The Savarkar Case

The Anglo-French disagreement on the matter of refuge and extradition

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A decree on November 11, inserted in the Official Newspaper of the next day, has approved the compromise of the judgement related to the Savarkar case signed at London, on 25 October 1910, between France and Great Britain. The two governments, in fact, have decided to submit to the judgement the questions of fact and rights raised by the arrest and the reintegration on board the liner/steamboat 'Morea' on 8 July 1910, at Marseille, of the Indian Savarkar, a fugitive escaped from the building where he had been detained, as well as the protest of the French state, for the rightful surrender of Savarkar.

On the terms of the compromise, the law court should be composed of five judges chosen from among the members of the Permanent Court of Haye, who will meet on the 14th of February 1911, and will pronounce their sentence in thirty days, after the examination of the witnesses and counter-witnesses of the conditions specified in the deal. The objective of their deliberation will be to know if, in conformance with the rules of the international law, the Hindu Savarkar should or should not be surrendered by England to the French Government. It is the examination of this question that seems interesting here, because it raises a new problem in the matter of extradition.

The facts that to remember above all are:

The Indian Savarkar, the London correspondent of the indigenous newspaper "Kal" in which he glorified the series of political violence perpetrated by his compatriots against the British in India, had been arrested at Kensington and imprisoned on board the steamer of the Company of peninsular and oriental navigation "Morea" which would take him to Bombay. It had to be translated in front of the law courts of that city in order to declare there his crime of provoking assassination, and of being an accomplice in the murder of Mr. Jackson, an employee of the Indian Civil Service, and of participation in a revolutionary conspiracy. The steamer took a halt at Marseille and it seemed the French government had been warned of this fact which did not lead to any observation/remark on its part. But even though the vessel was in the harbor, Savarkar, escaping through the porthole of the washroom, succeeded in getting away. According to the English version, hardly had he set foot on the port, than he was seen by a naval police officer who stopped him and brought him back on board the "Morea", in spite of his protestations that he could not understand. It is known, in fact, that by the terms of the conventions of the consulate, the sailors of foreign vessels who desert are stopped and returned to their respective naval commanders. The procedure is, in this case, extremely simple and rapid; it is fixed, between France and England, by the pacts of 23rd June and 24th July 1854.

But Savarkar maintained that the events did not take place thus, he claimed having been able to reach the streets of the city and he declared having been arrested by the English

detectives who had been stationed to look for him. He therefore protested strongly against his arrest. One can understand easily the import of this question of the fact, because if the allegation of Savarkar is exactly acknowledged, the illegality of the arrest would not be doubted, and his delivery to the State, which would be the violation of his right to territorial sovereignty, would necessitate a deeper examination.

The protests and demands reached the French government. The latter was asked to make Great Britain return the victim of this arrest, qualified as illegal and abnormal, and, at the same time, its attention was called to the political nature of the offences of which the Hindu was accused, those which, according to the rules of international law, should have exempted him from the extradition. Also talks were held between France and Great Britain, talks that led, as it was seen, to a compromise on the judgement.

After all, the question to be solved is that of the extradition, but since the person at risk of being extradited is in the hands of the State without having followed the required formalities, it has to be examined, in the first place, if the restoration to France is legitimate and well-founded.

Remarkably that is the sole question subject to examination in the law court of Haye. The one of the extradition will be put up next, depending on whether the restoration of the Indian is, or is not ordered by England. We study thus successively this double problem: the one of the restoration first and the one of the extradition next, supposing the restoration to be ordered.

One preliminary observation is necessary: it is that the rules relating to the restoration of deserting sailors have nothing to do in this case, and it is necessary to eliminate them from the discussion. On the other hand, and before starting with our study, it is useful to give some information in brief about the state of trouble and political agitation existing in the British India. Certainly, the entire Indian peninsula is not involved in a revolt against the British authority, and there has not been recently, since 1906 principally, any marked agitation except in the provinces of Deccan, Bengal and Punjab. This agitation is supported by the party of the Arya Samaj whose motto is: India to/of the Hindus. The founder of this party, the Brahmin Dayanand Saraswati, had in mind a religious reform; but in fact his policy, which resulted in greatly provoking Indian nationalism, assumed an aggressive and distinctly revolutionary character. Almost all the accused (persons) since the discovery of the bombs at Calcutta in 1908 belonged to the Arya Samaj and the true objective of the party, the suppression of British domination, has become evident without any possible objection. It is the same, albeit to a lesser degree, in the reformative movement, or the swadeshite, which has declared itself almost all over Hindustan; it is not content with the demand for a system of self government for India, similar to those of other grand English possessions, it has in mind, for many of its followers, a political revolution, with the complete and absolute exclusion of foreigners.

Moreover, the English, and it is a justice to do them, have recently accorded the Indians certain political rights, and a representative system has been started, not simply under the pressure of the events, but because this reform seemed to them legitimate and just. But the murders and the conspiracies having continued with even greater force, the British government was forced to take repressive measures, and had to particularly

reinforce the legislation on the press in 1907, from which it had already observed good results. The revolutionary agitation however had not ceased; last August, a conspiracy had been discovered at Bengal and 42 accused were arrested in Dacca.
In Bombay and in Nasik district, another conspiracy had been plotted following the assassination of Mr. Jackson, collector of taxes: students, university graduates, and Brahmins had resolved to obtain “home rule” by all possible means, by murder if need be, and they would not hesitate to resort to theft in order to procure the required funds. They also took up the production of bombs and other explosives. Most of the Hindu revolutionaries received encouragement from outside, and many of them, who sought refuge in Japan and Canada, used to send them financial aid. The Indian Savarkar – whose arrest is the subject of this study – had taken part, since 1903, in the revolutionary movement, and he was affiliated to the swadeshi sects. In 1906, its oral propaganda became principally active, and, judging that his action could be more productive/fruitful away from India, he went to London where he founded a secret society, he wrote for the benefit of his compatriots about the life of the Italian Mazzini that inspired thousands all over India.
At the same time, he multiplied his fiery writings and apologized for the murder and the assassination. It was also at London that in the middle of the society, that the murder of Sir W. Curzon Willie was decided. Moreover, other charges, equally serious were levied against him, and his arrest by the English government is quite strongly justified. The latter, it must be mentioned, showed in front of the Indians, great courage and generosity: it refuses to consider them in their group as revolutionary agitators, and it makes a difference between those who, while demanding political reforms, only exercise a right, and the true radicals, perpetrators of crimes and offences, whose action is unacceptable under all conditions.
On the 24th of December last year, the special court/session of Bombay High Court, after 69 hearings, passed the sentence of his arrest in the Nasik conspiracy. Of the 38 accused, 26 were pronounced guilty and were condemned to various punishments. Among them was Savarkar, condemned to rigorous imprisonment and confiscation of assets, but in his case the execution of the sentence was suspended.
The judicial investigation, which extended for a year, established with complete evidence the existence of a revolutionary association at Nasik whose leader and inspiring force was Savarkar. The latter was, on the other hand, acquitted of the charge of accomplice in the murder, and the investigation in this case is going on.
Is the restoration of the Hindu Savarkar by Great Britain legitimate and does his delivery to France come across as a confirmation of the rules of international law? We believe the response is certainly in the affirmative.
It is thus at first if Savarkar’s arrest is the doing of English detectives, because in that case it would affect the principal of territorial sovereignty of the French state. But even if the theory of the English - that this arrest was due to a French police officer - is accepted as established, the restoration of Savarkar is absolutely justified by the international practice, and also we will do everything possible to prove this. As explained, the Hindu was detained on board a vessel of British trade, and it is certain that the stopover at Marseille would not change his legal situation, primarily because

the French government had already been updated about the detention of the culprit on board, and the possible halt of the vessel in the French ports. It must be mentioned that even if the English government would have omitted to inform France about this fact, it would not have led to any change in the condition of the detained. It can be questioned, given the circumstances, why England believed it necessary to provide this information, and the answer is quite easy to find.

It is known that in France and in many other states, the commercial vessels in the legal territories of a foreign state are considered, during the period of their stay, to be under the jurisdiction and the police of that state.

But those vessels and their crew stay, even when in foreign territory, under the jurisdiction of their countries. To resolve a possible conflict between the two jurisdictions on the subject of questions related to public right, particularly to criminal laws, it is admitted that there are two types of offensive acts (1). In the first are placed the acts of internal discipline, offences related to duties and common offences by member of the crew against another, when the peace of the port is not disturbed. The French authority is not supposed to concern itself with these acts, unless its help is asked for. The second class comprises of the crimes or offences committed right on board, against or by the foreigners in the crew and those committed by the members of the crew among them, when the peace of the port is disturbed. Our courts for the punishment thus know of these offensive acts.

The English system goes farther than ours. The English courts declare themselves competent to deal with all the crimes and offenses committed on board these commercial vessels, even when the peace of the ports or the territorial waters is not disturbed. Moreover, in accordance with a law named “territorial waters jurisdiction act, 1878” the British authorities have the right to deal with all the offences committed in the English waters up to a distance of three nautical miles, whether the doer of the act is a native or an outsider, and even if the offence was committed on board a foreign ship. Such are the rules concerning the commercial/trade ships. For warships, they are different, the latter are unchallengeable and its members are exempted from both civil and criminal jurisdiction of the waters they pass through. They are considered as out of territory, and that is how the right to asylum on board foreign warships is known. But it is fruitless to stretch these explanations any more without interest in the current matter, and it is necessary to return to the case of the detained (people) on board the trade ships in foreign waters.

The French theory considers that the situation of the detained does not change; the power of the police of the State cannot be exercised except in the case of present offences or crimes, the stopover constitutes a regular event in a sea voyage. (Journal of Internal Rights, pvt., 1896, Barrauddia). The English practice is more extensive, it is already explained, and it can be questioned whether, given the circumstances, the English State does not consider itself capable of releasing the captives on board the foreign trade ships entering its ports. This was how it was decided that a habeas corpus would be started to examine the legality of the detention of prisoners under the Canadian arrest warrant, on board a trade ship entering a British port (Canadian Prisoner’s case 1839, London’s case 1896). In the first case, the Canadian prisoners were

being taken to Tasmania and their detention was pronounced as illegal in England. In the second, a German expatriated from Canada had been taken to Liverpool, a fresh warrant was considered necessary for his expatriation from England to Germany (1). In the Mail Ships Act of 1891 (54 and 55, Vict. 631, S. 4), there were also some provisions for limiting the possibility of executing the procedures on board foreign liners/ships in the English ports. It should be noted, in any case, that the English government, informing the French government, avoided every discussion related to the fact of Savarkar's detention on board an English vessel making a stopover at Marseille, and the one in the hypothesis in which France had been given/specified to accept a theory as grand as that of the English, that which it is not, as it has also been indicated.
Moreover, by his escape, Savarkar has raised all the interest in the deep and detailed study of this hypothesis. It is certain that he succeeded in reaching the port of Marseille. Is he then justified in his demand for political asylum? The answer is emphatically in the negative, because the right to political asylum or refuge does not exist. It can be a moral duty of the state in certain cases to grant it, it is never a right for the one who asks for it because political asylum is an effect of the sovereignty of the State, always free either to grant or to refuse it, to restrain it by submitting it to the conditions that it deems necessary, or even to cancel it by the procedure of expulsion. The fact that expulsion is subordinate to certain rules such as that of communication of motives offered/put forward for his support to interested diplomatic agents, or yet to the necessity of acts disturbing public peace, does not affect its discretionary nature.
Besides, it would be remembered, that Savarkar was never granted political asylum in France (2). In fact, according to the English version, the officer who carried out his arrest captured him the moment he set foot on the banks and immediately returned him to the naval authorities. It wasn't till many days after having left the port that he thought of demanding asylum. And the writer of the note in the Journal of international rights pvt., 1911, pg. 159 considers that, the moment the French legal authorities refused to allow the fugitive into the country, his position was no better than that of an immigrant rejected from an English port on the grounds of his being a criminal: that immigrant would certainly not be able to claim that he was granted political asylum in England. This opinion seems a little understated, and it is simple, according to us, to be content to affirm, thus, that this is universally recognized today, that there is no right to political asylum that can be legally demanded by refugees/fugitives.
In the order of ideas, we take notice of the special situation of certain Asiatic possessions. Firstly, the reports of extradition between the English and the French Companies of India are subject to the particular rules fixed by Article 9 of the treaty of 7 March 1815. In case of violations committed in the limits of the Companies of the two governments in India, the delinquents, even those guilty of political crimes, are delivered to the demanding authorities without any other formality. As seen, refuge is suspended for these possessions from one to the other. To point out, on the other hand, a peculiarity of the legislation of the English Company of the straits: an accused, on board a foreign ship in the colonial waters, can be captured and extradited by a brief procedure if he escapes, whether or not he is accused politically. Similarly, at Hongkong, ships having on board the accused being taken to their respective countries, received in

the hands of the consulate courts of China, can enter the colonial waters and are guaranteed/secured against any risk of their escape.

But all these cases, that were interesting to remember, are exceptional. It is the same in certain African or Asian states, where, following surrender or special arrangements, the English government enforces the provisions of “Fugitive offenders act 1881 (44 and 45 Vict. Ch. 69) and of “Foreign jurisdiction act 1890 (53 and 54 Vict. Ch. 37)” permitting the British consulate courts to arrest English criminals in foreign territories. It must be noticed here, principally, the English criminal law is strictly territorial and local, the” Foreign jurisdiction act” allows it to extend to all the classes of British in all the parts of the world. This act is also applicable to the natives of the countries placed under the English domination. If the restoration of Savarkar, by Great Britain to France is not based on either the right of the police and of territorial sovereignty, or the right to political asylum, the only one that can be given is that one can stretch the non-observation of the formalities of the extradition. According to us, it is significant and it is totally sufficient to justify this remission.

Savarkar, having been delivered to the English authorities, there was in fact, an extradition. Now, extradition, which is a contract of the right of the people, is found tainted/polluted because of the same reasons as that of regular contracts. It is also that the consent of the parties in the contract has to be given with full knowledge of the cause, and when it is smeared with violence, or an error, it renders the convention/agreement invalid. And, in a case proceeded for the extradition of nationals, as against the rule admitted in France, or rather a simple and pure delivery of nationals, the individuals wrongly delivered are surrendered. It is a question of the subordinate officers and the soldiers in the defense forces/battalions at Dahomey, who, after having abandoned/deserted their post, sought refuge in the English territories of northern Nigeria, in June 1901. During a fight, these deserters killed an English captain and saved themselves by escaping into a French territory, where they posed as candidates to the post of Filingué. The leader of this post, on the orders of the Lieutenant-Colonel Péroz, commander of the military region of Niger-Chad, delivered them to the English authorities, who directed them to Gebba, in Lower Nigeria, for the judgement to be passed.

The minister of the Colonies, as soon as he was informed of these facts, called back Lieutenant-Colonel Péroz, who had neglected to observe the rules normally followed, and he warned the Minister of Foreign Affairs. Following diplomatic discussions, the persons who had been delivered (to the English) were returned to us. It was established, in fact, that the deserters were of French nationality and had been delivered in ignorance of their worth. Disregarding the regular procedure, this ignorance sufficed to taint the consent of one of the parties, and consequently, rendered the extradition invalid.

This theory is found, besides, to concur with the practice, and the author of a classic treaty on extradition, Mr. Bernard, says, quoting the opinion of another author, Mr. Billot: “Supposing that an errant/delinquent is arrested in the country of refuge, and that, the subordinate authorities proceed his extradition without permission/authorization before the rightful authorities have decided upon the demand

for the extradition. In such a case, the remission of the fugitive is of no juridical importance, no consent is given, the contract is invalid and the required State is justified in demanding the restoration of the fugitive." As seen, this is exactly what we are interested in. Can it not be supported then, that the refugee thus delivered had relinquished the formalities of the extradition and that, consequently, his remission becomes normal? No, says Mr. Bernard, because the extradition is not comparable to a step by the police in which the extradited (person) is deprived of the guarantee of his rights, and when there is a voluntary extradition, it is a must that the relinquishment of the diplomatic and judicial formalities of the extradited be absolutely open and sincere. Also, this author declares it to be unusual that the agents of the required State, who take up the search of the delinquent told to them, arrest and deliver him to the agents of the country requiring it, putting forward that the detained relinquish the formality of the extradition. Also unusual is the practice holding to the disguise of the extradition in the form of an expulsion: the extradited is taken to the frontier where he is supposed to regain his liberty fictitiously, whereas in reality, he is handed over to the public force of the State. On this last point, the judicial decisions substantiate the theory of the author and we content ourselves by citing the most important judgement of the Court of Appeal of Bordeaux, of 3rd February 1904, in the Jabouille case. The suspect Jabouille, condemned by mistake and under an arrest warrant, sought refuge in Spain and a demand for his extradition had been made diplomatically to the Spanish government. Before the latter could examine the demand made to it, Jabouille was evicted by the governor of the province that was not informed about the request at the end of the extradition, and was handed over to our agents on the frontier. Arrested and condemned, he protested and made his demand to the Chancellor. The appeal was interjected and the Public Minister was invited to make known to the Court the conditions of the remission of the suspect and to solicit his being set free. The Court made rightful to these conclusions and declared the arrest on the frontier invalid as not being legitimate except by the voluntary return of the accused or following a regular procedure of extradition.

There are, moreover, in the same sense, many decisions of State Courts that are part of the Australian Commonwealth, concerning the extradition of the transported or relegated (persons) escaped from New-Caledonia. These decisions generally imply a regular extradition and not a remission to the French authorities by an expulsion. It is thus in a judgement prompted by the Court of Appeal of Noumea, on 20 May 1899, related to an extradition of an escapee, accorded by the English authorities to an escaped convict who was not a suspect, in the treaty of extradition Franco-English of 1876 and that, moreover, escape was not considered an offence in the French legislation till 1885, that is, post the treaty. The particular point of the extradition accorded in the other cases and for other crimes than those specified in the treaties do not interest us for the moment; but that which is important for us to remember, is that the escape of a detained or condemned (person) does not justify, in any way whatsoever, discarding of the rules of extradition which it is always necessary to consult and it is to be noticed that the English authorities have always followed this practice. The judgement of the Court of Appeal of Bordeaux is thus absolutely representative,

and it is in no way made impotent by a judgement of 1st October 1904 of the Court of Noumea, also, besides, Mr. Leboucq established in his note a peremptory manner, the said judgement.

Here is the occasion when the second judgement was given: the condemned in the forced work, escaped from New Caledonia, had disembarked in the German New Guinea, and were engaged on a building site in the forest. But the governor, who recognized the dangerous criminals in these immigrants, ordered their expulsion, put them on a German ship and brought them to Sydney, in the hands of the French consulate.

Brought to the court of Noumea, for the breach of trust committed before their escape, they put down their conclusions in which they declared themselves to have appeared constrained and forced, protesting against their expulsion from German New Guinea and demanding their restoration to the situation prior to their arrest. The Court of Noumea, considering that extradition is an act of sovereignty beyond control of the judicial authority, declared itself incompetent to order the return of the accused to German New Guinea. It refused, consequently, to examine the regularity of the remission of the suspects and pronounced their condemnation. This judgement, albeit contrary to that of the Court of Bordeaux, is in reconciliation/understanding with it, and the contrast between the two is only apparent. In fact, it is admitted today that extradition is an act of sovereignty, and it is decided that in the absence of a law of extradition, the violation of which he can refer to, a suspect cannot demand, in a purely personal interest, against the claims of his extradition, neither in its form nor on its basis: Cass. 11 March 1847 (S. 47, 1,397); 18 July 1851 (S.52, 1,157); 23 December 1852 (S.53, 1,400); 4 July 1867 and 25 July 1867 (S. 67, 1,409); 13 April 1876 (S. &6, 1,287); 11 March 1880 (S. 81, 1,329); 2 July 1898; C. Noumea 20 March 1899, Bordeaux 13 May 1950; Ducrocq, Rev. crit. 1866, t.29,p.481; 1867, t.30, p.1 and foll.; Dalloz 1867,1,281, note by Mr. Leroy, general advocate.

On the other hand, the principle of separation of powers, in France, is opposed to that which the judicial authority reports, in order to pronounce administratively over the extradition, when the accused are deferred to it by the government: Cass 3 December 1866 (S. 67.1.409), 18 July 1851 (S. 52,1,157); 23 December 1852 (S. 53,1,400); 26 July 1867 (S. 67,1,409); Lyon 13 May 1889 (S. and P. 92,2,116); Ducrocq, Treaty of extradition, p. 38; Beauchet, extradition no. 885.

Thus, the Court of Noumea, incompetent to know of the claimed irregularity of the extradition, could not report for the examination of the grievances invoked without ignoring the character of the extradition, act of sovereignty, and without consequently violating the principal of the separation of the powers.

On the other hand, the Court of Bordeaux was able to ignore the conclusions of the suspect since it was taken in by the conclusion of the Public Minister reporting in the name of the government the irregularity of the remission of the suspect. Thus there was no more presumption of the regularity of this remission before it and it was urged by the government itself to examine it.

Note that the French government has always refused to admit that expulsion can be a substitute to extradition and the Chancellery has always been opposed to the tendency

of the magistrates, mostly of the frontier countries, to carry out the extraditions brevi manu [Brevi manu, (Italian) literally translated, means with short hand (directly, in person) this expression refers to what is delivered by hand to hand, without intermediaries.] It prohibits them to consult with judicial or administrative authorities of neighbouring countries to obtain from them the remission of fugitives outside the procedure of extradition.

In the same direction is the refusal of the Minister of War to prosecute the soldier Jerome, who was charged with desertion and theft of military effects, who expelled from Germany, had been released, despite the absence of any application for extradition, to our border agents by the imperial police. In the same vein, Faustin-Helie expressed his opinion thus: “It is not enough for justice that the accused be presented at its helm, it is necessary that the acts which led to his arrest be regular; it is important that the diplomatic treaties, under the protection of which they are found, be respected, because it should be grasped as is regular. Let us suppose for example that the accused was violently taken hold of in foreign territory by the enforcement officers (agents of public force), or that they were prosecuted by some subordinate authority unbeknownst to both Governments. How can the accused be denied the power to declare the violent and fraudulent facts that led to his arrest?

A judgement of the final Court of Appeal on 3rd May 1860 (S. 61, 1, 48) is devoted to the same theory. It deals with one Galand, expelled from Savoy, then a Sardinian country. Released on the frontier, he was arrested by the French police. In front of the courts, he raised a prejudicial exception on the legality of his arrest, an exception that was rejected. The appeal was dismissed; reason given that the arrest was regular, having taken place in France, and that Galand had not been delivered by the Piedmontese Carabinieri to the French constables. It seems that in this last hypothesis, the judgement had admitted the invalidity of the arrest and, therefore, of the procedure. Also, it is not possible for us to accept the opinion of those who claim that the judgement in question did not have this significance and justifies on the contrary the pursuits against an expelled declaring the arrest in France valid. To be convinced of the inaccuracy of this opinion, it is enough to read the judgement in its full text and without detaching from it the single sentence stating that the arrest is regular as having taken place in France. There are (in the text), in fact, others that underline the fact of the non-delivery of the expelled by the Piedmontese Carabinieri to the French constables, and which, consequently, affirm that there has not been an invalid and disguised extradition.

This decision is to move closer to the judgement of the Court of Bordeaux intervened in the Jabouille case and is a confirmation of the same. Yet another reconciliation comes across: that of the judgement of 31 July 1845 (Bastianesi case). The accused pursued in Corsica had succeeded in reaching Sardinia, and left it on a Sardinian boat that, in order to escape from the storm, had sought refuge in the gulf of Ajjacio. The Prosecutor's Office, with the permission of the Sardinian consul and the ship's captain came aboard where the fugitive was apprehended by the Sardinian crew and handed over to the French Authorities. In front of the Court of Assize, Bastianesi protested against the irregularity of his arrest. The French government had demanded the approval of the Sardinian government, and the Court declared itself capable following this approval. The

appeal was thus rejected. It follows from this judgement that the Court requires the extradition proceedings or at least a ratification later covering the unlawfulness of the acts, as a basis for the arrest and prosecution. Note that in this case the irregularity of the arrest was not doubtful: It had been made on a foreign ship position, i.e. notionally abroad and by subordinate foreign officers. French justice warrants had thus produced impact on foreign soil, and they had brought about the arrest outside of our territory. The Bastianesi judgement goes, in our opinion, a little too far when it admits that there may be on the part of both States subsequent ratification of illegal acts. It belittles, in this case, the rights of the individual, but it is true that these rights are absolutely unknown in the current French system, which affirms the incompetence of the judicial authority to decide on the conclusions regarding the invalidity of the extradition. Mr. Bernard rightly protests against a similar theory which he described as unworthy of our civilization, because, he said, provided that both Governments are in agreement, they can disregard the pacts ratified by legislature, mutually agree to remove the refugees from their territories as it pleases them, send them to the borders where the secret agents await them like a mousetrap, and then give themselves a compensation Bill for violent and arbitrary arrests ordered or conversely tolerated. It is seen that Mr. Faustin-Helie shares this viewpoint.

It is true that there exist certain decisions of the justice, in a sense opposite to the decision of the Court of Bordeaux as reported above. Thus, the Supreme Court of Illinois decided in May 1884 (Ker, Journal of International Law, Ltd.1886, p.491) that the powers of the judicial authority contain no restrictions, if it is in the presence not of an extradited, but of a fugitive seized from his asylum and brought back by force in the country in his pursuit.

This is also how the Supreme Court of the Italy marine admitted the regularity of the proceedings against one Merighi, an Italian subject expelled by the French government, and taken back to the Italian border where he was arrested (Journal of International Law, Ltd.1889, p.909). This Court found that the international conventions on extradition should not receive application when the accused is remitted to the prosecuting authorities by any other way than that of extradition. In the same vein, we can mention the judgement of the Council of war in Hanoi, dated 27 July 1890, concerning an individual expelled from a country of refuge and handed over to our agents on the border (Journal of International Law, Ltd.1891, p.233).

All these decisions appear doubtful and highly debatable. If they were to generalize, extradition would become completely unnecessary, and it could be possible, by mutual agreement, to get rid of its rules and its formalities. One cannot accept such a solution that not only renders international conventions moot, but also would deprive the guaranties of those who do not concern us, it is true, in many cases, but who nonetheless have the right to certain safeguards against arbitrary, irregular acts. Undoubtedly, due to the principle of separation of powers, one would not dare to remind the French courts of the right to rule over the findings before them given by those concerned, developing cases of the nullity of their extradition. But we find this system objectionable and we are as indignant as Mr. Bernard himself. Not only should a court have the right to decide in such a case, but it should, with stronger reason, do so

when instead of an extradition more or less regular, there has been an expulsion followed by an arrest. In such a case, there is a blatant violation of a treaty, a solemn international act, and even of the act of the legislative power approving or ratifying the said convent. According to us, the Courts relieve in ignorance of this legislative text, the ability of researching whether the arrest of the accused and his appearance before them have occurred under the conditions laid down in it.

Those who say that there is no legal bar opposing the arrest of an individual returned to our territory against his will by accident or by using force, believed having found a significant objection to our theory in practice which has established not to reject a foreigner on the border of the country where he is exposed to lawsuits. Why this practice, they say, if not so that his arrest be perfectly lawful? Such an understanding is erroneous. First of all, if the arrest of a refugee who approaches a country following an event beyond his control (storm, etc) is considered regular, one we could ask if it is right and there are, despite everything, certain scruples to decide in its favour. But when the individual is expelled from a country and taken to the border, the situation is totally different. In the first case, there has not been, unlike the second, the violation of a treaty of extradition. It was merely the incidents that led the offender to flee his country. As for the practice of not sending a foreigner back to the country where he is likely to be condemned, it is justified on humanitarian grounds, and there should be, besides, an observation of the rules of extradition, those that specifically oppose such a repression. Far from being an argument for our opponents, this practice is, on the contrary, one in our favour.

The other arguments of the same do not convince us to any greater degree. They say that the treaties of extradition have the sole objective of regularizing the relations between opposing States, and of determining the conditions they have to uphold in handing over the delinquents when they are on their soil, and on the other hand, they do not create any rights for the fugitives.

On this latter point, our opinion is known, and it will be a progress of the right of the people than the recognition of this right of fugitives. In civilized countries, the arrest of delinquents, the information on the acts attributed to them, the criminal procedure in a word, are the subject of a precise measure, where an increasingly deep worry of giving a guarantee to the accused, is seen. Why else would it be an international right? Why are they refused a similar guarantee?

As for the other part of the argument, it means nothing. Indeed, it is quite certain, that the conventions of extradition fix the conditions of the rehabilitation of the offenders on their respective territories of the States in contract; but again these conventions must not be twisted, and thereby rendered useless in practice of the procedure of expulsion.

Note that the texts about the immigration of foreigners do not in any way reduce the validity of our theory. A State is free and carries out an act of internal sovereignty when it regulates this immigration and decides in particular not to receive on its soil such and such category of immigrants, particularly offenders. It cannot be said that the situation of the non-landed immigrant is similar to that of the expelled, because the said immigrant is not the subject of a deportation. The result may be, in fact, the same if this non-landed immigrant is taken back to the country which he fled; by law, his situation

does not offer any relation. There is a superior rule of loyalty, morality and honesty which forbids a State to get rid of a fugitive by expelling and bringing him to the border of the country which he wants to escape, while that State has, at its disposal the regular procedure of extradition. The rule is not violated by a pure and simple non-admission of certain foreigners and their prohibition to disembark or enter the territory of the State. The latter is, once again, rightful and it violates no rule.

The conclusion of what we just said is that it is already deplorable to prevent the courts, under the pretext of separation of powers, to consider, when they are required to do so by the parties concerned, if criminal justice was delivered to the latter as is usual. It is important, at least, to allow them this faculty in totality when they can use it, i.e. when the State to which they are reported allows them to act thus. It is thus necessary, while totally approving of the judgement of the Court of Bordeaux, to affirm that it has the value of a decision of principle and to recognize that it lays down the rule to be followed in every such case. Note that in England, where the powers of the courts span a broader scope that in France and where the method of extradition is more perfect, since it does not have the bureaucratic character unfortunately practiced in our country, the interested parties possess the guarantees that we would like to see them accorded. It is always possible for them to denounce the irregularities in their arrests. The resemblance of the Savarkar case with the Jabouille case meets the eye and the solution that is imposed in the latter case also comes across in the one that we are interested in. Undoubtedly, there was not a clearly stated expulsion for Savarkar, but this fact highlights and compounds the irregularity of the delivery to the British authorities in the case at bar. Besides, not only does the Indian himself protest against the conditions in which the delivery is performed, but the French State joins in his protests, since the dispute is now subject to an arbitration tribunal.

It is therefore in the presence of the case pointed out in the judgment of the Court of Bordeaux: the one where the State itself acknowledges the irregularity of the delivery. The case itself is in fact the same, the necessary changes having been made, and one can sufficiently assume for the moment that Savarkar, a French subject, having disembarked in England in the course of a halt had been delivered by an English agent to the French authorities. By the application of the theory presented in the decision of the Court of Bordeaux, our courts should not consider this delivery legal.

To oppose the return of Savarkar by Great Britain could it not be said that the Hindu has waived extradition formalities? Of course not, because he continues to protest with the last energy against his arrest, and moreover the international practice wishes that this waiver be absolutely sincere, which would not be the case here. On the other hand, couldn’t one see in the delivery of Savarkar by France to Marseille a real expulsion, subsequently legitimate and based on which England could refuse to return the Hindu in its hands? This would not seem serious to us, expulsion is an act originated by the Internal Minister and occasionally of the Prefect. Even if Savarkar had been arrested by a senior official, by the Prefect for example, it could not be supported that this arrest is equivalent to an expulsion, the order for this expulsion not having been previously passed. Also we would not stop any more at these objections that we consider insignificant.

In order to support that England should return Savarkar to France, could one not rely on the nature of the offence alleged against him, and say that this offence, being political in character, does not consequently render the offender liable to extradition following the universally accepted doctrine?

Of course, but on the condition that it would be possible to prove the political nature of the offence; however it is known how difficult it is to define political offence.

Undoubtedly, when a similar offence is clearly illustrated, there is no extradition and the same solution is generally accepted as in the case of relative political crime, i.e. common law offence related to a political crime such as murder, arson, theft in an insurrectional movement. It should however be noted that many authors no more want to see the concerned political officers to benefit from this favour. On the contrary, it is clearly refused to social offences. The doctrine has proclaimed this theory and it is accepted today in international practice (Extradition by England to France today of the French anarchist, extradition of one named Meunier, Journal of international law.pvt 1893, pg 479 and 1895, pg 643; extradition by France to Italy of one Lucchesi, guilty of murder by anarchist vengeance, Diena, Rev. of international law, public 1895 pg.324; extradition by Switzerland to Italy of Ritalta and Guerrini, accused of attempts at explosion using bombs, Diene, Ibid., and Journal of international law.pvt 1897 , pg 1118.)

However, the crimes and offences attributed to Savarkar certainly do not have the character of a true political offence, and they do not even constitute relative political crimes. One does not see here offences against common law or even social crimes, of an anarchist nature, and it is precisely in these two cases that extradition is legal.

In these circumstances, we see that a solid base would cause a fault in this ground to support that the delivery by England is necessary, and this is why we have neglected this review. We will take it up in all the magnitude it deserves in the second part of this study, as we look for the likelihood of an extradition proceeding initiated by Britain following this delivery. The two questions are, in fact, distinctive and should be addressed successively. The one of the delivery comes across first and the arbitral court will resolve it. But the one of the extradition does not concern it according to us, and we do not think that the court has to enter this path in seeking to define the concept of political offence. That the delivery to France must have a temporary or definitive effect as it would indeed be the case if no subsequent extradition were possible, no matter; the legitimacy of this delivery must be considered in itself.

In summary, we believe that the rebate is fully and sufficiently justified by the fact that there was an extradition outside any kind of formality and contrary to the rules of international law, and we express with an Englishman himself, Sir Henry Cotton, the hope that the arbitral court shall pass a sentence ordering the return to France of the Hindu Savarkar.

II

It is to be considered now if, the restitution having been brought into effect, a regular extradition would be possible.

To this effect, it is necessary to research in the first place if the offence attributed to Savarkar constitutes a political offence, by reason of which following the doctrine generally accepted, he cannot be extradited, in the second place, in case this offence

does not have a political character, if, according to the current conventions between France and Great Britain, extradition would still be possible. The question of whether a criminal act is or is not political in nature is a question of fact that the authorities of the requested country appreciate greatly. Why this appreciation? It is that generally extradition does not take place for crimes and political offences, as was already explained. It is known that extradition, based on the idea of justice and utility, as the right to punish of which it not but an application, is justified by the international solidarity between the different populations to sanction criminal justice. The States have the binding duty to penalize offences, whether committed on their territory or outside of their territory by natives or by foreigners. Such is the modern theory which, if it is not practiced everywhere, tends to be recognized unanimously. In France the crimes committed by a native abroad are punished; but they are not extradited even though the general trend appears to be, with good reason, in favour of the extradition of nationals. When the perpetrator of a crime committed abroad is a foreigner, he is punished, if he is found in the hands of the French authority in an exceptional case in which his crime has an especially grave character: when it infringes on the security of the credit of the French State (Art. 7 C criminal instruction). It is correctly assumed, that in this case the punishment on the part of a foreign Government would be insufficient in the eyes of the French State. That is why extradition is not possible in this case.
Austria and Italy have a more advanced legislation which should serve as a form: if the foreigner commits a grave crime abroad he is extradited and sent back to his native country, the State of his residence judges him according to the local law or that scene of the crime if it is less rigorous. It is however quite rare that a State has to judge a foreigner for a crime committed abroad, because the practice of extradition has become more widespread and it is just seen with regard to France, this case is unique, the foreigner not being, by general rule, litigant of the French courts for crimes and offences committed abroad.
Formerly, extradition did not take place for political crimes, or rather the concept of political concept had not yet come into existence, for the most serious crimes were those directed against the sovereign or the State religion. The first international conventions for the rehabilitation of criminals were concluded in the exclusive interest of the Governments. So the treaty of 1174 between the kings of England and Scotland provided for the reciprocal delivery of traitors, felons of the two countries. So was the treaty of May 1303 between France and England. In 1497 the king of England signed with the Flemish a treaty named “Intercursus magnus”, by which the two parties agreed not to give asylum to political offenders of both the countries. At the same time, Henry VII obtained from Philippe le Bel the extradition of the Duke of Suffolk, accused of great treason. Much later, in the 17th century, Holland delivered the regicides to England. Considering everything, the actual extradition and such as we know it today was little practised: it was more about the international restrictions made to the right to asylum. From the 18th century, extradition became normal and was applicable for crimes of common law such as political crimes, and it was then that the practice of extradition was regularized. It is known that in the 19th century, following the spread of liberal ideas, the concept of political crime appeared and was expounded. Infringements

brought to a country's political institutions are considered under this column.
However, the examination of the facts during the first thirty years of the nineteenth century reveals some uncertainties and contradictions, though tending to acknowledge the right to political asylum and Mr. de Bonald was clearly mentioned in this direction.
With the July monarchy, the non-extraditory principle was clearly stated in case of political matters, and this explained subsequently the political events leading alternately to success followed by setbacks. It is in the Franco-Swiss treaty of 1833 that one sees for the first time the new rule formed, which at least in the beginning, was interpreted in a very broad sense.
Following the attacks directed against the life of the monarchs, a certain reaction towards the severity manifested itself in 1836. At that time, it was declared that regicide was not a political crime, but surely a crime against common law, and in the extradition treaties a clause was inserted known as the Belgian attack clause, because it was in a Franco-Belgian treaty that it was first included. Much later, United States also accepted it. Italy and Switzerland, who were very much in favour of the concept of refuge in political matters at first, limited the scope of the political offence following the frequency of anarchist actions. Germany and Russia, on the contrary, for special reasons and by treaties concluded in 1885, accepted between themselves extradition even for political deeds. England always showed a clear tendency for non-extradition in political matters and in favour of the extension of political offence, because, even though this principle was not accepted in France till 1830, it was already accepted in England since many years. So, by an abusive interpretation, it refused France the extradition of communards guilty of crimes and offences under ordinary law.
However, it appears that it is less prepared today to extend this concept of political offence, and upholding its respect for the right to asylum in political matters, it is less inclined than in the past to exaggerate.
Indeed, it has delivered to France the anarchist François, accused of complicity in the explosion of the restaurant Véry. The extradition judge decided, in this case, that the act of an individual who destroys a building and kills two people cannot be considered as a political offence. It can be said that in the current state of international law and as a result of a universal trend, that for a crime or an offence in today to be deemed a political one, it is not enough that the motive was such, it is necessary that it be directed against a certain established order, and not against the foundations of social life. Thus anarchist crimes and offences cannot claim the impunity accorded to criminal political acts. Not only is international practice in this sense, but even theorists have repeatedly expressed the same view. The Institute of international law proposed the restriction of the right of asylum and dedicated this point of view in 1892 in the session of Geneva. It decided that the offensive acts directed against a certain State or a certain form of government are deemed political offences, not those directed against the foundation of social organization. It is because of this interpretation, accepted by all the States today that we will not seek to further widen the concept of political offence and to give it a definition. This is of no use for solving the problem that is the subject of the present work. Let us be content to say with Soldan that political offences are directed against the established order rather than against the foundation of society; against the form of

government, rather than against the government itself.
To those who believe that extradition for acts of a political character is undesirable and contrary to the principle of non-intervention of the States in domestic affairs, we can counter that this interference does not occur in reality. Indeed, when the act is indisputably political in character, and in this case extradition has not taken place, or along with acts of a political motive there have been crimes or offences of common law, not only to the political institutions of a country, but also to the very foundation of civilized society, or repulsive to universal morale, such as assassinations, murders, attempted crimes of this kind, explosions, arson, serious thefts, etc., in such cases one does not see why extradition would be refused. it must be even less that the community of interest existing between the nations continues to grow and that the reasons of common purpose imperiously dictates them to defend themselves against acts which give rise to prejudice among all, which are heinous and which outrage public conscience. In a word, the social crimes and offences can be excluded from the non-extradition reserved for political offences, also the crimes and offences particularly heinous, even if the motive behind them is political.
For a long time, it was considered that when there was concurrently a political crime and one of common law, the concept of political offence should prevail, and it is based on this theory that France was refused the extradition of the Communal insurgents. Today, such an interpretation would no longer be accepted and it is unanimously rejected. If a criminal act takes place during an insurrection or in a political struggle, it is still necessary, so that extradition not be possible, that the act be an element of, or constitute an integral part of the political struggle. This is what the English judge Denman decided while refusing, on 10 December 1890, the extradition of Castioni, accused of the murder of the counselor of State Rossi, during an insurrectional movement that had broken out in Bellinzone. In the absence of troubles and insurrections, a crime is not political only because its motive is such, there should also be a political objective that is the interest of a party. So, the assassination of Marat by Charlotte Corday constitutes a political crime. On the contrary, the murder of a politician (other than a Head of State), minister, deputy, senior official, even encouraged by political reasons, is not a political offence, since it does not bring about by itself any political change. The murder of Archbishop Affre, during the days of June 1848, had its cause in political passions; it was not a political act. The distinction between the motive and the objective can sometimes be quite difficult to make out; we believe that it is especially more so to express and formulate, because when it is comes up in practice in a concrete form, one can identify it.
In any case, it is to be noted that outside the case of a civil war or insurrection, voluntary homicide is not considered a political act (In this sense: Lammasch, The right delivery due to political crime, Wein 1884, and project of Italian law on extradition.) We saw above that the Institute of international law had, following the report of Mr. Albéric Rolin, denied political character to social crimes. There again, the distinction can be difficult, but it is possible and likely to appear very clearly in a number of specific cases. Another reason to be particularly severe in the interpretation of the concept of political act is because today, following the liberal press, it is open for everyone to express

themselves freely on a certain political constitution, or system or government. This right to criticism is acknowledged everywhere very broadly. But what is unacceptable is that is manifests itself with violence, in a revolutionary form, with an objective more or less aiming to cause trouble, disorders and criminal acts.
However, as Diena exposes it, one should take the goal less into account than the methods the troublemakers intend to employ to reach it, and if these methods constitute a danger to society, extradition is legitimate since it is suppression itself. In summary, extradition is possible in case of a crime or offence of common law committed with a political objective, for example with an anarchist or socialist propaganda. Extradition is also possible when the methods employed for a political propaganda, whatever it may be, anarchist, socialist or other, are criminal or offensive.
What prompts non-extradition of political crimes and offences is that these acts do not provoke repulsion, even on the part of those who do not share the opinions of their instigator. On the contrary, when these acts raise public opinion, they cannot be political, there is no place to make a distinction in this vein whether the country of refuge is Republican or not, it is the opinion of a distinguished professor at the Faculty of law of Paris, Mr. Louis Renault, who replied that a Republican State as well as a Monarchical State, could estimate the attempts to overthrow the constitution of a country as criminal, and he added that it would not be more repugnant to the ideas of right in one country or the other to contribute to the punishment of the individuals who could have brought about Civil War in their countries, whether the institutions therein were Monarchical or Republican.
If we insist particularly on anarchist crimes, it is that they deserve to be considered apart despite the protests and claims of their apologists.
The anarchist crimes that jeopardize modern society need special measures of repression on the part of different nations. It was necessary to enact legislation on the manufacture and illegal possession of explosive materials, it was also necessary to prevent the formation of associations with an objective of anarchist propaganda; finally, it became necessary to prohibit incitements either oral or through the medium of press, to commit delinquent acts. Speaking strictly of France, this goal has been attained through the laws of 2 April 1892, 13 and 19 December 1893, and 28 July 1894. The first of these laws, which modifies the art. 435 of the Penal Code, applies the penalties of voluntary arson to the destruction of movable or immovable objects of any nature, by the effect of any explosive substance, regardless of whether the destruction is total or partial. In addition, the deposition, with a criminal intention, of an explosive engine on a public or private track, is equated to attempted murder.
The laws of 13 and 19 December 1893 have been to suppress an apology for theft, murder, pillage, fire and other crimes set out in art. 435 of the Penal Code. This apology was equated to provocation, because it was considered as being equally dangerous.
As for the provocation of crimes and offences, even if not followed by any effect, it was declared reprehensible and susceptible to legal repression.
On the other hand, the rules of Penal Code concerning the associations of delinquents were strengthened and supplemented, in order to reach the secret anarchist societies with certainty. It was the same for texts related to the fabrication and possession of

explosive engines.
The Act of 28 July 1894 determines the competent courts in case of acts of anarchist propaganda. They are referred to the remedial/corrective courts, because, as stated by the reporter of the Act to the Chamber of Deputies, the anarchist offences are offences of common law.
It is not doubtful, indeed, that the anarchy that aims to annihilate the State constitutes a danger for the entire civilized society and for the entire humanity. Thus it cannot give rise to political offences, but to those of common law. However the current doctrine is that it is necessary to grant extradition for offences of common law, even when they are related to political offences, provided that it was an action that can be considered as against the morale of all times and all countries, that the offence of the common law has a gravity much greater than that of political offence and that the magistrates of the concerned State have to take care exclusively of the common law offence, leaving aside the political offence.
It is in this sense that all the authors among those authorized in international law voted: Von Bar, Holtzendorff, Bulmerincq, Teichmann, Lammasch, de Martens, Calvo, Billot, Louis Benault, Despagnet, Bonfils, Rolin, etc. also the English Commission of 1868 agree with Lawrence, the learned commentator of Wheaton.
It is seen, after all that has been said on the subject of anarchist offences, that the offences committed through the medium of the press need not necessarily be considered as political offences. Journalists commit offences under ordinary law when they provoke assassination, the destruction of buildings, when they defame individuals or public officials, when they insult or abuse them, etc. the incitation of offences of common law through the medium of newspapers falls under the criminal repression, and its perpetrator cannot appeal to the political character of the his act to avoid extradition. It is so, whether the offence is executed, or only attempted, or the incitation was not followed by any effect, this incitation itself being considered as participation in an offence, and as constituting a criminal or offensive act according to the case.
The act attributed to Savarkar and which is none other than provocation to assassination through the medium of the press thus constitutes, by the application of the ideas outlined above, an offence of common law and cannot be considered a political offence.
International theory is very clear in this regard, and it is currently impossible that this provocation may be, among any public, considered as a simple political offence for which the perpetrator could claim refuge outside his country. Note, moreover, even for political offence clearly characterized, refuge is not due. The State which grants it acts with a humanitarian objective; but it is free to limit it by subjecting it to certain conditions and even to stop it at any time, since it holds the right to expulsion of foreigners.
But the difficulty of the problem regarding the subject of Savarkar is not however resolved. That he has been rendered guilty of an offence of common law, for which he cannot claim the benefit of non-extradition, does not follow that this be possible *ipso facto* (by the fact itself). It should be asked, furthermore, if the conventions between

France and England authorize it.
The treaty of 14 August 1876 which determines the case of extradition accepted between France and Great Britain, and which fixes the procedure to be followed is still in force, and the convention of 13 February 1896 brought about in it but the modifications in detail. However, this treaty presents a peculiarity: it is limiting, while most treaties of this kind have a declaratory character, and the circular of the Keeper of Seals on July 30, 1872 had already reported this case as totally special. There exists, indeed, in England, a law on extradition promulgated in 1870, and containing the limitative enumeration of offences for which a criminal can be extradited. For an offence not provided for in this Act, extradition is not allowed.
In France there is no law on extradition and the Bill on this subject has not yet been discussed in the Senate on 7th December 1900 (Official Journal, 27th January 1901.Senate, annex no. 395.) This project, moreover, was not the first, as in 1879, the Senate had voted a text filed by Mr. Dufaure, 1878. But this text, transmitted to the Chamber of Deputies only in 1892, was never reported. It is this project that the Government resumed in 1900, by amending it in a broad sense.
The project of the French law sets the government free to extradite in a case when the offending fact is not foreseen in the treaty. It can do in this case under condition of reciprocity. This is consistent with international practice which does not depend on the pre-existence of a diplomatic Treaty for extradition. Treaties merely define the obligations of the contracting parties, to make them clear and precise; but they do not create them.
The third rule of Oxford, the Institute of international law prepared can operate even in the absence of any contractual link."
There is nothing by Mr. Louis Renault, notes this practice in these words: "However, it is not only the treaties that make extradition an act in accordance with the law, in similar in English law, since it has a restrictive character, its domestic legislation totally prohibiting extradition outside the cases provided by the treaties. It is therefore useful to refer to the text of the articles of the Treaty of 1876 and recall them here.
Art. 3 reads: "The crimes and offences which could be extraditable are as follows:

1. . . . . .
. . . . . .

3. Murder (assassination, parricide {murder of a close, usu. adult relative}, infanticide, poisoning, attempted murder;

. . . . . .
. . . . . .

12. Acts of violence or abuse causing serious injury;
13. Violence against judges and public officers in the exercise of their functions

. . . . . .
. . . . . .

23. Destruction or degradation of any real estate or movable property, punishable by criminal or correctional penalties.

The complicity of the above mentioned facts when it is to be punished by the legislation of both countries is included in the qualifications of the acts giving rise to extradition."

Art. 5 concerns political offences. This is the text: “No person accused or convicted shall be handed over if the offence for which extradition is requested is regarded by the concerned parties as a political offence or an act connected to a similar offence or if the person proves, to the satisfaction of the magistrate of the police or the court in front of which he is brought by habeas corpus or the Secretary of State, that the extradition request was made in reality in order to prosecute or punish him for an offence of a political character.”

This article is cited for memory, since as shown in the first part of this study, the offence alleged against Savarkar cannot be considered a political offence.

But this offence, which is an offence of common law, does it figure in the cases provided for by Art. 3 of the treaty? That is where the question lies. It is certain that provocation to assassination does not figure among the violations enumerated in this article. In general, when it deals with a violation not provided for in the treaty of extradition, the country of refuge is free to welcome or reject the demand. If it accepts it, it mostly signs with the requesting State a convention of reciprocity by which it is decided that extradition shall be possible in the future for this new violation. This practice could develop because most often the lists of offences included in the treaties do not have a restrictive, but simply declaratory character. It is not thus with England and the list is restrictive. It is thus necessary to keep text of the treaty, however this text shows that England does not extradite a criminal or a delinquent but for an offence committed, except in the case of attempted homicide. Moreover, the latter case is the only one specified where an attempt can lead to extradition. This here is yet another peculiarity of the Franco-English treaty, because mostly attempt is provided for in a broader manner in other treaties. Even when it is not so, it is generally recognized that it is implied, and, subsequently, the fact that the offence remained the in the state of attempt is not considered sufficient to justify a refusal to extradite. Anarchist violations, which are not political offences as already explained, can thus lea to extradition for those among them that figure in offences of common law and so the anarchist François, seeking refuge in England could be extradited and handed over to France in 1894. The acts for which he was charged were in fact under the different headings of section 3 (destruction of buildings, murders, etc.). For Savarkar charged of a special offence: that of provocation to assassination not included as such in the Franco-English treaty of extradition, it seems that he is guilty of attempt of murder in the sense of the treaty. Indeed, if the provocation of crime not included in the treaty (which at this point presents an important loophole which it would be of interest to fill) is not offensive by itself, it can, when it is particularly serious, come under participation in the offence itself.

It is known that the French legislation is established in this sense and that public provocation by way of the press renders its perpetrator an accomplice in violation and subsequently liable to the same punishment as one who has committed the latter. This legislation besides goes much further, since public provocations to certain crimes, notably murder, assassination, arson and theft, apologies for the same once committed, secret incitation to commit these crimes with an objective of political propaganda, are punished as special offences, without there being need for another violation committed

by the principal perpetrator.
With regard to Savarkar, the question is whether it is possible, by the terms of the Franco-English convention, to go as far as that.
First and foremost it is certain that if the provocation to assassination alleged to Savarkar had been followed by effect, it would have been necessary to consider the perpetrator of this provocation as a true accomplice, subject, of course, to that it is possible to establish a certain relation of cause and effect between the criminal act and the newspaper article inciting it. But in the absence of any criminal act, apart from the provocation, the one reprehensible in French international law can, in our view, give rise to extradition between France and England, if it is of an especially serious character, because in that case, one can see an attempt of a criminal act, an attempt provided for in the treaty. There is no doubt that provocation can, by its terms, be considered as the commencement of the execution of a criminal act. If this action does not succeed, it is not through the fault of the perpetrator, who did everything that depended upon him to bring it about; it is only because of circumstances beyond his control.
It is not ignored that the attempt which meets these conditions is punishable by French law. It is the same in English law since the Act of 5th August 1873 which has in its Art.3 that any individual accused or recognized guilty of having advised, provoked or ordered the execution of a crime entailing extradition or of having been an accomplice *before* or *after* the crime, shall be considered as accused or recognized guilty of the said crime and, as a result, can be arrested and extradited. In any event, there is, on the part of the provocateur a commencement of the execution of the criminal act which is manifested objectively at the time by the very fact of the provocation, and subjectively, by the reason behind it. Also, it seems to us that the extradition of Savarkar would be justified, the act of which he has been charged being repressed simultaneously by the two legislations of the requested State and the requesting State, and is also to be noted that repression is more severe in the legislation on the Anglo-Indian press. It is known moreover that this simultaneous accusation is a condition for extradition.
It would be useful to observe in closing that, by the application of the universally accepted rules in the matter of extradition, the extradited cannot be judged but for the facts that had motivated the demand of the State in question. It is known that extradition should be *bona fide* (with a good intention) and that the delinquent cannot be condemned but by reason of a crime or offence which was the base of the demand for extradition. This rule is observed here as a reminder because on the part of England, there is no fear of abuse or of a different practice.
Let us add at last that, sticking to the legal considerations, we did not want to draw attention to the steadily narrowing international dependence of the States on one another, a dependence which prevents them from being absolutely indifferent to the happenings in their neighbouring countries and which prohibits them from being impassive to the events of any nature occurring outside their borders. Undoubtedly, the principle of non-interference restricts them from interfering in the domestic affairs of other nations; but when there is an attack directed against the universal foundation of all civilized society, there is a principle superior to the common restriction which should reign supreme over all other considerations. The problems which Great Britain faced in

India cannot let France, the Indo-Chinese suzerain, be indifferent, and this reason of common restriction should not be received passively. Another consideration of fact yet to be indicated is the trend which manifests in England as in other nations, to facilitate extradition and to make it an easier and simpler practice. This tendency is parallel to that which interprets the notion of political offence in a restrictive sense. As to common law offences and crimes, the States today want that repression be very strictly ensured, in order to fight against what Mr. Rouher calls “the ubiquity of evil”. This is why the condition of reciprocity which is most often insisted upon for extradition in the absence or insufficiency of a treaty, is very heavily attacked. The Institute of International Law has condemned it in the session of Oxford, deciding that if reciprocity can be controlled by political reasons, it is not by justice.

The English commission, given the responsibility, in 1877, to modify the Act of 1870, internal law of extradition, shared this view, and, according to its opinion, the interest of England in getting rid of criminals seeking refuge in their territory is so great that in the future, there would not be the subordination of extradition to reciprocity.

As regards the political crimes, it is not irrelevant to note in this work that following the spread of liberal and democratic ideas, these crimes are steadily declining, and in any case extradition, even for them, would not at all be shocking.

This is the opinion of MM. of Bar, Berner, Passy and Buccellati. The latter also said, in excellent terms: “It is open for all to judge that a given political constitution is more or less good; but to manifest this opinion publicly and violently by the actions and words aiming to destroy the State, always constitutes an offence.”

The same English commission had stated that a heinous crime committed for any political purpose or claiming any such cannot claim the impunity and be protected by non-extradition. This thesis, we tried to demonstrate, is accurate, and its application in the Savarkar case seems justified.

Maurice HAMELIN