

state may also take into account other necessary circumstances before deciding. As highlighted by the Inter-American Extradition Convention on this question :

"When extradition is requested for the same offence, the requested State shall give preference to the request of the State in which the offence was committed. If the requests are for different offences, preference shall be given to the State seeking the individual for the offence punishable by the most severe penalty, in accordance with the laws of the requested State. If the requests involve different offences that the requested State considers to be equal gravity, preference shall be determined by the order in which requests are received."

Article 14

Seizure of Property, Articles etc.

Articles seized which were in the possession of the fugitive, at the time of his arrest, and which may be used as proof of the offence shall be delivered to the requesting State at the time of the actual extradition.

Commentary

While arresting the fugitive it is the duty of the requesting State to seize all articles and objects that are found with him. This is essential since they might be needed during the committal proceedings in the requesting State as evidentiary objects. It is also the duty of the requested State to deliver all such articles seized from the fugitive to the requesting State. In view of the unanimity that prevails within the Committee and elsewhere the present draft article is almost identical to that of 1961 principles on this matter.

Article 15

Abduction of the Fugitive

If the fugitive is abducted from the requested State by the agents of requesting State, the requested state shall be entitled to demand the return of the fugitive.

Commentary

The question of abduction instead of formal extradition of a fugitive by the agents of the requesting State came into limelight after the seizure on May 11, 1960 of Adolf Eichmann by "private" Israeli citizens in Argentina and his transportation to Israel on an Israel's aircraft to face trial as a Nazi war criminal.⁶² It may, however, be noted that the extradition of a fugitive is a prerogative of the asylum/requested State and that the requesting State i.e. the State which seeks jurisdiction over the fugitive has an obligation to seek the consent of the territorial State where the fugitive is hiding. It is not a question of protection by the requested State for the fugitive but of its prerogative to have a say on the matters that take place within its territory. That is why the draft article makes it explicit that the requested State still has the right to demand the custody of the fugitive who might have been abducted by force by the agents of the requesting State.

Article 16

Deferral of Surrender

When the fugitive is being tried or is serving a sentence in the requested State for an offence other than the one which extradition is requested, surrender may be postponed until he is set free either through acquittal, completed service or commutation of sentence, dismissal, pardon or grace. Civil suit that may be pending against the fugitive in the requested State would not however defer his surrender.

Commentary

There might be a situation wherein a request for extradition may be made to procure a fugitive who is on trial in the requested State. Under such circumstances, it is the practice to wait for the final disposal of the on-going trial by the requested State. Therefore, the surrender could be postponed until the final ruling of the case. However, if the trial in the requested State takes unduly long time, the States concerned could arrive at a decision through negotiation as to whether to postpone the case of the fugitive to stand trial in

⁶² See Gerhard Von Glahn, *Law Among Nations : An Introduction to Public International Law*, Second Edition, (1970) pp. 268, 269.

the requesting State. Postponement or deferral of extradition is permissible only to a criminal case but not in civil cases.

Article 17

Provisional Arrest

In case of urgency the requesting State may request the provisional arrest of the fugitive and the requested State may do so and keep the fugitive in custody.

Commentary

Normally the fugitive is kept in custody after committal proceedings are over and the decision has been taken that the fugitive shall be extradited. However, in urgent cases the custody may precede the committal proceedings. Although the requesting State may request the requested State to do so, ultimately, it is at the discretion of the requested State to keep the fugitive in custody or not before committal. This matter, however, seem to be analogical to the preventive custody and accordingly would depend upon the provisions of relevant laws.

Article 18

Urgent Requests

1. In urgent cases requests for extradition may be made by post, telegram, or telephone, provided that requests include a short account of the offence, a notification that a warrant of arrest has been issued by the competent authority and that extradition shall be requested through diplomatic channel or other appropriate channels.
2. The requested State may, if necessary, arrest and detain the fugitive for a period not exceeding thirty days, after which he shall be released unless the written request accompanied by the necessary details of information are received.
3. If the request is made by post, telegram or telephone the requested State shall have the right to ascertain the request by seeking a written request from the requesting State.

Commentary

This article addresses the possible modes of communication relating to urgent requests for urgent extradition. Similar provision is found in almost all the modern extradition arrangements although with slight variations. In the case of urgency it may not be possible to adopt all the formalities or pre-requisites of a normal extradition request. That is why it may be provided for the use of simpler communication means such as posts, telegraphs, telephones and other modern communication means. Such requests need not even be sent through diplomatic channels and the governments could communicate directly at ministerial level. However, it may be pointed out that urgent requests would result only in provisional arrest of the fugitive and within the time limit set by the requested State. The requesting State shall have to make a proper and formal request in order to effect the surrender of the fugitive. The requested State has the right to set free the fugitive from provisional arrest if the requesting state has not presented the necessary details of information within the time set by the former.

Article 19

Extradition of a Third State's National

If the fugitive whose extradition is requested is not a national of the requesting State, the requested State may notify the State of which the fugitive is a national, of that request as soon as it is received in order to enable the said State to defend him if necessary.

Commentary

There are instances in which a State may be requested to surrender the fugitive who may be the national of a third State, having committed an extraditable offence within the territory of the requesting State. This is slightly different from concurrent requests wherein the State of the fugitive besides the requesting State may request the extradition on the basis of active nationality principle. Here the situation may be that the national state may not be aware that one of its nationals having committed an extraditable crime in one country has fled to a third country. Although the requested State in whose territory the fugitive is found has the right to decide on the question of surrender, it is however in the interests of comity of nations, to notify the

national State of the fugitive giving it an opportunity to be aware of the matter and if possible, to defend the fugitive. Those States who subscribe to the non-extradition of their nationals may find such provision useful.

Article 20

Re-extradition

The requesting State shall not without the consent of the requested State, surrender the fugitive to a third State in respect of offence committed before the surrender.

Commentary

The basic presumption of extradition law is that the fugitive is surrendered to the requesting State to stand trial or serve sentence only for the specific offence or sentence for which he was sought to be extradited. Therefore, the requesting State has an obligation to obtain the consent of the requested State if there is an intention to hand over the fugitive to a third country. The requested State has the right to decide the fate of the fugitive in relation to other offences that he might have committed other than the one for which he was surrendered. Such provision is found in the European Convention on Extradition,⁶³ and it may be adopted by the AALCC.

Article 21

Procedural Law

The procedure with regard to extradition, provisional arrest or committal before the judicial authorities shall be in accordance with the law of the requested State.

Commentary

Basically extradition is a domestic matter and analogical to a trial under the domestic law, although it has an international element in as much as the request for surrender comes from another State. However,

63. Article 15 of the European Convention.

the extradition process relating to provisional arrest, committal, evidence will have to be in accordance with the law of the requested State.

Article 22

Simplified Extradition (Waiver of Committal Proceedings)

The requested State may grant extradition without a formal extradition proceeding if : the fugitive sought irrevocably consents in writing to the extradition after being advised by a judge or other competent authority of his right to a formal extradition proceeding and the protection afforded by such proceeding.

Commentary

There is a possibility where the whole process of committal proceedings might become superfluous in view of the possibility that the fugitive may not contest the decision to surrender him. This amounts to a virtual waiver of committal proceedings by the fugitive and of course with the full knowledge of the consequences of such a voluntarism. Extradition arrangements such as Inter-American Convention and Commonwealth Scheme provide for such waiver of committal procedure by the fugitive. It is, however, the duty of the requested State to advise him of his rights as a fugitive.

Article 23

Rights of the Fugitive

The fugitive sought shall during the process of extradition, enjoy all the legal rights and guarantees granted by the law of that State.

The fugitive shall be assisted by legal counsel and if the official language of the requested State is other than his mother tongue, he shall also be assisted by an interpreter free of cost.

Commentary

This article guarantees the equality before the law of the requested State if he decides to contest the decision to extradite him. The

requested State is obliged in such cases to provide the fugitive with adequate legal assistance, for instance, the service of a legal counsel and an interpreter free of cost. This would guarantee the fugitive impartiality in the requested State.

Article 24

Costs of Extradition

The requesting State shall bear all expenses incurred in the execution of the request, and if the fugitive is discharged or acquitted, the said State shall bear the expenses necessary for his return to the requested State.

Commentary

The requesting state is expected to bear the expenses that might accrue in the execution of an extradition. For instance, the cost of conveyance, transport etc. from the territory of the requested State to the territory of the requesting State. In the event of the fugitive being acquitted or discharged the requesting State shall bear the expenses for the fugitive's return to the requested State.

XI. Indian Ocean as a Zone of Peace

(i) Introduction

At the Twenty-Eighth Session of the Committee, held in Nairobi in February 1989, the Committee decided to inscribe the item "Indian Ocean as a Zone of Peace" on its agenda and directed the Secretariat to prepare a study for its consideration at the following Session. Pursuant to that decision, the Secretariat prepared a Preliminary Study which focussed on the work of the United Nations *Ad hoc* Committee on the Indian Ocean as a Zone of Peace.

At the Twenty-ninth Session held in Beijing, due to paucity of time, the item could not be discussed in detail and the Committee directed the Secretariat to prepare a further study for consideration at the Thirtieth Session of the Committee.

In view of the continued deadlock in the work of the *Ad hoc* Committee, since the withdrawal of the United States, United Kingdom and France and some other Western States members of the *Ad hoc* Committee, no further progress could be made at the United Nations. The Secretariat while briefly reviewing these developments had updated its study for the Thirtieth Session (1991) which was earlier submitted for consideration at the Beijing Session (1990).

XI. Indian Ocean as a Zone of Peace

(1) Introduction

At the Twenty-Ninth Session of the Committee, held in 1990, the Committee considered the report of the Secretary-General on the Indian Ocean as a Zone of Peace. The Committee noted the report and the Secretary-General's conclusions and recommendations. The Committee also noted the Secretary-General's request for the Committee to consider the report and the Secretary-General's recommendations. The Committee decided to consider the report and the Secretary-General's recommendations at its Thirty-First Session in 1991.

The Committee also decided to consider the report and the Secretary-General's recommendations at its Thirty-First Session in 1991. The Committee also decided to consider the report and the Secretary-General's recommendations at its Thirty-First Session in 1991.

(ii) Decisions of the Twenty-Ninth Session

Agenda Item : Indian Ocean as a Zone of Peace

- The Committee took note of the Report on Indian Ocean as a Zone of Peace in Doc. No. AALCC/XXIX/90/7.
- The Committee directed the Secretariat to make a substantive study on the issues raised in the report and submit a report to the 30th Session of the AALCC.
- It was decided that the item should be kept on the agenda of the forthcoming 30th Session of the Committee in 1991 and the subject should receive due consideration.

(iii) Secretariat Study Indian Ocean as a Zone of Peace

Note on the work of the Ad Hoc Committee on the Indian Ocean as a Zone of Peace

The item entitled "*Declaration of Indian Ocean as a Zone of Peace*" was included in the agenda of the General Assembly in 1971, at the request of Sri Lanka and, subsequently joined by the United Republic of Tanzania. At that session, the General Assembly adopted the historic resolution 2832 (XXVI) by which the Indian Ocean, within limits to be determined, together with the airspace above and the ocean floor subjacent thereto, was designated for all time as a *zone of peace*. The Assembly called upon the great powers to enter into consultations with the littoral states of the Indian Ocean with a view to halting the further escalation of their military presence there and eliminating from the area all bases, military installations and logistical supply facilities, nuclear weapons and other weapons of mass destruction. Further, as a step towards the implementation of the Declaration, the Assembly urged the littoral and hinterland states of the Indian Ocean, the Permanent members of the Security Council and other major maritime users of the Indian Ocean to enter into consultations to achieve the objectives whereby :

- (a) Warships and military aircraft would not use the Indian Ocean for any threat or use of force against any littoral or hinterland State;
- (b) The right to free and unimpeded use of the zone by the vessels of all nations would be ensured; and

- (c) International agreement would be reached for the maintenance of the Indian Ocean as a *Zone of Peace*.

In the following year, the General Assembly established a fifteen member *Ad hoc Committee on the Indian Ocean* to study the measures to implement the Declaration. At the subsequent sessions, the General Assembly decided to enlarge the membership of the Committee. At present it is composed of 49 Member States.¹

During the course of the last eighteen years, the deliberations in the *Ad hoc Committee* have been marked by many ups and downs. The first breakthrough was the convening of a Meeting of the Littoral and Hinterland States of the Indian Ocean in 1979. That meeting, in its Final Act, elaborated the basic principles concerning the implementation of the Declaration of 1971. One of the recommendations of that Meeting was the convening of a United Nations conference on the Indian Ocean, which was subsequently endorsed by the General Assembly at its Thirty-fourth Session by Resolution 34/80B.

In 1985, the *Ad hoc Committee* established an open-ended working group to identify, expand and facilitate agreement on substantive issues relating to *Ad hoc Committee* elements which might be taken into consideration for the preparation of the draft of the final document of the conference.

Subsequently, the Working Group agreed to recommend 20 substantive issues and principles as a basis for further elaboration. These elements were as follows :

1. Respect for the Charter of the United Nations and International Legal Obligations.
2. Respect for the national sovereignty, the political independence, the territorial integrity and the inviolability of internationally accepted frontier of *littoral* and *hinterland* States.
3. Refraining from the threat or use of force.
4. Peaceful settlement of disputes.

1. Australia, Bangladesh, Bulgaria, Canada, China, Democratic Yemen, Djibouti, Egypt, Ethiopia, France, German Democratic Republic, Germany, Federal Republic of, Greece, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Japan, Kenya, Liberia, Madagascar, Malaysia, Maldives, Mauritius, Mozambique, Netherlands, Norway, Oman, Pakistan, Panama, Poland, Romania, Seychelles, Singapore, Somalia, Sri Lanka, Sudan, Thailand, Uganda, Union of Soviet Socialist Republics, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Yemen, Yugoslavia, Zambia and Zimbabwe.

5. Right to self-determination of people under colonial, alien or foreign domination and right of States to determine their own political, social and economic systems.
6. Non-intervention and non-interference in the internal affairs of States.
7. Right of individual and collective self-defence.
8. Freedom of navigation and over-flight in accordance with international law.
9. Development of friendly relations between States on the basis of the Charter of the United Nations and taking into consideration the five principles of peaceful coexistence.
10. Promotion of international security through regional and other means.
11. Halting of great power military/naval confrontation in the Zone.
12. Halting and reversing of the arms-race among militarily significant extra-regional powers, and among *littoral* and *hinterland* States.
13. Promotion and adoption of effective measures of disarmament in the Zone within the overall goal of general and complete disarmament.
14. Withdrawal of foreign military/naval presence and dismantling of foreign bases contrary to the objectives of the Declaration of the Indian Ocean as a Zone of Peace.
15. Assurance by nuclear-weapon States of the non-use of nuclear weapons against littoral and hinterland States.
16. Non-proliferation of nuclear weapons.
17. Promotion of confidence-building measures in all their aspects.
18. Promotion of co-operation and peaceful exchanges in political, social, economic, technical, cultural and other fields, including measures for the protection of the marine environment.
19. Promotion of economic cooperation including regional co-operation and trade.
20. Respect for human rights and fundamental freedoms.

The *Ad hoc Committee* was able to make considerable progress on the organizational matters in relation to the conference. However, no agreement could be reached on some substantial issues, including the timing for the convening of the United Nations Conference.