

COMMITTEE  
ON  
GOVERNMENT ASSURANCES  
(2003-2004)

**THIRTEENTH LOK SABHA**

**TWELFTH REPORT**

**(Extradition of Former Chairman, Union Carbide Corporation)**



**LOK SABHA SECRETARIAT  
NEW DELHI**

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**COMPOSITION OF THE COMMITTEE ON  
GOVERNMENT ASSURANCES\*  
(2002-2003)**

**CHAIRMAN**

Dr. S. Venugopal

**MEMBERS**

- 2. Shri E.Ahamed
- 3.\*\* Shri Padam Sen Choudhry
- 4. Shri Priya Ranjan Dasmunsi
- 5. Adv. Uttamrao Dhikale
- 6. Dr. S. Jagathrakshakan
- 7. Shri Brahma Nand Mandal
- 8. Shri Ramjee Manjhi
- 9. Shri Sudarsana E.M. Natchiappan
- 10 Shri Rupchand Pal
- 11. Shri Kishan Singh Sangwan
- 12. Shri Raghuraj Singh Shakya
- 13. Shri Bahadur Singh
- 14. Rajkumari Ratna Singh
- 15. Shri Tarlochan Singh Tur

SECRETARIAT

1. Shri P.D.T. Achary - Additional Secretary
2. Shri R.C. Gupta - Director
3. Ms. J.C. Namchyö - Under Secretary

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\* The Committee was nominated by the Speaker w.e.f. January 16, 2002  
vide Para No.2528 of Lok Sabha Bulletin Part-II dated January 16, 2002

\*\* Nominated to the Committee on August 12, 2002 by the Speaker as published  
vide Para No.3145 of Lok Sabha Bulletin Part-II dated August 12, 2002 vice Shri  
S.B.P.B.K. Satyanarayana Rao resigned

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9. Shri Rupchand Pal
10. Shri Dharam Raj Singh Patel
11. Shrimati Renu Kumari
12. Shri Kishan Singh Sangwan
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**SECRETARIAT**

- |    |                    |   |                      |
|----|--------------------|---|----------------------|
| 1. | Shri P.D.T. Achary | - | Additional Secretary |
| 2. | Shri S.K. Sharma   | - | Joint Secretary      |
| 3. | Shri R.C. Gupta    | - | Director             |
| 4. | Ms. J.C. Namchyö   | - | Under Secretary      |
-

- \* The Committee was nominated by the Speaker w.e.f. January 25, 2003  
vide Para No.3507 of Lok Sabha Bulletin Part-II dated January 28, 2003

## **INTRODUCTION**

I, the Chairman of the Committee on Government Assurances having been authorised by the Committee to submit the Report on their behalf, present this Report of the Committee on Government Assurances.

The Committee (2003-2004) was constituted on January 25, 2003.

The earlier Committees on Government Assurances took the evidence of the representatives of the Ministries of External Affairs, Law Justice & Company Affairs and CBI on December 07, 2000, March 14, 2001, August 13, 2001 and August 12, 2002 respectively.

At their sitting held on January 03, 2003, Committee (2002-2003) had considered and adopted Twelfth Report. After the formation of the Committee (2003-2004) on January 25, 2003, this Report was again considered and adopted by the Committee at their sitting held on February 17, 2003. The Minutes of the aforesaid sittings of the Committee form part of this Report. (Appendix)

The Committee also obtained the opinion of the Attorney General of India on the subject and the same is appended to this Report.

The conclusions/observations of the Committee are contained in this Report.

**NEW DELHI;**

**DR. S. VENUGOPAL**

**February , 2003**

**Chairman  
Committee on Government Assurances**



## PREFACE

On the intervening night of 2/3 December, 1984, a great industrial disaster occurred at Bhopal. Highly and dangerously toxic Methyl Isocyanate gas leaked. Aftermath of that leakage led to death and sufferings to thousands of human and animals lives. Thousands are still alive and suffering. Even then a person, who is alleged to be one of the responsible persons for such a massive tragedy has not yet been arrested to stand trial in the Court of justice although he has been declared fugitive by a Court of Bhopal and Summons issued for his presence in the Court. He is Mr. Warren Anderson, the former Chairman, Union Carbide Corporation, USA.

Several questions were raised in Lok Sabha to know whether the Government propose to seek extradition of the former Chairman, Union Carbide Corporation, USA. All along since May 1992, the reply of the Government has been that the matter was under examination. The Committee on Government Assurances *inter-alia* decided to examine these assurances during its Study Visit to Bhopal in October, 2000 where the representatives of Ministry of External Affairs and CBI were also present. Some Members of the Committee also visited the local hospital, where the victims of the tragedy are being treated, to know personally about their sufferings.

Not satisfied with the action taken by the Government in extraditing the former Chairman of UCC, USA, the Committee decided to examine the Ministries and agencies involved in fulfilling the assurances. Representatives of the Ministries of External Affairs, law & Justice and the CBI appeared before the Committee to give evidence. After examining the witnesses and documents, the Committee found that the Government are still dogged by the procedural matter. The evidence collected so far by the CBI are not found legally sustainable in US Courts as per the opinion of the Attorney General of US Law Firm. As a result, the Ministry of External Affairs has not even filed a request with the Government of USA for extradition of the then Chairman of Union Carbide Corporation.

The Committee have been entrusted with the task of scrutinizing the assurances, promises, undertakings etc. given by the Ministers on the floor of the House as also to report on the extent to which such assurances, promises undertakings etc. have been

implemented. Hence, the Committee present this Report on the action taken by the different Ministries and agencies along with observations/recommendations of the Committee.

## CHAPTER I

### QUESTIONS AND ASSURANCES

1.1. (i) On May 07, 1992, Shri Chitta Basu, MP addressed the following Unstarred Question No.9392 for answer by the Minister of External Affairs:-

**“(a) whether the Government propose to seek the extradition of the Former Chairman of the Union Carbide (India) in connection with the trial on Bhopal Gas Tragedy;**

**(b) if so, the details thereof; and**

**(c) if not, the reasons therefor?”**

1.2 In reply, the then Minister of State in the Ministry of External Affairs (Shri Eduardo Faleiro) stated as follows:-

**“(a), (b) & (c): The matter is under examination.”**

1.3 (ii) On July 29, 1992, Shri Dharam Pal Singh Malik, MP addressed the following Unstarred Question No.3340 to the Prime Minister:-

**“(a) whether the Government propose to seek the extradition of the former Chairman and other Officials of the Union Carbide (India) Ltd. in connection with the trial on Bhopal Gas Tragedy;**

**(b) if so, the details thereof; and**

**(c) if not, the reasons therefor?”**

1.4 In reply, the then Minister of State in the Ministry of State in the Ministry of External Affairs (Shri R.L. Bhatia) stated as follows:-

**“(a), (b) & (c): The matter is under examination.”**

1.5 (iii) On November 25, 1992, Prof. Malini Bhattacharya and Shri Sharad Dighe, MPs again addressed the same question as above as Unstarred Question No.400 to the Prime Minister.

1.6 The then Minister of State in the Ministry of External Affairs (Shri Eduardo Faleiro) gave the same reply to the above question that the matter is under consideration.

1.7 (iv) On March 01, 1993, Dr. Laxminarayan Pandey, MP addressed the following Unstarred Question No.872 to the Minister of External Affairs:-

**“the progress made in respect of Bhopal Court order seeking extradition of the former Chairman and other officials of Union Carbide Corporation (UCC)?”**

1.8 In reply to the above question the then Minister of State in the Ministry of External Affairs (Shri R.L. Bhatia) stated that the matter is under examination.

1.9 (v) On May 29, 1995 Shri Mohan Rawale, MP addressed the following Unstarred Question No.7547 for answer by the Minister of External Affairs:-

**“(a) whether the Union Government have since requested the U.S. Government for the extradition of the former Chairman of the Union Carbide Corporation (UCC) who is wanted in connection with the 1984 Bhopal gas disaster;**

**(b) if so, the details thereof and the response of the U.S. Government thereto; and**

**(c) if not, the reasons therefor?”**

1.10 The then Minister of State in the Ministry of External Affairs (Shri R.L. Bhatia) gave the following reply:-

**“(a), (b) & (c): The various aspects of the matter concerning the extradition of the former Chairman of the Union Carbide Corporation are under the consideration of the Government.”**

1.11 Replies to above five questions were treated as assurances and were required to be implemented by the Ministry of External Affairs within three months from the date the assurances were given on the floor of the House.

1.12 As the assurances remained unfulfilled, the Committee on Government Assurances examined the representatives of the Ministry of External Affairs and the CBI during their Study Tour to Bhopal on October 23, 2000 so as to have first hand information about the reasons for delay in the implementation. The Committee were informed that the matter had been taken by the Indian Embassy with a reputed Attorney in USA to ascertain whether evidence collected will be sustainable in US Court. However, several questions which were posed by the Members, remained unanswered during the above informal meeting held with Ministry of External Affairs and CBI. The Committee, therefore, decided to call the representatives of Ministry of External Affairs, Ministry of Law Justice and CBI for evidence in Delhi. Accordingly, the Committee took their evidence on December 07, 2000, March 14, 2001, August 13, 2001 and August 12, 2002. Action taken by the Government in fulfillment of assurances and the observations/recommendations of the Committee on the basis of facts furnished by the Ministry of External Affairs, the Ministry of Law & Justice and CBI are in the succeeding chapters.

## **CHAPTER II**

### **BRIEF HISTORY OF THE CASE**

2.1 Union Carbide Corporation (UCC) is a Company with Headquarters in USA having affiliate and subsidiary companies throughout the world. These subsidiaries were supervised by four regional offices which were controlled by UCC, USA. Union Carbide India Limited (UCIL) is a subsidiary of UCC, USA. Union Carbide Eastern Inc. (UCE) with its Office in Hong Kong was the Regional Office of UCC, USA which controlled UCIL, India. UCC, USA got incorporated in India on June 26, 1934, a company known as the Eveready Company (India) Limited, under the Indian Companies Act (Act VII) of 1913 with the Registrar of Joint Stock Companies, Bengal. The name of this Company was changed w.e.f. December 24, 1959 into Union Carbide India Limited under the Indian Companies Act, 1956. UCC was a major shareholder (50.9%) in UCIL. UCC had been nominating its own Directors to the Board of Directors of the UCIL and was exercising strict financial, administrative and technical control on the Union Carbide India Limited. Thus, all major decisions were taken under the orders of the UCC of America.

### **MANUFACTURE OF PESTICIDES AT BHOPAL**

2.2. UCIL was running a factory at Bhopal, Madhya Pradesh for the manufacture of pesticides. The main chemical from which the pesticides Sevin was manufactured was Methyl Isocyanate (MIC). In December, 1960, UCIL had started importing Sevin from UCC, USA. They were marketing this Sevin after adding dilutants etc. They were importing MIC in 200 litres capacity stainless steel drums from the UCC Plant in West Virginia, USA. Subsequently, UCC and UCIL started manufacturing MIC in their factory at Bhopal and stored in underground tanks.

2.3 On November 13, 1973, UCC and UCIL entered into an agreement entitled Foreign Collaboration Agreement according to which the best manufacturing information then available from or to Union Carbide had to be provided for the factory in India. This necessitated UCC supplying the design, knowhow and safety measures for the best

production storage and use of MIC which ought to have been at least as good on the factory of UCC at West Virginia based on the experience gained there. The design, knowhow and safety measures were provided by the Union Carbide Corporation, USA and the erection and commissioning of the plant was done under the strict control of the experts of UCC. The Indian Officers and Staff in this plant were only working under their directions.

2.4 As published in 'Frontline' dated January 03, 2003, the 1973 documents of UCC itself, discovered recently, prove that the UCC transferred substandard, inferior and dangerous technology instead of the 'state-of-the art' technology [i.e. proven, established and reliable technology that was being used at the American plant to produce MIC (methyl Isocyanate) and Sevin] for 'Sevin' pesticide production system in total disregard of the assurance given to Government of India. In fact, UCC had 'lied' to the Government of India in the matter. It is also important to note that Mr. Warren Anderson was on the Managing Committee of Union Carbide Corporation that took the key decision to transfer inferior and substandard technology to Bhopal.

2.5 After earning profits during initial period, the UCIL factory was running at loss. The loss for the first 10 months of 1984 amounted to Rs.5,03,39,000/-. Due to this U.C.E., Hongkong directed UCIL vide their letter dated October 26, 1984 that the factory at Bhopal should be closed down and sold to any available buyers. As no buyers became available in India, UCE, Hongkong directed UCIL to prepare an estimate for dismantling the factory and shipping it to Indonesia or Brazil where they probably had some buyers. These estimates were completed towards the end of November, 1984.

### **BHOPAL GAS TRAGEDY**

2.6 During the night intervening December 2/3, 1984, highly and dangerously Toxic Methyl Isocyanate (MIC) gas leaked from tank No.610 in the factory of UCIL, a subsidiary of Union Carbide Corporation, USA, at Bhopal. Over 2000 human beings, apart from numerous animals, died instantly and grievous injuries were caused to thousands of human beings and animals. Subsequently, the death toll of gas affected had risen to over four thousand human beings.

2.7 Crime No.1104/84 was registered at Police Station Hanumanganj, Bhopal on December 03, 1984 by S.H.O. (Shri Surinder Singh Thakur) of that Police Station.

During the investigation, accused Warren Anderson was inter-alia, arrested by the Madhya Pradesh Police on December 07, 1984 at Bhopal and was released on bail after necessary legal formalities were completed. The case was transferred to the Central Bureau of Investigation on December 09, 1984.

### **INVESTIGATION BY CBI**

2.8 The investigation of this case was dependent on highly scientific and technical evaluation of the events which led to the leakage of MIC gas from the UCIL Plant at Bhopal. The Government of India, therefore, constituted, immediately after the incident a team headed by Dr. S. Varadarajan, then Director General, Council of Scientific and Industrial Research (CSIR) to study all the scientific and technical aspects and submit their report. Dr. S. Sriram, Chief Research and Development Manager, Hindustan Organic Chemicals, Rasayani, District Raigad (Maharashtra), was a member as well as the Co-ordinator of the Scientific Team. Dr. Varadarajan submitted a report in December, 1985. A further back up report was submitted by the C.S.I.R. on May 25, 1987. These reports finally analyzed, inter-alia, the cause that led to the incident.

2.9 The investigation conducted by CBI, the report of the scientific team appointed by the Government of India and, in particular, the literature and manual etc. regarding MIC of Union Carbide Corporation itself prove that MIC is reactive, toxic, volatile and inflammable. It is a highly hazardous and lethal material by all means of contact and is a poison. Skin contact with MIC can cause severe burns. Similarly, eyes can be seriously injured even with 1% concentration. Exposure to MIC is extremely irritating and would cause chest pain, coughing, choking and even pulmonary oedema. On thermal decomposition, MIC would produce Hydrogen Cyanide, Nitrogen Oxide, Carbon Monoxide and/or Carbon Dioxide.

2.10 MIC has to be stored and handled in stainless steel containers of types 304 or 316 i.e. good quality stainless. Using any other material for the containers could be dangerous. In particular, iron or steel, aluminum, zinc or galvanized iron, copper or tin or their alloys were not be used for purposes of storage, transfer/transmission of MIC. This would mean that even the pipes and valves carrying MIC should also have been of the prescribed stainless steel. In other words, at no stage should MIC be allowed to come in



contact with any of the other metals mentioned above except prescribed steel containers, valves, pipes etc.

2.11 The tanks storing MIC have to be, for reasons of safety, twice the volume of the MIC to be stored. It was also advised by UCC, USA itself that an empty tank should also be kept available at all times for transferring MIC from the storage tank to the standby tank on occasions of emergency. MIC has to be stored in a tank under pressure by using Nitrogen which does not react with MIC. The temperature of the tank with MIC has to be maintained below 15° C and preferably at about 0° C. The storage system and the transfer lines have to be free of any contaminants as even trace quantities of contaminants are sufficient to initiate reaction which could become a run away reaction. On the reaction setting in, there could be dangerous and rapid trimerisation. The induction period could vary from several hours to several days. The heat generated could cause reaction of explosive violence. In particular, water reacts exothermically to produce heat and carbon dioxide. Consequently, the pressure in the tank will rise rapidly if MIC is contaminated with water. The reaction may begin slowly, especially if there is no agitation, but it will become violent. The UCC brochure itself stated that with bulk systems, contamination is more likely than with tightly sealed drums. All these properties of MIC show that despite all the safety precautions that could be taken, storage of large quantities of MIC in big tanks was fraught with considerable risk.

2.12 At the time when the incident took place, there were three partially buried tanks in the factory at Bhopal. These were numbered E-610, E-611 and E-619. MIC was being stored generally in tanks E-610 and E-611. Tank No.E-619 was supposed to be the standby tank. In the normal running of the factory, MIC from E-610 and E-611 tanks was being transferred to the Sevin Plant through stainless steel pipe lines. MIC used to be kept under pressure by Nitrogen which is supplied by a Carbon steel Header Common to all the storage tanks. There is a strainer in the Nitrogen line. Subsequent to the strainer the pipe is of Carbon steel and leads to rake up control valve (DNV) which also has a body of Carbon steel. These Carbon steel parts could get exposed to MIC vapours and get corroded, providing a source of contaminant which could enter the MIC storage tank and cause dangerous reactions in the MIC. During the normal working of the factory, MIC fumes and other gases that escape, pass first through a pipe line called

Process Vent Header (PVH) of 2" diameter. The escaping gases were carried by the PVH line to a Vent Gas Scrubber (VGS) containing alkali solution which would neutralize the escaping gases and release them into the atmosphere. Another escape lines of such gases that was provided from the tanks was the Relief Valve Vent Header (RVVH) of 4" diameter. Normal pressure of the MIC tank is shown by a pressure indicator. When the pressure in the tank exceeded 40 psig, a rupture disc (RD) leading to a Safety Relief Valve (SRV) had to break and the said SRV in the RVVH line open automatically to allow the escaping gas to travel through the RVVH line to the VGS for neutralization.

2.13 Investigation has shown that the PVH and RVVH pipe lines as well as the valves therein were of Carbon steel. Besides, on account of design defect these lines also allowed back flow of the alkali solution from the VGS to travel upto the MIC tanks.

2.14 A very essential requirement was that the MIC tanks in the factory had to be kept under pressure of the order of 1 Kg./cm<sup>2</sup>g by using Nitrogen, a gas that does not react with MIC. However, MIC in tank No.610 was stored under nearly atmospheric pressure from October 22, 1984 and attempts to pressurize it on November 30 and December 01, 1984 failed. The appropriate design of the plant ought not have allowed such a contingency to happen at all. The tank being under nearly atmospheric pressure, free passage was available for the entry of back flow of the solution from the VGS into the tank. According to the report of Dr. Varadarajan Committee, about 500 Kgs. water with contaminants could enter tank 610 through the RVVH/PVH lines. The water that entered RVVH at the time of waters flushing along with backed up alkali solution from the VGS already present could find its way into tank 610 through the RVVH/PVH lines via the below down RVH or through the DHV and RD.

2.15 The first indication of any reaction in the tanks comes through the pressure and temperature indicators. The thermo and temperature transmitting lines were out of order throughout and no temperature was being recorded for quite some time. Pressure was also being recorded at the end of each shift of 8 hours duration instead of every two hours was being done earlier. Shifts in the factory ended at 06:45 AM, 02:45 PM and 10:45 PM.

2.16 On December 02, 1984 before 10:45 PM, no deviation was noticed in the pressure of tank No.E-610. Soon thereafter, in the night shift, some operators noticed leakage of

water and gases from the MIC structure and they informed the Control Room. The Control Room operator saw that the pressure had suddenly gone up on tank No.E-610. Some staff in the 3<sup>rd</sup> Shift including S/Shri R.K. Kamparia, C.N. Sen and Suzen Dey checked the pressure indicators on tank E-610 and found that the pressure had gone out of range. The factory staff tried to control the situation but they failed. Even tank E-619 which had to be kept empty for emergency transfer was found to contain MIC and, therefore, when the reaction started, transfer thereto from tank E-610 was not possible. The staff on duty immediately informed senior Officials of UCIL at Bhopal about the escape of MIC.

2.17 During all these developments and even thereafter the Union Carbide officials at Bhopal did not give any information to the residents or any local authority about the serious dangers to which the people were expected to be exposed in all probability and regarding which the said officials had full knowledge.

2.18 The scientific team headed by Dr. Varadarajan has concluded that the factors which led to the toxic gas leakage causing its heavy toll existed in the unique properties of very high reactivity, volatility and inhalation toxicity of MIC. The needless storage of large quantities of the material in very large size containers for inordinately long periods as well as insufficient caution in design, in choice of materials of construction and in provision of measuring and alarm instruments, together with the inadequate controls on systems of storage and on quality of stored materials as well as lack of necessary facility for quick effective disposal of material exhibiting instability, led to the incident. Thus, the combination of conditions for the accident were inherent and extant.

2.19 The post mortem, medical and other evidence prove that the deaths and injuries were caused due to the exposure of the people to MIC and its derivatives including Cyanide.

## **FINDINGS**

2.20 The investigation conducted by the CBI has proved the following aspects:

- (i) MIC is a highly dangerous and toxic poison.
- (ii) Storing huge quantity of MIC in large tanks was undesirable and dangerous as the capacity and actual production in the Sevin Plant did not

require such a huge quantity to be stored. Only adequate quantity of MIC should have been stored, that too in small separate stainless steel drums.

- (iii) The VGS that had been provided in the design was capable of neutralizing only 13 tonnes of MIC per hour and proved to be totally inadequate to neutralize the large quantities of MIC that escaped from tank No.E-610. When the two tanks (610 and 611) themselves had been designed for storing a total of about 90 tonnes of MIC, proportionately large capacity VGS should have been furnished in the design and erected rather than the VGS that was actually provided.
- (iv) Due to the design defect, there was back flow of alkali solution from the VGS to the tanks which had been drained in the past by the staff of UCIL. In fact, even after the incident, much draining was done from the PVH and RVVH lines.
- (v) Whereas the MIC tanks had to be constantly kept under pressure using nitrogen, the design at Bhopal plant permitted the MIC tanks not being under pressure in certain contingencies.
- (vi) The refrigeration system that had been provided was inadequate and insufficient. No alternate standby system was provided.
- (vii) Neither the UCC nor the UCIL took any step to apprise the local administrative authorities or the local public about the consequences of the exposure of the MIC or the gases produced by its reaction and the medical steps to be taken immediately.
- (viii) Invariably storing MIC in the tanks was much more than the 50% capacity of the tanks which had been prescribed. The tank No.619 which was

supposed to be kept empty as a stand by tank was used for storing MIC.  
Thus, there was no such arrangement left for situation of emergency.

- (ix) Not taking any adequate remedial action to prevent back flow of solution from VGS into the RVVH and PVH lines. The alkali solution/water, therefore, used to be drained.
- (x) Not maintaining the temperature of the MIC tanks at the required temperature of 15° C or below (preferred temperature of 0° C) but at ambient temperature which were much higher.
- (xi) Putting a slip blind in the PVH line and connecting the PVH line with a jumper line to the RVVH line.
- (xii) Not taking any immediate remedial action when tank No.E-610 did not maintain pressure from October 22, 1984 onwards.
- (xiii) When the gas escaped in such large quantities, not setting out an immediate alarm to warn the public and publicize the medical treatment that had to be given immediately.
- (xiv) A team of experts of Union Carbide Corporation, USA had conducted survey of the UCIL Plant at Bhopal and submitted a Safety Survey Report in May 1982 wherein a number of deficiencies in the maintenance and storage of MIC was brought out and remedial measures were suggested by them.
- (xv) In October 1982 also, there was leakage of MIC in the UCIL Plant at Bhopal and a number of persons had suffered serious injuries.

## **CONCLUSION BY CBI**

2.21 Investigation has shown that even if these lapses had not occurred, still the incident would have taken place due to the basic defects in the design supplied by the UCC whose experts supervised the erection and commissioning of the Plant itself. The lapses only helped to aggravate the consequences of the incident. The lapses were also of such nature which could be reasonably foreseen as inevitable in any such factory and the design ought to have catered to ensure total safety.

2.22 Investigation done by the CBI has disclosed that in 1984, prior to the incident which took place in the night of 2/3 December, 1984, there had been back flow of alkali solution from the VGS towards the MIC tank through the PVH and RVVH lines. This had been drained on six occasions. Similarly, in 1984 itself refrigeration system was not functioning and MIC which ought to have been at temperatures between 0° C and 15° C was kept at atmospheric temperature, which in India in general and Bhopal in particular could rise in summer even upto 45° C. Even in winter, the maximum temperature at Bhopal would mostly be more than 15 degree centigrade. Similarly, in 1984 itself MIC was not also being kept under pressure by use of Nitrogen. It was well known to all the executives, scientists and technical personnel of UCC and UCIL that such lapses were highly dangerous, particularly when MIC in large quantities kept in the tanks was involved. The 50.9% shareholders UCC was exercising full control over the functioning of the plant but in spite of such control and in spite of serious defects in the design as well as the other defects that occurred in 1984, UCC and UCIL took no steps whatsoever to remedy the defects or change the design. It is due to this defect which persisted in 1984 also that the incident took place on the night of 2/3 December, 1984. Corporate criminal liability as well as criminal liability of the Chiefs of such a corporation even in cases of mere pollution of the environment exists under the laws of India as well as USA. UCC, USA and its Chief, Mr. Warren Anderson, as well as UCIL and its Chief, Mr. Keshub Mahindra, are, therefore, criminally liable for the offences charged. Mr. Warren Anderson, the Chairman, was in-charge of and responsible to the Company UCC, and is thus liable for the acts of omission/commission mentioned in the proceeding paragraphs.

2.23 There are also reasons to believe that Mr. Warren Anderson was personally aware of the better safety precautions which were available in the UCC Plant in West Virginia

and yet he did not ensure that safety measures of the same standards were enforced in Bhopal also.

2.24 The evidence collected during the investigation proves that the accused persons had the knowledge that by the various acts of omission and commission in the prescription of the design and running of the MIC based plant, death and injury of various degrees could be caused to a large number of human beings and animals. All the accused persons had joined in such acts of omission and commission with such common knowledge. This resulted in the incident on the night of 2<sup>nd</sup> /3<sup>rd</sup> December, 1984, which caused the death immediately and till date of about 3800 human beings and about 3000 animals. The number of affected persons is more than 3,00,000. The ailments developed by the affected persons include damaged respiratory tract function, gastro intestinal functions, muscular weakness, forgetfulness, etc.

#### **CONCLUSIONS BASED ON LEGAL ADVICE**

2.25 The investigation has established that Mr. Warren Anderson, then Chairman, Union Carbide Corporation, USA; S/Shri Keshub Mahindra, then Chairman UCIL, Bombay, Vijay Gokhale, then Managing Director and presently Chairman-cum-Managing Director, UCIL, Bombay; Kishore Kamdar, then Vice President, In-charge A.P. Division, UCIL, Bombay; J. Mukund, then Works Manager, A.P. Division, UCIL, Bhopal; Dr. R.B. Roy Choudhary, then Asstt. Works Manager, A.P. Division, UCIL, Bhopal; S.P. Choudhary, then Production Manager, A.P. Division, UCIL, Bhopal; K.V. Shetty, Plant Superintendent, A.P. Division, Bhopal; S.I. Qureshi, Production Assistant, A.P. Division, UCIL, Bhopal; the Union Carbide Corporation, USA; Union Carbide Eastern Inc., Hongkong and Union Carbide India Limited, Calcutta, have committed offences punishable Under Section 304, 326, 324, 429 IPC r/w Section 35 IPC.

2.26 As Chairman of the UCC, USA Mr. Warren Anderson had full knowledge of the design and structure of the Plant at Bhopal and the consequences which were bound to occur due to the leakage of poisonous gas. The other accused persons who have been prosecuted are the Chairman of UCIL, India, and others who were found involved in the various acts of omission of commission in the design and running of the Plant at Bhopal.

### **FILING OF CHARGE SHEET**

2.27 The Committee were informed that Mr. Warren Anderson was granted bail by the local Police immediately after his arrest in December, 1984 when the case was under investigation with State Police of Madhya Pradesh. The case was transferred to CBI on December 09, 1984 and charge-sheet was filed u/s 304, 324, 326, 429 r/w 35 IPC in the Court of Chief Judicial Magistrate, Bhopal against Mr. Warren Anderson, former Chairman of Union Carbide (UCC) in case RC 3/84/ACU-I (Bhopal Gas Tragedy Case) and other accused persons by CBI on December 01, 1987.

### **SUMMONS ISSUED TO MR. WARREN ANDERSON, FORMER CHAIRMAN, UCC, USA**

2.28 After filing of the charge-sheet, summons were issued by the Court of Chief Judicial Magistrate, Bhopal, against Mr. Warren Anderson on December 01, 1987, for service. In this connection information was received from the National Central Bureau, Washington, that the service of summons can be pursued through letter Rogatory and hence fresh summons were issued. The summons dated July 16, 1988 were sent for service and a report in this connection was received from the Embassy of India, Washington, vide letter dated September 20, 1988 that the summons had been served on Mr. Warren Anderson.

2.29 The Court of Chief Judicial Magistrate thereafter issued bailable warrant against Mr. Warren Anderson on November 15, 1988. The said bailable warrant could not be executed by the U.S. Department of Justice and a report was received that execution of warrant is not covered by the Statutory provision of US laws on International Judicial assistance.

### **PROCLAMATION ISSUED BY CJM, BHOPAL**

2.30 As Mr. Warren Anderson failed to appear in the Court in spite of service of summons, the Chief Judicial Magistrate, Bhopal, as per provision contained in Section 32 of the Code of Criminal Procedure, 1973 of India (Act II of 1973), ordered publication of Proclamation in USA for appearance of accused Warren Anderson.



2.31 The Proclamation issued by the Court of Chief Judicial Magistrate, Bhopal was published in the Washington Post on January 01, 1992.

**NON-BAILABLE WARRANT ISSUED BY CJM, BHOPAL**

2.32 In spite of the Proclamation and its publication in newspapers in the USA as well as in India, accused Warren Anderson failed to appear in Court. The Chief Judicial Magistrate, Bhopal, therefore, issued order for the attachment of the immovable and movable properties of accused Warren Anderson and also asked the prosecution to furnish details of the property held by him. However, legal advice was received from USA that in the criminal law and the criminal procedure of USA there is no procedure for such attachment of property as a means of compelling the attendance of an accused in a criminal case and that extradition proceeding is the only legally available course of action. The Chief Judicial Magistrate, Bhopal, has accordingly issued a non-bailable warrant of arrest dated April 10, 1992 against Mr. Warren Anderson for arranging extradition proceeding against him.

2.33 As per provision contained in Extradition Treaty between the United States of America and the Government of India, reciprocity has been granted for the offence of man-slaughter and maliciously wounding or inflicting grievous bodily harm. These two offences are identical with the offence of culpable homicide not amounting to murder as defined in section 304 of Indian Penal Code and causing grievous hurt by dangerous weapons or means as defined in section 326 of the Indian Penal Code. Thus, the offences involved under Sections 304 and 326 of Indian penal Code are covered under the cover of dual criminality as these offences are punishable in India as well as in USA.

## **CHAPTER III**

### **PROCEDURE FOLLOWED FOR EXTRADITING CRIMINALS**

3.1 The Committee have been informed that an Extradition Treaty has been in operation between India and U.S.A. since April, 1966. This Treaty was revised and a fresh Extradition Treaty was signed between India and U.S.A. on June 25, 1997 which came into force on September 14, 1999 (Appendix II). The procedure for extraditing criminals from U.S.A. has remained the same under both the old and the new Extradition Treaty. The Ministry of External Affairs informed the Committee that the Government of India receives extradition requests in the Ministry of External Affairs from various investigating agencies and the same are legally examined to see whether they fall within the gamut of extradition offences as mentioned in the extradition treaties with the respective countries. Thereafter, if all the required documents are received with the extradition request, the same are sent to the concerned country through diplomatic channels.

### **PROVISION OF THE INDIAN EXTRADITION ACT**

3.2 As per the provisions of the Indian Extradition Act, when a request for extradition is received, the matter is first referred to a magistrate to find out whether the case can be tried or not. The Magistrate conducts an inquiry and gives his findings. Thereafter the matter comes before the Central Government which take final view in the matter.

Section 8 of the Extradition Act, 1962 relevant in this case reads as under:

“If, upon receipt of the report and statement under sub-section (4) of section 7, the Central Government is of opinion that the fugitive criminal ought to be surrendered to the foreign State or country, it may issue a warrant for the custody and removal of the fugitive criminal and for his delivery at a place and to a person to be named in the warrant.”

In this connection, DIG, CBI elaborated during evidence:

“But application of mind from the Judicial side has gone into this case on two occasions – once when the warrant was issued against Mr. Anderson and thereafter when the framing of the charges took place which went right up to Supreme Court. The framing of charges against the other nine accused in this case are upheld by the Supreme Court. But, at least, for some of them, the offence is more or less on parity with Mr. Anderson.

### **ACTION TAKEN BY CBI**

3.3 Mr. Warren Anderson was charge-sheeted by CBI in the Court of Law for committing offences under different sections of law in connection with Bhopal Gas Tragedy case along with other accused persons. During process of trial 9 accused persons appeared before the Court to face trial except Mr. Warren Anderson and two others i.e. UCC and UCE Hongkong. After all the process available in the judicial system were exhausted to bring Mr. Warren Anderson to face trial in the Court, a non-bailable warrant was issued by the Court against him on April 10, 1992. For execution of non-bailable warrant in foreign country extradition process is the only course available. Accordingly CBI moved the Ministry of External Affairs to initiate proceedings against Mr. Warren Anderson. CBI has informed the Committee that the evidence in this case was found sufficient by them and by the Court of law to the effect that Mr. Warren Anderson was also responsible for the offences mentioned in the charge-sheet. CBI also informed that the Court has not yet been able to frame charges against Mr. Warren Anderson because he has not appeared before the Court to face trial although summons were issued to him by trial court.

3.4 To a question as to when CBI realized that Anderson's presence was required in India, the representative of CBI submitted during evidence that they framed the opinion when they filed the charge-sheet i.e. on December 01, 1987. When asked as to why it took so much time for the CBI to realize that Anderson's presence was required in India and why did not the CBI foresee well in time that he should not be allowed to leave India till the trial is over, the representative of CBI mentioned that it was on April 10, 1992 that non-bailable warrant was issued by Court. They further clarified that the case was initially with the State Police and not with CBI. The circumstances in which he was

arrested and released on bail were with the State Police at that point of time. After taking over the investigation, CBI found that there is sufficient material to prosecute the accused.

3.5 The Committee were also informed that CBI did not contact Interpol for provisional arrest of Mr. Warren Anderson at any point of time. According to a note submitted by CBI in regard to execution of non-bailable warrant in foreign country, extradition process is the only course and accordingly they moved Ministry of External Affairs to initiate extradition proceedings against Mr. Warren Anderson.

3.6 A request sent by CBI for extradition of Mr. Warren Anderson was received by the Ministry of External Affairs on 23.9.1993. The Ministry of External Affairs, after examining the documents, informed CBI through their letter dated 29.10.1993 that the documents relating to extradition request did not contain the court order and were incomplete.

3.7 When asked whether CBI was unaware of the procedure to be followed for extradition as according to Article 93(a) of the Treaty the Court order is required to be attached with the request made to Ministry of External Affairs for extradition, CBI, through their note, have stated that the request in the form of Affidavit of a CBI Officer contained facts and evidence of the case against Mr. Warren Anderson and reference of documents have also been mentioned wherever necessary in the Affidavit and copies of such documents were also sent to the Ministry of External Affairs. It has further been stated that the concerned order dated March 27, 1992 of Chief Judicial Magistrate, Bhopal was not referred to in the Affidavit of CBI and hence the same was not sent to Ministry of External Affairs along with the Affidavit and copies of the documents. The Committee have been informed that CBI furnished the concerned court order to Ministry of External Affairs on 10.11.1993 after preparing English version of the said order of the Court. CBI also clarified that the Court's order in the Court's file related to order for issuance of non-bailable warrant against Mr. Warren Anderson. Actual order of the Court in the form of non-bailable warrant issued on 10.04.1992 in original was sent to Ministry of External Affairs as one of the documents for extradition along with the affidavit of CBI which served the total purpose of the extradition matter. To a query, whether it was a deliberate attempt to delay filing of the request for extradition or lack of

knowledge/experience or incompetence on the part of concerned officer, the CBI replied that it was not so. They have also categorically denied that non-furnishing of order dated March 27, 1992 of the Court to MEA was a lapse on the part of CBI.

### **LETTER ROGATORY ISSUED BY CJM, BHOPAL**

3.8 To a specific query as to whether CBI visited USA when Chief Judicial Magistrate, Bhopal on July 06, 1988 issued Letter Rogatory to the US Administration seeking permission for CBI to inspect safety system installed at the MIC Unit of UCC's premier pesticide plant in the State of West Virginia, USA, it was replied that CBI Officers indeed visited USA to conduct investigation on some specific points relating to the concerned case as per Letter Rogatory dated July 06, 1988 issued by the Chief Judicial Magistrate, Bhopal. The purpose of visit of CBI Officers to USA was restricted as the Letter Rogatory contained request for the inspection of the MIC Plant and to take photographs and video film as may be required for the purpose of evidence and not specifically to inspect the safety systems installed at the MIC Unit of UCC in the State of Virginia. To a question as to why it did not occur to them to be familiar with the laws of USA in case extradition was required or otherwise also if Mr. Anderson was to be prosecuted, CBI replied that it was neither foreseen nor it was feasible in the light of specific points mentioned in the Letter Rogatory allowing CBI Officers to visit USA.

3.9 To another question as to when did the US Administration grant permission to the CBI to inspect the safety system of UCC's pesticide plant at Institute, West Virginia for purposes of comparison of the safety standards with that of the safety systems installed at Bhopal Plant, it was informed that a CBI team headed by Shri K.Mahadevan, the then DIG, CBI visited the USA in the 3<sup>rd</sup> /4<sup>th</sup> week of November 1988 as per the Letter Rogatory dated July 6, 1988. The CBI team along with the Counsellor (Pers), Embassy of India in the USA, had several meetings with the officials of the Justice Department of USA and clarified various matters of facts and laws. During the visit, the Justice Department of USA intimated that the Letter Rogatory would be sent to the United States Attorney in West Virginia for filing an application for appointment of Commissioner by the District Attorney and service of subpoenas to the UCC Officials to execute the Letter Rogatory. It was decided that after the appointment of Commissioner, the CBI team will be required to visit the USA again for inspecting the plant in West Virginia for a

comparative study with the Bhopal (India) Plant as well as to assist officials of Justice Department. However, it was at this stage that the Hon'ble Supreme Court of India passed Orders on February 14, 1989 and February 15, 1989 in various civil petitions by which it ordered the settlement of Civil Suits and UCC was directed to pay a sum of US \$ 470 millions and all criminal and civil litigations were quashed. Therefore, the Counsellor (Pers.) Embassy of India, Washington was advised on February 22, 1989 to request the Department of Justice of the USA to keep the matter of conducting investigation in the USA as per the Letter Rogatory in question, in abeyance, till they heard from the CBI in future. However, the Hon'ble Supreme Court vide its Order dated October 03, 1991 in Review Petitions held that the quashing of the Criminal proceedings were not justified. The Criminal proceedings were, therefore, directed to be proceeded with. On receipt of the above Orders dated October 03, 1991 of the Supreme Court of India, the Counsellor (Pers), Embassy of India, Washington (USA) was requested vide D.O. letter dated December 24, 1991 to renew CBI's request to US authorities for taking up the matter relating to Letter Rogatory dated July 06, 1988. Thereafter, the Criminal proceedings were started in the Court of Chief Judicial Magistrate, Bhopal. But accused Mr. Warren Anderson failed to attend the Court in spite of service of summons. The trial court thereafter issued orders for proclamation and attachment of property. But since as per legal provisions in the USA, the attachment of property could not be made for compelling the attendance of the accused, which can only be done through extradition proceedings, the Chief Judicial Magistrate, Bhopal ordered for issue of non-bailable warrant for extradition proceedings which was issued on April 10, 1992.

### **SUPREME COURT ORDERS OF 1989 & 1991**

3.10 The Supreme Court vide its orders dated 14 & 15 February, 05 April and 04 May, 1989 in Union Carbide Corporation Vs. Union of India [AIR 1990 SC 273] approved a package of settlement of various claims in respect of Bhopal Gas disaster. As a part of that settlement, the Court quashed all pending criminal proceedings relating to and arising out of the gas disaster. The Court also directed that any civil or criminal proceedings filed or to be filed before any court or authority shall not be proceeded with except for dismissal or quashing in terms of this order. It seems that review petitions had been filed against the orders dated 14 & 15 February, 1989. The Supreme Court,

accordingly, vide its order dated 4 May, 1989, proceeded to give reasons for the above orders. But the Court refrained from giving reasons for quashing of criminal proceedings. It observed:

“There is yet another aspect of the Review pertaining to the part of the settlement which terminated the criminal proceedings. The questions raised on the point in Review – petitions, prima facie, merit consideration and we should, therefore, abstain from showing anything which might tend to pre-judge this issue one way or the other.”

3.11 The review petitions were decided by the Supreme Court vide its order dated 03 October, 1991 in Union Carbide Corporation Vs. Union of India [(1991) 4 SCC 584]. The Court observed that there was no indication in its decision under review as to grounds and criteria justifying the withdrawal of the prosecution cases. The Court accordingly held that the termination of criminal proceedings was bad in law and against the provisions of Sections 320(9), 321 & 482 of Cr.P.C. The Court also observed that barring future criminal proceedings amounted to conferment of immunity from criminal proceedings, which was essentially a legislative function and could not be made by a judicial act. The Court held that as a logical corollary and consequence of the above direction about pending criminal proceedings, the direction regarding future prosecution in the case under review also required to be deleted.

### **ORDER OF CJM FOR SEPARATION OF CASE**

3.12 It has been reported that the Chief Judicial Magistrate, Bhopal by the Order dated May 25, 1992 separated the trial of accused Mr. Warren Anderson, Union Carbide Corporation, USA and Union Carbide Eastern (Hongkong) and thereafter committed the case to the Court of Session on July 22, 1992 against remaining accused, namely, Keshab Mahindra, Vijay Gokhale, Kishore Kamdar J. Mukund, Dr. R.B. Roy Chaudhary, SP Choudhary, KV Shetty, SI Qureshi, UCI Limited, Bhopal.

**SUPREME COURT JUDGEMENT DATED SEPTEMBER 13, 1996 ON SLPs**  
**FILED BY ACCUSED**

3.13 When it was enquired whether certain co-accused in Bhopal Gas Tragedy case went up in appeal to Supreme Court against the order of Madhya Pradesh High Court which confirmed the order of Additional District Judge, Bhopal dated April 08, 1993 according to which charges were framed under Section 304(II), 326, 324 and 429 read with Section 35 of IPC, the CBI informed the Committee that the Hon'ble Supreme Court on 13<sup>th</sup> September, 1996 quashed the charges u/s 304 (II), 324, 326 and 429 IPC r/w 35 IPC and held that the material on record could only sustain a prima facie case u/s 304A IPC and left for consideration of the Trial Court whether charges u/s 336, 337 and sec. 338 of the Indian Penal Code with or without the aid of sec. 35 IPC should be framed.

3.14 The Committee were also apprised that charge-sheet was initially filed in the Court of Law at Bhopal against Mr. Warren Anderson and other accused persons u/s 304, 324, 326, 429, IPC r/w 35 IPC. Section 304 (Part II) deals with culpable homicide not amounting to murder. The charge-sheet against other accused persons facing trial are under 304-A IPC which is causing death by rash and negligent act.

3.15 When it was asked as to what action did the CBI take in view of the Supreme Court Judgement dated 13<sup>th</sup> September, 1996 on the SLPs filed by the accused Keshub Mahindra and others against the orders of High Court, Jabalpur, the CBI, in a written note, stated that the judgement of the Hon'ble Supreme Court did not warrant any action on part of the CBI. However, as per its direction to the Trial Court, charges were framed by the CJM, Bhopal against 9 accused persons u/s 304A, 336, 337, 338 IPC r/w 35 IPC.

3.16 To a query as to whether the CBI had filed an appeal before the CJM, Bhopal for modifying charges against Mr. Warren Anderson, former Chairman of UCC, and UCC Eastern Inc, Hong Kong drawing the attention to the Orders dated September 13, 1996 of the Hon'ble Supreme Court, the CBI have stated that they moved an application in the Trial Court on May 23, 2002 for issuance of warrant under Section 304 A, IPC as charges framed against the other accused in the case of Bhopal Gas Tragedy was amended from 304 IPC to 304 A IPC. According to CBI, this matter was examined at length by Legal Division, CBI, Learned Attorney General and the Ministry of Law. In the light of the



Orders of the Supreme Court it was opined that the extradition of Mr. Warren Anderson was possible only under Section 304 A IPC. They have, however, denied that the application moved was for modifying charges but only for issuance of fresh non-bailable warrant against Mr. Warren Anderson.

3.17 The Committee have also been informed that the Learned Court of Chief Judicial Magistrate, Bhopal rejected the application of CBI for issuance of fresh non-bailable warrant of arrest against Mr. Warren Anderson u/s 304 A IPC on August 28, 2002.

#### **ACTION TAKEN BY MINISTRY OF EXTERNAL AFFAIRS**

3.18 The issue of the extradition of Mr. Warren Anderson, former Chairman of Union Carbide Corporation (UCC) from the United States to India, with regard to the criminal charges filed in a Court in Bhopal in connection with the Bhopal Gas Tragedy in December, 1984, has been under consideration of the Government since September, 1993.

3.19 When asked the reasons for delay in extradition of Mr. Anderson from USA although a request was given to Ministry of External Affairs way back in 1993, the Ministry clarified in a written note, that an official request for extradition made to a foreign Government needs to be fully supported by evidentiary material, so that the request is legally sustainable when examined by the Courts of the requested state. The Government has been seized of this matter and has considered the evidence as well as the applicable laws taking into account both Indian and American legal systems, laws and their requirements.

3.20 With regard to issue of extradition becoming time barred, legal opinion has indicated that since the case has already been charge-sheeted, it will not be time-barred as per Indian Laws. It has further been clarified that the time limitation which is applicable in such cases under the provision of the Indo-US Extradition Treaty is as per the domestic laws of the Requesting State. Article 7 of the New Indo-US Extradition Treaty States as follows:

***“Extradition shall not be granted when the prosecution has become barred by lapse of time according to laws of the Requesting State.”***

3.21 In reply to a query as to why such a long time has been taken to examine whether extradition proceedings against Mr. Anderson were legally sustainable, the Ministry of External Affairs submitted in a written note that the case had been considered by the Committee of Secretaries on February 09, 1995 in which it was decided to pursue the extradition request and prepare the case papers thoroughly.

3.22 When asked as to the reasons for taking a long time from February 1995 to September 1998 for the Government to form an opinion as regards fixing criminal liability on Mr. Anderson, the Ministry of External Affairs have stated that the fixation of criminal liability on Mr. Anderson required co-ordination between various Government Agencies/Ministries/Departments and more so, the case against Mr. Anderson was found weak to stand extradition trial in the US Court of Law. Following actions are reported to have been taken by the Ministry of External Affairs from February, 1995 to September, 1998:-

<b>Date</b>	<b>ACTION TAKEN</b>
09.02.1995	Meeting of Committee of Secretaries (CoS) held in which it was decided as follows: <ol style="list-style-type: none"><li>1. CBI will transfer all relevant documents concerning the criminal case against Mr. Warren Anderson to MEA, who may examine whether extradition proceedings against Mr. Anderson are legally sustainable under the provisions of Indo-US Extradition Treaty. The opinion of Attorney General (AG) may also be taken, if necessary.</li><li>2. After the matter has been legally examined, MEA may submit it to PM for a decision on the issue.</li></ol>
14.02.1995	Foreign Secretary (FS) writes to Director, CBI requesting him to get the dossier on Warren Anderson's extradition directly to JS (L&T), MEA.
04.04.1995	CBI sends documents to JS (L&T).
20.04.1995	MEA examines these documents and requires the following in the form of

a self contained note:

1. Offence which the accused is alleged to have committed in India.
2. How the accused and those offences are covered under the Extradition Treaty keeping in view the provisions of Articles 1 and 3 of the Treaty.
3. Specific acts of omissions or commissions for which the accused is held responsible under the specific provisions of the IPC, 1860.
4. How the acts of omission or commissions alleged to have been committed may be attributed to the accused.
5. any precedent in the past where similarly placed persons were held responsible in similar circumstances.

21.04.1995 The opinion of MEA was communicated to CBI.

13.06.1995 CBI responds to the advice of MEA and forwards a self-contained note on various points raised by MEA.

16.08.1995 Ministry of Law, Justice & Company Affairs (MoLJ) on the issue of the criminal liability of Mr. Anderson under the circumstances when he was not present in India during the time of the Bhopal Gas Leak disaster, whether a case is made out against Mr. Anderson stated that this was a secondary issue, sufficient to justify the committal of the accused for trial under the provisions of the Indo-American Extradition Treaty (old).

MoLJ also advised that in case the opinion of the learned Attorney General is needed on certain legal issues, a draft statement of the case may be sent, identifying legal issues on which the opinion is required.

25.08.1995 MEA seeks advice of the Deptt. of Legal Affairs on whether the documents and evidence provided by CBI are sufficient to establish a prima-facie case against Warren Anderson.

05.09.1995 Advice of MoLJ sought.

14.09.1995 In a separate reference related to the same case, MoLJ also advised that in case the opinion of the learned Attorney General is needed on certain legal issues, a draft statement of the case may be sent, identifying specific legal issues on which the opinion is required.

19.09.1995 The consolidated comments of MoLJ and MEA were conveyed to CBI for providing further information.

29.11.1995 CBI provides information to MEA as sought for on 25.08.1995.

29.12.1995 MoLJ tells JS (L&T) to advise CBI that the documents given by CBI are not sufficient and more comments are needed.

08.01.1996 After examining the matter MEA returns paper to CBI for furnishing further information as required by MoLJ.

27.08.1996 FS decides to take a meeting on 02.09.1996 to discuss the question of seeking the extradition.

30.08.1996 MEA, on the basis of the documents supplied by CBI requests L&T Division to prepare a draft statement for seeking the opinion of Attorney General.

02.09.1996 FS convened a meeting on this case. CBI was requested to send its

comments and clarifications within one week and then the matter would be referred to Attorney General.

- 03.09.1996 As decided in the meeting chaired by FS, MEA forwards a draft statement to the CBI for seeking its comments, before sending this statement to MoLJ to get the opinion of Attorney General so as to ensure the sufficiency of the evidence in terms of Indo-US Extradition Treaty, and the requirements mentioned in the US Government Note of 1992.
- 29.09.1996 CBI informs MEA that in the light of a judgement delivered by Supreme Court of India on 13.09.1996, on special leave petition filed by the accused persons against the framing of charges, the matter pertaining to extradition of Warren Anderson needs to be re-examined. The CBI at that point of time was also awaiting a certified copy of the judgement order.
- 30.10.1996 CBI informs MEA that the draft statement is in order, subject to the change that extradition has now to be sought under section 304 A of IPC instead of 304 (P&T) of IPC as per the order given by Supreme Court of India on 13.09.1996.
- 12.11.1996 MEA prepares a draft statement for seeking Attorney General's view.
- 20.08.1997 The draft statement is sent to MoLJ for seeking the opinion of Attorney General, along with enclosures.
- 10.09.1997 MoLJ suggest that the views of Legal Adviser, CBI may be obtained and thereafter, if necessary, the extradition documents may be forwarded to the MoLJ. Thus, the documents were sent back to CBI.
- 08.12.1997 Opinion of Legal Adviser, CBI received, however, the enclosures were not received.

13.02.1998 The matter is again referred to MoLJ.

17.06.1998 A reminder sent to MoLJ to expedite their views.

31.07.1998 Attorney General of India gives his opinion on the matter. (Appendix III)

3.23 The Attorney General had *inter alia* opined\* that:

*“The first issue that requires clarifications is what are the offences with which Mr. Anderson can be charged after the Supreme Court’s decision in the appeal of certain co-accused in the criminal cases filed in connection with the disaster. In that judgement which is reported as Keshub Mahindra Vs Union of India (1996)6 SSC 129, the Supreme Court quashed charges under Section 304 (II), 326, 324 & 429 read with Section 35 of IPC against top officials of Union Carbide (India) Limited (UCIL). The Supreme Court held that the material on record could only sustain a prima facie case under Section 304A of the IPC which penalizes the causing of death by rash or negligent acts. The same reasoning would apply to Mr. Anderson also. In these circumstances, it is clear that any extradition request for Mr. Anderson will have to be linked to Section 304A of the IPC.*

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*Prima-facie in my view the evidence so far collected does not appear to be sufficient at this time. As the Union Carbide Corporation (UCC) is one level removed from Union Carbide India Limited (UCIL), the corporate veil will have to be pierced to fix criminal liability on Mr. Anderson. Moreover, the Supreme Court’s holding is based on Indian Laws.”*

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***“The U.S. is under obligation to extradite Mr. Anderson under Article 9 of the Extradition Treaty which is only if the Government of India is able to meet evidentiary standards applicable in the United States. Whether the evidence on record would be sufficient to meet the probable cause standard application in the United States is an issue of American Law on which advice should be obtained from the competent American Attorney.”***

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\* Also see opinion of Attorney General dated August, 2001

3.24 When the Committee asked what was the rationale for CBI to file an application for modifying the charges against Mr. Warren Anderson, former Chairman of UCC, UCC(USA) and UCC(Eastern) as pretty long time has elapsed since the Supreme Court Order of 1996, the Secretary, Ministry of External Affairs stated that the rationale primarily would be that the opinions of the Attorney General and the American Attorney have been taken into consideration for arriving at that position.

3.25 When asked the meaning of ‘Corporate veil being pierced’ to fix criminal liability against Mr. Anderson, the Ministry of External Affairs through a written note explained that the ‘corporate veil’ is a complicated legal concept and may have different meanings. In the present case it was referred to because of the need to establish appropriate evidence to hold Anderson responsible for the incident in India, even though he was the Chairman of UCC America and not Chairman of UCC India which was constituted under Indian laws with its own Board of Directors.

3.26 To a query, as to what kind of evidentiary standards are required in USA to substantiate the charges against Mr. Anderson for extradition and whether the opinion of Attorney General of India not sufficient to proceed for extradition, the Ministry of External Affairs, in a written reply, stated that the opinion of Attorney General would have been sufficient as far as India is concerned. However, as the evidence for extradition would have to be established under the laws of United States certain appreciation of the requirements under the law was felt necessary by the Attorney General himself.

3.27 When queried why Attorney General was of the opinion that the evidence collected were not sufficient to proceed with the case, the Ministry of External Affairs drew the attention to the opinion of Attorney General which states:

*“the evidence should be to the effect that Mr. Anderson had knowledge of the design defects in the plant and violation of safety precautions. If strict proof, is, in fact, a requirement of American Law for purposes of determining whether there is probable cause to believe that Mr. Anderson was in any way responsible for the disaster, in, my view, the evidence obtained by the CBI so far would not meet such high standard of proof. This is an issue of American Law on which it would be advisable to obtain the opinion of competent American Attorney.”*

3.28 When it was pointed out that the case had been filed in the US Court of Law in November 1999 by the survivors and relatives of victims of Bhopal Gas Tragedy against UCC and its former Chairman for gross violation of human rights and International Law and how it has been found sustainable, the Committee were informed that the case was filed by 5 Bhopal Gas victims and 7 voluntary agencies in the US Federal Court for Southern District of New York on November 15, 1999. The plaintiff had requested for claims under the Alien Tort Claim Statute of USA and requested the US Court to adjudicate the obligation and liabilities of the defendant who are absconders from the criminal proceedings pending in the Bhopal District Court and to decide fundamental issues relating to liabilities of Union Carbide under the International Law in the conduct with which it has been criminally charged in India. The US Court, however, dismissed the civil claims of plaintiffs relating to the Bhopal disaster since the relevant settlement orders of Supreme Court of India of 1989 bar all claims related to the disaster. The US Trial Court dismissed the plaintiffs’ case in toto without specifically addressing the additional environmental claims, allegedly attributable to the UCIL plant in Bhopal. Hence, the case was not found sustainable. However, important references to Mr. Warren Anderson in the US Court of Appeal are quoted below:

**“The amended complaint is vague at best in describing Anderson’s role, if any, in creating the contamination on which the additional environmental claims are based. In its general factual allegations,**



**however, the amended complaint asserts that Anderson exercised significant direct control over management of the Bhopal plant, including control over safety procedures, the plaintiffs submitted at least some evidence to support these allegations in response to the defendants' motions for summary judgement."**

3.29 The Committee have been informed that a thorough and comprehensive brief was prepared by the CBI in consultation with the Legal & Treaties Division of the Ministry of External Affairs and the same was sent to the Indian Embassy in Washington on September 18, 2000 for obtaining the legal opinion of the US Attorney. The Indian Embassy consulted their firm who in turn advised that the brief may be examined by Mr. Martin Mendelsohn of Verner Liipfert.

3.30 When asked as to why it took almost two and a half years to obtain US Attorney's opinion just to know that there was no evidence to establish the necessary factual link between Mr. Anderson and the gas leak incident in Bhopal, the Ministry of External Affairs have stated that they have taken the following action:-

<b>Date</b>	<b>Action Taken</b>
31.07.1998	Attorney General of India gives his opinion on the matter.
11.12.1998	FS after perusing AG's opinion gives the go ahead for seeking opinion of US Attorney on the points raised by AG.
14.01.1999	MEA writes to Deputy Chief of Mission, Embassy of India, Washington to locate a law firm/US Attorney for advice as suggested by AG.
12.02.1999	MEA writes to CBI to prepare a self-contained memorandum, containing facts and the evidence along with necessary enclosures on which the Attorney may give his opinion.
August, 2000	Final draft memorandum was received from the CBI.
18.09.2000	MEA forwards the brief with enclosures to Embassy of India,

Washington on the extradition of Mr. Anderson.

December, Financial approval for obtaining the opinion of American Attorney  
2000 obtained and conveyed to Embassy of India, Washington.

### **APPOINTMENT OF US ATTORNEY**

3.31 The Ministry of External Affairs in a written reply, stated that the embassy in Washington first approached the US Department of Justice to seek advice but the Department of Justice declined to recommend any specific legal firms which specialized in extradition cases. Due to sensitivity of the case and the need for confidentiality, Embassy in Washington decided to seek the opinion from the Embassy's Law firm M/s Verner Liipfert. M/s Verner Liipfert are reported to be one of the most well reputed and highly regarded law firms in USA. Even the Fortune Magazine has listed it as amongst the largest and most competent law firms in the US. It has further been stated that M/s Verner Liipfert specifically enlisted the services of a legal expert (Mr. Martin Mendelsohn), who had earlier worked in the Department of Justice and had extensive experience of handling extradition cases. The basic brief is reported to have been prepared by this expert and vetted and examined from various angles by other legal experts on issues like taxation, liability, etc. within the firm of M/s Verner Liipfert. According to the written note, the terms of reference given to the law firm were to seek legal opinion on the extradition of Mr. Warren Anderson under the provisions of Indo-American Extradition Treaty, the US national laws and taking into account the material forwarded by CBI.

3.32 The Committee were informed that the law firm was paid US \$ 15,000 for their service.

3.33 The US law firm sought some specific information as under:-

- 1. Were there legally mandated safety requirements that were not being followed by the Bhopal UCIL Plant?**

**2. Who was legally responsible for implementing the safety recommendations made in 1982?**

**REPLIES OF CBI**

3.34 Following are the replies of CBI as sent to Indian Embassy, Washington in February, 2001:

- (1) It is a fact that the legally mandated safety requirements were not being followed in UCIL Plant at Bhopal during the relevant period.**

MIC which was being produced by UCIL in their factory at Bhopal was highly reactive, toxic, volatile and inflammable. It is highly hazardous and lethal by all means of contact and is a poison.

There were a number of safety measures which were mandatory to be adopted to avoid such eventuality which occurred on the night of 2<sup>nd</sup> and 3<sup>rd</sup> December, 1984.

MIC has to be stored and handled in stainless steel container of types 304 or 316 namely, good quality stainless steel. Using any other material can be dangerous. In particular, iron or steel, aluminum, zinc or galvanized iron, copper or tin or their alloys could not be used for the purpose of storage, transfer/transmission of MIC. This would mean that even the pipe and valve carrying MIC had also got to be of the prescribed stainless steel.

The tanks storing MIC have to be twice the volume of MIC to be stored and an empty tank should also be kept available at all times for transferring MIC from its storage tank to the standby tank on occasions of emergency. MIC has to be stored in the tank under pressure by using nitrogen which does not react with MIC.

The temperature of the tank with MIC has to be maintained below 15° C and preferably at 0° C. The storage system and the transfer lines have to be free of

any contaminants as even trace quantities of contaminants are sufficient to initiate reaction. On reaction setting in, there could be dangerous and rapid trimerisation. The heat generated could cause reaction of explosive violence. In particular, water reacts exothermically to produce heat and carbon dioxide. Therefore, the pressure in the tank will rise rapidly if MIC is contaminated with water.

Contrary to the above safety requirements, the PVH and RVVH pipelines as well as valves therein were of carbon steel. The MIC tank no.610 used for storage of MIC was of a large size. The MIC in tank No.610 was stored in huge quantity much more than 50% capacity of the tank under nearly atmospheric pressure from October 22, 1984 and attempts to pressurize it on November 30, 1984 and December 01, 1984 failed. The tank being under nearly atmospheric pressure, free passage was available for the entry of the back flow of the solution from the VGS into the tank. The tank E-619 which had to be kept for emergency transfer was found to contain MIC and therefore when the reaction started, transfer thereto from tank No.610 was not possible.

The VGS that had been provided in the design was capable of neutralizing only 13 tonnes of MIC per hour and proved to be totally inadequate to neutralize the large quantities of MIC that escaped from tank No.E-610. The refrigeration system that had been provided was inadequate and insufficient. No alternate standby system was provided.

Non-compliance of above stated safety requirements resulted in leakage of the poisonous gas on the intervening night of 2<sup>nd</sup> and 3<sup>rd</sup> December, 1984 thereby causing death of over 2,000 human beings and grievous injuries to thousands of human beings and animals.

**2        The Management of UCC/UCIL were responsible to implement the safety recommendations of 1982 and on account of their failure, the**

**concerned Members of the Management have been prosecuted for their omissions/commissions in the crime.**

Mr. Warren Anderson was the Chairman of UCC of USA. The design, know-how and safety measures were provided by UCC, USA and erection and commissioning of the plant was done under the strict control of experts of UCC. The UCC, USA was exercising strict financial, administrative and technical control on the UCIL, Bhopal. As per the collaboration agreement dated November 13, 1973 entered between UCC, USA and UCIL, Bhopal, the best manufacturing information then available to Union Carbide had to be provided for the UCIL factory at Bhopal. This necessitated the UCC, USA supplying the design, know-how and safety measures for production, storage and use of MIC which ought to have been at the moment in the factory of UCC at West Virginia based on the experience gained there. But the factory at Bhopal was deficient in many safety aspects.

Mr. Warren Anderson in his capacity as Chairman of UCC USA, having 50.9% share holdings in UCIL was responsible for the implementation of the safety requirements. As Chairman, he had full knowledge of the design defects and defect in maintenance of the plant at Bhopal and the consequences which were bound to occur due to the leakage of poisonous gas. Therefore, Mr. Warren Anderson is liable for indictment for the said offences. There are reasons to believe that Mr. Warren Anderson was personally aware of the safety precautions which were available in the UCC plant in West Virginia and yet he did ensure that safety measures of the same standard were enforced in Bhopal also. 50.9% share holder, UCC was exercising full control over the function of the plant but in spite of such control and in spite of serious defect in the design as well as the other defects that occurred in 1984, the UCC & UCIL took no steps whatsoever to remove the defects or change the design. It is due to the inherent design defect and non observance of other legally mandated safety requirements according to the brochure of UCC, USA itself which persisted in 1984 also, the unprecedented

incident took place on the night of 2<sup>nd</sup>/3<sup>rd</sup> December 1984 causing death of thousand of human beings.

A team of experts of Union Carbide Corporation, USA had conducted survey of the UCIL plant at Bhopal and submitted safety survey report in May, 1982 wherein a number of deficiencies in the maintenance and storage of MIC were brought out and remedial measures were advised.

### **OPINION OF US LAW FIRM**

3.35 The opinion of the US law firm received on April 20, 2001 had concluded that from the material provided in the brief, there is no evidence to establish the necessary factual link between Mr. Anderson and the gas leak incident in Bhopal for the following reasons:

- 1. The Treaty requires that there be “dual criminality”, meaning that Mr. Anderson would be prosecuted in the United States under a comparable offence.**
- 2. There must be a factual basis that rises to the level of probable cause to believe that Mr. Anderson committed the crime comparable to “causing death by negligence”, in this manslaughter.**
- 3. Under US Law, the accused must have actual notice or knowledge of the cause for the disaster and should have refused to remedy it to be convicted of manslaughter.**

From the material available, there is no evidence that establishes the necessary factual link between Mr. Anderson and the cause of the explosion and leak, nor is there evidence that the deaths were the result of any act by Mr. Anderson.

There is no published precedent for extraditing a corporate official for manslaughter arising solely because of his or her position in a corporation.

The US Secretary of State is empowered in any case, to decline extradition based on diplomatic or humanitarian concerns.

3.36 During the evidence, the representative of the Ministry of External Affairs (Additional Secretary) also informed that the legal opinion of the US Attorney in substance, is similar to the opinion of the Attorney General that there is insufficient evidence to link Mr. Anderson to the Bhopal Gas Tragedy.

3.37 The Committee were also informed that the documents forwarded by the Ministry of External Affairs to the US Attorney did not contain the opinion of the Attorney General of July 31, 1998.

3.38 The American Attorney's opinion was sent to the Ministry of Law & Justice to seek the final opinion of the Learned Attorney General as to whether or not India should make a request for the extradition of Mr. Anderson in view of the legal position emerging from the examination of the case internally and the opinion of US Attorney.

3.39 The opinion of Attorney General (Annexure IV) was received on August 09, 2001. He had *inter-alia* opined as follows:-

**“(i) Although it is not impossible to furnish the “missing evidentiary links”, the time and effort involved would be considerable and I am not sanguine that at the end of the day the requisite evidentiary material would be forthcoming.**

**(ii) All things considered, in my opinion, proceedings in the USA for extradition of Mr. Anderson are not likely to succeed and, therefore, the same may not be pursued.”**

3.40 Whereas the Secretary, Ministry of External Affairs submitting before the Committee was optimistic that there might be new developments, new materials forthcoming which might establish the required evidentiary link to seek the extradition, the representative of CBI was of the view that after so many years of offence, it was not an easy task to find the missing evidentiary links. However, he stated that the CBI were

on the job and they are in possession of certain judgements of US Court in a civil matter which they are scrutinizing to find out whether they might strengthen the extradition request.

3.41 The Ministry of Law & Justice have observed that there is no evidence to show that the parent company exercised control over day to day operation and running of the Bhopal Plant and have opined that the extradition case appears to be weak.

3.42 The Ministry of External Affairs have, however, asked the investigating agency to examine ways to strengthen the evidentiary links in the extradition request so that it has reasonable chances of success in the US legal system.



## **CHAPTER IV**

### **OBSERVATIONS/RECOMMENDATIONS**

**4.1 The Committee note that the Bhopal Gas Tragedy, world's worst industrial disaster occurred 18 years back on the intervening night of 2<sup>nd</sup>/3<sup>rd</sup> December, 1984 when over 2000 people and hundreds of animals lost their lives instantly and grievous injuries were caused to thousands of human beings and animals. Subsequently, the death toll of gas affected had gone to over 4000 human beings (some believe the tally might reach four times this number). In addition to above, thousands of human beings had become the victims of innumerable diseases and sufferings for the rest of their lives. But the Union Carbide Corporation which owned the plant and the then Chairman of that Company alleged to be responsible for the tragedy are still to be brought before the Indian Courts for trial.**

**4.2 The Committee find that the Bhopal Gas Tragedy case was entrusted to CBI on December 09, 1984. After carrying out the investigation by the CBI and the committee constituted by the Government to study all the scientific and technical aspects, it was concluded that Methyl Isocyanate (MIC), a highly hazardous and lethal material by all means of contact and a poison had leaked from the Bhopal plant of Union Carbide on that fateful night causing death to thousands of people and animals. The Committee are distressed to note that the CBI filed the charge sheet against 12 accused including Mr. Warren Anderson, former Chairman, Union Carbide Corporation USA in a Bhopal Court on December 01, 1987 i.e. three years after the tragedy.**

**4.3 The irony of the case is that Mr. Warren Anderson had, in fact, been arrested and released on bail by the Madhya Pradesh Police at Bhopal on December 07, 1984. The statement of the CBI that the case was initially with the State Police and the circumstances in which he was arrested and released on bail were known to the State Police speaks volumes of things, which the Committee feel, the CBI did not perhaps like to disclose. The Committee are of the firm opinion that in a matter involving such a great industrial disaster involving a foreign company, the State**

Government could not have taken a unilateral decision on arrest and release of Mr. Warren Anderson. The Committee hold both the Governments of the State and the Centre equally responsible for this drama of arrest and release of Mr. Warren Anderson. If the intention of the Government in releasing him on bail was in good faith, Mr. Anderson, on the other hand, has belied that faith by ignoring the Bhopal Court by not responding to several summons issued to him for appearance.

4.4 Since May, 1992 onwards, the Government have been giving assurances in the House that the matter regarding extradition of former Chairman of Union Carbide was under examination. But sadly, the formalities for filing the application for extradition of the accused has not been completed even though the Chief Judicial Magistrate, Bhopal had issued a non-bailable warrant of arrest for arranging extradition proceedings against Mr. Warren Anderson on April 10, 1992 itself. For initiating extradition proceedings against the accused CBI took more than one year in forwarding the case to the Ministry of External Affairs on September 23, 1993. It is surprising that the Ministry took another year to place the matter before the Committee of Secretaries. The committee of Secretaries on February 09, 1995 had decided that the CBI would transfer all relevant documents concerning the criminal case against Mr. Warren Anderson to the Ministry of External Affairs, which would then examine whether extradition proceedings against Mr. Anderson are legally sustainable under the provisions of Indo-US Extradition Treaty. The Committee desire to know the reasons as to why CBI did not submit all the relevant documents to the Ministry of External Affairs in 1993 itself.

It was also suggested by the committee of Secretaries to obtain the opinion of the Attorney General, if need be. After the matter had been legally examined, it was also suggested that the Ministry of External Affairs should submit the case to the Prime Minister for a decision on the issue. The Committee, however, note that ever since then, the Government are found to be bogged down by administrative procedure and legal complexities of the case.

4.5 The CBI no doubt, had submitted the documents on April 04, 1995 but the Ministry of External Affairs returned the same with a request to send a self-contained note containing certain information to which CBI responded on June 13,

1995. Thereafter, the Ministry of External Affairs sought advice of the Ministry of Law & Justice in regard to the issue of criminal liability of Mr. Anderson who was not present in India at the time of the Bhopal Gas Tragedy to which the latter advised that it was a secondary issue sufficient to justify the committal of the accused for trial under the provisions of the Indo-American Extradition Treaty. In regard to documents and evidence provided by the CBI, the Ministry of Law & Justice advised on December 29, 1995 that the same were not sufficient and more comments were needed. On September 03, 1996, the CBI were once again requested to furnish their comments on the draft statement prepared by the Ministry of External Affairs for seeking opinion of Attorney General in regard to sufficiency of the evidence in terms of Indo-US Extradition Treaty and the requirements mentioned in the US Government note of 1992. The CBI informed the Ministry of External Affairs on September 29, 1996 that the matter pertaining to extradition of Mr. Warren Anderson needs to be re-examined in the light of a judgement delivered by the Supreme Court on September 13, 1996. The CBI informed on October 30, 1996 that the draft statement was in order but the extradition has to be sought under Section 304 A of IPC instead of 304 (Part-II) of IPC. The draft statement for seeking the opinion of Attorney General was finally referred to the Ministry of Law & Justice on February 13, 1998.

4.6 In this connection, the Committee note that earlier all the 12 accused in the Bhopal Gas Tragedy were charge-sheeted under Section 304, 324, 429 r/w 35 IPC. Later, the Supreme Court by its ruling on September 13, 1996 in a petition filed by certain co-accused against whom the charge-sheets were filed under Section 304, quashed the charges under that Section and held that the material on record could only sustain *prima facie* case u/s 304A IPC which states, causing death by rash and negligent act. The Attorney General opined on July 31, 1998 that the same reasoning would apply to Mr. Anderson also and that any extradition request for Mr. Anderson will have to be limited to section 304A of the IPC. The Attorney General, however, advised the Government to obtain the opinion of a competent American Attorney to determine whether the evidence obtained by the CBI would

be adequate to meet the probable cause standard applicable in the United States as in his view, the evidence collected (by CBI and other agencies) was not sufficient.

4.7 In a written submission made by the CBI, it had been stated that the judgement dated September 13, 1996 of the Hon'ble Supreme Court did not warrant any action on the part of the CBI. However, the Committee note that in the light of the Supreme Court's judgement, it had been conveyed to the Ministry of External Affairs that charge-sheet framed against Mr. Anderson had to be changed. Subsequently, the Attorney General had also advised in July 1998 that the request for extradition of Mr. Anderson will have to be limited to Section 304A IPC. The Committee, however, note that the CBI decided to move the Court only on May 23, 2002 i.e. after four years of the advice. The delayed reaction of the Government to the Supreme Court ruling of September 1996 and that of advice of the Attorney General of July 1998 clearly shows that the Government were either too diffident or cautious as to decide the course of action to take and, therefore, preferred to watch and wait for the developments to unfold in future or too complacent to notice the urgency of the case to be settled. However, the CJM, Bhopal did reject the application of the CBI within a period of 3 months of filing of the application i.e. on August 28, 2002 on the ground that the accused has been absenting from the very beginning and hence the charges framed against him are not liable to be changed in respect of the Sections in the charge sheet. The Committee also find that the Court has also remarked that the application was filed on flimsy grounds. It is incomprehensible that the Government had taken such a long time in deciding to file an application despite the fact that the Supreme Court and the Attorney General had given their rulings and advice in 1996 and 1998 respectively. It is of course another matter that CJM, Bhopal rejected the application. The Committee, therefore, desire to know the reasons for this inordinate delay and recommend that the responsibility should be fixed on the Officers responsible for delay. The Committee also recommend that the Government should ensure that in future the task in hand should not be kept pending, more so, if there is a clear cut direction/advice from the Court or Attorney General.

4.8 The Committee observe that the Ministry of External Affairs did not act immediately either in getting the opinion of the American Attorney as advised by the Attorney General on July 31, 1998. They took almost 6 months even to write to the Indian Embassy in Washington to locate a law firm/US Attorney as also asking the CBI to prepare and send a self-contained memorandum along with necessary enclosures on which the US Attorney may give his opinion. It is amazing to the Committee that the CBI then took another 1½ years in preparing and sending the brief to the Ministry of External Affairs. The Legal opinion of US Law Firm was finally received on April 04, 2001 i.e. after almost three years of the advice given by the Attorney General. The Committee are distressed by the fact that the Government were able to obtain the opinion of the US Law Firm almost after three years of obtaining the advice of Attorney General. In this age of fast communication network around the globe it sounds strange that the obtaining the opinion of US Law Firm by the Government of India took almost three years. This clearly speaks of lackadaisical approach of the Government in this case. The Committee have, therefore, come to a conclusion that the Government never seemed to be serious enough to get this case decided on priority basis and dealt the case in a routine manner resulting in loss of precious time apart from sufferings being borne by the victims or might be too reluctant and hesitant to proceed against the chief accused, i.e Chairman of Union Carbide, Mr. Warren Anderson, an MNC of USA.

4.9 The Committee also find that the opinion of the US Law Firm is also not encouraging as they *inter-alia* opined that from the material made available to them there is no evidence that establishes the necessary factual link between Mr. Anderson and the cause of the explosion and leak, nor is there evidence that the deaths were the result of any act of Mr. Anderson. The Attorney General in his note dated August 2001 concurred with the opinion of the US Law Firm and has stated that there are missing evidentiary links that need to be supplemented which in his view, is not impossible to furnish but the time and effort involved would be considerable and he was not optimist that at the end of the day, the requisite evidentiary material would be forthcoming. During evidence the Secretary, Ministry of External Affairs being optimistic, stated that there might be new

developments, new materials forthcoming which might establish the required evidentiary link to seek the extradition of the Mr. Warren Anderson. The representative of the CBI was, however, apprehensive and had stated that so many years after the offence had been committed it was not an easy task to find the missing evidentiary links but the CBI were in possession of certain judgement of the US Courts in a civil matter which they are scrutinizing to find out whether they might strengthen the extradition request. The Committee would like to know the latest position in this regard.

4.10 The Committee were apprised that a CBI team headed by the then DIG visited the USA in the 3<sup>rd</sup> /4<sup>th</sup> week of the November, 1988 when a Letter Rogatory to the US Administration seeking permission for CBI to inspect safety system installed at the MIC Unit of UCC's previous pesticide plant in the State of the West Virginia, USA had been issued by the Chief Magistrate, Bhopal on July 06, 1988. During the visit, it is stated that the Justice Department of USA had intimated that the Letter Rogatory would be sent to the US Attorney in West Virginia for filing an application for appointment of Commissioner by the District Attorney and service of the subpoenas to the UCC Officials to execute the Letter Rogatory. After the appointment of Commissioner, the CBI team would be required to visit the USA again for inspecting the plant in West Virginia for a comparative study with the Bhopal (India) plant as well as to assist officials of Justice Department. However, the Committee note that the Supreme Court orders of February 14, 1989 and February 15, 1989 upset that plan as all criminal and civil litigation were quashed by those orders. The Committee also note that the Counsellor (Per), Embassy of India, Washington was asked on February 27, 1989 to request the Department of Justice of the USA to keep the matter of conducting investigation in the USA as per the Letter Rogatory in abeyance till they heard from the CBI in future. Subsequent to the Supreme Court Order dated October 03, 1991 directing the criminal proceedings to be proceeded with, the CBI had requested the Counsellor (Per), Embassy of India, Washington to renew the CBI's request to US Authorities for taking up the matter relating to Letter Rogatory dated July 06, 1988. The Committee are of the view that the CBI should also explore this avenue to

strengthen their case as to UCIL's safety and design issues compared to UCC plant in USA.

4.11 The Committee are distressed by the fact that the Government have taken such a long time in examining the possibility of extraditing Mr. Warren Anderson from USA. The delay in extraditing Mr. Warren Anderson has become the cause of concern as the victims of the tragedy as also the people at large have shown their displeasure and questioned the attitude of the Government in handling the case. The Committee, therefore, urge the Government to strengthen the evidence and thereafter request the Government of USA for extradition of the accused from the USA.

4.12 From the facts placed before the Committee, they find that Hon'ble Supreme Court of India has passed orders on February 14, 1989 and February 15, 1989 for the settlement of Civil Suits in which UCC was directed to pay a sum of US\$ 470 millions. The Committee would like to know the exact amount deposited by the UCC; the amount actually distributed amongst the victims of the gas tragedy; principles and guidelines followed in distributing the compensation; the number of cases lying pending with the Government for payment of compensation and the amount lying undisbursed with the Government. The Committee may also be intimated about the number of complaints received regarding siphoning the money and the cases of corruption in distributing the money amongst the victims along with the action taken by the Government against the officials involved.

4.13 The Committee note that the 1973 UCC documents, discovered recently, show that Union Carbide's engineers at South Charleston expressly warned of the danger of sub surface water pollution.

The Government of India's and Madhya Pradesh State Government's participation in the on-going law suit in the American Court by the Disaster Survivors' Organization for the unprecedented and huge environmental pollution in Bhopal and reopening of the settlement issue is urgently required for claiming compensation for cleaning costs as damages from UCC.

**The Madhya Pradesh Government may also – if they deem it fit and proper - point out that since UCC is wholly responsible for the environmental disaster in Bhopal, the cleaning cost must be borne by them only.**

**4.14 The Committee, particularly in the background of emerging liberalisation/globalisation when transnational Corporations and Foreign Companies are being invited to set up their Units in the Country, want to caution the Government that it has now become incumbent on their part to send a message world over that the offences of the type committed by UCIC Plant at Bhopal will not be allowed to be repeated. For that, Government should come with a concrete plan of action along with the appropriate Legislation so that nobody could escape from the clutches of Law after committing grave crimes as in the case of Bhopal Gas Tragedy. This Committee hope that the Union Government, even after the inexplicable inordinate delay in the matter, will now promptly and adequately bring to book all the culprits including Chairman, UCC to ensure that the people of this Country can be convinced that although late, the Government has been proving its sincerity in the matter of worst industrial disaster in history.**

**NEW DELHI;**

**February , 2003**

**DR. S. VENUGOPAL**

**Chairman**

**Committee on Government Assurances**



**MINUTES**  
**TWELFTH SITTING**

Minutes of the Twelfth Sitting of the Committee on Government Assurances held on December 07, 2000 in Committee Room ‘62’, First floor, Parliament House, New Delhi.

The Committee met from 1500 hours to 1650 hours on December 07, 2000.

**PRESENT**

**Chairman**

Dr. S. Venugopal

**Members**

2. Shri Haribhai Chaudhary
3. Shri Padam Sen Choudhry
4. Shri Priya Ranjan Dasmunshi
5. Adv. Uttamrao Dhikale
6. Shri Brahma Nand Mandal
7. Shri Rupchand Pal
8. Shri Ravindra Kumar Pandey
9. Shri Sukhdeo Paswan
10. Dr. Prasanna Kumar Patasani
10. Shri Manoj Sinha

**SECRETARIAT**

- |    |                     |   |                    |
|----|---------------------|---|--------------------|
| 1. | Shri P.D.T. Achary  | - | Joint Secretary    |
| 2. | Shri K. Chakraborty | - | Deputy Secretary   |
| 3. | Ms. J.C. Namchyö    | - | Assistant Director |

## **MINISTRY OF EXTERNAL AFFAIRS**

1. Shri J.C. Sharma, Additional Secretary (NRI & PV)
2. Shri S.R. Tayal, Joint Secretary (CPV)
3. Dr. V.D. Sharma, Legal Officer (L&T Division)

## **C.B.I.**

1. Shri S. Upadhyay, Joint Director
2. Shri C. Sahay, ALA
3. Shri N.K. Mukherjee, Dy. SP

The Committee took Oral Evidence of the representatives of Ministries of External Affairs and CBI in connection with assurances given on May 07, 1992, July 29, 1992, November 25, 1992, March 01, 1993 and May 29, 1995 in reply to USQ Nos.9392, 3340, 400, 872 and 7547 about Extradition of Mr. Warren Anderson, former Chairman of Union Carbide Corporation.

3. A verbatim record of the sitting has been kept.
4. The Chairman thanked the Officials of the Ministries of External Affairs and C.B.I. for furnishing valuable information to the Committee and for the free and frank views expressed on various points raised by Members. The Chairman also requested the representatives of Ministry of External Affairs and C.B.I. to furnish information which the Committee had desired.
5. After the witnesses had withdrawn, the Committee decided to undertake study tour to Shimla after the conclusion of Session in December, 2000 and directed the Secretariat finalise the details in this regard.

*The Committee then adjourned.*

**MINUTES**  
**THIRD SITTING**

Minutes of the Third sitting of the Committee on Government Assurances held on March 14, 2001 in Committee Room '62', First floor, Parliament House, New Delhi.

The Committee met from 1500 hours to 1600 hours on Tuesday, March 14, 2001.

**PRESENT**

**Chairman**

Dr. S. Venugopal

**Members**

2. Shri Rupchand Pal
3. Dr. Prasanna Kumar Patasani
4. Rajkumari Ratna Singh

**SECRETARIAT**

- |    |                   |   |                    |
|----|-------------------|---|--------------------|
| 1. | Shri A.K. Singh,  | - | Deputy Secretary   |
| 2. | Ms. J.C. Namchyo, | - | Assistant Director |

## **MINISTRY OF EXTERNAL AFFAIRS**

1. Shri J.C. Sharma, Additional Secretary (NRI & PV)
2. Shri S.R. Tayal, Joint Secretary (CPV)
3. Dr. V.D. Sharma, Legal Officer (L&T Division)

## **C.B.I.**

1. Shri N.P. Singh, DIG/CBI
2. Shri C. Sahay, ALA
3. Shri N.K. Mukherjee, Dy. SP

## **MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS**

1. Shri R.L. Meena, Secretary (Deptt. Legal Affairs)
  2. Shri A. Sinha, Joint Secretary
2. The Committee took oral evidence of the representatives of the Ministry of External Affairs & C.B.I. in connection with an assurance given in Lok Sabha to USQ No.9392, 3340, 400, 872 and 7547 on 7<sup>th</sup> May, 1992, 29<sup>th</sup> July, 1992, 25<sup>th</sup> November, 1992, 1<sup>st</sup> March, 1993 and 29<sup>th</sup> May, 1995 respectively about Extradition of former Chairman of Union Carbide Corporation.
3. A verbatim record of the sitting has been kept.
4. The evidence, however, could not be concluded as the representatives of the Ministry of Law, Justice and Company Affairs could not be examined. The Committee, therefore, decided to call the representatives once again after the receipt of information regarding legally mandated safety requirements at Union Carbide Plant at Bhopal is made available by the Ministry of External Affairs.

*The Committee then adjourned.*

**MINUTES**  
**NINTH SITTING**

Minutes of the Ninth sitting of the Committee on Government Assurances held on August 13, 2001 in Committee Room '63', First floor, Parliament House, New Delhi.

The Committee met from 1600 hours to 1700 hours on Monday, August 13, 2001.

**PRESENT**

**Chairman**

Dr. S. Venugopal

**Members**

2. Shri E. Ahamed
3. Shri Padam Sen Choudhry
4. Shri Priya Ranjan Dasmunshi
5. Shri Uttamrao Dhikale
6. Shri Brahma Nand Mandal
7. Shri Rupchand Pal
8. Dr. Prasanna Kumar Patasani
9. Shri Manoj Sinha

**SECRETARIAT**

1. Shri P.D.T. Achary, - Joint Secretary
2. Shri A.K. Singh, - Deputy Secretary

3. Ms. J.C. Namchoy, - Assistant Director

**MINISTRY OF EXTERNAL AFFAIRS**

1. Shri J.C. Sharma, Additional Secretary (NRI & PV)
2. Shri S.R. Tayal, Joint Secretary (CPV)
3. Dr. V.D. Sharma, Legal Officer (Grade-II)

**C.B.I.**

1. Shri M.A. Ganapathy, DIG
2. Shri C. Sahay, ALA
3. Shri N.K. Mukherjee, Addl. SP

**MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS**

1. Shri R.L. Meena, Law Secretary
2. Shri Ajay Sinha, Joint Secretary (Deptt. Legal Affairs)

**MINISTRY OF CHEMICALS AND FERTILIZERS**

1. Shri Anurag Saxena, Deputy Secretary
2. The Committee took Oral Evidence of the representatives of Ministries of External Affairs, as also of Law, Justice and Company Affairs and CBI in connection with assurances given on May 07, 1992, July 29, 1992, November 25, 1992, March 01,

1993 and May 29, 1995 in reply to USQ Nos.9392, 3340, 400, 872 and 7547 about Extradition of former Chairman of Union Carbide Corporation.

3. A verbatim record of the sitting has been kept.

4. The Chairman thanked the Officials of the Ministries of External Affairs, Law, Justice and Company Affairs for the free and frank views expressed on various points raised by Members and asked the representatives to submit information sought by the Committee.

*The Committee then adjourned.*

**MINUTES**  
**SEVENTH SITTING**

Minutes of the Seventh sitting of the Committee on Government Assurances held on August 12, 2002 in Main Committee Room, Ground floor, Parliament House Annexe, New Delhi.

The Committee met from 1500 hours to 1645 hours on Monday, August 12, 2002.

**PRESENT**

**CHAIRMAN**

Dr. S. Venugopal

**MEMBERS**

2. Adv. Uttamrao Dhikale
3. Dr. S. Jagathrakshakan
4. Shri Ramjee Manjhi
5. Shri Sudarsana E.M. Natchiappan
6. Shri Rupchand Pal
7. Shri Kishan Singh Sangwan
4. Shri Bahadur Singh
5. Rajkumari Ratna Singh
6. Shri Tarlochan Singh Tur

**SECRETARIAT**



1. Shri R.C. Gupta, Director
2. Ms. J.C. Namchoy, Assistant Director

### **MINISTRY OF EXTERNAL AFFAIRS**

1. Shri J.C. Sharma, Secretary (PCD)
2. Shri Y.C. Sharma, Joint Secretary (CPV-II)
3. Dr. V.D. Sharma, Legal Officer (L&T Division)

### **C.B.I.**

1. Shri A.K. Majumdar, Joint Director
2. Shri M.A. Ganapathy, DIG, AC(I)
3. Shri Probodh Kumar, Superintendent of Police of AC(I)

### **MINISTRY OF LAW & JUSTICE**

1. Shri R.L. Meena, Law Secretary (Deptt. Legal Affairs)
2. Shri A. Sinha, Joint Secretary & Legal Advisor

### **MINISTRY OF CHEMICAL & FERTILIZERS**

Shri Harish C. Gupta, Joint Secretary

2. The Committee took oral evidence of the representatives of the Ministry of External Affairs, Ministry of Law & Justice and C.B.I. in connection with the assurances given in Lok Sabha in replies to USQ Nos.9392, 3340, 400, 872 and 7547 on 7<sup>th</sup> May, 1992, 29<sup>th</sup> July, 1992, 25<sup>th</sup> November, 1992, 1<sup>st</sup> March, 1993 and 29<sup>th</sup> May, 1995 respectively regarding Extradition of former Chairman of Union Carbide Corporation.
3. A verbatim record of the sitting has been kept.
4. After the withdrawal of the Officials witnesses, the Committee decided to undertake study tour w.e.f. 23<sup>rd</sup> to 29<sup>th</sup> August, 2002 to Hyderabad, Bhubaneshwar, Visakhapatnam and Chandigarh.

*The Committee then adjourned.*

**MINUTES**  
**ELEVENTH SITTING**

Minutes of the Eleventh sitting of the Committee on Government Assurances held on January 03, 2003 in Committee Room ‘B’, Ground floor, Parliament House Annexe, New Delhi.

The Committee met from 1200 hours to 1300 hours on Friday, January 03, 2003.

**PRESENT**

**CHAIRMAN**

Dr. S. Venugopal

**MEMBERS**

2. Shri E. Ahamed
3. Shri Padam Sen Choudhry
4. Shri Brahma Nand Mandal
5. Shri Ramjee Manjhi
6. Shri E.M. Sudarsana Natchiappan
7. Shri Rupchand Pal
8. Shri Kishan Singh Sangwan
9. Shri Raghuraj Singh Shakya
10. Shri Bahadur Singh
11. Shri Tarlochan Singh Tur

**SECRETARIAT**

Shri R.C. Gupta            -            Director

The Committee considered the draft 12<sup>th</sup> Report and adopted the same with the amendments/modifications as shown in Annexure.

3. The Committee also authorized the Chairman to present the Report to the House or to the Speaker, Lok Sabha as he deem fit.

*The Committee then adjourned.*

**AMENDMENTS/MODIFICATIONS MADE BY THE COMMITTEE IN THE DRAFT  
TWELFTH REPORT**

<b><u>Sl.No.</u></b>	<b><u>Modifications/Amendments</u></b>
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- |    |   |
|----|---|
| 1. | <b><u>Add</u></b> the following as para No.2.4 and renumber the paragraphs 2.4 to 2.33. |
|----|---|

As published in 'Frontline' dated January 03, 2003, the 1973 documents of UCC itself, discovered recently, prove that the UCC transferred substandard, inferior and dangerous technology instead of the 'state-of-the art' technology [i.e. proven, established and reliable technology that was being used at the American plant to produce MIC (methyl Isocyanate) and Sevin] for 'Sevin' pesticide production system in total disregard of the assurance given to Government of India. In fact, UCC had 'lied' to the Government of India in the matter. It is also important to note that Mr. Warren Anderson was on the Managing Committee of Union Carbide Corporation that took the key decision to transfer inferior and substandard technology to Bhopal.

- |    |   |
|----|---|
| 2. | <b><u>Add</u></b> the following as para No.4.13 and renumber the paragraph No.4.13 as 4.14. |
|----|---|

The Committee note that the 1973 UCC documents, discovered recently, show that Union Carbide's engineers at South Charleston expressly warned of the danger of sub surface water pollution.

The Government of India's and Madhya Pradesh State Government's participation in the on-going law suit in the American Court by the

Disaster Survivors' Organization for the unprecedented and huge environmental pollution in Bhopal and reopening of the settlement issue is urgently required for claiming compensation for cleaning costs as damages from UCC.

The Madhya Pradesh Government may also – if they deem it fit and proper - point out that since UCC is wholly responsible for the environmental disaster in Bhopal, the cleaning cost must be borne by them only.

**MINUTES**  
**SECOND SITTING**

Minutes of the Second sitting of the Committee on Government Assurances held on February 17, 2003 at 1500 hours in Committee Room 'D', Parliament House Annexe, New Delhi.

The Committee met from 1500 hours to 1600 hours on Monday, February 17, 2003.

**PRESENT**

Dr. S. Venugopal - Chairman

## Members

2. Shri E. Ahamed
3. Shri Ramakant Angle
4. Shri Rupchand Pal
5. Shrimati Renu Kumari
6. Shri Kishan Singh Sangwan
7. Rajkumari Ratna Singh

SECRETARIAT

1. Shri R.C. Gupta, Director
2. Ms. J.C. Namchyo, Under Secretary

The Committee again considered and adopted the draft 12<sup>th</sup> Report which was earlier considered and adopted by the Committee (2002-2003) on January 03, 2003.

3. The Committee authorized the Chairman to present the Report during the current session of the House.

4. The Committee also decided to undertake study tour to **Mumbai, Calicut, Chennai, Bangalore and Goa** during the recession of Session i.e. between March 14, 2003 and April 6, 2003

*The meeting then adjourned.*



**MINISTRY OF EXTERNAL AFFAIRS**

**ORDER**

**New Delhi, the 14<sup>th</sup> September, 1999**

**Extradition Treaty**

**between**

**the Government of Republic of India**

**and**

**the Government of the United States of America**

G.S.R. 633(E) – Whereas the Extradition Treaty between the Government of the Republic of India and the Government of the United States of America was signed at Washington D.C. on 25<sup>th</sup> June, 1997 and in accordance with Article 23 of the Treaty instruments of ratification were exchanged at New Delhi on 21<sup>st</sup> July, 1999 and which treaty provides as follows:

**Article 1**

The Contracting States agree to extradite to each other, pursuant to the provisions of this Treaty, person who, by the authorities in the Requesting State are

formally accused of, charged with or convicted of an extraditable offence, whether such offence was committed before or after the entry into force of the Treaty.

## **Article 2**

### **Extraditable Offenses**

1. An offense shall be an extraditable offense if it is punishable under the laws in both Contracting States by deprivation of liberty, including imprisonment, for a period of more than one year or by a more severe penalty.
2. An offense shall also be an extraditable offense if it consists or an attempt or a conspiracy to commit, aiding or abetting, counselling or procuring the commission of or being an accessory before or after the fact to, any offense described in paragraph 1.
3. For the purposes of this Article, an offense shall be an extraditable offense:
  - (a) whether or not the laws in the Contracting States place the offense within the same category of offenses or describe the offense by the same terminology;
  - (b) whether or not the offense is one for which United States federal law requires the showing of such matters as interstate transportation, or use of the mails or of other facilities affecting interstate or foreign commerce, such matters being merely for the purpose of establishing jurisdiction in a United States federal court; or
  - (c) whether or not it relates to taxation or revenue or is one of a purely fiscal character.
4. Extradition shall be granted for an extraditable offense regardless of where the act or acts constituting the offense were committed.

5. If extradition has been granted for an extraditable offense, it shall also be granted for any other offense specified in the request, even if the latter offense is punishable by less than one year's deprivation of liberty, provided that all other requirements for extradition are met.

### **Article 3**

#### **Nationality**

Extradition shall not be refused on the ground that the person sought is a national of the Requested State.

### **Article 4**

#### **Political Offenses**

1. Extradition shall not be granted if the offense for which extradition is requested is a political offense.

2. For the purposes of this Treaty, the following offenses shall not be considered to be political offenses:

(a) a murder or other willful crime against the person of a Head of State or Head of Government of one of the Contracting States, or of a member of the Head of State's or Head of Government's family;

(b) aircraft hijacking offenses, as described in The Hague Convention for the Suppression of Unlawful Seizure of Aircraft, done at the Hague on December 16, 1970;

(c) acts of aviation sabotage, as described in the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on September 23, 1971;

(d) crimes against internationally protected persons, including diplomats, as described in the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, done at New York on December 14, 1973;

(e) hostage taking, as described in the International Convention against the Taking of Hostages, done at new York on December 17, 1979;

(f) offenses related to illegal drugs, as described in the Single Convention on Narcotic Drugs, 1961, done at New York on March 30, 1961, the Protocol Amending the Single Convention on Narcotic Drugs, 1961, done at Geneva, 1961, done at Geneva on March 25, 1972, and the United Nations Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances, done at Vienna on December 20, 1988;

(g) any other offense for which both Contracting States have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit the case to their competent authorities for decision as to prosecution; and

(h) a conspiracy or attempt to commit any of the foregoing offenses, or aiding or abetting a person who commits or attempts to commit such offenses.

## **Article 5**

### **Military Offenses and Other Bases for Denial Extradition**

1. The executive authority of the Requested State may refuse extradition for offenses under military law which are not offenses under ordinary criminal law.
2. Extradition shall not be granted if the executive authority of the Requested State determines that the request was politically motivated.

## **Article 6**

### **Prior Prosecution**

1. Extradition shall not be granted when the person sought has been convicted or acquitted in the Requested State for the offense for which extradition is requested.
2. Extradition shall not be precluded by the fact that the authorities in the Requested State have decided not to prosecute the person sought for the acts for which extradition is requested, or to discontinue any criminal proceedings which have been instituted against the person sought for those acts.

## **Article 7**

### **Lapse of Time**

Extradition shall not be granted when the prosecution has become barred by lapse of time according to the laws of the Requesting State.

## **Article 8**

### **Capital Punishment**

1. When the offense for which extradition is sought is punishable by death under the laws in the Requesting State and is not punishable by death under the laws in the Requested State, the Requested State may refuse extradition unless:

- (a) the offense constitutes murder under the laws in the Requested State; or
- (b) the Requesting State provides assurances that the death penalty, if imposed, will not be carried out.

2. In instances in which a Requesting State provides an assurance in accordance with paragraph (1) (b) of this Article, the death penalty, if imposed by the courts of the Requesting State, shall not be carried out.

#### Article 9

### **Extradition Procedures and Required Documents**

- 1. All requests for extradition shall be submitted through the diplomatic channel.
- 2. All requests for extradition shall be supported by:
  - (a) documents, statements, or other types of information which describe the identity and probable location of the person sought;
  - (b) information describing the facts of the offense and the procedural history of the case;
  - (c) a statement of the provision of the law describing the essential elements of the offense for which extradition is requested;
  - (d) a statement of the provisions of the law describing the punishment for offense; and
  - (e) the documents, statements, or other types of information specified in paragraph 3 or paragraph 4 of this Article, as applicable.
- 3. A request for extradition of a person who is sought for prosecution shall also be supported by:
  - (a) a copy of the warrant or order of arrest, issued by a judge or other competent authority;
  - (b) a copy of the charging document, if any; and

(c) such information as would justify the committal for trial of the person if the offense had been committed in the Requested State.

4. A request of extradition relating to a person who has been convicted of the offense for which extradition is sought shall also be supported by:

(a) a copy of the judgment of conviction or, if such copy is not available, a statement by a judicial authority that the person has been convicted;

(b) information establishing that the person sought is the person to whom the conviction refers;

(c) a copy of the sentence imposed, if the person sought has been sentenced, and a statement establishing to what extent the sentence has been carried out; and

(d) in the case of a person who has been convicted in absentia, the documents required in paragraph 3.

## Article 10

### **Admissibility of Documents**

The documents which accompany an extradition request shall be received and admitted as evidence in extradition proceedings if:

(a) in the case of a request from the United States, they are certified by the principal diplomatic or principal consular officer of the Republic of India resident in the United States;

(b) in the case of a request from the Republic of India, they are certified by the principal diplomatic or principal consular officer of the United States resident in the Republic of India, as provided by the extradition laws of the United States; or

(c) they are certified or authenticated in any other manner accepted by the laws in the Requested State.

## Article 11

### **Translation**

All documents submitted by the Requesting State shall be in English.

## **Article 12**

### **Provisional Arrest**

1. In case of urgency, a Contracting State may request the provisional arrest of the person sought pending presentation of the request for extradition. A request for provisional arrest may be transmitted through the diplomatic channel. The facilities of the International Criminal Police Organization (Interpol) may be used to transmit such a request.
2. The application for provisional arrest shall contain:
  - (a) a description of the person sought;
  - (b) the location of the person sought, if known;
  - (c) a brief statement of the facts of the case, including, if possible, the time and location of the offense;
  - (d) a description of laws violated;
  - (e) a statement of the existence of a warrant of arrest or a finding of guilt or judgment of conviction against the person sought; and
  - (f) a statement that a request for extradition for the person sought will follow.
3. The Requesting State shall be notified without delay of the disposition of its application and the reasons for any denial.
4. A person who is provisionally arrested may be discharged from custody upon the expiration of sixty (60) days from the date of provisional arrest pursuant to this Treaty if the executive authority of the Requested State has not received the formal request for extradition and the supporting documents required in Article 9.
5. The fact that the person sought has been discharged from custody pursuant to paragraph (4) of this Article shall not prejudice the subsequent rearrest and extradition of that person if the extradition request and supporting documents are delivered at later date.

## **Article 13**



### **Decision and Surrender**

1. The Requested State shall promptly notify the Requesting State through the diplomatic channel of its decision on the request for extradition.
2. If the request is denied in whole or in part, the Requested State shall provide the reasons for the denial. The requested State shall provide copies of pertinent judicial decisions upon request.
3. If the request for extradition is granted, the authorities of the Contracting States shall agree on the time and place for the surrender of the person sought.
4. If the persons sought is not removed from the territory of the Requested State within the time prescribed by the laws in that State, that person may be discharged from custody, and the Requested State may subsequently refuse extradition for the same offense.

### **Article 14**

#### **Temporary and Deferred Surrender**

1. If the extradition request is granted in the case of a person who is being prosecuted or is serving a sentence in the Requested State, the Requested State, subject to its laws, may temporarily surrender the person sought to the Requesting State for the purpose of prosecution. The person so surrender shall be kept in custody in the Requesting State and shall be returned to the Requested State after the conclusion of the proceedings against that person, in accordance with conditions to be determined by agreement of the Contracting States.
2. The Requested State may postpone the extradition proceedings against a person who is being prosecuted or who is serving a sentence in that State. The postponement may continue until the prosecution of the person sought has been concluded or until such person has served any sentence imposed.

### **Article 15**

#### **Requests for Extradition Made by More than One State**

If the Requested State receives requests from the other Contracting State and from any other State or States for the extradition of the same person, either for the same offense or for different offenses, the executive authority of the Requested State shall

determine to which State it will surrender the person. In making its decision, the Requested State shall consider all relevant factors, including but not limited to:

- (a) whether the requests were made pursuant to treaty;
- (b) the place where each offense was committed;
- (c) the respective interests of the Requesting States;
- (d) the gravity of the offenses;
- (e) the nationality of the victim;
- (f) the possibility of further extradition between the Requesting States; and
- (g) the chronological order in which the requests were received from the Requesting States.

## **Article 16**

### **Seizure and Surrender of Property**

1. To the extent permitted under its laws, the Requested State may seize and surrender to the Requesting State all articles, documents, and evidence connected with the offense in respect of which extradition is granted. The items mentioned in this Article may be surrendered even when the extradition cannot be effected due to the death, disappearance, or escape of the person sought.
2. The Requested State may condition the surrender of the property upon satisfactory assurances from the Requesting State that the property will be returned to the Requested State as soon as practicable. The Requested State may also defer the surrender of such property if it is needed as evidence in the Requested State.
3. The rights of third parties in such property shall be duly respected.

## **Article 17**

### **Rule of Speciality**

1. A person extradited under this Treaty may not be detained, tried, or punished in the Requesting State except for:-
  - (a) the offense for which extradition has been granted or a differently denominated offense based on the same facts on which extradition was granted, provided such offense is extraditable or is a lesser included offense;

- (b) an offense committed after the extradition of the person; or
  - (c) an offense for which the executive authority of the Requested State consents to the person's detention, trial, or punishment. For the purpose of this subparagraph:
    - (i) the Requested State may require the submission of the documents called for in Article 9; and
    - (ii) the person extradited may be detained by the Requesting State for 90 days, or for such longer period of time as the Requested State may authorize, while the request is being processed.
2. A person extradited under this Treaty may not be extradited to a third State for an offense committed prior to his surrender unless the surrendering State consents.
3. Paragraphs 1 and 2 of this Article shall not prevent the detention, trial, or punishment of an extradited person, or the extradition of that person to a third State, if:
- (a) that person leaves the territory of the Requesting State after extradition and voluntarily returns to it; or
  - (b) that person does not leave the territory of the Requesting State within 15 days of the day on which that person is free to leave.

#### Article 18

### **Waiver of Extradition**

If the person sought consents to surrender to the Requesting State, the Requested State may, subject to its laws, surrender the person as expeditiously as possible without further proceedings.

#### Article 19

### **Transit**

1. Either Contracting State may authorize transportation through its territory of a person surrendered to the other State by a third State. A request for transit shall be made through the diplomatic channel. The facilities of Interpol may be used to transmit such a request. It shall contain a description of the person being transported and a brief

statement of the facts of the case. A person in transit may be detained in custody during the period of transit.

2. No authorization is required where air transportation is used and no landing is scheduled on the territory of the Contracting State. If an unscheduled landing occurs on the territory of the other Contracting State, the other Contracting State may require the request for transit as provided in paragraph 1. That Contracting State shall detain the person to be transported until the request for transit is received and the transit is effected, so long as the request is received within 96 hours of the unscheduled landing.

#### Article 20

##### **Representation and Expenses**

1. The Requested State shall advise, assist, appear in court on behalf of the Requesting State, and represent the interests of the Requesting State, in any proceeding arising out of a request for extradition.

2. The Requesting State shall bear the expenses related to the translation of documents and the transportation of the person surrendered. The Requested State shall pay all other expenses incurred in that State by reason of the extradition proceedings.

3. Neither State shall make any pecuniary claim against the other State arising out of the arrest, detention, examination, or surrender of persons sought under this Treaty.

#### Article 21

##### **Consultation**

The competent authorities of the United States and the Republic of India may consult with each other directly or through the facilities of Interpol in connection with the processing of individual cases and in furtherance of maintaining and improving procedures for the implementation of this Treaty.

#### Article 22

##### **Mutual Legal Assistance in Extradition**

Each Contracting State shall, to the extent permitted by its law, afford the other the widest measure of mutual assistance in criminal matters in connection with an offense for which extradition has been requested.

## Article 23

### **Ratification and Entry Into Force**

1. This Treaty shall be subject to ratification; the instruments of ratification shall be exchanged as soon as possible.
2. This Treaty shall enter into force upon the exchange of the instruments of ratification.
3. Upon the entry into force of this Treaty, the Treaty for the Mutual Extradition of Criminals between the United States of America and Great Britain, signed at London December 22, 1931, shall cease to have any effect between the Government of Republic of India and the Government of the United States of America. Nevertheless, then prior Treaty shall apply to any extradition proceedings in which the extradition documents have already been submitted to the courts of the Requested State at the time this Treaty enters into force, except that Article 17 of this Treaty shall be applicable to such proceedings.

## **Article –24**

### **Termination**

Either Contracting State may terminate this Treaty at any time by giving written notice to the other Contracting State, and the termination shall be effective six months after the date of such notice.

In WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments have signed this Treaty.

Done at Washington, D.C., in duplicate, this twenty –fifth day of June, 1997, in the English and Hindi languages, both texts being equally authentic.

Now, therefore, in exercise of the power conferred by Sub. Section (1) of Section 3 of the Extradition Act, 1962 (34 of 1962), in suppression of the notification G.S.R.

No:- 493 the provisions of the said Act, other than chapter III, shall apply to the United States of America with effect from the date of Publication of this notification.

**(No. T. 413/15/95)**

**S.R. TAYAL, JT. Secy.(CPV)**

**OPINION OF ATTORNEY GENERAL**

**Querist:        Legal and Treaties Division, Ministry of External Affairs.**

My opinion has been sought on whether a request by the Government of India to the Government of United States of America for the extradition of Mr. Warren Anderson, would be consistent with the requirement of the Extradition Treaty between India and the United States (the 'Extradition Treaty').

Mr. Anderson was the Chairman of the Union Carbide Corporation, a corporation incorporated and existing under the laws of the States of Delaware in the United States of America ("UCC"), immediately before and during the Bhopal gas leak disaster which resulted in the deaths of thousands of people and grievous injury to tens of thousands of people. The Government of India seeks his extradition on the ground that +he should stand trial in India under Sections 304, 326, 324 and 429, and potentially, Section 304-A read with Section 35 of the Indian Penal Code (the "IPC") for his role in the Bhopal gas leak disaster.

The facts are cogently stated in the Brief for Opinion and are discussed here only to the extent necessary. The proximate cause of the Bhopal gas leak disaster was the release of Methyl Isocyanate Gas ("MIC") into the atmosphere in Bhopal, India from a holding tank on the premises of Union Carbide India Limited, a company incorporated in India ("UCIL"). According to the case of the prosecution, the disaster was caused by a number of design defects in UCIL's chemical plant in Bhopal as well as dangerous procedures employed in day-to-day operations of the plant. According to the prosecution, UCC not only supplied the design for the plant but also had a majority shareholding of 50.9% in UCIL when the disaster took place.

The first issue that requires clarifications is what are the offences with which Mr. Anderson can be charged after the Supreme Court's decision in the appeal of certain co-accused in the criminal cases filed in connection with the disaster. Certain co-accused in

this case, including Shri Keshub Mahindra, Chairman of UCIL and Shri V.P. Gokhale, the Managing Director of UCIL, went up in appeal to the Supreme Court against the order of the Madhya Pradesh High Court which confirmed the order of the Additional District Judge, Bhopal dated April 08, 1993 by which he framed charges against the co-accused under Sections 304(II), 326, 324 and 429 read with Section 35 of IPC. In that judgement which is reported as Keshub Mahindra Vs. Union of India (1996) 6 SSC 129, the Supreme Court quashed charges under Sections 304(II), 326, 324 and 429 read with Section 35 of IPC against top officials of Union Carbide (India) Limited (“UCIL”). The Supreme Court held that the material on record could only sustain a prima facie case under Section 304-A of the IPC which penalises the causing of death by rash or negligent acts. The same reasoning would apply to Mr. Anderson also. In these circumstances, it is clear that any extradition request for Mr. Anderson will have to be limited to Section 304-A of the IPC.

The next issue is whether, in the light of the requirements of the Extradition Treaty, the material on record can sustain a request for extradition of Mr. Anderson under Section 304-A for the IPC. Article 3 of the Extradition Treaty lists the various extraditable offences. These offences include murder and manslaughter. The effect of Article 9 is that the United States is under an obligation to extradite Mr. Anderson only if India provides evidence sufficient under the laws of the United States to justify the committal of the prisoner for trial assuming that the offence had been committed in that country. Based on these provisions, two sub-issues arise for consideration: (i) whether Section 304-A IPC is one of the offences covered by Article 3 of the Extradition Treaty; and (ii) whether the evidence on record is sufficient to satisfy the United States that Mr. Anderson should be extradited to stand trial for this offence.

In my view, prima facie, the offence of causing death by rash or negligent act is covered by the offence of manslaughter referred to in Article 3 of the Extradition Treaty. The United States has also indicated in its note to the Government that this offence may be covered by Article 3.

The next question is whether there is sufficient evidence on record to meet the requirement that the Government of India must be able to show that it has probable cause



to believe that Mr. Anderson actually committed an offence under Section 304-A. So far relevant evidence obtained by the CBI in this regard to be the following:

- (i) The parent Corporation UCC supplied the design and engineering specifications of the Bhopal plant.
- (ii) In 1982, some engineers of the parent Corporation, i.e. UCC, prepared a safety report on the Bhopal plant that the CBI believes was also known to Mr. Anderson.
- (iii) Because the parent Corporation, UCC, controlled 50.9% of the shareholding of UCIL and had nominated some Directors on the Board of UCIL, it can be inferred that UCC was in charge of, and controlled, the affairs of UCIL.
- (iv) Mr. Anderson was the Chairman of Union Carbide Corporation immediately before and at the time that the accident occurred.

Based on the above, the CBI is of the view that Mr. Anderson would be extraditable by the United States under the Extradition Treaty. However, as pointed out by the Legal and Treaties Division, in the legal proceedings initiated by the Government of India to fix civil liability on UCC in the United States for its role in the disaster, the U.S. Court of Appeals turned down India's argument that the UCC could be sued in the United States because it controlled a majority of the share of UCIL and nominated some Directors on its Board. The standard of proof in a criminal case would be higher than in a civil proceeding. However, at the same, the prima facie case/probable cause standard cannot require India to prove beyond a reasonable doubt that Mr. Anderson is guilty of the crime. The requirement is only to provide sufficient evidence to warrant a criminal trial. The evidence should be to the effect that Mr. Anderson had knowledge of the design defects in the plant and violation of safety precautions. If strict proof is, in fact, a requirement of American law for purposes of determining whether there is probable cause to believe that Mr. Anderson was in any way responsible for the disaster, in my view, the evidence obtained by the CBI so far would not meet such a high standard of

proof. This is an issue of American law on which it would be advisable to obtain the opinion of a competent American attorney.

Accordingly, I answer the questions posed to me as follows:

**Question (i)**

Whether, in view of the findings of US Court of Appeal it would be necessary to establish and support by evidence that:

- (a) UCIL was controlled and managed by UCC, USA at the time of accident.
- (b) The day to day management including safety aspects of UCIL were controlled, directly or by other means, attributing such control to UCC, USA;
- (c) The then Chairman, UCC, UCIL, had sufficient knowledge that his omissions or commissions will result or are likely to result in the accident, to cover such omissions or commissions within the meaning of Section 304-A of IPC.

**Answer**

As discussed above, these are really issue of US law on which the advice of competent US Attorney should be obtained. In my view, prima facie, these facts would need to be proved.

**Question (ii)**

Whether the evidence submitted by CBI is adequate to establish a prima facie case/probable cause against Mr. Warren Anderson for the offences he is alleged to have committed in Bhopal gas leak case, as required under Section 9 of the Indo-US Extradition Treaty.

**Answer**

The Supreme Court of India has held that there is enough evidence on the record to establish a prima facie case against various co-accused who were high Officials of UCIL. However, those officials were in charge of UCIL India. UCC is one level removed from UCIL and the corporate veil would have to be pierced to fix criminal liability on Mr. Anderson. Moreover, the Supreme Court's holding is based on India law. Under

Article 9 of the Extradition Treaty, the United States is under an obligation to turn over Mr. Anderson only if the Government of India is able to meet evidentiary standards applicable in the United States, i.e. probable cause to believe that Mr. Anderson committed an extraditable offence. Whether the evidence on record would be sufficient to meet the probable cause standard applicable in the United States is an issue of American law on which advice should be obtained from a competent American Attorney. Prima facie, in my view, the evidence so far collected does not appear to be sufficient at this time.

**SOLI SORABJEE**

ATTORNEY GENERAL OF INDIA

New Delhi

31<sup>st</sup> July, 1998

**OPINION OF ATTORNEY GENERAL**

Sub: whether extradition proceedings against Mr. WARREN ANDERSON are legally sustainable under Indo-American Extradition Treaty – F.No.AG/23/2001-Adv.`C`.

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The present opinion is regarding whether extradition proceedings against Mr. Warren Anderson are legally sustainable under Indo-American Extradition Treaty.

In my earlier opinion dated 31.07.1998 on the same subject, I had taken the view that the offence of causing death by rash or negligent act [Section 304-A of the Indian Penal Code] would be comparable to the offence of manslaughter under the law of the United States and would prima facie be covered under Article 3 of the Extradition Treaty between India and the United States (the “Extradition Treaty”).

As regards the other question whether the available evidence against Mr. Anderson would meet the evidentiary standard of “probable cause” required under US law. I had suggested that as the issue involved was of US law, legal advice on this aspect should be obtained from a competent US Attorney.

A legal opinion has now been obtained through the Embassy of India from M/s Verner, Liipfert, Bernhard, McPherson and Hand, Chartered. I have perused the opinion.

According to the said opinion, manslaughter and “causing death by negligence” would be found comparable by a US Court.

Thereafter, the said opinion addresses the question whether on the available evidence the Indian Government can satisfy the probable cause requirements necessary for the magistrate to issue a certificate of extraditability. After a detailed analysis of evidence and case law the conclusion reached is as follows:-

There are missing evidentiary links that need to be supplemented, such as :(1) the actual cause of the gas leak; (2) Mr. Anderson’s knowledge of the cause of the gas leak prior to its occurrence; (3) the extent to which Mr. Anderson had decision-

making control over UCIL's safety and design issues; and (4) whether Mr. Anderson refused to correct the hazard.

Although the Indian Government does not have to show that Mr. Anderson will be convicted of Criminal negligence, US law requires evidence linking him directly to the cause of the gas leak. Without this type of evidence, it is our opinion a US Court will not find probable cause on the charge of "causing death by negligence" or its equivalent, manslaughter.

In my opinion, although it is not impossible to furnish the 'missing evidentiary links' the time and the effort involve would be considerable and I am not sanguine that at the end of the day the requisite evidentiary material would be forthcoming.

However, I will proceed on the assumption that it will be possible to supply the evidence which is lacking at present to sustain the finding of "probable cause" by the US Court. Ultimately, the crucial question is whether the US Secretary State who has discretion to refuse extradition on diplomatic or humanitarian concerns will accede to the extradition request.

According to the opinion of the US Attorneys the State Department would likely find policy reasons not to surrender Mr. Anderson to the Indian Government. The reasons are humanitarian concerns, such as Mr. Anderson's age, said to be 81 years old, and health, and the length of time has elapsed, almost 17 years, between the event and the Indian Government's decision to make a formal request for his extradition. These are weighty and relevant considerations for the State Department for refusing our request for extradition. I am inclined to agree with the opinion of the US Attorneys on this aspect.

All things considered, in my opinion, proceedings in the USA for extradition of Mr. Warren Anderson are not likely to succeed and, therefore, the same may not be pursued.

**SOLI SORABJEE**

New Delhi

ATTORNEY GENERAL OF INDIA