States, in giving effect to its extradition treaties with countries where *in absentia* convictions are part of the judicial system, considers a person convicted *in absentia* as merely charged with the offense and in the event of extradition entitled to be tried again therefor with full opportunity to make defense. The laws of these countries appear to vary with respect to the legal effect of an *in absentia* conviction. Accordingly, before proceeding further in the instant case, the Secretary of State would appreciate being advised whether the law of Greece provides that a person convicted *in absentia* who returns or is returned to Greece is entitled to a trial and opportunity to make defense to the charges on which he was convicted *in absentia*.

(Note of Feb. 21, 1964, from the Secretary of State to the Ambassador of Greece, on file in the Office of the Legal Adviser.)

IMMUNITY

Service of process in personal suits against foreign states

In response to an inquiry from the Department of Justice regarding, *inter alia,* (1) the possibility of securing State Department transmittal of a summons addressed to a foreign state through diplomatic channels, and (2) the Department's views as to the possibility of having a Marshal or a Foreign Service Officer serve process on a diplomatic representative in his capacity as an "agent" of a foreign state, the Department of State responded, in part, as follows:

. . . . .

Your second question was whether the Department of State had occasion in the past to transmit informally summonses issued by United States courts to foreign embassies. While it is possible that from time to time the Department may have transmitted informally such summonses when agreed to in advance by the foreign embassy, there is no present record of any such transmissions having occurred. It is believed that the only prior activity of the Department in this general area has been limited to ascertaining whether an embassy or a particular official thereof would object to receiving service of process in a pending dispute.

Frequently, the Department does receive through the mail notices of estates in process of administration or probate in the United States. These notices are sent in an apparent effort to comply with State statutes which require that notice be given to the foreign country concerned when one of its nationals leaves an estate in which it may have an interest. In such cases, the Department returns the notice to the sender with the suggestion that the notice be sent directly to the embassy or legation concerned.

Your third question was whether or not it would have been possible to transmit the summons by means of a diplomatic note. The Department would not, in the absence of express statutory or treaty provision, attempt to transmit the summons by an official diplomatic note to the embassy of a sending state, unless the embassy indicated a willingness to accept the summons.

. . . . .

Question five of your letter asks whether the Department of State would consider having American diplomatic officers serve summonses on foreign embassies. The Department considers that its officers do not have authorization to make service of summonses against foreign governments through their embassies here. Moreover, since diplomatic representatives of foreign governments are not generally authorized to accept service of process on behalf of their government, and since they are immune from service of process, it is doubtful whether service of summons—be it by a Department officer or marshal—would be effective to give *in personam* jurisdiction to a United States court. Finally, the Department believes that it would not be in the best interests of the United States to require either personnel of the Department of State or American diplomatic officers temporarily assigned to duty in the Department to serve such process. The establishment by one country of a diplomatic mission in the territory of another does not implicitly or explicitly empower that mission to act as agent of the sending state for the purpose of accepting service of process. The Department of State, as in the case of any other foreign office, may not impute such authority to the diplomatic mission of the sending state.

Your sixth question was whether it would make any difference if a summons were served in the premises of an embassy by a process server or by a diplomatic officer. Article 22 of the Vienna Convention on Diplomatic Relations states that the premises of the mission shall be inviolable, and that the agents of the receiving state may not enter them except with the consent of the receiving state. This Article, which is declaratory of international law and practice, does not differentiate between agents who can and agents who cannot enter an embassy. The Department is of the view that the transmission of a summons, whether by a process server or by a diplomatic officer, should not be by personal service within the premises of the embassy of the sending state, except with the consent of the embassy.

. . . . .

(Letter from the Acting Legal Adviser, Leonard C. Meeker, to the Assistant Attorney General, John W. Douglas, dated Aug. 10, 1964.)

Organization of American States

Application of the Rio Treaty to Cuba

On August 4, 1964, a Department of State spokesman made the following statement concerning the decision of July 26, 1964,* of the Ninth Meeting of Consultation of the O.A.S. Foreign Ministers, held at Washington to consider Venezuelan charges of Cuban intervention and aggression, to apply the provisions of the Rio Treaty to Cuba:

> We consider that the Rio Treaty was correctly applied by the foreign ministers at their recent meeting. The acts of the Cuban

* For text of the Final Act signed at the conclusion of the meeting, see 51 Dept. of State Bulletin 179 (1964).