

**Session of Cambridge - 1983**

**New Problems of Extradition**

*(Twelfth Commission, Rapporteurs : Mr Karl Doehring)*

*(The English text is authoritative. The French text is a translation.)*

*The Institute of International Law,*

*Recalling* the previous Resolutions of the Institute on matter of extradition (Oxford 1880, Geneva 1892, Paris 1984) ;

*Desirous* to contribute to a more effective suppression of crime by means of a better regulation of the systems of extradition ;

*Conscious* of the need to ensure in this field the observance of fundamental rights of the accused in particular of his rights of defence,

*Adopts* the following Resolution :

**I. The Treaty System on Extradition**

1. Both systems of extradition at present in use, the bilateral and the multilateral, should be developed and extended.
2. Since in certain respects the laws of States or groups of States show essential differences and in order nevertheless to promote a more satisfactory State practice in matters of extradition, States should be encouraged to agree upon a system of extradition in accordance with the general principles of this Resolution. Such agreements might contribute more effectively to the development of a modern system of extradition than would efforts exclusively aimed at establishing a universal system.
3. The making of reservations to multilateral treaties on extradition should be limited as far as possible.

4. When there exists no extradition treaty between them, States should nevertheless be encouraged reciprocally to extradite accused persons. The requirements of international law should be respected in such cases.

## **II. The Political Offence**

1. Where the extradition treaty does not expressly contain the right to refuse extradition for political offences, a State may nevertheless invoke this defence in support of its refusal.

2. The right to refuse extradition for a political offence should not be replaced by the mere right to grant asylum from political persecution ; the prosecution of a political offender does not always necessarily amount to persecution justifying the grant of asylum by third States.

3. Acts of a particularly heinous character, such as acts of terrorism, should not be considered political crimes.

## **III. The *Attentat* Clause**

The traditional *attentat* clause should be maintained, and its application should be extended to representatives of States, in particular members of diplomatic missions, and to representatives to, and officials of, international organizations.

The application of the *attentat* clause should be extended to acts of a particularly heinous nature.

## **IV. The Protection of the Fundamental Rights of the Human Person**

In cases where there is a well-founded fear of the violation of the fundamental human rights of an accused in the territory of the requesting State, extradition may be refused, whosoever the individual whose extradition is requested and whatever the nature of the offence of which he is accused.

## **V. The Relationship between the Grant of Political Asylum and the Duty to Extradite**

Notwithstanding the provisions of Article II, section I, the right to refuse extradition by granting asylum against political persecution should not be exercised where there is reason to conclude that the requesting State will prosecute the accused with due observance of all requirements, both substantive and procedural, of the rule of law. Where the treaty to be applied contains pertinent provisions, the right to refuse extradition for a political offence should depend on those provisions.

## **VI. *Aut judicare aut dedere***

1. The rule *aut judicare aut dedere* should be strengthened and amplified, and it should provide for detailed methods of legal assistance.

2. When a State undertakes to prosecute the person concerned, other interested States, in particular the State on the territory of which the offence was committed, should be entitled to send observers to the trial unless serious grounds related to the preservation of State security in fact justify the non-admittance of such observers.

3. In cases of such prosecution, if the tribunal concerned finds the accused guilty, an appropriate penalty should be imposed similar to that which would normally be applied under the law of that State in a similar case.

### **VII. The Extradition of Nationals**

While every State should in principle remain free to refuse the extradition of its nationals, it should in that event try the offence under its own law. The extradition of nationals, on a reciprocal basis, may serve to reduce crime.

### **VIII. The Relationship between an Obligation to Extradite and Municipal Law**

1. Extradition treaties or appropriate national legislation should provide that a person whose extradition is requested is entitled to invoke before national courts any protective treaty provision. A person whose extradition is requested should similarly be entitled to rely before national courts on rules of customary international law which provide for his protection.

2. The fact that the extradition of an alien may be forbidden by municipal law should not prevent his expulsion by legal procedure. It must be left to each State to harmonize its municipal provisions on extradition and expulsion. The exercise of any right to expel an alien should, internationally, be limited by the duty to respect human rights, in particular by avoiding the deportation of the person to a State which might persecute him and by avoiding any arbitrary expulsion.

### **IX. The Settlement of Disputes**

Disputes concerning treaties on extradition should be submitted to arbitral or judicial settlement, in particular to the International Court of Justice.

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(1<sup>st</sup> September 1983)