

## **ARTICLES CONTAINING THE PRINCIPLES CONCERNING EXTRADITION OF FUGITIVE OFFENDERS**

### **Article I**

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 international 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 I 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 political 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 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 ordinary 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 1. 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 recognized rule of customary international law in this matter and State practice is widely divergent. The extradition laws e trial of the person extradited " 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 States 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 therefore.

## 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 principal forms a part of most extradition treaties. The delegation were also in agreement that if such a situation should arise, the requested States 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 States 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.

## 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. Prodiokoro.** Chairman

**(Sd.) B. Sen.** Secretary