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## Draft European Multilateral Convention on Extradition

### Request for an opinion

Committee of Ministers

#### *I. Letter by the Secretary-General to the President of the Assembly*

Strasbourg, 8th October 1956

Sir,

In Point 4 of Recommendation 66 (1954), the Assembly expressed the wish that the text of the proposed European Convention on Extradition should be communicated to it for an Opinion before being finally approved by the Committee of Ministers. Bearing this wish in mind, the Ministers' Deputies, after a preliminary study of the draft Convention prepared by the Committee of Experts, have decided to submit it to the Assembly for an Opinion.

I therefore have the honour to enclose the draft in question, which is not yet in its final form. It will be reconsidered later by the Ministers' Deputies in the light of the comments and suggestions of the Assembly and of Member Governments.

I remain, Sir,

Your obedient Servant,

Signed: Dunstan CURTIS

Acting Secretary-General

#### II. Draft of a multilateral European Convention on Extradition

The Governments signatory hereto, being Members of the Council of Europe,

1. Considering that the aim of the Council of Europe is to achieve greater unity between its Members;
2. Considering that this purpose can be attained by the conclusion of agreements and by common action in legal matters;
3. Considering that the acceptance of uniform rules with regard to extradition is likely to assist this work of unification, Have agreed as follows :

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#### ARTICLE 1

##### Obligation to extradite

The Contracting Parties undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons against whom the competent authorities of the requesting Party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order.



## ARTICLE 2

### Extraditable offences

1. Extradition shall be granted in respect of offences punishable under the laws of the requesting Party and of the requested Party by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty. Where a conviction and prison sentence have occurred or a detention order has been made in the territory of the requesting Party, the punishment awarded must have been for a period of at least four months.
  2. If the request for extradition includes several separate offences each of which is punishable under the laws of the requesting Party and the requested Party by deprivation of liberty or under a detention order, but of which some do not fulfil the condition with regard to the amount of punishment which may be awarded, the requested Party shall also have the right to grant extradition for the latter offences.
  3. Any Contracting Party whose law does not allow extradition for certain of the offences referred to in paragraph 1 of this Article may, in so far as it is concerned, exclude such offences from the application of this Convention.
  4. Any Contracting Party which wishes to avail itself of the right provided for in paragraph 3 of this Article shall, at the time of the deposit of its instrument of ratification or accession, transmit to the Secretary-General of the Council of Europe either a list of the offences for which extradition is allowed or a list of those for which it is excluded and shall at the same time indicate the legal provisions which allow or exclude extradition. The Secretary-General of the Council shall forward these lists to the other signatories.
  5. If extradition is subsequently excluded in respect of other offences by the law of a Contracting Party, that Party shall notify the Secretary-General. The Secretary-General shall inform the other signatories. Such notification shall not take effect until three months from the date of its receipt by the Secretary-General.
- Any Party which avails itself of the right provided for in paragraph 4 or 5 of this Article may at any time apply this Convention to offences which have been excluded from it. It shall inform the Secretary-General of the Council of such changes, and the Secretary-General shall inform the other signatories.
7. Any Party may apply reciprocity in respect of any offences excluded from the application of this Convention under this Article.

## ARTICLE 3

### Political offences

1. Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as a fact connected with a political offence.
2. The same rule shall apply if the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person for political reasons or that that person's position may be prejudiced for political reasons.
3. The taking or attempted taking of the life of a head of State or a member of his family shall not be deemed to be a political offence for the purposes of this Convention.
4. This Article shall not affect any obligations which the Contracting Parties may have undertaken or may undertake under any other international Convention of a multilateral character.

## ARTICLE 4

### Military offences

Extradition for offences under military law which are not offences under ordinary criminal law is excluded from the application of this Convention.

## ARTICLE 5

### Fiscal offences

Extradition shall be granted, in accordance with the provisions of this Convention, for offences in connection with taxes, duties, customs and exchange only if the Contracting Parties have so decided in respect of any such offence or category of offences.

## ARTICLE 6

### Extradition of nationals

1. The requested Party may grant extradition of its nationals if its law so permits.

Each Contracting Party may, by a declaration made at the time of signature or of deposit of its instrument of ratification or accession, define as far as it is concerned the term " nationals " within the meaning of this Convention.

Nationality shall be determined as at the time of surrender.

2. If the requested Party does not extradite its national, it shall at the request of the requesting Party submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. For this purpose, the files, information and exhibits relating to the offence shall be transmitted without charge by the means provided for in Article 12, paragraph 1. The requesting Party shall be informed of the result of its request.

## ARTICLE 7

### Place of commission

1. The requested Party may refuse to extradite a person claimed for an offence which is regarded by its law as having been committed in whole or in part in its territory or in a place treated as its territory.

2. When the offence for which extradition is requested has been committed outside the territory of the requesting Party, extradition may only be refused if the law of the requested Party does not allow prosecution for the same category of offence when committed outside the latter Party's territory or does not allow extradition for the offence concerned.

## ARTICLE 8

### Pending Proceedings for the same offences

The requested Party may refuse to extradite the person claimed if the competent authorities of such Party are proceeding against him in respect of the offence or offences for which extradition is requested.

## ARTICLE 9

### Non bis in idem

Extradition shall not be granted if final judgement has been passed by the competent authorities of the requested Party upon the person claimed in respect of the offence or offences for which extradition is requested. Extradition may be refused if the competent authorities of the requested Party have decided either not to institute or to terminate proceedings in respect of the same offence or offences.

## ARTICLE 10

### Lapse of time

Extradition shall not be granted when the person claimed has, according to the law of either the requesting or the requested Party, become immune by reason of lapse of time from prosecution or punishment.

## ARTICLE 11

### Capital punishment

If the offence for which extradition is requested is punishable by death under the law of the requesting Party, and if in respect of such offence the death penalty is not provided for by the law of the requested Party or is not normally carried out, extradition may be refused unless the requesting Party gives such assurance as the requested Party considers sufficient that the death penalty will not be carried out.

## ARTICLE 12

### The request and supporting documents

1. The request shall be in writing and shall be communicated through the diplomatic channel. Other means of communication may be arranged by direct agreement between two or more Parties.

2. The request shall be supported by :

- a. the original or an authenticated copy of the conviction and sentence or detention order immediately enforceable or of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting Party;
- b. a statement of the offences for which extradition is requested. The time and place of their commission, their legal descriptions and a reference to the relevant legal provisions shall be set out as accurately as possible; and
- c. a copy of the relevant enactments or, where this is not possible, a statement of the relevant law and as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity and nationality.

## ARTICLE 13

### Supplementary information

If the information communicated by the requesting Party is found to be insufficient to allow the requested Party to make a decision in pursuance of this Convention, the latter Party shall request the necessary supplementary information and may fix a time-limit for the receipt thereof.

## ARTICLE 14

### Rule of Speciality

1. A person who has been extradited shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order for any offence committed prior to his surrender other than that for which he was extradited, except in the following cases :

- a. when the Party which surrendered him consents. A request for consent shall be submitted accompanied by the documents mentioned in Article 12 and a legal record of any statement made by the extradited person in respect of the offence concerned. Consent shall be given when the offence for which it is requested is itself subject to extradition in accordance with the provisions of this Convention;
- b. when that person, having had an opportunity to leave the territory of the Party to which he has been surrendered, has not done so with 45 days of his final discharge or has returned to that territory after leaving it.

2. The requesting Party may, however, take any measures necessary under its law, including proceedings by default, to prevent any legal effects of lapse of time.

3. when the description of the offence charged is altered in the course of proceedings, the extradited person shall only be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence which would allow extradition.

## ARTICLE 15

### Re-extradition to a third State

Except as provided for in Article 14, paragraph 1 (b), the requesting Party shall not, without the consent of the requested Party, surrender to another Party or to a third State a person surrendered to the requesting Party and sought by the said other Party or third State in respect of offences committed before his surrender. The requested Party may request the production of the documents mentioned in Article 12, paragraph 2.

## ARTICLE 16

### Provisional arrest

1. In case of urgency the competent authorities of the requesting Party may request the provisional arrest of the person sought. The competent authorities of the requested Party shall decide the matter in accordance with its law.

2. The request for provisional arrest shall state that one of the documents mentioned in Article 12, paragraph 2 (a), exists and that it is intended to send a request for extradition. It shall also state for what offence extradition will be requested and when and where such offence was committed and shall, so far as possible, give a description of the person sought.

3. A request for provisional arrest shall be sent to the competent authorities of the requested Party either through the diplomatic channel or direct by post or telegraph or through the International Criminal Police Commission or by any other means affording evidence in writing or accepted by the requested Party. The requesting authority shall be informed without delay of the result of its request.

4. Provisional arrest may be terminated if, within a period of 18 days after arrest, the requested Party has not received the request for extradition and the documents mentioned in Article 12. It shall not, in any event, exceed 40 days from the date of such arrest. The possibility of provisional release at any time is not excluded, but the requested Party shall take any measures which it considers necessary to prevent the escape of the person sought.

5. Release shall not prejudice re-arrest and extradition if a request for extradition is received subsequently.

## ARTICLE 17

### Conflicting requests

If extradition is requested concurrently by more than one State, either for the same offence or for different offences, the requested Party shall make its decision having regard to all the circumstances and especially the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality of the person claimed and the possibility of subsequent extradition to another State.

## ARTICLE 18

### Surrender of the person to be extradited

1. The requested Party shall inform the requesting Party by the means mentioned in Article 12, paragraph 1, of its decision with regard to the extradition.

2. Reasons shall be given for any complete or partial rejection.

3. If the request is agreed to, the requesting Party shall be informed of the place and date of surrender and of the length of time for which the person claimed was detained with a view to surrender.

4. Subject to the provisions of paragraph 5 of this Article, if the person claimed has not been taken over on the appointed date, he may be released after the expiry of 15 days and shall in any case be released after the expiry of 30 days. The requested Party may refuse to extradite him for the same offence.

5. If circumstances beyond its control prevent a Party from surrendering or taking over the person to be extradited, it shall notify the other Party. The two Parties shall agree a new date for surrender and the provisions of paragraph 4 of this Article shall apply.

## ARTICLE 19

### Postponed or conditional surrender

1. The requested Party may, after making its decision on the request for extradition, postpone the surrender of the person claimed in order that he may be proceeded against by that Party or, if he has already been convicted, in order that he may serve his sentence in the territory of that Party for an offence other than that for which extradition is requested.

2. The requested Party may, instead of postponing surrender, temporarily surrender the person claimed to the requesting Party in accordance with conditions to be determined by mutual agreement between the Parties.

## ARTICLE 20

### Handing over of property

1. The requested Party shall, in-so-far as its law permits and at the request of the requesting Party, seize and hand over property :

- a. which may be required as evidence; or
- b. which has been acquired as a result of the offence and which, at the time of the arrest, is found in the possession of the person claimed or is discovered subsequently.

2. The property mentioned in paragraph 1 of this Article shall be handed over even if extradition, having been agreed to, cannot be carried out owing to the death or escape of the person claimed.

3. When the said property is liable to seizure or confiscation in the territory of the requested Party, the latter may, in connection with pending criminal proceedings, temporarily retain it or hand it over on condition that it is returned.

4. Any rights which the requested Party or third parties may have acquired in the said property shall be preserved. Where these rights exist, the property shall be returned without charge to the requested Party as soon as possible after the trial.

## ARTICLE 21

### Transit

1. Transit through the territory of one of the Contracting Parties shall be granted on submission of a request by the means mentioned in Article 12, paragraph 1, provided that the offence concerned is not considered by the Party requested to grant transit as an offence of a political or purely military character.

2. Transit of a national may be refused.

3. Subject to the provisions of paragraph 4 of this Article, it shall be sufficient to produce the documents mentioned in Article 12, paragraph 2 (a).

4. If air transport is used, the following provisions shall apply :

a. when it is not intended to land, the requesting Party shall notify the Party over whose territory the flight is to be made and shall certify that one of the documents mentioned in Article 12, paragraph 2 (a) exists. In the case of an unscheduled landing, such notification shall have the effect of a request for provisional arrest as provided for in Article 16 and the requesting Party shall submit a formal request for transit;

b. when it is intended to land, the requesting Party shall submit a formal request for transit.

5. A Party may, however, at the time of signature or of the deposit of its instrument of ratification of, or accession to, this Convention, declare that it will only grant transit of a person on some or all of the conditions on which it grants extradition. In that event, reciprocity may be applied.

## ARTICLE 22

### Procedure

Except where this Convention otherwise provides, the procedure with regard to extradition and provisional arrest shall be governed solely by the law of the requested Party.

## ARTICLE 23

### Language to be used

The documents to be produced shall be in the language of the requesting or requested Party. The requested Party may require a translation into one of the official languages of the Council of Europe to be chosen by it.

## ARTICLE 24

### Expenses

1. Expenses incurred in the territory of the requested Party by reason of extradition shall be borne by that Party.

2. Expenses incurred by reason of transit through the territory of a Party requested to grant transit shall be borne by the requesting Party.

3. In the event of extradition from a non-metropolitan territory of the requested Party, the expenses occasioned by travel between that territory and the metropolitan territory of the requesting Party shall be borne by the latter. The same rule shall apply to expenses occasioned by travel between the non-metropolitan territory of the requested Party and its metropolitan territory.

## ARTICLE 25

### Definition of " Detention Order "

For the purposes of this Convention, the expression "detention order" means any order involving deprivation of liberty which has been made by a criminal court in addition to, or instead of, a prison sentence.

#### ARTICLE 26

##### Reservations

1. Any Contracting Party may, when signing this Convention or when depositing its instrument of ratification or accession, make a reservation in respect of any provision or provisions of the Convention.
2. Any Contracting Party which has made a reservation shall withdraw it as soon as circumstances permit. Such withdrawal shall be made by notification to the Secretary-General of the Council of Europe.
3. A Contracting Party which has made a reservation in respect of a provision of the Convention may not claim application of the said provision by another Party save in so far as it has itself accepted the provision.

#### ARTICLE 27

##### Territorial application

1. This Convention shall apply to the metropolitan territories of the Contracting Parties.
2. In respect of France, it shall also apply to Algeria and to the overseas departments and, in respect of the United Kingdom of Great Britain and Northern Ireland, to the Channel Islands and to the Isle of Man.
3. The Federal Republic of Germany may extend the application of this Convention to the Land of Berlin by notice addressed to the Secretary-General of the Council of Europe, who shall notify the other Parties of such declaration.
4. By direct arrangement between two or more Contracting Parties, the application of this Convention may be extended, subject to the conditions laid down in the arrangement, to any territory of such Parties other than the territories mentioned in paragraphs 1, 2 and 3 of this Article, for whose international relations any such Party is responsible.

#### ARTICLE 28

##### Relations between this Convention and bilateral Agreements

1. The provisions of this Convention shall, in respect of the territories to which it applies, prevail over the provisions of any bilateral treaty, convention or agreement in force between any two Parties to this Convention and dealing with the same subject.
2. Contracting Parties between which bilateral treaties, conventions or agreements concerning extradition are in force shall, in accordance with the provisions of paragraph 1 of this Article, specify by agreement which provisions of such treaties, conventions or agreements shall remain applicable after the entry into force of this Convention in respect of themselves.
3. The Contracting Parties may conclude among themselves bilateral or multilateral agreements in order to supplement the provisions of this Convention or to facilitate the application of the principles contained therein.
4. If a uniform or reciprocal system of laws is in force or is adopted in future with regard to extradition or the mutual enforcement of warrants of arrest as between the respective territories of two or more of the Parties to this Convention, those Parties shall be free to regulate their mutual relations in respect of those matters exclusively on the basis of such a system, notwithstanding the provisions of this Convention.

#### ARTICLE 29

##### Signature, ratification and entry into force

1. This Convention shall be open to signature by the Members of the Council of Europe. It shall be ratified. The instruments of ratification shall be deposited with the Secretary-General of the Council.
2. The Convention shall come into force 90 days after the date of deposit of the third instrument of ratification.
3. As regards any signatory ratifying subsequently, the Convention shall come into force 90 days after the date of the deposit of its instrument of ratification.

#### ARTICLE 30

#### Accession

1. The Committee of Ministers of the Council of Europe may invite any State, not a Member of the Council, to accede to this Convention, provided that the resolution containing such invitation receives the unanimous agreement of the Members of the Council who have ratified the Convention.
2. Accession shall be by deposit with the Secretary-General of the Council of an instrument of accession, which shall take effect 90 days after the date of its deposit.

#### ARTICLE 31

##### Denunciation

Any Contracting Party may denounce this Convention in so far as it is concerned by giving notice to the Secretary-General of the Council of Europe. Denunciation shall take effect six months after the date when the Secretary-General of the Council received such notification.

#### ARTICLE 32

##### Notifications

The Secretary-General of the Council of Europe shall notify the Members of the Council and the Government of any State which has acceded to this Convention of :

- a. the deposit of any instrument of ratification or accession;
- b. the date of entry into force of this Convention;
- c. any declaration made in accordance with the provisions of Article 6, paragraph 1, and of Article 21, paragraph 5;
- d. any reservation made in accordance with Article 26, paragraphe 1;
- e. the withdrawal of any reservation in accordance with Article 26, paragraph 2;
- f. any notification of denunciation received in accordance with the provisions of Article 31 and the date on which such denunciation will take effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at , this , in French and English, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary- General of the Council of Europe shall transmit certified copies to the signatory Governments.