

10. *What are the views of your Government as to the feasibility of establishing any regional or sub-regional arrangements to facilitate the investigation of economic crimes and the prosecution of offenders? What regional or sub-regional arrangements would, in your opinion, be appropriate for the purpose?*

Note: In the countries of EEC, there is the Naples Convention of 1967 on mutual assistance. In respect of customs and excise, the European Communities Act 1971 provides for the co-operation of the commissioners of customs and excise with other customs services on matters of mutual concern and in particular to give effect to any reciprocal arrangement made between member States for securing by the exchange of information or otherwise, the due administration of their customs laws and the prevention or detection of fraud or evasion. Under the Benelux Treaty of 1952 there are provisions for mutual assistance including the possibility of action by the customs officer of the jurisdiction upon the territory of the other when acting as part of combined control. Similarly, in customs matters, there is a provision for the co-operation of police outside their local territory with national officers, and the conferment of a right of fresh pursuit.

The European Convention on Mutual Assistance in Criminal Law Matters, which opened for signature on 20 April 1959, excluded from its purview, fiscal offences. However, Sub-Committee No XXXI of the European Committee on Crime Problems had proposed in 1976, certain draft additional protocols to the above Convention. The intention of the Sub-Committee was to place fiscal offences on the same footing as ordinary offences. Article 2 of the proposed additional protocol provides :-

ARTICLE-2

In the case where a Contracting Party has made the execution of letters rogatory for search or seizure of property dependent on the condition that the offence motivating the letters rogatory is punishable under both the law of the requesting Party and the law of the requested Party, this condition shall be fulfilled, as regards fiscal offences, if the offence is punishable under the law of the requesting Party and corresponds to an offence of the same nature under the law of the requested Party. The request may not be refused on the ground that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, customs or exchange regulation of the same kind as the law of the requesting Party.

Another important aspect which the Sub-Committee considered was the question of speedy return of property which has very often entered a State as stolen property and without payment of any duties etc. This is an important area of reciprocal and mutual assistance and needs further examination.

11. *Which country, in your opinion, should have jurisdiction to prosecute and punish an offender for an economic crime where the various elements constituting the punishable offence are committed in different jurisdictions? In regard to such offences the substantive law of which country should be applied?*

Note: It is well known that in economic offences of a transnational character the various acts or omissions constituting the offence may be committed in different jurisdictions and by virtue of *nexus* doctrine more than one State may be competent to try and punish the offender. For example, the State where the offender is found, the

State where the conspiracy to commit the offence has been hatched, the State which has been the victim of the offence all have the jurisdiction to try the offender. It is desirable to establish some principle to determine as to which of the States concerned shall have priority in the matter of trial and punishment of the offender. Furthermore, the laws of different countries vary on the question of the criminality of an act or omission as also on the question of punishment. It is, therefore, desirable to formulate some principles to determine the applicable substantive law to such prosecutions.

12. *What principles should, in your opinion, govern the question of extradition of fugitive offenders in respect of economic offences of a transnational character?*

Note: Extradition laws vary from country to country and in some cases extradition is not permissible for fiscal offences. This position needs to be reviewed and some principles should be established which would permit extradition of the offender to the country which would have jurisdiction to try him.

13. *Has your country entered into any bilateral, sub-regional or regional arrangements for extradition of economic offenders? What regional/sub-regional arrangements would, in your opinion, be appropriate for the extradition of economic offenders?*

Note: The European Convention on Extradition which entered into force on 18 April 1960 contained the following article in respect of fiscal offences :—

“Extradition shall be granted, in accordance with the provisions of this Convention, for offences in connection with taxes, duties, customs and exchange only if the Contracting Parties have so decided in respect of any such offence or category of offences.” (Articles 5).

In 1976, the Sub-Committee, No. XXXI of the European Committee on Crime Problems suggested in a draft additional protocol that the above article of the Extradition Convention be replaced by the following provisions :

- “1. For offences in connection with taxes, customs, and exchange, extradition shall take place between the contracting parties in accordance with the provisions of the Convention if the offence, under the law of the requested Party, corresponds to an offence of the same nature.
2. Extradition may not be refused on the ground that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, customs or exchange regulation of the same kind as the law of the requesting Party.”

It is possible that a State Party to the Protocol is willing to envisage extradition only for certain fiscal offences or certain categories of fiscal offences; for this reason Article 8 (2) (a) of the Additional Protocol permits such a State to make the appropriate reservation.

14. *What measures, in your opinion, would be appropriate in the field of judicial cooperation in respect of economic offences?*

Note: The most promising areas of international judicial co-operation concern the exchange of information and the international recognition of foreign penal judgments. The work of the Council of Europe has resulted in the European Convention on the International Validity of Criminal Judgments (1970) and the European Convention on the Transfer of Proceedings in Criminal Matters (1972).

The provisions on judicial assistance and co-operation provided for in the European Convention on Mutual Assistance in Criminal Law Matters (1959), would also be

available in respect of fiscal offences with the adoption of the additional protocol proposed in 1976 by the Sub-Committee No. XXXI of the European Committee on Crime Problems.

According to the Report of the Working Group IV of the UN Committee on Crime Prevention and Control on Judicial Processes in relation to the Prevention of Crime, judicial and legislative action to deal with such offences includes extensions of jurisdictions to allow national courts to deal with foreign offences and foreign offenders in certain circumstances, and international conventions to permit the extradition and sentencing of persons who have committed such offences.

15. *What, in your opinion, should be the principles for recognition of a foreign judgment rendered in penal proceedings and how should it be enforced?*

Note : Recognition and enforcement of foreign judgments in civil proceedings take place under the local laws of various States where arrangements for such purpose have been made between the States concerned on a reciprocal basis. It is for consideration as to on what basis penal judgments should be recognised because the penalty prescribed for various offences vary from State to State and at times acts or omissions which are regarded as offences in one country are not so regarded in another. Furthermore, the question of execution of penal sentences passed by the court of a country may present difficulties when the same is to be executed in another.

- 16 *Has your country experienced any difficulty in respect of the recognition and enforcement of a judgment rendered by your courts against an economic offender? If so, kindly indicate the nature of such difficulty.*

17. *Has your country at any time refused to recognise a foreign judgment in respect of economic offences? If so, kindly indicate the reasons for the same.*
18. *What comments, if any, would you like to offer on the international plan of action on corrupt practices, particularly illicit payments in international commercial transactions, suggested by the Ad hoc Intergovernmental Working Group on Corrupt Practices established by the United Nations Economic and Social Council ?*

VI. TERRITORIAL ASYLUM

TERRITORIAL ASYLUM

The subject of "Territorial Asylum" was discussed by this Committee at its Kuala Lumpur Session held in 1976. It was pointed out that the 1951 Convention on the Status of Refugees did not deal directly with the law of asylum or the question of admission of aliens, and it was therefore considered necessary to promote the progressive development of international law relating to this subject.

With regard to the provisions of a Convention on Territorial Asylum in general, one delegate pointed out that three fundamental elements should find expression in such a convention: first, a certain limitation on the discretionary right of States to grant asylum; secondly, a broad and unambiguous statement of the principle of *non-refoulement* which would provide for protection at the stage of rejection at the frontier; and thirdly, the inclusion of an article on extradition in consonance with recent developments which recognized that a person might not be extradited in respect of common law offence to a country to which he might not be expelled by virtue of the principle of *non-refoulement*. As regards the difference between the Bellagio draft and the Geneva draft, it was pointed out that whereas the former applied the principle of *non-refoulement* to the stage of rejection at the frontier, under the latter contracting States were required only to use their best endeavours to ensure that the principle was applied. This was considered to be more restrictive than the provisions of the U.N. Declaration or the OAU Convention.

It was felt that the first question which the Conference on Territorial Asylum would have to consider was whether

there was a need for a separate convention on territorial asylum in view of the fact that there were various other instruments which dealt with legal principles relating to territorial asylum. It was suggested that while dealing with the question of asylum, care should be taken to ensure that the principles of territorial asylum would be consonant with the principles embodied in the U.N. Charter regarding sovereign equality of States and also that the provisions should be clear and precise. It was stressed that any obligation to grant asylum should not have the implication of interference in the domestic affairs of a State.

Another delegate drew attention to the problems arising out of the use of the expression "owing to a well-founded fear" and the proviso to Article 1 of the Bellagio text which provided that the article shall not apply to any person who seeks asylum for reasons of a purely economic character.

On 2 July 1976, the Plenary after a general discussion, decided to constitute a Sub-Committee to examine various issues more closely. The Sub-Committee consisted of the delegates of Bangladesh, Egypt, Ghana, Mauritius, Oman and Pakistan. It met under the chairmanship of the delegate of Mauritius. The delegate of Egypt acted as the rapporteur. The observer from UNHCR provided technical assistance to the Sub-Committee's work.

Basing itself on the comprehensive document made available by the Secretariat on the question of the proposed Convention on Territorial Asylum, the Sub-Committee decided first to have a general discussion on the overall question and then to examine the drafts article by article. It had before it the draft prepared by experts at Bellagio as well as the draft as reviewed by governmental experts at Geneva pursuant to the General Assembly Resolution 3272 (XXIX). The 1969 OAU Convention and the 1951 Geneva Convention relating to the Status of Refugees as well as the Bangkok Principles

adopted by the Committee served as background material along with all other international instruments directly or indirectly relevant to the question of territorial asylum.

The Sub-Committee felt, on the whole, that the initiative of the General Assembly to hold a Conference of Plenipotentiaries at Geneva from January 10 to February 4, 1977, was a welcome initiative in the context of development and codification of international humanitarian law. One delegate felt that it should be ensured that the proposed Conference would lead to positive development of existing international law and practice. Should it appear that this might not be the case, it would be desirable to review the question of holding the conference early next year. The delegate also felt that any convention on territorial asylum must be so elaborated as to take care adequately of the following important concerns of governments: (i) that no provisions of such a convention allow or enable interference in the internal affairs of States; (ii) that common offenders are not able to invoke and benefit from it; and (iii) that it does not, in any manner, lead to a situation endangering security of States.

The Sub-Committee then proceeded to examine, article by article, the draft text as reviewed by the group of governmental experts at Geneva. This was done in conjunction with the earlier draft prepared by experts at Bellagio and bearing in mind the Bangkok Principles concerning the Treatment of Refugees elaborated by the Committee in 1966. Following is an account of the discussion of the Sub-Committee.

Preamble

The Sub-Committee felt that the text was an improvement upon the Bellagio draft to the extent that the governmental experts recommended the addition of paragraphs 3A, 4A and 6A to the Preamble. It found the text of the Preamble in order except preambular paragraph 3 where one

delegate felt that the reference to Articles* 12 and 13 of the Covenant on Civil and Political Rights created some difficulty. Referring to Article 31 of the Vienna Convention on the Law of Treaties, 1969, the delegate felt that in the interpretation of the proposed Convention on Territorial Asylum, the preambular paragraph 3 might give the impression of a binding character since some of the States parties to the Convention on Territorial Asylum might not become parties to the Covenant. Others felt that the wording of the paragraph as a whole did not necessarily lead to such a conclusion. After further discussion, the Sub-Committee felt that governments might wish to review more closely the wording of this preambular paragraph.

* Article 12 of the Covenant on Civil and Political Rights reads as follows:

- "1. Every one lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Every one shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country".

Article 13 of the Covenant states:

"An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority".

Article 1

Discussion took place upon the desirability of inclusion in the article of the words "..... shall use its best endeavours ...". One delegate felt that the use of the word "shall" and the overall wording of the article created the impression of an obligation on States and thus led to a contradiction in view of the words "acting in the exercise of its sovereign rights" used in the same article. Others felt, however, that although the article was an improvement upon existing provisions, e.g. Article 14 of the Declaration of Human Rights, the words "best endeavours" would be open to interpretation. It was thought that governments should attempt another formulation in order to remove the ambiguity inherent in the words "use their best endeavours".

Comparing this article to the corresponding article of the Bellagio draft, some delegates felt that it was unfortunate that the experts had deleted the provision: "asylum shall not be refused by a Contracting State solely on the ground that it could be sought from another State". It was felt that it would be advantageous to retain this provision since it represented an important development in the law of asylum and would help remedy a lacuna that could exist in the practice of States.

Article 2

One delegate wondered whether it would not be appropriate to replace the words "owing to well-founded fear of" by "has reasonable grounds to believe that he would be subjected to" and adjust the rest of the provision accordingly. The discussion indicated, however, that in view of the history of the term "well-founded fear" which had already been used in the 1951 Convention on the Status of Refugees and the 1969 OAU Convention and the fact that it had come to acquire, through practice and existing jurisprudence, a specific and precise meaning, it would be best to maintain the

term. It was also pointed out that, in the case of well-founded fear, both subjective and objective elements must be present for the person to be considered eligible.

One delegate enquired whether the use of the notion of "nationality" as one of the grounds for persecution was relevant and pointed out in this connexion that obviously within the country of one's nationality, it was inconceivable that persecution could take place on account of nationality. The Sub-Committee examined the historical background of its inclusion in all earlier international instruments and found that its inclusion could cover certain specific situations.

One delegate pointed out that in connexion with the inclusion of "race" in the sub-paragraph, it would be desirable, for the sake of consistency and in order to include the notion of struggle, if governments were to consider the possibility of adding the word "racism" after the word "*apartheid*".

The Sub-Committee felt that the second part of the article dealing with exclusion clauses should retain the following provision which appeared in the Bellagio draft: "any person who seeks asylum for reasons of a purely economic character". One delegate felt that the wording should, in fact, be even more precise and comprehensive and should be so worded as to exclude from the benefit of the convention persons who have committed "economic offences punishable by law".

Article 3

The Sub-Committee discussed the wording of Article 2 of the Bellagio draft as compared to paragraph 1 of Article 3 of the draft as reviewed by governmental experts at Geneva. It found the former to be more precise and felt that governments should further study the latter in order to give it the precision of Article 2 of the Bellagio draft as well as existing provisions on *non-refoulement* in relevant international instruments.

The Sub-Committee further felt that the draft as reviewed by governmental experts at Geneva no longer contained an

appropriate provision with regard to the principle of non-extradition. The relevant article in the Bellagio draft reads as follows: "No person shall be extradited to a State to the territory of which he may not be returned by virtue of Article 2 (referring to *non-refoulement*)". It was concluded that, having due regard to the treaty obligations of States concerning bilateral extradition arrangements, which could be covered by an appropriate proviso, governments should favourably consider the possibility of a provision on the subject in the proposed Convention.

Articles 4, 5, 6 and 7

The Sub-Committee took note of Articles 4, 5 and 7. As regards Article 6 relating to voluntary repatriation, it felt that this provision was a welcome addition in the draft Convention. The Sub-Committee noted that the article required the contracting States not to place any obstacle in the way of repatriation and stressed the importance of the notion of voluntary repatriation both as regards the country of asylum and the country of origin.

Article 8

One delegate felt that this article could more appropriately be part of Article 1. However, the Sub-Committee found that in view of the division of articles into chapters and the heading of chapter II under which Article 8 appears, it would be desirable to retain it in its present place.

Furthermore, it was suggested that a new article be added in order to retain the notion expressed in paragraph 2 of Article 10 of the Bellagio draft. While paragraph 1 of that article was now a part of the exclusion clause in paragraph 2 of Article 2 of the draft as reviewed by governmental experts, the following provision (which formed paragraph 2 of the Bellagio draft) should be retained and not deleted: "Without prejudice to the provisions of regional conventions, a State incurs international responsibility for the actions of