Lastly, the Hungarian Government feels obliged to revert once again to certain formal provisions of the two draft Conventions.

In its opinion, Articles 21 and 25 of the first draft and Articles 46 and 48 of the second draft, in their present wording, offer certain drawbacks. For instance, the Convention may be acceded to even before, for lack of ratifications, it has come into force (Article 21 of the first draft and Article 46 of the second draft). This conflicts with the principle that an international convention may only be acceded to after it has come into force. The drawback to Article 25 of the first draft and Article 48 of the second draft is that, as they are worded at present, the entry into force of the Convention may take place independently of the signatory States and even without any of those States having ratified the Convention.

In the Hungarian Government's opinion, Article 21 of the first and Article 46 of the second draft should be amended so as to make accession possible only after the date on which the Convention comes into force. Moreover, the text of Article 25 of the first and Article 48 of the second draft should be revised so as to ensure that the entry into force of the Convention is subject only to ratification by a certain number of Members of the League of Nations or non-member States.[1]

The Hungarian Government wishes to point out that, on July 10th, 1935, it submitted similar observations regarding the second preliminary draft International Convention on the Use of Broadcasting in the Cause of Peace (Circular Letter 44.1936.XII, Annex, pages 19 and 20), and that the Drafting Committee appointed to draw up the text of the draft for submission to the Diplomatic Conference to be held at Geneva on September 3rd, 1936, recognised the soundness of the objections formulated by the Hungarian Government (cf. the above-mentioned document, page 8).

In accordance with this Government's proposals, Articles 10 and 11 of the draft Convention in question were worded as follows:

"*Article 10.*

"After the entry into force of the present Convention, any Member of the League of Nations and any non-member State referred to in Article 8 may accede to it.

"The instruments of accession shall be sent to the Secretary-General of the League of Nations, who shall notify the deposit thereof to all the Members of the League and to all the non-member States referred to in the aforesaid article.

"*Article 11.*

"The present Convention shall enter into force on the ninetieth day following the receipt by the Secretary-General of the League of Nations of the sixth ratification.

"Every ratification effected after the deposit of the ratification mentioned in paragraph 1 of the present article shall take effect on the ninetieth day following the date of receipt thereof by the Secretary-General of the League of Nations.

"In conformity with the provisions of Article 18 of the Covenant of the League of Nations, the Secretary-General shall register the present Convention on the date of its coming into force."

India.

August 14th, 1936.

As regards the draft Convention for the Creation of an International Criminal Court, the Government of India do not propose to offer any detailed remarks, since they are unable to accept the draft Convention. As the jurisdiction of the Court is limited to the offences set out in the Terrorist Convention (or, possibly, to some of them), and as the Convention, even for these offences, places no obligation upon any party to the Convention to remit any person to the Court, they feel doubtful whether this organisation would serve any practical purpose. Terrorism in India has very little connection at present with that in European countries. The Governments in India have adequate legal powers to deal with it and it appears most unlikely that they would ever wish to resort to the proposed Court. Further, if India accepted the Convention, the institution of the Court would necessitate new legislation in the Indian Legislature, and, even if the Court would serve a useful purpose as regards crimes committed in Europe, the Government of India would not feel justified in introducing legislation to make resort possible to a court situated at such a distance from India. The inconvenience and expense involved in resort to the Court would outweigh any advantages to be obtained from participation in an international administration of criminal law.

As regards the draft Convention for the Prevention and Punishment of Terrorism, the Government of India observe that, under the operation of Article 23, the enactment of any

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[1] *Note by the Secretariat.* — The provisions here criticised are not an innovation. They represent a method of facilitating the entry into force of general international conventions, and their extension to the greatest possible number of countries, which originated with the conventions adopted at the Barcelona Conference of 1921. Every convention which has been actually concluded under the League's auspices and which is open to accession allows accession to take place before the convention is in force. Since 1928, it has been the regular practice to give to an accession the same force as to a ratification so far as regards the entry into force of the convention.

legislation necessary to bring the law of India and the administrative organisation into conformity with the rules contained in the Convention would be a condition precedent to ratification. It is impossible for them within the time at their disposal to reach definite conclusions regarding the extent, if any, to which the Convention would necessitate amendment of the existing law. In view of certain sections of the Indian Penal Code and the Code of Criminal Procedure which provide that offences (or abetments of offences) committed by British-Indian subjects outside British India may be dealt with as if they had been committed within British India, they anticipate that the existing law is likely to be found adequate to implement the more essential provisions of the Convention, though it is probable that detailed examination will disclose certain respects in which legislation would be necessary. They therefore desire it to be understood that their attitude towards this Convention is subject to the possibility that the Indian Legislature would decline to pass legislation the enactment of which might be found to be a condition precedent to ratification, and that the question whether, in that event, resort could properly be had to the extraordinary powers vested in the Governor-General by the Government of India Act, which empower him to pass legislation that is considered essential to the safety and tranquillity of British India, has not been considered. In the second place, it has not been found possible to consult the local Governments in the time allowed, and a similar reservation is necessary as regards consultation with them. In the third place, it is necessary to state that this document refers to the position in British India alone.

Subject to the reservations mentioned above, the Government of India are fully in accord with the principle of international co-operation for the prevention and punishment of terrorism, as stated in Article 1 of the draft Convention.

Latvia.

[*Translation.*] July 14th, 1936.

I have the honour to inform you that the competent authorities have considered the draft Conventions and have declared that, in principle, they have no objection to make to them. They reserve, however, their right to express a further opinion at a later date.

Norway.

[*Translation.*] July 20th, 1936.

1. *Draft Convention for the Prevention and Punishment of Terrorism.*

The most important provisions of the draft are those of Articles 2, 3, 7, 8 and 9.

The Norwegian Government has no objections of principle to Articles 2, 3, 7 and 8.

Under the Norwegian Criminal Code, all the acts enumerated under Nos. 1 to 3 of Article 2 are punishable both as ordinary or as aggravated crimes intended to cause death, grievous bodily harm or loss of liberty (Criminal Code, Chapter 9, cpr. Article 96, Chapters 21 and 22), crimes against property (Chapter 28) or crimes against public security (Chapter 14). The same applies to attempts to commit the above mentioned crimes. Generally speaking, the penalties provided for in the Criminal Code are also applicable to persons guilty of participation in such crimes.

Article 2, No. 4, and Article 3, No. 1 (2), refer to certain preparatory acts less directly connected with the actual crimes. As a general rule, such preparatory acts are not punishable under Norwegian law. For this reason and as both the determination of guilt and also the definitions of " attempt " and " participation " vary greatly from country to country, the Norwegian Government considers that the draft Convention should do no more than refer, in so far as these questions are concerned, to the municipal law of the individual States.

Persons guilty of the acts mentioned in Articles 7 and 8 could no doubt be prosecuted in Norway in all cases (Criminal Code, Article 12, Nos. 3*c* and 4*b*). As regards offences committed abroad by foreigners, Article 13, paragraph 2, of the Criminal Code nevertheless provides that criminal proceedings can only be instituted if the act in question is also punishable in the country in which it was committed; furthermore, the sentence cannot be heavier than that which might be passed in the foreign country in question. The Norwegian Government does not, however, consider it necessary to enter a reservation as the result of these provisions of its Criminal Code.

The chief importance of the draft Convention resides, no doubt, in the proposals regarding the treatment of political crimes and, above all, extradition. It would appear that the obligation as to extradition embodied in Article 9 overrides the obligation to institute criminal proceedings under Article 8.

The objections of principle that might be raised against restrictions upon the right of asylum, however, would also apply in Norway to the obligation to institute criminal proceedings. In cases in which the request for the extradition of an offender guilty of a political crime has been refused, there has never been any question of instituting criminal proceedings in Norway, even when the express conditions under which such proceedings are permissible, in virtue of Article 12, No. 4, of the Criminal Code, have been fulfilled.

Article 3 of the Norwegian Extradition Law of June 13th, 1908, contains the following provisions:

> " Extradition may not be granted in respect of any political crime or of any ordinary crime committed in connection with a political crime and with the purpose of assisting the attainment of the end aimed at by that crime.
>
> " The crime of causing death or grievous bodily harm to the head of a State or to a person belonging to the family of the head of a State may nevertheless give rise to extradition, provided always that the crime was not committed in connection with another political crime."

The draft Convention could not therefore be accepted unless the above law were amended.

The Norwegian Government is not convinced of the wisdom of adopting, at the present juncture, general restrictions on the right of asylum, which would be the result of the acceptance of the provisions of the draft. It nevertheless considers that certain acts must be punishable and also give rise to extradition, even when they constitute political crimes or are connected with such crimes. Murder and attempted murder fall within this category; nevertheless, an exception should perhaps be made in respect of acts committed in open fight. Nor has the Government any special objection to extending international repression so as to include crimes intended to cause grievous bodily harm or loss of liberty. The crimes mentioned under No. 3 of Article 2 of the draft should be regarded from the same point of view as they are also of a nature to endanger human lives.

On the other hand, the Norwegian Government considers that the acts mentioned in Article 2, No. 2, should not be included in the above-mentioned category. In serious cases, these acts would come under the provisions of No. 1 or No. 3 of the article; otherwise, the right of asylum must be granted; provided always that the acts in question are to be regarded as political crimes within the meaning of the law. The same applies to the preparatory acts mentioned in Articles 2 and 3.

The Norwegian Government desires, lastly, to point out that, in its opinion, the provisions of Articles 14, 15 and 16 are of particular importance and to them it gives its fullest support. These articles are designed to centralise criminal investigations and to institute mutual assistance during criminal proceedings, together with a service for the mutual exchange of information.

2. *Draft Convention for the Creation of an International Criminal Court.*

The Norwegian Government regrets that, for reasons of principle, it is unable to support this draft.

Netherlands.

[*Translation.*] July 15th, 1936.

The Minister for Foreign Affairs of the Netherlands has the honour to forward to the Secretary-General, in respect of the Kingdom of the Netherlands in Europe, the following observations concerning the two draft Conventions drawn up by the Committee—viz., the draft Convention for the Prevention and Punishment of Terrorism, and the draft Convention for the Creation of an International Criminal Court.[1]

The Netherlands Government is perfectly ready to co-operate, in so far as may be possible, in an international attempt to put down terrorist crimes having a political object. Nevertheless, the two drafts prepared by the Committee call for the following comments:

As regards Article 2, the Netherlands Government is of opinion that it should be clearly understood that the acts enumerated in that article will only fall within the scope of the Convention when committed for the purpose of bringing about " the overthrow of a Government or an interruption in the working of public services, or a disturbance in international relations, by the use of violence or by the creation of a state of terror ". It will not, therefore, be enough that such an act should be *of a nature* to bring about the overthrow of a Government or a disturbance in international relations, as mentioned above. The efforts of the person committing the act must have been deliberately directed towards such an end. The Netherlands Government is doubtful as to whether the words " lorsque lesdits faits tendent à " make this sufficiently clear.[2]

The Netherlands Government is further of opinion that the enumeration of the categories of offences which are to be covered by the Convention is too wide. This observation applies to Article 2, No. 5, under which it is a punishable offence to give assistance to an accomplice of a person who commits any of the acts mentioned in that article; the Government considers that this clause should only apply to assistance given to the criminal himself.

The Netherlands Government considers that the Convention being naturally limited to international acts, this fact implies that Article 2 should not deal with offences which are in no way international in character—*i.e.*, offences committed against a State by one of its own nationals in its own territory and without the criminal's having proceeded to any other country.

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[1] The present note reproduces certain observations regarding this problem already set forth in the note of September 5th, 1935, and published in document A.7.1936.V, in so far as their relevance has remained unaffected by the Committee's subsequent proceedings.

[2] *Translator's note.* — The English text has " in all cases where they are directed to . . . "

The words " any wilful complicity [1] and any help given towards the commission of such an act " in Article 3, paragraph I (2), would appear to be too wide in scope; it should be understood that help given towards the commission of such an act would only be punishable if the person by whom the help was given had the *deliberate intention (volonté)* to assist the commission of the criminal act.

The drafting of Article 3, paragraph 3, with regard to incitement is not quite clear. The Netherlands Government assumes that it is to be interpreted to mean that, as a rule, incitement which has not taken place in public must always be punished like that which has taken place in public, and that the exception made in paragraph 3 merely relates to incitement which has not taken place in public when such incitement has not been successful.

Article 7 calls for the comments made in the previous note in respect of Article 6. As the Netherlands does not admit the principle of the extradition of nationals, a provision (Article 5) has been included in the Criminal Code to the effect that Netherlands law shall apply to any act committed by a Netherlands subject in foreign territory, provided always that such act constitutes a crime under the Netherlands criminal law, and is at the same time punishable under the laws of the country in which it has been committed.

As regards Article 9, which deals with extradition, the Netherlands Government desires to reiterate what was said in the note of September 5th, 1935. The Netherlands is not prepared to consider all the offences referred to in the present Articles 2 and 3 as being deemed to be included as extradition crimes in any extradition treaty which has been or may hereafter be concluded between the Netherlands and all the other contracting States. Moreover, the extradition treaties hitherto concluded by the Netherlands Government are based, in general, on the principle that extradition cannot be granted for political offences. In view of the wide differences of political opinion which at present exist in different countries on fundamental questions, the time does not seem favourable for completely abrogating this rule. The present circumstances as regards the national policies of different States are not such as to induce the Netherlands to depart from their historic tradition as regards the hospitality offered to political refugees.

The service referred to in Article 14, as at present drafted, would merely deal with the offences referred to in Articles 2 and 3. Would it not be desirable to make the same service responsible for the investigations in regard to offences under Article 12.

The Netherlands Government has been glad to note that rules have been inserted in Article 19 with regard to the settlement of disputes which might arise in respect of the interpretation or application of the Convention. At the same time, the Netherlands Government regrets that the present text does nothing to remove the possibility that, in the event of two contracting parties failing to agree upon the jurisdiction, the dispute will remain unsettled. In this connection, the Netherlands Government ventures to suggest that a rule be inserted making good this omission; it would, for example, be possible to reproduce the provisions of Article 21 of the 1930 Convention on Certain Questions relating to the Conflict of Nationality Laws, which are more satisfactory in this respect.

As Her Majesty's Government has already stated in its previous note, it considers that the establishment of an international jurisdiction would no doubt offer advantages, particularly in cases in which the State on whose territory an accused person has taken refuge prefers sending him for trial before the international jurisdiction to extraditing him to the injured State.

In this connection, the Netherlands Government ventures to suggest that, in Article 22 of the first draft Convention, States prepared to ratify the Convention should be given the possibility of entering a special reservation to the effect that the reciprocal obligations ensuing from that instrument are only accepted in regard to the States which are also parties to the Convention on the Court. It might, indeed, happen that a State unwilling to accept the very general rule as to extradition embodied in Article 9 would nevertheless be prepared to accept the Convention on terrorism in regard to other contracting parties if it were entitled, under certain circumstances, to send the person charged before the International Court for trial instead of granting his extradition.

As regards the second draft Convention, the Netherlands Government has been gratified to note that The Hague has been suggested as the seat of the new Court. The Government has observed with satisfaction that the Committee has taken into account several observations regarding the details of the Court's composition and the procedure to be followed which were put forward by the Netherlands Government in its previous note. The Government persists in its belief that it would be wiser to modify Article 6 by the introduction of the rule contained in the Statute of the Permanent Court of International Justice, which lays down that the Assembly and the Council shall proceed to the election of judges independently of one another.

The Netherlands Government ventures to suggest that the draft Convention be modified in the following way:

From the present text of Articles 17 and 36, it ensues that, unless otherwise decided by the Court, sentences involving loss of liberty shall be executed by the State in whose territory the offence was committed. It might nevertheless happen that a State sending an offender for trial before the Court had adopted this procedure in preference to extradition to the State in whose territory the offence was committed, for the very reason that it was anxious to avoid leaving jurisdiction and execution of the sentence to the State in question. It would therefore appear to be desirable that a clause be inserted in Article 36 to the effect that the Court will be required to " decide otherwise " within the meaning of Article 36 if the State by which the offender has been sent for trial before the Court has itself requested to be entrusted with the execution of any sentence of imprisonment which is imposed.

The observation regarding the settlement of disputes made in regard to Article 19 of the first Convention naturally applies also to Article 44 of the second draft.

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[1] *Translator's note.* — The French text has " participation intentionnelle ".

Siam.

July 1st, 1936.

The Siamese Government has the honour to state that, whereas many of the acts enumerated in the draft are already punishable under the Siamese Penal Code, the draft Convention in its present form would entail certain difficulties in respect of the existing judicial system, and in some other matters is not particularly appropriate to conditions in Siam. Under the circumstances, His Majesty's Government is inclined to refrain from offering detailed comment at the present time.

Union of Soviet Socialist Republics.

[*Translation.*] April 16th, 1936.

The People's Commissar for Foreign Affairs has the honour to acknowledge receipt of the copies of document A.7.1936.V, transmitted by the Secretary-General's letter dated February 25th, 1936 (Circular Letter 26.1936.V), and containing the draft Conventions for the Prevention and Punishment of Terrorism and for the Creation of an International Criminal Court, together with the report adopted by the Council on January 23rd, 1936.

Examination of these drafts suggests a general observation concerning the actual object of the international agreement in question as contemplated by the Council resolution of December 10th, 1934. Considered in the light of the circumstances which prompted this resolution and of the exchange of views following which the resolution was drawn up, the agreement provided for was to have as its sole object the organising of joint action by the contracting parties for combating terrorist conspiracies which endanger international peace and security. This aspect of the question does not seem to have been sufficiently taken into account in the drafts drawn up by the Committee, although it is the aspect which should be the one and only object of the agreement to be concluded under the terms of the resolution of December 10th, 1934.

Bearing this in mind, the drafts in question should be examined with a view to a more exact definition of their scope, while providing at the same time for a more complete and efficacious solution of the problem in its international aspect.

Venezuela

[*Translation.*] August 7th, 1936.

I have the honour to inform you that the Department concerned, after studying the draft Conventions for the Prevention and Punishment of Terrorism and for the Creation of an International Criminal Court, finds that the acts in respect of which proceedings are to be instituted, as indicated in Section A and enumerated in Bases (*a*), (*b*), (*c*), (*d*) and (*e*) for the conclusion of the former agreement, are included in the provisions of our Criminal Code (Articles 158, 160, 174, 175, 273, 284, 286, 287, 344 and 385), so that, so far as our country is concerned, it is unnecessary to add other acts to the list in question.

As regards paragraph (*a*), it should be noted that criminal acts committed in the territory of the Republic against the head or President of a foreign nation, or against the diplomatic representatives accredited to the Venezuelan Government, on account of their functions, and also attempts to commit such acts and complicity in the commission of such acts, are severely punished under the above-mentioned Articles 158 and 160 of the present Criminal Code.

With reference to paragraph (*d*), which relates to the possession of arms, ammunition, explosives, etc., by private persons, this question is dealt with in Venezuela by a special Law dated July 19th, 1928, prohibiting the " importation, manufacture, sale, purchase, possession, and carrying of arms " whether these are *side-arms* or *fire-arms;* this Law provides for the imposition of effective penalties in the case of the said acts, which are also offences under our Criminal Code.

In accordance with the spirit of our penal legislation, the punishment of the acts enumerated in the Bases mentioned above would come wholly within the jurisdiction of the Venezuelan criminal courts, since the administration of justice in the States which form the Union is automatic, in virtue of the federal regime in force. Consequently, the proposal to create an International Criminal Court for the trial of persons accused of the criminal acts mentioned above, under the conditions set forth in Section B of the draft Convention, would necessitate a previous reform of our positive criminal law, which is a delicate matter, owing to the autonomy of the federal organisations in question.

In conclusion, the opinion of the Department for Foreign Affairs of Venezuela, after examining the draft Convention for the Prevention and Punishment of Terrorism and the draft Convention for the Creation of an International Criminal Court, is favourable in the former and unfavourable in the latter case.