INTERNATIONAL LAW

CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES

BY

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§ 309A. **Substitutes for International Adjudication.** The United States as a claimant State has at times within recent years found it expedient to avoid contentious litigation before an international tribunal in large groups of cases where the basis of liability was apparent, and to endeavor by agreement with the respondent State to fix a rule or test by reference to which cases within such groups should be adjusted. This procedure was exemplified by arrangements developed by the American and German agents before the Mixed Claims Commission under the agreement of August 10, 1922,[1] and resulted in awards of a non-litigious character in harmony therewith.[2] This avoidance of conflict even before a tribunal authorized to adjudicate has borne fruit. It has encouraged the conclusion of agreements between the United States and other countries calling for the joint examination of claims and an endeavor to effect agreement through the joint efforts of competent agents as to the treatment to be applied to certain categories of claims, such, for example, as those enumerated in an existing claims convention, and confining arbitration to cases where such efforts might prove abortive.[3] It is the endeavor to agree to effect direct adjustment which distinguishes such arrangements from those which mark an effort to agree to have recourse to contentious litigation and which are likely to necessitate a belated award by a neutral umpire.[4]

Again, effort is increasingly made to obtain agreement by a respondent State to pay a fixed sum (possibly in installments) to cover all claims within a specified category, the amount being measured by the financial potentialities of the respondent State, the volume and condition of claims preferred against it by foreign powers generally, and other kindred considerations.[5] In the event of

tract Claims," *Am. J.*, II, 78, 90–94; J. B. Scott, The Hague Peace Conferences, I, 416–418; A. Pearce Higgins, The Hague Conferences, 194–196; Edwin M. Borchard, International Contractual Claims and Their Settlement, Baltimore, 1913, 52–53. See, also, *Deuxième Conférence Internationale de la Paix, Actes et Documents*, I, 553–561, especially the views expressed by General Porter, 558.

§ 309A. [1] U. S. Treaty Vol. III, 2601.

[2] See Report of Robert W. Bonynge, Agent of the United States before the Mixed Claims Commission, United States and Germany, Dec. 31, 1934, especially in relation to agreement for the settlement of claims of American nationals against the German Government arising out of mark balances in German banks and private debts owing in marks by German nationals, and which received the approval of the Commission, pp. 83–96.

[3] See protocol with exchange of notes relating thereto, between the United States and Mexico, of April 24, 1934, relative to claims presented to the General Claims Commission, established by the convention of Sept. 8, 1923, U. S. Executive Agreement Series, No. 57, also contained in U. S. Treaty Vol. IV, 4489.

See, also, arrangement between the United States and Spain, of Aug. 24, 1927, May 13, 1929, and June 20, 1929, for the informal consideration by representatives to be appointed by the two States of all outstanding diplomatic claims between them, U. S. Executive Agreement Series, No. 18.

[4] Yet the joint endeavor to appraise and agree to the treatment of particular categories of claims may not always prove completely successful. The operation of the scheme contemplated by the protocol with Mexico of April 24, 1934, in relation to claims pending before the General Claims Commission was perhaps an instance.

[5] See, for example, convention between the United States and Mexico, of April 24, 1934, covering the en bloc settlement of the claims presented by the Government of the United States to the Commission established by the special claims convention concluded Sept. 10, 1923, U. S. Treaty Vol. IV, 4487.

agreement on such a basis, the United States undertakes by appropriate means, such as through the medium of a domestic claims commission, to make equitable distribution to American claimants.[6] By a convention with Mexico signed at Washington on November 19, 1941, the Government of the United States agreed to accept the sum of $40,000,000.00 as the balance due from that of Mexico in full settlement of large groups of specified claims, certain others (set forth in Article II) not being extinguished.[7] The plan superseded the stipulations of the General Claims Convention signed on September 8, 1923, and those of the Protocol in relation to it, signed on April 24, 1934.[8]

"By an exchange of notes dated December 24, 1923, the Government of the United States and the Government of Turkey entered into an agreement which provided that a Commission should be designated to determine solutions which should be given to claims outstanding between the two Governments. A supplementary agreement was concluded by an exchange of notes dated February 17, 1927. As a result of subsequent exchanges of communications, the two Governments agreed, with a view to the amiable, expeditious and economic adjustment of the claims, that the Commission should in the first instance undertake a summary examination of the cases for the purpose of recommending to the two Governments a lump sum settlement." [9] Following negotiations begun in 1933 between commissioners of the two Governments, there came a Turkish offer of settlement which was rejected by the American Government. On October 13, 1934, commissioners signed an agreement, "recommending that the Government of Turkey should pay to the Government of the United States a sum of $1,300,000," [10] and this agreement was confirmed by a formal arrangement between the two Governments, of October 25, 1934, which was negotiated and signed in behalf of the United States by Mr. Fred K. Nielsen.[11] Pursuant to Acts of Congress,[12] examination was made of the claims against Turkey to determine the merits of each case; and opinions were duly prepared thereon, in order to enable the Government of the United States to make proper distribution of the sum which the Government of Turkey was obligated to pay.[13] Inasmuch as the merits of the claims of American citizens were to be determined "in accordance with rules and principles of international law controlling as to questions with respect to international responsibility on the part of Turkey," [14]

[6] See, for example, Act of June 19, 1934, to establish a commission for the settlement of the claims comprehended within the terms of the convention between the United States and Mexico, concluded April 24, 1934, 48 Stat. 1021, 1041–1042.

[7] U. S. Treaty Series, No. 980. Against the sum mentioned there was credited $3,000,000.00, representing payments made prior to the signing of the convention pursuant to an agreement in relation to agrarian claims in November, 1938, and also an additional $3,000,000.00 to be paid on the date of the exchange of ratifications. Art. IV.

[8] Art. III. For the domestic allocation of funds received from Mexico, appropriate legislation by the Congress was to follow in 1942.

[9] Nielsen's American-Turkish Claims Settlement, General Report, 7.

[10] *Id.*, Annex I, 45.

[11] *Id.*, Annex II, 47, U. S. Executive Agreement Series No. 73.

The payment of the sum agreed upon was to be made in thirteen annual installments of $100,000.

[12] Act of March 22, 1935, 49 Stat. 67, 76; Act of June 22, 1936, 49 Stat. 1597, 1633.

[13] It is understood that the several opinions were prepared by Mr. Nielsen.

[14] Case of Jehu Eborn Archbell, Nielsen's American-Turkish Claims Settlement, Opinions, 151.

the several opinions were, accordingly, enunciatory of what those rules and principles were deemed to ordain.[15]

The tendency to seek agreement as to bases of responsibility rather than bases of contentious litigation, as well as the tendency also to seek and accept what delinquent States find it possible under the exigencies confronting them to agree to pay, in preference to struggles to obtain favorable arbitral awards of which the ultimate payment may be problematical, is the significant feature of contemporaneous negotiations. It shows the readiness of States, and notably of the United States as a typical claimant, to take full cognizance of realities that mark the vicissitudes in the lives of respondent countries. If their fiscal burden is thus lightened, their acknowledgment of responsibility for the consequences of internationally illegal conduct is at least in some cases accentuated.

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EXTRADITION

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§ 310. **Preliminary.** Extradition was defined by Chief Justice Fuller in the case of *Terlinden* v. *Ames* to be:

> The surrender by one nation to another of an individual accused or convicted of an offence outside of its own territory, and within the territorial jurisdiction of the other, which, being competent to try and punish him demands the surrender.[1]

[15] See *id.*, General Report, Classification of Cases, 22–23.

§ 310. [1] 184 U. S. 270, 289; also, Moore, Extradition, I, § 1, *citing* Billot, *Traité de l'Extradition*, 1.

" 'Extradition' is the formal surrender of a person by a State to another State for prosecution or punishment." Art. 1 (a) of Harvard Draft Convention on Extradition, *Am. J.*, XXIX, *Supplement*, 21.

See, generally, documents in Hackworth, Dig., IV, Chap. XII; John Bassett Moore, Third Assistant Secretary of State, Report on Extradition, with returns of all cases from August 9, 1842, to January 1, 1890, Washington, 1890; same author, Extradition and Interstate Rendition, 2 vols., Boston, 1891; Moore, Dig., IV, 239–424; same author, The Difficulties of Extradition (reprinted from publications of Academy of Political Science, I, No. 4), New York, 1911; Samuel Thayer Spear, Law of Extradition, International and Interstate, 2 ed., Albany, 1884; John G. Hawley, Law and Practice of International Extradition, Chicago, 1893; Extradition of Fugitives from the United States in Foreign Jurisdiction (Extract from book of instructions to court officials), issued by the Attorney-General, June 1, 1916.

See, also, Biron and Chalmers, Law and Practice of Extradition, London, 1903; A. Billot, *Traité de l'Extradition*, Paris, 1874; Ludovic Beauchet, *Traité de l'Extradition*, Paris, 1899; Paul Bernard, *Traité Théorique et Pratique de l'Extradition*, 2 vols., Paris, 1890; Maurice Bourquin, "*Crimes et Délits contre la Sûreté des États Étrangers*," *Recueil des Cours*, 1927, XVI, 117, 191–214; Sir Edward Clarke, Law of Extradition, 4 ed. (Prepared by that author and E. Percival Clarke), London, 1903; Pasquale Fiore, *Traité de Droit Pénal International et de l'Extradition*, French translation by Antoine, 2 vols., Paris, 1880; Sir Francis T. Piggott, Extradition, London, 1910; Baron Albéric Rolin, "*Quelques Questions relative à l'Extradition*," *Recueil des Cours*, 1923, I, 177; J. Saint-Aubin, *L'Extradition et le Droit, Extraditionnel Théorique et Appliqué*, 2 vols., Paris, 1913; Maurice Violet, *La Procédure d'Extradition Spécialement dans le Pays de Refuge*, Paris, 1898.

Proceedings, American Society of International Law, III, 95–165; Draft on Extradition prepared by Delegates to the International Commission of Jurists at Rio de Janeiro, For. Rel. 1912, 37–39; Resolutions adopted by the Institute of International Law in 1880, *Annuaire*, V, 127, J. B. Scott, Resolutions, 42; Resolutions adopted by the same body in 1892, *Annuaire*, XII, 182, J. B. Scott, Resolutions, 102.

See Harvard Draft Convention on Extradition, extensive bibliography, and appendices, with comment by Charles K. Burdick, Reporter, including the following documents: Extraditable Offenses in United States Treaties, 1900–1930; Extraditable Offenses in Treaties Concluded by States Other Than the United States; Multipartite Extradition Conventions; Drafts and Projects; Typical Bipartite Treaties of Recent Date; and Selected Extradition Statutes. These documents are printed in *Am. J.*, January and April, 1935, XXIX, *Supplement*, 241–434. See, also, Report of the Sub-Committee (Mr. Brierly and M. de Visscher) on Extradition, to the Committee of Experts for the Progressive Codification of International Law, Nov. 17, 1925, *Am. J.*, XX, *Special Supplement*, 243.

The extradition of a fugitive from justice signifies that the State within whose domain he is found, believes it to be preferable that he should be prosecuted by the country where the offense was committed than remain unpunished or even be prosecuted under the laws of the place of asylum.[2] Inasmuch as in the United States and England crime is regarded as territorial, and the wrongdoer usually punishable solely in the place where his offense occurred, failure on the part of either of them to surrender a fugitive to the foreign country within whose territory he committed a crime, would result in his immunity from prosecution.[3] Where the laws of the State of asylum permit the prosecution of its own nationals, who may have committed offenses on foreign soil, the surrender of such an individual indicates even stronger preference for the prosecution of the wrongdoer at the place where his criminal acts took place. Such preference on the part of the State of asylum always indicates that it regards with respect the administration of justice of the country demanding the fugitive, and also that it itself denounces as illegal and punishable the commission within its own domain of acts such as are laid at the door of the fugitive. Respect for the administration of justice in foreign countries sufficient to encourage States to conclude treaties of extradition is the result of a highly organized society of nations, the intercourse between whose members has become intimate and friendly. The habit of extradition marks the abatement of distrust which long retarded the surrender of fugitives and oftentimes served to thwart the operation of existing treaties.[4]

The process of extradition, which is a response to the request of a foreign State for the surrender to itself of a fugitive from its justice for prosecution pursuant to its laws, is to be differentiated from that of deportation, which is a mere manifestation of domestic policy marking the effort of a State to cause the removal from its domain of one who has unlawfully entered or remained therein; and it is likewise to be differentiated from that of expulsion which betokens the endeavor of a State to rid itself of an alien whose continued presence within its territory is deemed to be highly detrimental to its welfare. The United States is properly averse to efforts made by a foreign State to cause it to resort to

[2] Mr. Blaine, Secy. of State, to Baron Fava, Italian Minister, June 23, 1890, For. Rel. 1890, 559, 566, Moore, Dig., IV, 290, 296.

[3] Statement in Moore, Dig., IV, 287.

See also in this connection, For. Rel. 1913, 38.

[4] Moore, Extradition, I, § 8; also Biron & Chalmers, Extradition, 1–14.