

Note
re: draft Convention in matter of Terrorism

The Krisdika (Sub-Committee No. III) has examined, upon the request of the Ministry of Foreign Affairs, the two drafts International Conventions submitted by the League of Nations, namely:

- a) a draft Convention for the Prevention and Punishment of Terrorism,
- b) a draft Convention for the Creation of an International Criminal Court established for that purpose.

The two drafts are examined hereafter separately.

I
Draft-Convention For the International Repression of Terrorism

The Scheme of a Convention for the International repression of Terrorism has been initiated by the French Government after the murder of King Alexander of Yugoslavia and French Minister of Foreign Affairs Barthou in September 1934. The purpose is to check criminal activities amounting to "terrorism". What is meant by terrorism is approximatively indicated by Section 2 of the draft which reads as follows:

"Section 2. – With this object, each High Contracting Party should make the following acts criminal offences, whether they affect his own interests or those of another High Contracting Party, in all cases where they are directed to the overthrow of a Government or an interruption in the working of public services or a disturbance in international relations, by the use of violence or by the creation of a state of terror – viz.:

(1) Any act intended to cause death of grievous bodily harm or loss of liberty to:

- (a) Heads of States; persons exercising the prerogatives of the head of the State; their hereditary or designated successors;
- (b) the wives or husbands of the above-mentioned persons;
- (c) Members, officers or servants of Governments;
- (d) Members of constitutional or legislative bodies;
- (e) Persons holding judicial office;
- (f) Diplomatic representatives or consuls;
- (g) Members of the armed forces of the State;

(2) Wilful destruction of, or damage to:
(a) Public buildings or other public property;
(b) Means of communication and transport or installations belonging thereto;

(c) Property belonging to public utility undertakings;
(3) Any wilful act calculated to endanger the lives of members of the public, and in particular interference with the working of means of communication, the use of explosives or incendiary materials, propagation of contagious diseases, or the poisoning of drinking water or food;

(4) Manufacture, possession, export, import, transport, sale, transfer or distribution of any material or object with a view to the commission of an act falling within the present article;

(5) Wilfully giving assistance by any means whatever to a person or an accomplice of a person who does any of the acts set out above”.

From the lecture of Section 2, it appears that many of the acts enumerated therein are, as a matter of fact, already punished by the Siamese Penal Code. For instance Sections 97 (act of violence against the Sovereigns of Siam) and 112 (acts of violence against the Sovereigns or Heads of Friendly States); Sections 98 and 113 (in case of threats against the same); Sections 190 to 196, 198, 199 against damages to public buildings, roads, conveyances, poisonous substances into water, etc.), Section 178 and foll. (Criminal Associations). Attempt and instigation to commit an offence, dealt with in section 3 of the draft, are also provided by sections 60 to 62 and 174 to 175 of the penal Code. It is not denied that the acts enumerated in Section 2 of the draft may include some acts which are not exactly punishable under the Siamese Penal Law; but this is however exceptional.

The novelty of the draft-convention is not in the enumeration of the above offences themselves, but in the following specifications:

a) the purpose of the offences, as trifling as they may be, is to “overthrow a Government” or to cause “an interruption in the working of public services or a disturbance in international relations”;

b) the committing of the offences is by violence or terrorism. Terrorism is, as far as we know, a new notion in criminal law. If one tries to realize exactly what it means, it seems that it is the creation of conditions likely to frighten the citizens or the responsible Heads and officials of a State, in order to compel them to do or not to do something or to modify their policy or political line. There is little doubt that the offence is a political one. In fact, acts of terrorism abroad are always connected with some political purpose: either racial claims of a minority which complains to be ill-treated, or political claims for the establishment of an entirely different kind of regime such as Anarchism, Communism or Fascism. This induces to concur with the wise observation made by the Government of Netherlands, when it has said that “It considers that the great divergences which at present exist in several countries as regards the fundamental bases of national policy calls for some caution in this connection”.

c) there is an extension of the punishments of offences committed in a country to the criminal offences committed abroad. In Siam, the matter is governed by Section 10 Penal Code. According to Section 10, are punishable for an offence committed abroad: anybody in a few limited cases specifically enumerated, Siamese subjects only when some conditions are complied with. Owing to its international character, the draft-convention requires in section 8 that:

“Article 8. – Foreigners who are on the territory of a High Contracting party and who have committed abroad any of the acts set out in Articles 2 and 3 should be punished as though the act had been committed in the territory of that High Contracting Party, if the following conditions are realized namely, that:

(a) Extradition has been demanded and could not be granted for a reason independent of the act itself;

(b) The law of the country of refuge, as a general rule, considers prosecution for offences committed abroad admissible;

(c) The foreigner is a national of a country which, as a general rule, considers the prosecution of foreigners for offences committed abroad admissible”.

This is a modification to the system of Section 10 Penal Code.

If Siam should become a party to the Convention, it is submitted, as far as principles of criminal law are involved in the draft-convention, that;

a) the enumeration of the categories of offences which are to be covered by the Convention is much too wide (some of them being quite trifling and likely to be tried and adjudicated perfectly by the local Courts); this concur with a similar observation made by the Government of Netherlands;

b) Siam does not admit international recidiv-e and consequently is not interested in Section 5;

c) Siam does not admit the extradition of Siamese nationals, and consequently Section 7 of the draft should apply; but this is the point which entail a modification of the policy of Section 10 Penal Code, and it is assumed that this should be acceptable only if the extensive list of offences given in Section 2 should be revised and reduced (the observation has the support of the Dutch Note, which refer to a similar legislation as ours);

d) Siam would have great difficulties to try and punish in Siam offences of the nature mentioned in Section 2 in such an extensive manner, when committed by foreigners in foreign countries;

e) it is unusual to provide that the criminal offences provided by the Convention would be taken as "included as extradition crimes in any extradition treaty which has been, or may hereafter be, concluded between any of the High Contracting Parties (Sect. 9)". This objection has been made previously by the Legislative Adviser in case of other Drafts-conventions submitted to the Siamese Government, and is now supported strongly by the Note of the Dutch Government which says that "the Netherlands, which makes extradition conditional on the existence of a treaty, is not prepared to consider all the offences referred to in the present Article 2 as being deemed to be included as extradition crimes in any extradition treaty which has been or may hereafter be concluded between the Netherlands and all the other contracting States.";

f) a general legislation concerning the fire-arms, ammunition and explosive does not seem in its proper place in much a Convention (Sect. 11), and the present legislation of Siam is quite sufficient;

g) a general legislation on forged passports does not seem in its proper place in such a Convention, and should be made separately (Sect. 12);

h) a general legislation on "Letters of Request" does not seem in its proper place again in such a Convention, and is a matter of Criminal Procedure which should be reserved to another Convention.

When considering if it is necessary for Siam to accept such a convention, two points must be examined, namely:

First, is Siam herself in need of the Convention? It does not seem so. Acts of terrorism are very unfrequent in this country; and there is nothing comparable to the situation of the European States where there are now-a-days sharp rivalties and hatred for racial reasons (as is shown by the outrage at Marseilles, 1934). If some attempts or preparation have been made in the last years by some communists (including Chinese of Annamites) who did fabricate bombs, etc., the present criminal law has been quite sufficient to deal with such attempts which are local

second, has Siam the duty to accept the Convention in order to cooperate with the other members of the League of Nations in an international repression of terrorism? Here again, it may be said that the acts which have originated

the proposal of the French Government are obviously restricted to European affairs, and practically foreign to Far Eastern politics. Should international terrorism exist in Siam, it should affect Far Eastern neighbouring countries only, and it seems that the present criminal law also is sufficient to meet the cases.

But those two points are a question of policy to be decided by the Government, which has better informations than the Krisdika in the matter.

As appears from the documents communicated, there are up to now only 3 states members of League of Nations who have submitted observances as to the draft, the most elaborate being the answer of the Dutch Government (probably because the Hague is contemplated as the place for an International Court in the matter). It does not seem that the Siamese Government should necessarily take any initiative in the matter. Section 21 (1) and 25 stipulate that "after the....the present Convention shall be open to accession on behalf of any Member of the League of Nations and any of the non-member States referred to in Article 20 on whose behalf it has not been signed. The present Convention shall not come into force until....ratifications or accessions on behalf of members of the League of Nations or nonmember States have been deposited. The date of its coming into force shall be the ninetieth day after the receipt by the secretary-General of the League of Nations of the....th. ratification or accession." It is likely that the discussion of the draft shall be rather elaborate at Geneva, and the best for the time being is probably to wait and see, since there is no urgency for Siam.

II

Draft Convention for the Creation of an International Criminal Court for the repression of Terrorism.

It appears from the report of the Committee of the League of Nations that this second draft was previously amalgamated with the first one. But the two drafts have been separated, obviously because "differences of opinion were manifested both as to the principle and the timeliness of the creation of an International Criminal Court (report, p. 2)". In other words, many states have been *prima facie* reluctant to admit the principle of an international Court substituted to their national Courts in the matters concerning terrorism. The hope of the Committee, when separating the two drafts, is that "under this system, States which, for reasons of principle or any other reason, feel unable to hand over an accused person to the International Criminal Court in any circumstances, will have the option of becoming contracting parties to the first Convention only."

To accept the second Convention is of course subject to the acceptance of the first one. It seems that the stipulations of Sections 46 and 48 concerning any future adherence to the Convention are so much the more quite sufficient for Siam to adhere posterosely if she thinks it convenient. For the time being, the Legislative Adviser is of opinion that to transfer the Criminal cases in question to an International Court sitting at the Hague, am where Siamese, or eventually Chinese, Annamites etc., subjects should have to be transported as accused or witnesses, raises *prima facie* so many practical difficulties that the local Court is to be preferred. Not to speak of the question of principle concerning the giving up of the normal competency of the local Court for an International Court in criminal matters. And not to speak also of the pecuniary contri bution to be made by Siam under Section 40 (2) for a Court which will have probably to try and adjudicate cases having no interest at all for this country.

Secretary-General

Juridical Council.
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