



Recommendation 420 (1965)¹

Settlement of conflicts of jurisdiction in criminal matters

Parliamentary Assembly

The Assembly,

1. Noting that under international law each State possesses various kinds of criminal jurisdiction : territorial, *ratione personae* or universal, or jurisdiction to punish offences that jeopardise its safety or its credit ; that, whenever an offence involves some foreign element, there may be overlapping of two or more of these jurisdictional powers, giving rise to positive conflicts of jurisdiction ;
2. Noting that, when territorial jurisdiction is involved, that jurisdiction itself may give rise to conflict regarding determination of the place of the offence ;
3. Whereas such conflict of jurisdiction is undesirable and may, in particular, have the consequence, unacceptable in law, that a single person may be tried successively by courts in several States for the same offence ;
4. Whereas it is of unquestionable value to find a solution for these problems ;
5. Whereas this solution can only be found in an agreement between States by means of an international Convention ;
6. Having considered the report of its Legal Committee and the draft European Convention on conflicts of jurisdiction in criminal matters prepared by that Committee ([Doc. 1873](#)).

Recommends the Committee of Ministers :

7. to instruct the European Committee on Crime Problems to prepare a draft European Convention on conflicts of jurisdiction in criminal matters, taking the attached draft as a basis ;
8. to submit to the Assembly for an Opinion the draft Convention prepared by the European Committee on Crime Problems before it is signed by the member Governments.

Draft European Convention on Conflicts of Jurisdiction in Criminal Matters

Article 1

Scope of the Convention

Subject to the application of the special provisions of international treaties and of the particular rules of customary international law, the purpose of this Convention is to determine jurisdiction in respect of the prosecution and trial of offences committed in the territories of the Contracting States.

Article 2

Authorities with competence to exercise criminal jurisdiction

1. Assembly debate on 29th January 1965 (24th Sitting) (see [Doc. 1873](#), report of the Legal Committee). Text adopted by the Assembly on 29th January 1965 (24th Sitting).



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1. The authorities entitled to prosecute and try offences are the State where the offence was committed, the State of which the offender is a national or in which he is domiciled, and the State in which the offender is found.
2. Furthermore, the State has the right to prosecute and try offences committed outside its territory, even by aliens, if such offences constitute a danger to its external or internal safety, or if they consist in the counterfeiting of its currency or of its official stamps, seals, marks or other imprints.

Article 3

Territorial jurisdiction

1. Subject to the jurisdiction specified in Article 2 (2), the State in whose territory the offence was committed shall have the primary right to exercise jurisdiction.
2. The place of the offence shall be deemed to be the territory on which has taken place an act or omission constituting an offence or an attempt, or an act of complicity, and the territory on which the act or omission produced its effect.
3. Where in application of the preceding paragraph, more than one State claims that the offence was committed on its territory, jurisdiction shall be exercised in the following order : first, the State on whose territory the constituent factor of the offence or attempted offence was committed or the constituent omission occurred ; then, the State on whose territory an act of complicity was committed ; lastly the State on whose territory the effect was produced. Where more than one State can claim equal right to exercise jurisdiction, primary right of jurisdiction shall lie with the State on whose territory the offender is found.
4. The State whose territorial jurisdiction is secondary may exercise jurisdiction if the State having the primary right to do so waives that right either proprio motu or at the request of the other State.

Article 4

Jurisdiction *ratione personae*

1. The jurisdiction claimed by a State to prosecute and try offences committed outside its territory by its own nationals and by persons domiciled in its territory is recognised.
2. Such jurisdiction shall be subsidiary to that of the State where the offence was committed.
3. It shall be exercised at the request of that State when the latter is unable to bring proceedings defended by the accused because of refusal to allow his extradition, unless such refusal is based on the political nature of the offence.
4. In all other cases it may be exercised when the State of the place of the offence has renounced its primary right to exercise jurisdiction either proprio motu or when so requested.

Article 5

Jurisdiction of the State in whose territory the offender is found

The State in whose territory is found the perpetrator of a grave offence committed abroad against life, limb, freedom, morality or property, or an offence against common interests protected by international law, may prosecute and try him if the States competent under Articles 3 and 4 fail to prosecute, refrain from requesting or refuse an offer of extradition.

Article 6

Principle of double incrimination

The jurisdiction defined in Articles 4 and 5 is subject to the condition that the incriminating acts or omissions must be punishable both by the laws of the prosecuting State and by those of the State in whose territory the acts were committed.

Article 7

Jurisdiction in respect of acts directed against the safety or the credit of the State

The jurisdiction of the State whose safety or credit has been jeopardised in the conditions defined in Article 2 (2) is independent of that of any other State and cannot be affected by the exercise of the latter jurisdiction.

Article 8

Collaboration between States in the institution of criminal proceedings

1. Authorities of Contracting States shall lay information with the State having primary right of jurisdiction concerning the offences punishable under their own law known to them, together with any other information which may assist prosecution and trial. They may also announce their intention to exercise their own right of jurisdiction in cases in which the rules in force do not permit extradition.
2. The State waiving its primary right of jurisdiction shall give notice of its decision to any State possessing subsidiary right of jurisdiction which has laid information concerning the offence or indicated its intention of exercising jurisdiction.
3. This notification shall, where necessary, indicate that another jurisdiction, itself superior to that of the State requesting prosecution, has been set in motion.
4. If this jurisdiction has not been set in motion by the State having primary right of jurisdiction, the obligation referred to in paragraph 1 above shall continue to lie with the State whose right of jurisdiction remains subsidiary.

Article 9

Forms of request, laying of information and notification

Requests, laying of information and notifications provided for in the foregoing Articles shall be made in the forms specified in the European Convention on Mutual Assistance in Criminal Matters, signed at Strasbourg on 20th April 1959.

Article 10

Appraisalment of the offence by the competent court

The courts competent under the provisions of the present Convention shall judge the principal offence in all its elements, whatever their territorial location.

Article 11

Application of criminal law

1. The State exercising jurisdiction to prosecute and try an offence shall apply its own criminal law.
2. However, except in the case of the offences defined in Article 2 (2), and subject to accessory penalties and sanctions applicable in the State exercising its jurisdiction, the principal penalty imposed may not be more severe than that incurred for the same offence under the law of the place of the principal activity.

Article 12

Barring of proceedings and subtraction of penalties

1. Except in the case of the offences defined in Article 2 (2), proceedings cannot be taken in the courts of the Contracting States if the accused can show that he has already been prosecuted and tried for the same offence before the present Convention entered into force and that he was acquitted or, having been convicted, served his sentence in the way prescribed by the competent authorities unless it was now subject to statutory limitation, or that he was pardoned.
2. In all cases, even when the offence is one of those specified in Article 2 (2), any penalty undergone abroad shall be deducted from the duration of any sentence involving deprivation of liberty.