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PART I

INTRODUCTORY NOTE

Establishment and Functions of the Committee

The Asian Legal Consultative Committee, as it was originally called, was constituted by the Governments of Burma, Ceylon, India, Indonesia, Iraq, Japan and Syria as from the 15th November 1956, to serve as an Advisory Body of Legal Experts, to deal with problems that may be referred to it, and to help in the exchange of views and information on matters of common concern between the Participating Countries. In response to a suggestion made by the Prime Minister of India, which was accepted by all the Participating Countries in the Asian Legal Consultative Committee, the Statutes of the Committee were amended with effect from the 19th April 1958, so as to include participation of countries in the African Continent. Consequent upon this change in the Statutes the name of the Committee was altered and it was renamed as the Asian-African Legal Consultative Committee. Membership of the Committee is open to the countries in the Asian-African Continents in accordance with the provisions of its Statutes.

The United Arab Republic upon its formation by the merger of Egypt and Syria became an original Participating Country in the Committee in the place of Syria. Sudan was admitted to the Committee with effect from the 1st October 1958. Pakistan from the 1st January 1959, and Morocco from the 24th February 1961.

The Committee is governed in respect of all matters by its Statutes and the Statutory Rules. Its functions as set out in Article 3 of the Statutes are :—

(a) Examination of questions that are under consideration by the International Law Commission, and to arrange for the views of the Committee to be placed before the said Commission;

(b) Consideration of legal problems that may be referred to the Committee by any of the Participating Countries and to make such recommendations to Governments as may be thought fit;

(c) Exchange of views and information on legal matters of common concern; and

(d) To communicate with the consent of the Governments of the Participating Countries, the points of view of

the Committee on international legal problems referred to it, to the United Nations, other institutions and international organizations.

The Committee meets once annually by rotation in the Countries participating in the Committee. Its first Session was held in New Delhi, the second in Cairo, the third in Colombo and the fourth in Tokyo. The Fifth Session is scheduled to be held in Rangoon. The Committee maintains a Permanent Secretariat in New Delhi for the conduct of its day-to-day work. A section of the Secretariat is charged with the collection of material and preparation of background papers for assisting the Committee in its deliberations during the Sessions. The Committee acts in all matters through its Secretary who is advised by a body of Liaison Officers appointed by each of the Participating Countries. The Liaison Officers normally meet once a month or as often as necessary.

Office Bearers of the Committee and its Secretariat

The Committee during its First Session elected the Member for Burma, Hon'ble Chief Justice U Myint Thein, and the Member for Indonesia, Hon'ble Chief Justice Dr. Wirjono Prodjodikoro, respectively as the President and the Vice-President of the Committee for the year 1957-58. During the Second Session, the Committee elected the Member for the United Arab Republic, H.E. Mr. Abdel Aziz Mohamed, President of the Cour de Cassation, as the President and the Member for Ceylon, Hon'ble Chief Justice Mr. H. H. Basnayake as the Vice-President of the Committee for the year 1958-59. At its Third Session, the Member for Ceylon, Hon'ble Chief Justice Mr. H. H. Basnayake was elected President and Chaudhuri Nazir Ahmed Khan, Attorney-General of Pakistan was elected as the Vice-President of the Committee. At its Fourth Session, the Member for Japan, Dr. Kenzo Takayanagi, President, Cabinet Commission on Constitutional Reforms, was elected President and Hon'ble Mr. R. Wirjono Prodjodikoro, Chief Justice of the Republic of Indonesia, as Vice-President of the Committee.

The Committee at its First Session decided to locate its Permanent Secretariat at New Delhi (India). The Committee also decided during its First and Second Sessions that Mr. B. Sen, Hon. Legal Adviser to the Ministry of External Affairs, Government of India, should perform the functions of the Secretary of the Committee.

Co-operation with other Organizations

The Committee maintains close contacts with and receives published documents from the United Nations, the Specialised

Agencies, International Law Commission, the Council of Jurists of the Organization of American States and the Arab League. The Committee is empowered under the Statutory Rules to admit to its Sessions Observers from international and regional inter-governmental organizations.

First Session of the Committee

The Committee held its First Session in New Delhi from the 18th till the 27th April 1957. The Session was inaugurated by the Prime Minister of India and was attended by Delegations from Burma, Ceylon, India, Indonesia, Iraq, Japan and Syria, the then Participating Countries of the Committee. At that Session the Committee had before it for consideration 10 subjects which had been referred to it by the various Participating Countries of the Committee.

These were :

(i) Functions, Privileges and Immunities of Diplomatic Envoys or Agents including questions regarding enactment of legislation to provide Diplomatic Immunities. (Referred by India and Japan).

(ii) Principles for extradition of offenders taking refuge in the territory of another including questions relating to desirability of conclusion of extradition treaties and simplification of the procedure for extradition. (Referred by Burma and India).

(iii) Law relating to the Regime of the High Seas including questions relating to the Rights to Sea-bed and Sub-soil in the Open Sea. (Referred by Ceylon and India).

(iv) Status of Aliens including questions of Responsibility of States regarding Treatment of Foreign Nationals. (Referred by Japan).

(v) Restrictions on Immunity of States in respect of Commercial Transactions entered into by or on behalf of States and by State Trading Corporations. (Referred by India).

(vi) Law of the Territorial Sea. (Referred by Ceylon).

(vii) Questions relating to Dual Citizenship. (Referred by Burma).

(viii) Ionospheric Sovereignty. (Referred by India).

(ix) Questions relating to Reciprocal Enforcement of Foreign Judgments in Matrimonial Matters. (Referred by Ceylon).

(x) Questions relating to Free Legal Aid. (Referred by Ceylon).

During the session, however, the item relating to the Status of Aliens was withdrawn and items (iii) and (vi), viz., the Law relating to the Regime of the High Seas and the Law of the Territorial Sea were not pressed for consideration. The remaining items were discussed by the Committee and preliminary reports were drawn up and submitted to the Governments of the Participating Countries on three of the subjects, viz., Diplomatic Immunities, Principles of Extradition and Immunity of States. All the subjects were carried forward for further consideration at the next Session.

Second Session of the Committee

The Second Session of the Committee was held in Cairo from the 1st to the 13th of October 1958. The Session was inaugurated by the Minister of Justice in his capacity as the Personal Representative of the President of the United Arab Republic. It was attended by Delegations from Burma, Ceylon, India, Indonesia, Iraq, Japan, Sudan and the United Arab Republic. Observers representing the Governments of Cambodia, Philippines and Thailand as also the representatives of the Arab League were admitted to the meetings of the session.

During this session the Committee had before it five main subjects for consideration, viz., Diplomatic Immunities, Principles of Extradition, Immunity of States in respect of Commercial Transactions, Dual Nationality and Status of Aliens. It also discussed briefly the questions relating to Free Legal Aid and Reciprocal Enforcement of Foreign Judgments in Matrimonial Matters. Moreover the Committee had before it the Reports of the 9th and 10th Sessions of the International Law Commission for consideration. The Law of the High Seas and Territorial Waters as also Ionospheric Sovereignty had not been included in the agenda of the session.

The Committee finalised its Reports on Diplomatic Immunities and on Immunity of States in respect of Commercial Transactions. These Reports were submitted to the Governments of the Participating Countries. Final conclusions were not reached on the other subjects which were discussed at the Cairo Session.

Third Session of the Committee

The Third Session of the Committee was held in Colombo from January 20 to February 4, 1960. It was attended by the Delegations of all the Participating Countries in the Committee except Sudan which was unable to be represented. In addition, the Government

of Iran was represented by an Observer. The Session was inaugurated by the Minister of Justice in his capacity as the Personal Representative of the Prime Minister of Ceylon.

The Committee at this session considered the comments of the Governments on its Reports on Functions, Privileges and Immunities of Diplomatic Envoys, and Immunity of States in respect of Commercial Transactions which the Committee had finalised during its Second Session in Cairo. The Committee confirmed the view it had taken in its Report with regard to restrictions of Immunity of States in respect of Commercial Transactions. It, however, made certain changes in its Report on Diplomatic Immunities in the light of the comments received from the Governments of the Participating Countries.

The Committee gave detailed consideration to the subjects of Status of Aliens and Extradition on which it was able to draw up provisionally the principles governing the subjects in the form of Draft Articles. The Committee discussed the subject of Status of Aliens, which had been referred to it by the Government of Japan; on the basis of a Memorandum presented to it by the Committee's Secretariat and information supplied by the Governments of the Participating Countries regarding their laws and State practice with regard to entry, treatment and deportation of foreigners. The discussions on Extradition were based on the Draft of a Multilateral Convention presented by the Government of the United Arab Republic and a Memorandum submitted by the Committee's Secretariat. The Provisional Recommendations of the Committee on these two subjects were submitted to the Governments of the Participating Countries for their comments.

The Committee also generally considered questions relating to Dual Nationality and the recommendations of the International Law Commission on Arbitral Procedure. It decided to postpone consideration of the Law of the Seas in view of the U.N. Conference of Plenipotentiaries which was scheduled to meet in March 1960. The Committee did not find sufficient time to consider the Reports presented to it by the Rapporteurs appointed by it on the subjects of Legal Aid and Enforcement of Foreign Judgments in Matrimonial Matters.

The Committee decided to take up at its next session the question of Legality of Nuclear Tests and the legal aspects of certain economic matters namely, Conflict of Laws in respect of International Sales, and Relief against Double Taxation.

Fourth Session of the Committee

The Fourth Session of the Committee was held in Tokyo from 15th to 28th February 1961. The Session was inaugurated by the Minister for Foreign Affairs of Japan. It was attended by the Delegations of all the Participating Countries in the Committee except Sudan which was unable to be represented. Morocco was admitted as a new Member of the Committee at this Session. Observers representing the International Law Commission of the United Nations and the Governments of Combodia and Ghana were admitted to the meetings of the Session.

The Committee at this session discussed in detail the subjects of Extradition and Status of Aliens on the basis of the Draft Articles as provisionally drawn up by the Committee at its Third Session. The Committee revised the existing Drafts on the subjects in the light of the comments made by the Delegations present at the Session and adopted its Final Reports for submission to the Governments of the Participating Countries. The Committee decided to remove Extradition and Status of Aliens from the agenda of the future sessions of the Committee.

The subject relating to Diplomatic Protection of Citizens Abroad and State Responsibility for Maltreatment of Aliens was also generally considered by the Committee. It took note of the statement made at this Session by Mr. F. V. Garcia Amador, Special Rapporteur of the International Law Commission on State Responsibility and decided to take up the subject for discussion at its next session.

The Committee at this Session gave special attention to the question of Legality of Nuclear Tests. It considered the subject on the basis of the Report prepared by the Secretariat and the Delegates of the United Arab Republic, India, Ceylon, Indonesia, Iraq, Japan, Burma and Pakistan made statements on the question of Legality of Nuclear Tests indicating the scope of the subject under consideration of this Committee and the basic principles on which further material need to be collected. After a general discussion on the subject, the Committee unanimously decided that the consideration of this subject was a matter of utmost urgency and should, therefore, be placed as the first item on the agenda of the Fifth Session.

The Committee also considered the Report of the Secretariat on the work done by the International Law Commission at its Twelfth Session and took note of the statement made by the

Observer on behalf of the International Law Commission. In view of the stage reached in the International Law Commission's work on Consular Immunities and Privileges, the Committee decided to take up this subject at its Fifth Session when the Draft prepared by the International Law Commission is to form the basis for discussion.

The Committee considered its work on the subjects relating to Free Legal Aid and Recognition of Foreign Decrees in Matrimonial Matters and decided to publish the Reports of the Rapporteur on both these subjects to be presented to the Governments of the Participating Countries.

The Committee also generally discussed other subjects on the agenda, viz., Arbitral Procedure, Conflict of Laws with regard to International Sales and Purchases, Laws relating to Avoidance of Double Taxation and Dual Nationality. The Committee decided to include all these subjects in the agenda of its Fifth Session.

Fifth Session of the Committee

It has been decided to hold the Fifth Session of the Committee at Rangoon from 17th to 30th January, 1962.

DELEGATIONS OF THE PARTICIPATING COUNTRIES

BURMA

Member & Leader of Delegation	:	Hon'ble U Myint Thein, Chief Justice of the Union of Burma.
Alternate Member	:	U Nyun Tin, Legal Adviser to the Municipal Corporation of Rangoon.
Adviser	:	U Soe Tin, Secretary to the Government of Burma, Ministry of Foreign Affairs.
Adviser	:	U Kyaw Thaung, Assistant Attorney-General.

CEYLON

Member & Leader of Delegation	:	Senator the Hon. Mr. Sam P. C. Fernando, Minister of Justice.
Alternate Member	:	Mr. E. R. S. R. Coomaraswamy, Advocate.
Adviser	:	Mr. R. S. Wanasundera, Crown Counsel, Attorney-General's Department.

INDIA

Member & Leader of Delegation	:	Mr. M. C. Setalvad, Attorney-General for India.
Alternate Member	:	Hon'ble Mr. Justice S. K. Das, Judge, Supreme Court of India.
Alternate Member	:	Mr. B. N. Lokur, Secretary to the Government of India, Ministry of Law.
Adviser	:	Mr. P. K. Banerjee, Counsellor, Embassy of India in Japan.
Secretary	:	Mr. A. G. Asrani, Third Secretary, Embassy of India in Japan.

INDONESIA

Member & Leader of Delegation	:	Hon'ble Mr. R. Wirjono Prodjodikoro, Chief Justice of the Republic of Indonesia.
Alternate Member	:	Dr. S. H. Tajibnapis, Acting Chief of Legal Division, Department of Foreign Affairs.
Adviser	:	Mr. Mochtar Kusmaatmadja, Professor of International Law, Bandung University.
Secretary	:	Mr. Utarso, Second Secretary, Embassy of Indonesia, Tokyo.

IRAQ

Member & Leader of Delegation	:	H.E. Mr. Abdul Amir Al-Egaili, Attorney-General and Chief of Public Prosecution, Iraq.
Alternate Member	:	Dr. Hassan Al-Rawi, Director-General, Legal Department, Ministry of Foreign Affairs.
Adviser	:	Mr. Abdul Malik Al-Zaibeq, First Secretary, Embassy of Iraq in Japan.

JAPAN

Member & Leader of Delegation	:	Dr. Kenzo Takayanagi, President, Cabinet Commission on Constitutional Reforms, Japan.
Alternate Member	:	Mr. Kumao Nishimura, Judge, Permanent Court of Arbitration.
Adviser	:	Dr. Zengo Ohira, Professor of Law, Hitotsubashi University.
Adviser	:	Mr. Toshio Mitsudo, Counsellor, Embassy of Japan, New Delhi.
Adviser	:	Mr. Yoshiho Yasuhara, Counsellor, Criminal Affairs Bureau, Ministry of Justice.

Adviser	:	Mr. Jiro Muraoka, Public Prosecutor, Civil Affairs Bureau, Ministry of Justice.
Adviser	:	Mr. Chikara Ikegami, Public Prosecutor, Immigration Bureau, Ministry of Justice.
Adviser	:	Mr. Motoo Ogiso, Chief of Legal Affairs Section, Ministry of Foreign Affairs, Japan.
Adviser	:	Mr. Hirohiko Otsuka, Legal Affairs Section, Ministry of Foreign Affairs, Japan.

MOROCCO

Member & Leader of Delegation	:	H.E. Mr. Ahmed Banabud, Ambassador of Morocco in India.

PAKISTAN

Member & Leader of Delegation	:	Mr. A. T. M. Mustafa, Barrister-at-Law, Standing Counsel to the Government of Pakistan.
Adviser	:	Mr. K. A. Aziz Khan, Third Secretary, Embassy of Pakistan.

SUDAN

Not Represented

UNITED ARAB REPUBLIC

Member & Leader of Delegation	:	H.E. Hafez Sabeq, Attorney-General of the United Arab Republic.
Alternate Member	:	Dr. Ezz El-Din Abdullah, Dean, Faculty of Law, University of Ein Shams.
Adviser	:	Dr. Jabir Abdul Rahman, Professor, Faculty of Law, University of Cairo.
Adviser	:	Mr. Mohammed Hafiz Ganom, Professor of Public International Law, University of Ein Shams.

Adviser	:	Mr. Gamal El Nomani, Ministry of Justice.
Adviser	:	Mr. Nazar El Kayyali, Advocate.

OBSERVERS

INTERNATIONAL LAW COMMISSION	:	Mr. F. V. Garcia Amador, Member, International Law Commission.
CAMBODIA	:	Mr. Hem Heng alia Phanrasy, Minister Counsellor, Embassy of Cambodia in Japan.
		Mr. Penn Thol, Commercial Attaché, Embassy of Cambodia, Tokyo.
GHANA	:	Mr. S. E. Quaran, First Secretary, Embassy of Ghana, Tokyo.

Secretary-General of the Conference & Secretary to the Committee	:	Mr. B. Sen, Senior Advocate of the Supreme Court of India & Hon. Legal Adviser, Ministry of External Affairs.
Liaison Officer of the Government of Japan & Head of Organisation	:	Mr. T. Mitsudo, Counsellor, Embassy of Japan in India.
Conference Officer	:	Mr. Otsuka, Legal Affairs Section, Treaty Bureau, Ministry of Foreign Affairs, Japan.

LIAISON OFFICERS OF THE PARTICIPATING COUNTRIES WITH THE COMMITTEE*

BURMA	U Ba Chit, First Secretary, Embassy of Burma, New Delhi.
CEYLON	Mr. B. P. Tilakaratna, First Secretary, Ceylon High Commission, New Delhi.
INDIA	Mr. K. S. Bajpai, Deputy Secretary (UN), Ministry of External Affairs, Government of India, New Delhi.
INDONESIA	Mr. Ch. Anwar Sani, Minister Counsellor, Embassy of Indonesia, New Delhi.
IRAQ	Mr. Saeed K. Hindawi, First Secretary, Embassy of Iraq, New Delhi.
JAPAN	Mr. Hisaji Hattori, Minister, Embassy of Japan, New Delhi.
MOROCCO	Mr. Hassan Daoud, Second Secretary, Embassy of Morocco, New Delhi.
PAKISTAN	The Deputy High Commissioner, Pakistan High Commission, New Delhi.
UNITED ARAB REPUBLIC	Mr. Mahmoud El-Erian, First Secretary, Embassy of the United Arab Republic, New Delhi.

* As on 1st October, 1961.

AGENDA OF THE FOURTH SESSION

I. Administrative and Organisational Matters

1. Adoption of the Agenda.
2. Election of the President and Vice-President of the Session.
3. Admission of new Members to the Committee.
4. Admission of Observers to the Session.
5. Consideration of the Secretary's Report.
6. Further consideration of the Draft Articles on Immunities and Privileges of the Committee.
7. Consideration of the Committee's programme of work for 1961-62.
8. Consideration of the question of printing and publication of the Proceedings of the Fourth Session of the Committee and other publications.
9. Appointment of the Secretary of the Committee for the term 1961-63.
10. Consideration of the question of the Committee's staff structure for the term 1961-63.
11. Co-operation with other Organisations.
12. Date and place of the Fifth Session.

II. Reports of the International Law Commission

1. Consideration of the Report of the Twelfth Session of the International Law Commission.
2. Consideration of the subject of Arbitral Procedure on the basis of the comments received from the Governments of the Participating Countries on the questionnaire prepared by the Committee and the Provisional Report of the Committee.

III. Matters Referred by the Governments of the Participating Countries under Article 3 (b) of the Statutes

1. Status of Aliens (referred by the Government of Japan).

   (a) Consideration of the comments by the Governments on the Draft Articles prepared by the Committee on the Admission, Treatment and Expulsion of Aliens.

   (b) Consideration of the question of Diplomatic Protection of Citizens abroad and the Responsibility of States for Maltreatment of Aliens.

2. Extradition (referred by the Governments of Burma and India).

   Consideration of the comments received from the Governments on the Draft Articles prepared by the Committee on the subject at the Third Session.

3. Dual Nationality (referred by the Government of Burma).

   Consideration of the comments received from the Governments on the Working Paper prepared on the subject and the Draft Convention prepared by the U.A.R. Delegation.

4. Reciprocal Enforcement of Judgments (referred by the Government of Ceylon).

   The Enforcement of Judgments, the Service of Process and the Recording of Evidence among States both in Civil and Criminal cases.

IV. Matters of Common Interest Referred by the Governments of the Participating Countries under Article 3 (c) of the Statutes

1. Reciprocal Enforcement of Foreign Judgments in Matrimonial Matters (referred by the Government of Ceylon).

   Consideration of the comments on the Rapporteur's Report on the subject and any specific question that may be raised by the Governments.

2. Legal Aid (referred by Ceylon).

   Consideration of the comments on the Rapporteur's report on the subject and any specific questions that may be raised by the Governments.

3. Legality of Nuclear Tests (adopted by the Committee at the suggestion of the Government of India).

4. Conflict of Laws relating to Sales and Purchases in Commercial Transactions between States or their Nationals (adopted by the Committee at the suggestion of the Government of India).

5. Laws relating to Avoidance of Double Taxation (adopted by the Committee at the suggestion of the Government of India).

FINAL REPORT OF THE COMMITTEE ON EXTRADITION OF FUGITIVE OFFENDERS

1. The subject of extradition of fugitive offenders, namely, the principles concerning extradition of offenders in one State taking refuge in the territory of another, including questions relating to desirability of conclusion of extradition treaties and simplification in the procedure for extradition was referred to this Committee for consideration by the Government of the Union of Burma. The government, in its memorandum referring this subject for consideration of this Committee, had stated :

> "Extradition in most countries was based on either specific enactments or upon treaties. These vary in their list of extraditable offences, depending upon the relationship between the States concerned. In Asian States, which have only recently regained their independence, the extradition laws of colonial days have continued and at the present juncture it is necessary to examine the position. It is most desirable that as between the Member States of the Asian-African Legal Consultative Committee, definite arrangements should exist for the extradition of fugitive criminals. Each Member State should see that it has adequate statutory laws for this purpose and then enter into relations with Member States either bilateral or multilateral".

2. The Government of India had also, by a separate reference, referred to this Committee for its opinion the following questions relating to the subject of extradition, that is :

(a) Whether and on what principle should a State voluntarily extradite fugitive criminals even in the absence of an extradition treaty?

(b) Whether a State should extradite its own nationals and nationals of States other than the requesting State?

(c) What should be the procedure to be followed in the matter of extradition?

(d) What offences should properly be regarded as extraditable and whether attempts to commit such offences should also make a person liable to be extradited?

(e) What principles ought to be followed in determining the question as to whether a crime is of a political nature?

3. The Indian memorandum in referring these questions for consideration of the Committee had set out a summary of the

views of text-writers on international law and the prevailing practice in various countries of the world on these questions.

4. The Government of Japan also submitted a memorandum on this subject dealing with the various questions raised in the Indian and Burmese memoranda, and generally on the subject.

5. The Committee considered this subject at its first Session held in New Delhi in April 1957 on the basis of the three memoranda presented by the Governments of Burma, India and Japan. The discussion at that Session was mainly confined to the five questions raised in the Indian memorandum as set out above. The conclusions which could be drawn from the discussions of the Committee at that Session on those five specific questions were as follows :

(1) There was agreement in principle among the Delegations of Burma, Ceylon, India, Indonesia and Japan that the conclusion of extradition treaties between various States was desirable so that fugitive criminals could be surrendered to the State in whose territory the crime had been committed. The Indian and the Japanese Delegations were of the opinion that there was no objection to the voluntary surrender of criminals even in the absence of a treaty. The Indonesian Delegation considered such voluntary surrender to be desirable only in respect of crimes of a serious character. The Delegations of Burma and Ceylon were not in favour of such voluntary surrender.

(2) On the question of extradition by a State of its own nationals, whilst the Indian Delegation was of the view that there was not sufficient justification in refusing to extradite its own nationals and the Indonesian Delegation favoured surrender of one's own nationals in respect of crimes of a serious character, the Delegations of Burma and Japan were opposed to such surrender of its own nationals by a State. The position taken by the Delegation of Ceylon was that surrender of its own nationals ought to be on a reciprocal basis between the States, but such reciprocity need not be insisted upon in all cases. On the question of surrender of nationals of a third State, the Burmese Delegation was of the view that such extradition ought to be through the State of

origin of the offender which should be approached by the requesting State. The other Delegations saw no objection to direct surrender of offenders to the requesting State in such cases.

(3) The Delegations of Burma, Ceylon, India, Indonesia and Japan were agreed that a **prima facie** case of guilt in respect of an extraditable offence ought to be established before a fugitive offender could be handed over to the requesting State.

(4) The Delegations of Burma, Ceylon, India, Indonesia and Japan were agreed that extraditable offences should be determined by the States themselves by means of extradition treaties on the question; as to whether attempts to commit extraditable offences should themselves be extraditable, the Delegations expressed varying opinions.

(5) The Delegations of Burma, Ceylon, India, Indonesia and Japan were agreed that no particular text or formula could be evolved to determine the question as to whether a particular crime could be regarded as one of a political nature.

The Committee having considered the statements and views put forward by various Delegations represented at that Session was of the opinion that it was necessary for the Committee to collect further material and make a study of the question of voluntary surrender of fugitive criminals and the questions of extradition of its own nationals and those of third States before making its recommendations to the governments of the participating countries. The Committee, however, submitted an interim report on the three other questions on which there was agreement between the five Delegations (the Delegations of Syria and Iraq having reserved their position). The recommendations of the Committee were in the following terms :

(1) The Committee favours the view that before a State surrenders a fugitive criminal to a requesting State, **a prima facie** case of guilt ought to be established to show :

(i) that an extraditable offence was committed;

(ii) that the offence was committed in the territory of the requesting State;

(iii) that the crime was committed by the person who is sought to be extradited; and

(iv) that the crime is not of a political nature.

(2) The Committee is of the view that no specific procedure need be laid down in respect of establishment of such a **prima facie** case and this should be governed in accordance with the rules of criminal procedure as prevailing in the country where the offender has taken refuge.

(3) The Committee is of the view that extradition treaties ought to be concluded between the participating countries and that the list of extraditable offences should be set out in such treaties.

(4) The Committee is of the opinion that it is not feasible to formulate any specific text to determine the question as to whether a crime is of a political character or not and has to be judged in the facts and circumstances of each case.

6. This subject was again taken up at the Second Session of the Committee held in Cairo in October 1958 and a second interim report was drawn up. At the Cairo Session the entire subject concerning principles of extradition as referred by the Government of Burma was discussed on the basis of a detailed questionnaire prepared by the Secretariat and a memorandum submitted by the Delegation of the United Arab Republic. The second interim report adopted at the Cairo Session stated "As there appears to be a fair measure of agreement on most of the questions discussed in this Session, it is for consideration whether an attempt should be made to embody the agreed principles into a draft of a convention at a later stage."

7. The Secretariat of the Committee accordingly prepared a draft incorporating the agreed principles on the subject in the form of Articles for consideration of this Committee. This draft prepared by the Secretariat together with the Draft of an Agreement submitted by the Delegation of the U.A.R. was considered by the Committee at its Colombo Session and the Committee at that Session drew up certain Draft Articles containing the principles on the subject which were submitted to the governments for their comments. The subject was placed before this Session for final consideration of the Draft Articles prepared at the Colombo Session in the light of the comments received from the governments of the various participating countries in this Committee,

and the comments made by the Delegations present at this Session.

8. The Committee having considered all the materials placed before it and having taken note of the views expressed by the Delegations of the participating countries present at this Session decides to present its final report in the form of draft articles embodying the principles on the subject of extradition of fugitive offenders. These Articles are annexed to and form part of this Report.

9. There was no unanimity in the Committee on the question as to whether the arrangements for extradition between the participating countries and other Asian-African countries should be made by means of bilateral treaties or by means of a multilateral convention between a group of States. The Delegations of Burma, Ceylon, India, Pakistan and Japan are in favour of conclusion of separate bilateral treaties whilst the Delegations of Iraq and U.A.R. prefer adoption of a multilateral convention. The Delegation of Indonesia was not in a position to indicate its views as to its preference between bilateral treaties and a multilateral convention. Consequently it was not possible to reach unanimity on the provisions of all the Articles embodying the principles on this subject and the views expressed by various Delegations wherever they are divergent have been embodied in alternative drafts in the Articles.

10. The Committee takes the view that it is a matter for each State to decide as to whether it would enter into bilateral arrangements with other States on the question of extradition of fugitive offenders or whether it should be a party to a multilateral convention among a group of States. The Committee, however, is of the opinion that whether a State enters into bilateral arrangements or becomes a party to a multilateral convention certain principles would need to be observed on the question of extradition of fugitive offenders.

11. The Committee having examined the entire position on the subject as requested by the Governments of the Union of Burma and India has formulated the principles on the subject in the light of State practice prevailing in various countries and particularly in the Member States participating in this Committee.

(Sd.) R. W. Prodjodikoro, Chairman.

25-2-1961 **(Sd.) B. Sen, Secretary.**

ARTICLES CONTAINING THE PRINCIPLES CONCERNING EXTRADITION OF FUGITIVE OFFENDERS

Article 1

The Contracting Parties undertake to surrender to each other, in the present Treaty/Convention, persons who are within the jurisdiction of one party and are being prosecuted or have been convicted by the judicial authorities of the other party.

Note : (1) The Delegation of Iraq was in favour of adoption of the words "in the territory" in place of the words "within the jurisdiction".

(2) Burma, Ceylon, India, Japan and Pakistan were in favour of the view that extradition arrangements should be made by means of bilateral treaties, whilst Iraq and the United Arab Republic favoured adoption of a multilateral convention. The Delegation of Indonesia did not express any specific view.

Commentary

At the Cairo Session of the Committee there appeared to be a fair measure of agreement among the delegations of the participating countries on the general principles relating to the extradition of fugitive criminals, although some differences of opinion were expressed on certain aspects. It was agreed that "no legal duty is imposed by customary international law on States to extradite fugitive offenders". The majority of the delegations was, however, of the opinion that "extradition may, in the absence of a treaty, be effected by way of international co-operation in suppression of crimes on a reciprocal basis". India was of the opinion that "international law imposes no obligation to extradite criminals, but States do recognise it even in the absence of treaties". The U.A.R. expressed the view that "extradition is a moral obligation based on the principles of solidarity and co-operation between nations" and Japan stated that although international law imposes no obligation, "extradition is made even in the absence of treaties". Some delegations, however, thought that extradition could be effected only in pursuance of a treaty. Ceylon stated that her law recognised extradition but only with countries with which she had a treaty and Sudan expressed the view that "there should be a treaty regarding extradition because otherwise things would be fluctuating". Although it has been asserted by some writers on inter-

national law that there is a legal duty to extradite even in the absence of a treaty, this doctrine has not become an established rule of international law and there was agreement in principle among the delegations to the Cairo Session that there is no legal duty of extradition under customary international law. These Articles, therefore, commence with an Article which states that the contracting parties undertake to surrender fugitive offenders only "in the circumstances and under the conditions stipulated in the present Treaty/Convention". The words "Treaty/Convention" have been inserted because there is a divergence of view as to whether extradition arrangements should be made between States by separate bilateral treaties or by a multilateral convention between a group of States.

Article 2

Alternative 'A'

Extradition shall not be granted unless the act constituting the offence for which the person sought is being prosecuted or has been convicted is punishable at least by three years' imprisonment under the laws of both the requested and requesting States.

Alternative 'B'

(1) Extradition may be granted if the person whose extradition is requested, is accused as a principal or as an accessory, of committing or attempting to commit an offence, within the jurisdiction of the requesting State, punishable at least by one year's imprisonment under the laws of both the requesting and the requested States.

(2) If this person has been already convicted for such an offence, he should not be extradited unless he was condemned for at least two months' imprisonment.

Alternative 'C'

Extradition shall not be granted under Article 1 except in respect of offences enumerated in the Schedule to the present Treaty.

Note : The Delegations of Burma and Japan accepted alternative "A" of the draft. The Delegation of Pakistan wished to leave the position open as to whether to accept alternative "A" with an amendment or to accept alternative "C". The amendment suggested by the Delegation of Pakistan to Alternative "A" was that the period of one year should be substituted in place of three years. The Delegations of Ceylon and India were in favour of accepting alternative "C". The Delegation of Indonesia accepted paragraph (1) only of alternative "B". The Delegations of Iraq and the U.A.R. accepted alternative "B" of the draft.

Commentary

Every convention or treaty on extradition has to choose between two methods of qualifying extraditable offences, namely, the enumerative method and the eliminative method. The enumerative method, which specifies each offence for which extradition may be granted, has been adopted by most extradition treaties in the nineteenth and early twentieth centuries. This system has also been adopted in municipal legislation by the United Kingdom (Extradition Acts 1870, 1873, 1906 and 1932), Belgium (Law of 1933), and countries such as India, who have based their Extradition Acts on the British model. Until recently the practice among most of the Member Countries of this Committee has been to enumerate the offences which are to be extraditable in treaties as also in the municipal legislations relating to extradition. The modern trend, in both extradition treaties and municipal legislation, is to adopt the eliminative method, which defines extraditable offences by reference to the maximum or minimum penalty which may be imposed. Modern bilateral treaties, such as Extradition Treaty of 12th June 1942 between Germany and Italy, and the Treaty of 29th November 1951 between France and the Federal Republic of Germany, have adopted the eliminative method in preference to the enumerative method. The recent treaty between Iraq and Turkey provides that the offence must be punishable in both countries with at least one year's imprisonment. The eliminative method has also been adopted in municipal legislation by countries such as France (Law of 1927) and Germany (Law of 1929). Recently concluded multilateral conventions, such as the Extradition Agreement of 14th September 1952 between the Member States of the League of Arab States and the Extradition Convention of 5th May 1954 adopted by the Legal Committee of the Council of Europe, have adopted the eliminative method. The eliminative method has also been adopted by the well-known Harvard Research Draft on Extradition and by the Draft Convention of Extradition adopted by the Inter-American Council of Jurists at its Third Session in the Mexico City in February 1956.

Although the majority of the delegates in this Committee appeared to favour the eliminative method, there was no unanimity on the specific provisions to be included regarding this matter and

the Committee has finally adopted 3 alternative Articles on this question. The laws and treaties of most of the Member Countries of the Committee have adopted the principle of double criminality, namely, that the act should be punishable as an offence in both the requesting and requested States. All the delegations appeared to be in agreement on this question.

Article 3

Extradition shall not be granted for political offences. The requested State shall determine whether the offence is political.

Note : This Article is adopted by a majority. The Delegations of Ceylon and Indonesia dissented (See Commentary).

Commentary

The majority of the delegations at the Cairo Session were of the opinion that extradition should not be granted for political offences. The Delegation of Ceylon, however, observed that "although this principle has been accepted in Ceylon at present, in future legislations she would reserve the right to extradite persons who commit serious types of mixed crimes, such as crimes which are both of a political and ordinary nature." The Delegation of Indonesia urged consideration by the Member States of the principle that "no offence should be considered as being of a political character by the Member States if it was committed in any of these States by a foreigner." In the view of Indonesia, a political crime can only be committed by persons exercising political rights in the State in which the crime has been committed; in other words, it can be committed only by a citizen of that State within the boundaries of the State concerned. Thus, in the view of Indonesia, a political crime can only be committed against one's own State within its boundaries and foreigners cannot be regarded as having committed a political crime against a State other than his own.

At the Colombo Session, the Delegations of Burma, India, Iraq, Japan, Pakistan and the United Arab Republic were in agreement that extradition should not be granted for political offences. The Delegation of Ceylon was of the opinion that in the matter of extradition no distinction should be made between ordinary crimes and crimes which amount to political offences or which are of a political nature, and as such Ceylon was not in a position to accept the provisions of this Article. The Delegation of Indonesia stated that the Article went must beyond the hitherto accepted notions in the matter of non-extradition of political offenders. The

Delegation was of the view that the difficulties in determining whether a crime is of a political character or not may lead to complications and if the principle of non-extradition of political offenders was accepted it would be difficult to determine in each case whether a person should be extradited or not, especially in the case of mixed offences. The Delegation was also of the opinion that aliens or foreigners have no right to meddle in the internal affairs of a foreign country and if such a person did so, he should not be given asylum. The Delegation of Indonesia therefore felt that the principles behind this Article should not be applicable to the cases of persons who are not the nationals of the States where the political crime is committed since foreign nationals do not enjoy any political rights. The Delegation also drew attention to the provisions of the Harvard Draft Convention on the subject and stated that the Article should begin with the words "unless otherwise provided by a treaty". The Draft suggested by the Indonesian Delegation was in the following terms :

(a) Unless otherwise provided by a treaty, extradition shall not be granted for political offences.

(b) An offence shall not be considered as political if it is committed by a person who does not exercise political rights in the aggrieved State.

(c) An offence shall not be considered as of a political nature if there is a preponderance of the features of a common crime over the political motives or objectives of the offender.

At the Tokyo Session of the Committee the Delegation of Ceylon also accepted this draft of the Article. Extradition treaties do not usually contain a definition of the term "political offence". A similar situation prevails in most systems of municipal law. Although the Japanese Law of Extradition has adopted the principle of non-extradition of political criminals, no definition of a political crime is given in either the Ordinance or the Law of Extradition. With regard to the United Arab Republic, neither the Syrian Penal Code nor the Laws of the Egyptian Region contain a definition of political offences for the purposes of extradition. A similar position prevails in the municipal legislations of the other Member Countries. This is true of almost all systems of municipal law. The difficulty of defining a political crime is no less reflected in the writings of text-book writers among whom there is much controversy. Some writers consider a crime "political" if committed from a political motive, whereas others call "political" any crime committed for a politi-

cal purpose; again others recognise such a crime only as "political" as was committed both from a political motive and at the same time for a political purpose; and finally, some writers confine the term "political crime" to certain offences against the State only, such as high treason. In view of the paucity of legislative precedents and the failure of text-book writers to formulate a satisfactory definition of the term, the feasibility of defining a political crime has always been doubted and in most countries the question is left to the discretion of the authorities exercising jurisdiction in the matter. English law, for instance, merely refers to "offences of a political character" and does not attempt a precise definition. A similar position prevails in French law, with the exception that in France an offence committed during an insurrection or civil war is always regarded as a political offence. Belgian law recognises the so-called **"fait connexe a un crime au delit politique"** and Swiss law, the **"systeme de la predominance"**. At the Colombo Session, the Delegations agreed that no particular test or formula could be evolved to determine what is a political offence. Article 3 accordingly provides that the decision as to whether an offence is political or not, shall be left to the discretion of the requested State. Such a provision is in accordance with the State practice in the Member Countries. A similar provision has been adopted by the League of Arab States in its Extradition Agreement of 1952, and by the Inter-American Council of Jurists in its Extradition Convention of 1956.

Article 4

Extradition may be refused, if the person in question is a national of the requested State.

Commentary

The municipal laws of most countries provide that nationals shall not be extradited, but there are some countries which are prepared to extradite their own nationals on the basis of reciprocity. Belgium, Denmark, France, Germany, Greece, Italy, Spain, Switzerland and almost all other continental European States have provisions in their laws and Constitutions that nationals may not be extradited. On the other hand, the United Kingdom and the United States do not make any distinction in their extradition laws between their own nationals and foreign citizens; presumably the United Kingdom and the United States are prepared on principle to surrender their own nationals, but in practice this policy is not always followed on account of the difficulty of securing reciprocity. Most of the treaties between the United States and foreign countries

either disclaim any obligation to surrender citizens of the asylum State or make their surrender discretionary with that State. Similarly, it is not unusual for the United Kingdom when concluding extradition treaties with countries which prohibit the extradition of their own nationals to insert a clause which leaves it to the discretion of the United Kingdom to grant or refuse the extradition of United Kingdom nationals. With regard to the Member States of this Committee, India, Ceylon, Iraq, Sudan and Indonesia appear to be in favour of the extradition of their own nationals on a reciprocal basis but Burma, Japan and the United Arab Republic have expressed a contrary view. This Article accordingly leaves it to the discretion of the Contracting Party whether to grant or refuse extradition of its own nationals.

Article 5

Extradition shall not be refused on the ground that the person sought to be extradited is not a national of the requesting State.

Note : This Article was adopted by a majority. The Delegations of Burma and India did not accept the provisions of this Article. The Delegation of Pakistan reserved its position.

Commentary

The practice of States as evidenced in various extradition treaties appears to favour the extradition of persons who are not nationals of the requesting State. The majority of the delegations of the Member Countries agreed that extradition of nationals of third States could not be refused. The Delegation of Pakistan reserved their position on this Article as the Government of Pakistan did not have an opportunity of considering this matter fully. The Delegations of Burma and India could not accept the provisions of this Article.

Article 6

Extradition shall not be granted for purely military offences.

Note : This Article was adopted by a majority. The Delegations of Burma, Indonesia and Pakistan were of the view that this Article should be deleted. The Delegation of Indonesia was of the opinion that the principle of non-extradition of military offences is not an accepted notion of international law.

Explanation: The expression "purely military offences" means acts or omissions which are punishable only under the military laws of a State and do not fall within the scope of ordi-

nary penal laws of the State. This Article will have no application to offences i.e., acts or omissions which are punishable both under the military laws and ordinary penal laws of a State.

Commentary

Most extradition treaties exclude military offences but the exemption is intended to be granted only for offences of an exclusively military character. The Agreement between Egypt and Iraq of 1931, for instance, expressly prohibits extradition for "purely military offences" and the Franco-German Treaty of 1951 provides that extradition shall not be granted if the offence "consists exclusively of a violation of military duties." The Inter-American Draft Convention of 1956 similarly excludes "essentially military crimes". The exemption is for offences of an exclusively military character and not for those which are also offences under general criminal law. At the Cairo Session, Japan, Indonesia, India and Ceylon stated that there were no provisions in their extradition laws relating to military offences. Iraq stated that under her law there was an express provision excluding military offences from extradition and the United Arab Republic said that the "Egyptian Military Code defines military offences as being offences committed by any member in the rank and file of the Armed Forces in violation of military duties and discipline imposed on him by his military status."

At the Colombo Session, the Delegations of Burma, Ceylon, India, Iraq and the United Arab Republic agreed that extradition should not be granted for purely military offences and accepted the provisions of Article 6. The expression "purely military offences" was defined as "acts or omissions which are punishable only under the military laws of the State and do not fall within the scope of ordinary penal laws of the State." This Article would, therefore, have no application to offences which are punishable both under the military laws and the ordinary penal laws of a State.

Article 7

(1) The requested State has the right to seek information and clarification from the requesting State as to the nature of the offence for which extradition has been requested in order to determine whether the offence is of a political character or not.

(2) In cases where the person sought to be extradited submits **prima facie** evidence that his offence is of a political character the burden of proving the opposite lies on the requesting State.

Note : The Delegations of Ceylon and Japan were in favour of deletion of the whole Article whilst Delegations of Burma, India and Indonesia wished paragraph 2 of the Article to be deleted. The Delegations of Iraq and the U.A.R. accepted the Article as it stood. The Delegation of Pakistan was prepared to accept the provisions of this Article but had no objection to deletion of paragraph 2 of this Article.

Article 8

Extradition shall be granted only if the offence for which the person sought is being prosecuted or has been convicted, has been committed within the jurisdiction of the requesting State.

Note : The provisions of this Article will be unnecessary if the alternative (B) to Article 2 is adopted.

Commentary

Most extradition treaties provide that extradition shall be granted only if the offence was committed within the jurisdiction of the requesting State. The Anglo-American Extradition Treaty of 1931, for instance, provides that extradition shall be granted only if the crime was "committed within the jurisdiction of one party". The Extradition Treaty between Japan and the United States contains a similar provision in Article I. The Inter-American Draft Convention also provides that the offence "must have been committed within the jurisdiction of the requesting State". The provisions of this Article were accepted unanimously. It may be stated that under the penal laws of Japan certain crimes committed outside the territorial jurisdiction are punishable in Japan. The position is also the same under the penal laws of Indonesia.

Article 9

The requesting State shall not try or punish the person extradited except for the offence for which he was extradited and with the consent of the requested State for offences directly connected with it.

Note : The Delegation of Indonesia did not accept the provisions of this Article and suggested retention of the text of the Draft Article as adopted in the Colombo Session which was as follows :

"The requesting State shall not, without the consent of the requested State, try or punish the person extradited except for the offence for which he was extradited,

offences directly connected with it and committed for the same purpose and the offences he might have committed after his extradition".

Commentary

The rule of speciality is usually embodied in extradition treaties but there is no universally recognised rule of customary international law in this matter and State practice is widely divergent. The extradition laws of some countries such as the United Kingdom do not permit the trial of the person extradited "on facts other than those on which the surrender is based". Section 19 of 1870 Extradition Act of the United Kingdom provides that a person "shall not . . . . . be tried for any offence committed prior to the surrender other than such of said crimes (described in the First Schedule) as may be proved by the facts on which the surrender is grounded". German law, on the other hand, permits the consideration at the trial of "new facts" which have subsequently been revealed, provided that these "new facts" leave unaffected the general factual situation underlying the offence when viewed as a whole. Belgian law permits the prosecution of the person extradited for all offences committed prior to extradition, provided such offences fall within the category of extraditable crimes under the treaty in question. At the Cairo Session, India, Burma, Ceylon, Indonesia, Japan and Iraq were of the opinion that a person may be tried only for the offence in respect of which extradition was granted. Burma observed that "international custom seems to be that when extradition is requested by the requesting State for a particular offence, then the person can be tried only for that offence and cannot be tried for an offence other than that mentioned in the extradition report unless there was an elapse of time and permission was obtained from the requested State." Indonesia and Iraq stated that their extradition laws contained no provisions relating to this matter and Japan observed that "theoretically the person must be tried for the offence in respect of which extradition was granted". The United Arab Republic agreed that "treaties and custom usually prevent trial for any offence other than that for which extradition was granted" but raised the question of certain exceptions to this rule of speciality. Most treaties provide that the rule may be waived with the consent of the requested State. At the Colombo Session, the Committee decided to adopt a draft providing that the requesting State shall not try the person extradited for any other offence without the consent of the requested State. Such a provision has been included in most of the recently concluded conventions on extradition such as the European Draft Convention of 1956 and it also forms part of the well-known Harvard Research Draft on Extradition. The Draft adopted at the Colombo Session was revised in the light of the comments made by the Governments of the Participating Countries.

Article 10

A person who has been extradited may be tried for an offence other than those referred to in Article 9 where the person after being given an opportunity of leaving the territory of the State to which he had been surrendered fails to do so within a period of sixty days after being given that opportunity provided that notice in writing of the fact of such opportunity being afforded is given to the State of which such person is a national at or about the time when such opportunity is afforded to such person.

Commentary

The Extradition laws of some countries provide that the rule of speciality may be waived by the surrendered person himself. At the Colombo Session, the Delegations of Burma, India, Indonesia, Iraq and the United Arab Republic adopted a Draft Article containing provisions regarding this matter. The Delegations of Ceylon and Japan, however, did not accept the provisions of that Article. The Delegation of Pakistan had also reserved its position. At the Tokyo Session, however, unanimity was reached on the present text of this Article.

Article 11

Extradition shall be refused if the offence in respect of which extradition is sought is under investigation in the requested State or the person sought to be extradited has already been tried and discharged or punished or is still under trial in the requested State for the offence for which extradition is sought.

Commentary

The laws and/or treaties of most of the member countries of this Committee contain provisions providing against double jeopardy for the same act. There is, for instance, a provision in the Criminal Procedure Code of Iraq prohibiting double jeopardy and treaties concluded by Iraq with other countries, such as the Iraqi-Egyptian Treaty of 1931, contain provisions to this effect. The principle of **"Non Bis In Idem"** is also observed by the United Arab Republic and the agreement signed by Egypt and Iraq in 1931 stipulates that the requested person may not be surrendered if he has

been previously tried for the offence for which his surrender is requested, so that punishment may not be repeated for the same offence. The extradition agreement concluded between the countries of the League of Arab States contains a stipulation to this effect. The principle of **"Non Bis In Idem"** is also recognised by Japan and Indonesia. Though all the Delegations at the Colombo Session were in agreement with the principle of providing against double jeopardy for the same act, there was disagreement with regard to the precise wording of the provisions to be included. At the Tokyo Session this Article was, however, unanimously adopted.

Article 12

If the person sought to be extradited is on trial in the requested State for an offence other than that for which his extradition is requested, his extradition shall be postponed until his trial is terminated and the penalty has been undergone.

Article 13

Extradition shall not be granted if the person in question has become immune by reason of lapse of time from prosecution or punishment according to the laws of either the requesting or the requested State.

Commentary

Although all extradition treaties contain a provision to the effect that extradition may be refused on the ground of lapse of time, some treaties provide that the request may be refused if the offence is time-barred under the law of the requested State, while others provide that the request may be refused only if the offence is time-barred under the laws of both the requested and requesting States. Most treaties have in the past regarded the law of the requested State as decisive, but the modern tendency, as exemplified in the Franco-German Treaty of 1951, the European Draft Convention of 1954 and the Inter-American Draft Convention of 1956, appears to favour the refusal of extradition when the offence has become time-barred under the laws of either the requested or requesting State. At the Colombo Session the Committee followed the modern tendency and provided that extradition should be refused when the trial or punishment of the offence has become barred by lapse of time according to the laws of either the requesting or requested State. All the delegations at the Colombo and Tokyo Sessions accepted the provisions of this Article.

Article 14

The requisition for extradition shall be made in writing and shall be submitted normally through diplomatic channels to the competent authority of the requested State.

Commentary

There was a good deal of discussion at the Colombo and Tokyo Sessions regarding the proper channel through which requests for extradition should be made. It was agreed that where diplomatic posts were maintained the request should be forwarded through diplomatic channels. But if a country had no diplomatic mission in the State from whose territory it wished to extradite a criminal the request could be sent through its consular representatives and in the absence of a consular post the request could be sent directly from the Ministry of Foreign Affairs of one State to the Foreign Ministry of the other. All the delegations were agreed on the text of this Article.

Article 15

(1) The requisition for extradition shall be accompanied by the original or a certified copy of the sentence of the warrant of arrest or other document having the same validity issued by a competent judicial authority.

(2) The nature of the offence for which the requisition for extradition is made, the time and place of its commission, its legal classification or description, and the legal provisions applicable to it, should be specified as precisely as possible.

(3) The requisition shall also be accompanied by a copy of the criminal law provisions that are applicable to the case, together with a description of the person claimed and any other particulars which may serve to establish his identity and nationality.

(4) The requisition shall also be accompanied—

(i) where the person claimed is proposed to be prosecuted, by the original or certified copies of the evidences recorded by competent judicial authorities of the requesting State establishing **prima facie** that the person concerned has committed an extraditable offence within the jurisdiction of the requesting State; and

(ii) where the person claimed is already convicted of an offence in the requesting State, by original or certified copies of documents establishing that the conviction was recorded by competent judicial authorities of the

requesting State in respect of an extraditable offence committed by the person concerned within the jurisdiction of the requesting State and that he has not served his sentence in accordance with the laws of the requesting State.

Commentary

In all the member countries the procedure for extradition is substantially similar. Some differences of opinion were, however, expressed at the Colombo Session with regard to the provisions of this Article and the Committee had decided to provisionally adopt alternative Draft Articles. At the Tokyo Session, however, unanimity was reached on the text of this Article.

Article 16

Extradition shall not be granted unless the competent authorities of the requested State are satisfied that the material furnished under Paragraph 4 of Article 15 establishes—

(i) where the person claimed is proposed to be prosecuted that he has **prima facie** committed an extraditable offence within the jurisdiction of the requesting State; and

(ii) where the person claimed is already convicted for an offence in the requesting State, that he was convicted by competent judicial authorities in respect of an extraditable offence committed by him within the jurisdiction of the requesting State and that he has not served his sentence in accordance with the laws of the requesting State.

Article 17

All measures to carry out extradition shall be taken in accordance with the provisions of the laws of the requested State, and the person sought shall have the right to utilise all remedies and relief available to him according to the laws of the requested State.

Commentary

In all the member countries a fugitive offender would be discharged if a **prima facie** case is not made out against him and no question of extradition would then arise. This question would, of course, be decided according to the laws of the requested State and the final decision would be left to the discretion of the executive. The person sought would, however, have the right to utilise

all resources available to him according to the laws of the requested State. All the Delegations at the Colombo and Tokyo Sessions accepted the provisions of Articles 16 and 17.

Article 18

If requests for extradition are made concurrently by several States, in respect of the same person, the requested State shall have the discretion to decide thereon taking into consideration all the circumstances of the case and, in particular, the priority of the request, the gravity of the offence and the penalty to be imposed therefor.

Commentary

Concurrent requests for the extradition of the same person may arise in instances where the person sought has committed crimes in different States. The Inter-American Convention, for instance, states that "when several States request the extradition of a person, preference shall be given to the first formal request". The European Draft Convention adopts, as additional factors to be taken into account, the possibility of subsequent extradition taking place as between the requesting States, severity of the offence, the place where the offence has been committed and the nationality of the person whose extradition is sought. At the Colombo Session, the delegations were agreed that in the event of conflicting requests, the requested State shall decide to which of the requesting States the person shall be surrendered. This principle forms a part of most extradition treaties. The delegations were also in agreement that if such a situation should arise, the requested State should exercise its discretion taking into consideration the priority of the claim, the gravity of the crime and the penalty to be imposed. This Article accordingly provides that the requested State shall decide thereon, taking particularly these three factors into consideration.

Article 19

The requested State shall inform the requesting State in writing and through diplomatic channel of its decision on the requisition for extradition. If the request for extradition is rejected, the reasons shall be stated.

Article 20

The competent authorities of extraditing State shall take the necessary steps to enable the agents of the requesting State to take away the extradited person.