

ver be regarded as "political" (Article 1) and other specified offences *may not* be (Article 2), notwithstanding their political content or motivation.

17. The system established by Articles 1 and 2 of the Convention reflects the consensus which reconciles the arguments put forward in favour of an obligation, on the one hand, and an option, on the other hand, not to consider, for the purposes of the application of the Convention, certain offences as political.

18. In favour of an obligation, it was pointed out that it alone would give States new and really effective possibilities for extradition, by eliminating explicitly the plea of "political offence", a solution that was perfectly feasible in the climate of mutual confidence that reigned amongst the member States of the Council of Europe having similar democratic institutions. It would ensure that terrorists were extradited for trial to the State which had jurisdiction to prosecute. A mere option could never provide a guarantee that extradition would take place and, moreover, the criteria concerning the seriousness of the offence would not be precise.

19. In favour of an option, reference was made to the difficulty in accepting a rigid solution which would amount to obligatory extradition for political offences. Each case should be examined on its merits.

20. The solution adopted consists of an obligation for some offences (Article 1), and an option for others (Article 2).

21. The Convention applies only to particularly odious and serious acts often affecting persons foreign to the motives behind them. The seriousness of these acts and their consequences are such that their criminal element outweighs their possible political aspects.

22. This method, which was already applied to genocide, war crimes and other comparable crimes in the Additional Protocol to the European Convention on Extradition of 15 October 1975 as well as to the taking or attempted taking of the life of a head of State or a member of his family in Article 3.3 of the European Convention on Extradition, accordingly overcomes for acts of terrorism not only the obstacles to extradition due to the plea of the political nature of the offence but also the difficulties inherent in the absen-

ce of a uniform interpretation of the term "political offence".

23. Although the Convention is clearly aimed at not taking into consideration the political character of the offence for the purposes of extradition, it does recognise that a Contracting State might be impeded, e. g. for legal or constitutional reasons, from fully accepting the obligations arising from Article 1. For this reason Article 13 expressly allows Contracting States to make certain reservations.

24. It should be noted that there is no obligation to extradite if the requested State has substantial grounds for believing that the request for extradition has been inspired by the considerations mentioned in Article 5, or that the position of the person whose extradition is requested may be prejudiced by these considerations.

25. In the case of an offence mentioned in Article 1, a State refusing extradition would have to submit the case to its competent authorities for the purposes of prosecution, after having taken the measures necessary to establish its jurisdiction in these circumstances (Articles 6 and 7).

26. These provisions reflect the maxim *aut dedere aut iudicare*. It is to be noted, however, that the Convention does not grant Contracting States a general choice either to extradite or to prosecute. The obligation to submit the case to the competent authorities for the purpose of prosecution is subsidiary in that it is conditional on the preceding refusal of extradition in a given case, which is possible only under the conditions laid down by the Convention or by other relevant treaty or legal provisions.

27. In fact, the Convention is not an extradition treaty as such. Whilst the character of an offence may be modified by virtue of Articles 1 and 2, the legal basis for extradition remains the extradition treaty or other law concerned. It follows that a State which has been asked to extradite a terrorist may, notwithstanding the provisions of the convention, still not do so if the other conditions for extradition are not fulfilled; for example, the offender may be a national of the requested State, or there may be time limitation.

28. On the other hand, the Convention is not exhaustive in the sense that it does not prevent States, if their law so allows, extraditing in cases other than those provided for