

Commentary

The provisions of Articles 19 and 20 relating to the performance of extradition are in conformity with existing international practice and are contained in most extradition treaties and conventions. Wherever diplomatic relations between the States have not been opened, the Committee decided that the requests for extradition may be made directly by one Government to another, or through consular channels if desirable.

Article 21

If a person is abducted from a State by the agents of another State which wishes to prosecute or enforce judgment on him, the State from which he was abducted shall be entitled to demand his return.

Commentary

This Article relates to the problem of the recovery of fugitives. At the Colombo Session all the Delegations were agreed that the State from whose territory the abduction took place should be entitled to demand the return of the abducted person. At the Tokyo Session the text of the Article was modified and adopted.

Article 22

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

Note: The Delegations of Burma, India and Pakistan did not accept the provisions of this Article in view of their position on the provisions of Article 5.

Article 23

The person whose extradition is sought may be provisionally arrested and kept under supervision until the question of extradition is decided upon.

Note: The Delegations of Ceylon, India and Pakistan did not accept the provisions of Article 23.

Article 24

(1) In urgent cases requests for extradition may be made by post, telegram or telephone, provided that such 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 channels. In such cases the requested State shall take the necessary precautions to keep the person in question under supervision until it receives the written extradition request. The requested State may, if necessary, arrest and detain the said person for a period not exceeding thirty days, after which he shall be released if the written request accompanied by the necessary documents, or a request for the renewal of his detention for a period of thirty days at the most, has been received. At the expiry of the renewal period, the person in question is immediately released if the written request accompanied by the necessary documents has not been received.

(2) The period of detention shall be deducted from the period of imprisonment to which he is sentenced in the requesting State.

(3) If the request is made by post, telegram or telephone, the competent authorities in the requested State may, if necessary, communicate with the competent authorities in the requesting State, to ascertain the request.

Note: (i) The Delegations of Iraq and the United Arab Republic accepted the whole of this Article.

(ii) The Delegations of Indonesia and Japan accepted Clauses (1) and (3) of this Article.

(iii) The Delegations of Burma, Ceylon, India and Pakistan did not accept the provisions of this Article.

Article 25

Articles seized which were in the possession of the person being extradited, at the time of his arrest, and which may be used as proof of the offence shall be delivered to the requesting State when extradition takes place, and that in so far as the laws of the extraditing State permit.

Note: The Delegation of Pakistan reserved its position on this Article.

Article 26

The requesting State shall bear all expenses incurred in the execution of the request, and if the extradited person is discharged or acquitted, the said State shall bear the expenses necessary for his return to the State from which he was extradited.

Article 27

The State which granted extradition may release the person in question, if the requesting State does not take him away within a period of one month from the date of its notification of the order of extradition to the requesting State.

Article 28

If extradition takes place as a result of fraud, deceit or misrepresentation or any similar fault on the part of the requesting State or its agents, the State which extradited the person may demand his return.

Note : The Delegation of India did not accept the provisions of this Article as in its view it would be difficult to determine as to which should be the competent authority to decide as to whether the extradition had taken place as a result of fraud, deceit or misrepresentation.

Article 29

Each contracting party shall upon presentation of a copy of the extradition order, grant facilities for the transit through their territories, of persons surrendered by one of them to the other and ensure their safe custody.

Note : This Article would apply only in cases where a multilateral convention is drawn up, and was accepted only by the Delegations of Iraq and the United Arab Republic. The Delegations of Burma, Ceylon, and India did not wish to comment on this Article as they had expressed preference for extradition agreements being made through bilateral treaties. The Delegates of Pakistan and Indonesia reserved their position on this Article. The Delegate of Japan suggested deletion of the words "and ensure their safe custody".

Article 30

If the provisions of this agreement are in conflict with those of any bilateral agreement between two signatory States, those two States shall apply the provisions most suitable for facilitating extradition.

Note : This Article which would be applicable only in the case of a multilateral convention was accepted by the Delegations of Iraq and the United Arab Republic. The Delegations of Indonesia and Japan suggested the following Draft of this Article :

"The provisions of the present convention shall not affect the existing bilateral agreements concerning extradition between the contracting parties or shall not prevent the conclusion of such agreements in the future".

The Delegates of Burma, Ceylon, India and Pakistan did not comment on this Article due to the fact that the Article would be applicable only to multilateral conventions.

APPENDIX

ILLUSTRATIVE LIST OF EXTRADITABLE OFFENCES

(Suggested by the Delegation of India)

1. Culpable homicide.
2. Attempt to murder.
3. Causing miscarriage and abandonment of child.
4. Kidnapping, abduction, slavery and forced labour.
5. Rape and unnatural offences.
6. Theft, extortion, robbery and dacoity.
7. Criminal misappropriation and criminal breach of trust.
8. Cheating.
9. Mischief.
10. Forgery, using forged documents and other offences relating to false documents.
11. Offences relating to coins and stamps.
12. Piracy by law of nations committed on board or against a vessel of a foreign State.
13. Sinking or destroying a vessel at sea or attempting or conspiring to do so.
14. Assault on board a vessel on the high seas with intent to destroy life or to do grievous bodily harm.
15. Revolt or conspiracy to revolt by two or more persons on board a vessel on the high seas against the authority of the master.
16. Smuggling of gold, gold manufactures, diamonds and other precious stones or of any narcotic substances.
17. Immoral traffic in women and girls.
18. Any offence which may, from time to time, be specified by the Central Government by notification in the Official Gazette either generally for all States or specially for one or more States.

FINAL REPORT OF THE COMMITTEE ON THE STATUS OF ALIENS

1. The subject of Status of Aliens was referred to this Committee for consideration by the Government of Japan. The Ministry of Foreign Affairs of the Government of Japan in its memorandum dated the 20th February 1957, had stated that this question was one of common concern to Asian African countries and enumerated the various topics which arise for consideration on this subject. The topics listed are as follows :

Status of Aliens

I. Definition of the term "alien".

II. Entry of Aliens.

(1) Restriction on entry.

(2) Entry of fugitives.

Extradition—Kinds of extraditable crimes—Refusal to extradite—Right of Asylum.

III. Status of alien residents.

A. Status under public laws.

(1) Obligation to register.

(2) Personal duties—obligatory military service—Compulsory education—Liability to taxes.

(3) Suffrage—Status to be public officials.

B. Status under private laws.

(1) Respect of human rights and fundamental freedoms—Freedom of religion—Freedom to choose and change one's residence.

(2) Protection of person and property.

(i) Extent of protection.

National treatment—Most-favoured-nation treatment.

(ii) In case of nationalisation of property.

(iii) State responsibility for damages.

(iv) Protection of nationals abroad by home State.

(3) Restriction on business activities.

IV. Departure of aliens.

(1) Freedom of departure—The case when departure is not admitted.

(2) Enforcement of departure.

(i) Conditions of expulsion.

(ii) Proceedings of expulsion.

2. The subject was generally discussed at the Second Session of this Committee held in Cairo and the views of various Delegations were ascertained on the basis of a questionnaire prepared by the Secretariat of the Committee. The Committee at that Session decided that the subject, having regard to its importance, needed further study and directed the Secretariat to prepare a report in the light of discussions held at the Cairo Session. The Secretariat accordingly collected the relevant material and drew up a report in the form of draft articles containing the principles on the subject. The matter was discussed in detail during the Third Session of the Committee held in Colombo in January 1960. At that Session it was decided to separate the topics relating to Diplomatic Protection of Citizens Abroad and State Responsibility for Maltreatment of Aliens from the other topics on the Status of Aliens as in the opinion of the Committee those two topics did not relate to the substantive rights of aliens regarding their status and treatment. The Committee decided at the Session to consider separately these two topics at its future Sessions. The Committee was able to consolidate its provisional views on the other topics.

3. The draft articles containing the provisional views of the Committee on the subject of Status and Treatment of Aliens as adopted in the Colombo Session were submitted to the Governments of the participating countries for their comments, and the subject was placed on the Agenda of this Session for reconsideration in the light of the comments received from the Governments.

4. The subject was fully discussed at the present Session. The Committee having taken note of the comments made on the draft articles adopted at the Colombo Session and having heard the views of the Delegations of the participating countries present at this Session decides to draw up its final report in the form of draft

articles containing the principles regarding the Status and Treatment of Aliens or Foreign Nationals. The Committee directs the Secretariat to prepare the commentaries to these articles in the light of discussions held at the present Session and thereafter to submit the report together with the commentaries to the Governments of the participating countries.

5. The Committee is separately considering the topics relating to Diplomatic Protection of Citizens Abroad and State Responsibility for Maltreatment of Foreign Nationals on which some progress has been made. The Committee shall submit its report on these two topics to the Governments of the participating countries in due course.

(Sd.) R. W. Prodjodikoro.

Chairman

(Sd.) B. Sen.

Secretary

25-2-1961

PRINCIPLES CONCERNING ADMISSION AND TREATMENT OF ALIENS

(Adopted by the Committee at its Fourth Session)

Article 1

Definition of the term Alien

An alien is a person who is not a citizen or national of the State concerned.

Note : In a Commonwealth country the status of the nationals of other Commonwealth countries shall be governed by the provisions of its laws, regulations and orders.

Article 2

(1) The admission of aliens into a State shall be at the discretion of that State.

(2) A State may—

- (i) prescribe conditions for entry of aliens into its territory;
- (ii) except in special circumstances, refuse admission into its territory of aliens who do not possess travel documents to its satisfaction;
- (iii) make a distinction between aliens seeking admission for temporary sojourn and aliens seeking admission for permanent residence in its territory; and
- (iv) restrict or prohibit temporarily the entry into its territory of all or any class of aliens in its national or public interest.

Note : (1) The Delegation of Japan is of the view that in sub-clause (iv) of Clause (2) of this Article the words "armed conflicts or national emergency" should be substituted in place of the words "national or public interest".

(2) The Delegation of Indonesia stated that his Delegation preferred Clause (2) of Article 2 as adopted by the Committee at its Third Session in Colombo.

Article 3

A State shall not refuse to an alien entry into its territory on the ground only of his race, religion, sex or colour.

Article 4

Admission into the territory of a State may be refused to an alien—

- (i) who is in a condition of vagabondage, beggary or vagrancy;
- (ii) who is of unsound mind or is mentally defective;
- (iii) who is suffering from a loathsome, incurable or contagious disease of a kind likely to be prejudicial to public health;
- (iv) who is a stowaway, a habitual narcotic user, an unlawful dealer in opium or narcotics, a prostitute, a procurer or a person living on the earnings of prostitution;
- (v) who is an indigent person or a person who has no adequate means of supporting himself or has no sufficient guarantee to support him at the place of his destination;
- (vi) who is reasonably suspected to have committed or is being tried or has been prosecuted for serious infractions of law abroad;
- (vii) who is reasonably believed to have committed an extraditable offence abroad or is convicted of such an offence abroad;
- (viii) who has been expelled or deported from another State; and
- (xi) whose entry or presence is likely to affect prejudicially its national or public interest.

Article 5

A State may admit an alien seeking entry into its territory for the purpose of transit, tourism or study, on the condition that he is forbidden from making his residence in its territory permanent.

Article 6

A State shall have the right to offer or provide asylum in its territory to political refugees or to political offenders on such conditions as the State may stipulate as being appropriate in the circumstances.

Article 7

(1) Subject to conditions imposed for his admission into the State, and subject also to the local laws, regulations and orders, an alien shall have the right—

- (i) to move freely throughout the territory of the State; and
- (ii) to reside in any part of the territory of the State.

(2) The State may, however, require an alien to comply with provisions as to registration or reporting or otherwise so as to regulate or restrict the right of movement and residence as it may consider appropriate in any special circumstances or in the national or public interest.

Note : The Delegation of Indonesia expressed preference for the text adopted at the Colombo Session in Clause (1) of this Article.

Article 8

Subject to local laws, regulations and orders, an alien shall have the right—

- (i) to freedom from arbitrary arrest;
- (ii) to freedom to profess and practise his own religion;
- (iii) to have protection of the executive and police authorities of the State;
- (iv) to have access to the courts of law; and
- (v) to have legal assistance.

Note : (a) The Delegation of Ceylon was of the view that in Clause (ii) the expression "to freedom of religious belief and practice" should be substituted;

- (b) The Delegations of Burma and Indonesia suggested retention of Clause (2) of the Draft adopted at the Colombo Session which provides that "Aliens shall enjoy on a basis of equality with nationals protection of the local laws."

The Delegation of Iraq and Japan had no objection to the retention of this clause.

Article 9

A State may prohibit or regulate professional or business activities or any other employment of aliens within its territory.

Note : The Delegation of Iraq was of the view that the words "shall be free to" should be inserted in place of the word "may". The Delegation of Pakistan wished to keep its position open.

Article 10

An alien shall not be entitled to any political rights, including the right of suffrage, nor shall he be entitled to engage himself in

political activities, except as otherwise provided by local laws, regulations and orders.

Article 11

Subject to local laws, regulations, and orders and subject also to the conditions imposed for his admission into the State, an alien shall have the right to acquire, hold and dispose of property.

Note : The Delegation of Indonesia, whilst accepting the provisions of this Article, stated that according to the new laws of Indonesia aliens cannot acquire title to property though they can hold property.

Article 12

(1) The State shall, however, have the right to acquire, expropriate or nationalise the property of an alien. Compensation shall be paid for such acquisition, expropriation or nationalisation in accordance with local laws, regulations and orders.

(2) The State shall also have the right to dispose of or otherwise lawfully deal with the property of an alien under orders of expulsion or deportation.

Note : (i) The Delegation of Japan did not accept the provisions of this article. According to its view "just compensation" should be paid for all acquisition, nationalisation or expropriation and not "compensation in accordance with local laws, regulations, and orders." The Delegation could not accept the provisions of Clause (2) as such a provision would be contrary to the laws of Japan.

(ii) The Delegation of Indonesia reserved its position on Clause (2) of this Article.

(iii) The Delegation of Pakistan stated that though it accepted the provisions of this Article, the view of the Delegation was that acquisition, nationalisation or expropriation should be in the national interest or for a public purpose.

Article 13

(1) An alien shall be liable to payment of taxes and duties in accordance with the laws and regulations of the State.

(2) An alien shall not be subjected to forced loans which are unjust or discriminatory.

Note : (i) Clause (1) of this Article was accepted by all Delegations except that of Japan. The Delegation of Japan wished a proviso to that clause to be inserted to read as follows:

"Provided that the State shall not discriminate between aliens and nationals in levying the taxes and duties."

(ii) Clause (2) was accepted by the Delegations of Burma, India, Indonesia and Iraq.

The Delegate of Ceylon wished the words "or discriminatory" to be deleted. The Delegate of Japan wished the clause to be drafted as "An alien shall not be subject to forced loans." The Delegation of Pakistan suggested the following draft: "An alien shall not be subjected to loans in violation of the laws, regulations and orders applicable to him." The Delegation of the United Arab Republic was of the view that the draft should be as follows: "An alien shall not be subjected to forced loans."

Article 14

(1) Aliens may be required to perform police, fire-brigade or militia duty for the protection of life and property in cases of emergency or imminent need.

(2) Aliens shall not be compelled to enlist themselves in the armed forces of the State.

(3) Aliens may, however, voluntarily enlist themselves in the armed forces of the State with the express consent of their home State which may be withdrawn at any time.

(4) Aliens may voluntarily enlist themselves in the police or fire-brigade service on the same conditions as nationals.

Note : The Delegation of Indonesia reserved its position on the whole article.

The Delegation of Iraq reserved its position on Clause (3) of this article.

The Delegation of Japan wished Clause (3) of this article to be deleted.

Article 15

(1) A State shall have the right in accordance with its local laws, regulations and orders to impose such restrictions as it may deem necessary on an alien leaving its territory.

(2) Such restrictions on an alien leaving the State may include any exit visa or tax clearance certificate to be procured by the alien from the authorities concerned.

(3) Subject to the local laws, regulations and orders a State shall permit an alien leaving its territory to take his personal effects with him.

Note : (i) The Delegate of Pakistan reserved his position on Clause (3).

(ii) The Delegates of Ceylon and United Arab Republic wished the following clause to be retained in this article :

"An Alien who has fulfilled all his local obligations in the State of residence, shall not be prevented from departing from the State of residence."

Article 16

(1) A State shall have the right to order expulsion or deportation of an undesirable alien in accordance with its local laws, regulations and orders.

(2) The State shall, unless the circumstances warrant otherwise, allow an alien under orders of expulsion or deportation reasonable time to wind up his personal and other affairs.

(3) If an alien under orders of expulsion or deportation fails to leave the State within the time allowed, or, after leaving the State, returns to the State without its permission, he may be expelled or deported by force, besides being subjected to arrest, detention and punishment in accordance with local laws, regulations and orders.

Article 17

A State shall not refuse to receive its nationals expelled or deported from the territory of another State.

Note : The Delegation of Pakistan suggested the addition of the word "normally" before the word "refuse".

Article 18

Where the provisions of a treaty or convention between any of the signatory States conflict with the principles set forth herein, the provisions of such treaty or convention shall prevail as between those States.

PRINCIPLES CONCERNING ADMISSION AND TREATMENT OF ALIENS

(Text of the Articles drawn up by the Committee together with the commentaries proposed by the Secretariat in the light of discussions in the Committee)

Article 1

Definition of the term "Alien"

An alien is a person who is not a citizen or national of the State concerned.

Note: In a Commonwealth country the status of the nationals of other Commonwealth countries shall be governed by the provisions of its laws, regulations and orders.

Commentary

Article 1 embodies a general though not a comprehensive definition of the term "alien". The national legislations of most of the States including the Participating Countries in this Committee do not appear to include a comprehensive statutory definition of this term, nor have the text-writers been able to define this term satisfactorily. According to the Institute of International Law, "all those are considered aliens who have no actual right of nationality in a State, without distinction as to whether they are simply passing through or are resident or domiciled, or whether they are refugees or have entered the country of their own free will."¹ The question whether an individual is an alien or not, therefore, must be determined by the laws and regulations of each State. The term "alien" generally includes not only foreign nationals but also stateless persons.

The note appended to this article takes into account the fact that owing to historical reasons the citizens of the Commonwealth Countries and those of Eire are not regarded as aliens in the United Kingdom, and in some of the other Commonwealth Countries. This is a special feature of the British Nationality Law and may be regarded as an exception to the general definition of the term "alien".

Article 2

(1) The admission of aliens into a State shall be at the discretion of that State.

¹ Scott: *Resolutions of the Institute of International Law* (New York, 1916), 109; *Year-book of the International Law Commission*, A/CN.4/111, Vol. II, 73.

(2) A State may—

- (i) prescribe conditions for entry of aliens into its territory;
- (ii) except in special circumstances, refuse admission into its territory of aliens who do not possess travel documents to its satisfaction;
- (iii) make a distinction between aliens seeking admission for temporary sojourn and aliens seeking admission for permanent residence in its territory; and
- (iv) restrict or prohibit temporarily the entry into its territory of all or any class of aliens in its national or public interest.

Note: (1) The Delegation of Japan is of the view that in Sub-clause (iv) of Clause (2) of this Article the words "in times of or during armed conflicts or national emergency" should be substituted in place of the words "in its national or public interest."

(2) The Delegation of Indonesia stated that it preferred Clause (2) of Article (2) as adopted by the Committee at its Third Session in Colombo, which reads as follows: "A State admitting aliens into its territory may lay down by law, regulations or executive orders conditions for entry of aliens into its territory."

Commentary

Admission of aliens is a matter of discretion

Article 2 which deals with the regulation of admission of aliens embodies a well accepted concept of international jurisprudence, according to which no State is legally bound to admit foreign nationals into its territory, and that it may impose such conditions as it deems fit concerning such admission. This competence emanates from the basic concepts of territorial supremacy and self preservation of States.² Clause (1) of Article 2 establishes a rule of traditional international law and the practice adopted by several States whereby a State is under no duty to admit aliens and that admission of aliens is a matter of unfettered discretion of the State concerned. Following the general trend and considerations

² *Nishimura Ekiu v. United States of America*, 142 U.S. 631, 639; *The Chinese Exclusion Case*, 130 U.S. 581, 606-611.
Moore: *A Digest of International Law*, Vol. IV, 67-96.

embodied in Clause (1) of Article 2, Clause (2) sets out in detail the right of a State to authorize entry of aliens on whatever conditions it may choose to impose and the right to refuse admission if its vital interests so require.

Conditions regulating admission of aliens

Under Sub-clause (i) of Clause (2) if a State decides to admit aliens within its domain it has the right to impose such conditions as it may deem fit.

Sub-clause (ii) of Clause (2) gives expression to the modern State practice on the admission of aliens. Though normally individuals wishing to visit foreign countries are provided, in accordance with the law of the State, with passports for the purpose, these are not normally granted to stateless persons and refugees who have themselves been admitted into the host State on humanitarian grounds. When these persons wish to visit or emigrate to another State, the State of temporary residence may provide them with some kind of travel documents which in a limited way take the place of passports. Under this sub-clause although normally an alien seeking admission into a State must be in possession of a valid passport yet as a State enjoys unrestricted discretion in regard to the admission of aliens it may at its discretion admit an alien, even if he does not possess a valid passport or travel document. Such cases are, however, exceptional as in the case of stateless persons or political refugees.

Sub-clause (iii) of Clause (2) incorporating a rule of State practice, establishes the right of the host State to make a distinction between an alien on a visit of short duration and the one who seeks admission into the State for purposes of permanent settlement i.e., an immigrant. Most States generally make a distinction between such foreign nationals as intend to settle down within their borders and such persons as intend merely to come for temporary stay in the country e.g., students, tourists, artists, etc. Normally States do not permit aliens to take up permanent residence on their territories without having asked for and having been granted the appropriate authorization therefor. But in the case of visitors, States generally permit their entrance provided they carry valid passports and comply with the applicable police and visa regulations relating to such class of foreigners. Even in the latter case, States have the competence to impose conditions embracing the terms of permitted sojourn or temporary residence. These may even be exemplified by a statutory stipulation requiring aliens staying on its

territory for and after a specified period of time to apply for registration or comply with other requirements.³

Denial of Entry

Sub-clause (iv) of Clause (2) is an extension of another acknowledged rule of customary international law which empowers a State to restrict or even prohibit temporarily the admission of all aliens, or certain categories of foreigners during armed conflicts or national emergency such as internal revolt. The Committee has extended the rule to cover cases of national and public interest even apart from cases of national emergency especially taking into account the particular needs of the newly independent countries of Asia and Africa. This, however, is an exceptional provision intended to safeguard the peace and tranquillity as well as integrity of a State during certain contingencies. Since by virtue of its territorial supremacy a State possesses the competence to forbid the entrance of aliens into its territory, this sub-clause is in no way in conflict with the general principles of international law.

Opinions of Writers

Vattel observes: "A sovereign may prohibit entrance into its territory, either to all foreigners in general or to certain persons, or in certain cases or for certain purposes, according as the welfare of the State may require."⁴ In the view of Oppenheim, "Apart from special treaties of commerce, friendship and the like, no State can claim the right for its subjects to enter into and reside on the territory of a foreign State. The reception of aliens is a matter of discretion and every State is by reason of its territorial supremacy competent to exclude aliens from the whole or any part of its territory."⁵ According to Hackworth, "in the absence of treaty obligations, a State is under no duty to admit aliens into its territory. If it does admit them it may do so on such terms and conditions as may be deemed by it to be consonant with its national interests."⁶ McNair says: "Apart from treaty stipulations to the contrary a State has a right to exclude all aliens including stateless persons or particular categories of such persons."⁷

³ *Hines v. Davidowitz*, 312 U.S. 52; Oppenheim: *International Law* Vol. I, 8th Ed. (1955), 676.

Weis: *Nationality and Statelessness in International Law*, London, (1956), 219-236.

⁴ Vattel: *International Law*, Vol. I, s. 125, 231.

⁵ Oppenheim: *International Law*, op. cit., 675-678.

⁶ Hackworth: *Digest of International Law*, Vol. III, 717-718.

⁷ McNair: *International Law Opinions*, (1956) Vol. II, 105.

Practice of Member States of the Committee

According to the relevant laws and regulations of the Member Countries of the Committee, in the absence of treaty obligations to the contrary, a State is not bound to admit aliens into its territory but if it does so, it may do so at its discretion on terms and conditions of its choosing. For instance, according to the Indonesian practice the State has the right to lay down by law or executive orders the conditions for the entry of aliens into its territory. The practice of these States reveals that an alien is not permitted to enter a State unless he is armed with a valid passport with the necessary visa endorsement thereon. A State enjoys absolute discretion in the matter of granting visas to foreign nationals. In this regard Japan follows a policy of reciprocity. Entry of foreigners into Japan is regulated by the Immigration Control Order III of April 1951, and matters relating to admission of aliens fall under the jurisdiction of the Immigration Office and the Ministry of Justice. In the Egyptian and Syrian Regions of the United Arab Republic the admission of aliens is regulated by the Egyptian Law No. 74 of 1952 and the Decree No. 54 of January 12 of 1952 respectively.

Generally all these States make a distinction between aliens seeking admission for temporary sojourn and those coming as immigrants into the country. They take the view that the State has the right to restrict or prohibit temporarily the admission of all aliens or certain class of aliens, if such course of action is considered necessary in its national or public interest. According to the practice of Japan, a State enjoys the right to forbid entrance of all aliens or any class of aliens in times of armed conflict or national emergency.

Practice of States other than Member States of the Committee

The Canadian practice has been indicated by the Supreme Court of New Brunswick in 1906 in the case of *Papageorgiou v. Turner*, in which Justice Barker declared that "the power of prohibiting aliens' entrance into a country is one which is recognized and acted upon by all civilized countries." The above view was elaborated in subsequent leading case in 1919, in which it was held that the Parliament of Canada, acting well within its right, has the right to prescribe the conditions upon which an alien may enter or be permitted to remain in Canada.⁸

In the United Kingdom, as in several other States, the right to admit, exclude or deport aliens is regarded as an incident of ter-

ritorial sovereignty. The British practice reveals that apart from treaty stipulation to the contrary a State has the right to exclude aliens including stateless persons or particular categories of such persons from its territory.⁹ In the leading case of *Attorney-General of Canada v. Cairn* (1896), Lord Atkinson delivering the judgment of the Privy Council, quoted with approval the following passage from Vattel's Law of Nations: "One of the rights possessed by the supreme power in every State is the right to refuse to permit an alien to enter that State, to annex what conditions it pleases to the permission to enter it, and to expel or deport from the State, at pleasure, even a friendly alien especially if it considers his presence in the State as opposed to its peace, order and good government, or to its social or material interests."¹⁰

The regulations of the United States relating to the admission and exclusion of aliens are laid down in 8 United States Code,¹¹ which declare that in the absence of treaty obligations to the contrary a State is under no duty to admit aliens into its territories. The Legal Adviser of the State Department stated that "a State is under no duty, in the absence of treaty obligations, to admit aliens to its territory. If it does admit them, it may do so on such terms and conditions as may be deemed by it to be consonant with its national interests." He added that this is one of the incidents of sovereignty. Emphasizing this right of a State Mr. Justice Gray of the Supreme Court of the United States in the leading case of *Nishimura Ekiu v. United States* (1892) stated that "it is an accepted maxim of international law, that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe."¹² In the *United States Ex. Rel, Knauff v. Shaughnessy* (1950), Mr. Justice Minton delivering the opinion of the court stated: "At the outset we wish to point out that an alien who seeks admission to this country (i.e., U.S.) may not do so under any claim of right. Admission of aliens to the U.S. is a privilege granted by the sovereign U.S. Government. Such privilege is granted to an alien only

⁹ McNair: International Law Opinions, Vol. II, 195; Vattel: Law of Nations S. 125.

¹⁰ *Musgrove v. Chun Teeong Toy*, (1891) A.C. 272; 7 T.L.R. 378; 64 L.T. 378; *Rex v. Home Secretary* (1942), 1 All. E.R. 574; 2 All E.R. 232; Ex. part Greenberg and others (1947) 2 All. E.R. 550.

¹¹ U.S. Code, SS. 100-299 & 1101-1362.

¹² 142 U.S. 651, 659; *Fong Yue Ting v. United States*, 149 U.S. 698, 705-707; *Lem Moon Sing v. United States*, 158 U.S. 538. *Turner v. Williams*, 194 U.S. 279.

Moore: Digest, op. cit., Vol. IV 71-80; Hyde: International Law, Vol. I, 216.

⁸ *Rex v. Alamazoff* (1919), 47 D.L.R. 533-535; Order in Council P.C. 2115 of Sept. 16, 1930, as amended by Order in Council P.C. 6229 (1951) S.C.R. 19 Dec. 28, 1950; *Re Leon Ba Chai* (1952) 4 D.L.R. 715.

upon such terms and conditions as the U.S. shall prescribe. It must be exercised in accordance with the procedure which the U.S. provides."¹³ Further Mr. Justice Clark of the United States Supreme Court reaffirming the above view stated in the case of *Shaughnessy v. United States ex rel Mezei* (1953) that "Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the government's political departments largely immune from judicial control . . . (alien's) right to enter the United States depends on the Congressional will. . . ." ¹⁴ Article 5 of the French Regulation of November 2, 1945 provides that, "any alien must, in order to enter France, bear the document and visas required by international conventions and regulations in force." In carrying out the provisions of Article 1 of the decree of June 30, 1946, establishing the conditions of entry and residence of aliens in France, the Ministries of Foreigners and of the Interior have promulgated an order on January 9, 1949 which by its Article 1 requires that any alien seeking entry into French Continental territory must "hold a national passport, or travel document in lieu of passport, valid and bearing a French visa." However, Article 2 of the same order provides that "nationals of States having entered into a reciprocal agreement with France for the waiver of this formality are exempted from the visa for days not exceeding three months in length at a time." The acknowledged right of the Minister of the Interior in France broad as it may be, is not absolutely discretionary and can only be used in the interests of "public security". The Conseil d'Etat (Council of State) will check the accuracy and materiality of the reasons given in support of the decision denying entry into French territory.¹⁵ In the *Residence of Alien Trader Case* (1954), the Administrative Court of Appeal at Münster (W. Germany) held that there was no rule of international law which conferred a right of residence on aliens as every State was entitled in its discretion to restrict or refuse the admission of aliens. The courts of most other States have also taken the same view on the question of admission.¹⁶ In, *in re Di Cesare*, the Federal Supreme

¹³ 338 U.S. 537; 70 S. Ct. 309 (1950).

¹⁴ Hackworth: Digest of International Law, Vol. III, 717; 289 U.S. 422, 425; 345 U.S. 206; 96 L. Edn. 73 S. Ct. 625.

¹⁵ Marcon, Conseil D'Etat, France, (1952). Katz & Brewster: The Law of International Transactions & Relations, (London 1960) 18-21.

¹⁶ The State (At the prosecution of Hermann Goertz) v. The Minister of State (1947), Irish Law Times (1948), 34. In re Carles Wunchs (1935), 46 Semanarie Judicial 5 Epoca 3799; In re Wong (1949), Semanarie Judicial de la Federation 5a Epoca vol. 99, part 3, 2254. In Lay v. La Nacion (1939), 37 Registro Judicial 22. Van In Resenburg v. Ballinger, (1950) 4 S.A.R. 427. Mohamed v. Principal Immigration Officer (1951) 3 S.A.R. 884; Hoosain v. Van Der Merwe, N.O. and others (1955) 3 S.A.R. 535; Harnecker v. Gaol Supdt., (1951) 3 S.A.R. 430 (c) Annuaire de l'Institut de Droit International, XII, 226; Scott: Resolutions of the Institute of International Law, 104.

Court of Argentina took the view that the political authorities have exclusive responsibility and power with respect to the entry of aliens.¹⁷ Several international agreements and conventions concluded since 1920 relating to the admission of refugees are based on the principle that a State has the discretion in the matter of reception of aliens on its territory. In a number of cases the Governing Body Committee on Freedom of Association, one of the Committees of the International Labour Organisation has been confronted with questions relating to the admission and expulsion of aliens. The Committee has taken the view that the admission and expulsion of aliens are matters within national discretion.^{17a}

Principles embodied in certain Conventions

Incorporating the above view, the draft Convention relating to the "International Regulation on the Admission and Expulsion of Aliens", adopted in 1892 by the *Institute of International Law* provides as follows: "The law of nations has not yet forbidden a State to exercise the largest discretion in establishing tests of undesirability of aliens seeking admission to its territory, and to that end, to enforce discrimination of its own devising." The *Havana Convention on the Status of Aliens*, signed in 1928, provides in Article 1 that "States have the right to establish by means of laws the conditions under which foreigners may enter and reside in their territory". The *International Conference on "Treatment of Foreigners"* held at Paris in 1929 approved the following provision in this regard: "Each of the High Contracting Parties remains free to regulate the admission of foreigners to its territory and to make this admission subject to conditions limiting its duration, or the rights of foreigners to travel, sojourn, settle, choose their place of residence, and move from place to place."¹⁸

Article 3

A State shall not refuse to an alien entry into its territory on the ground only of his race, religion, sex or colour.

Commentary

Discriminations against aliens

This article rules out discrimination by a State in the matter of admission of aliens into its territory. Refusal of admission to an alien must not be only on account of his race, religion, sex or colour. Although under international law, the reception of aliens is

¹⁷ Annual Digest (1938-1940) Case No. 119, 364.

^{17a} Jenks, C.W.: The International Protection of Trade Union Freedom, (New York, 1957), 438-442.

¹⁸ League of Nations Doc. C.I.T.E. 62, 1930, II, 5, 419-421.