

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 question 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 view 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.

25-2-1961

(Sd.) **R. W. Prodjodikoro,**
(Sd.) **B. Sen,**

Chairman.
Secretary.