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ADDIS ABABA

CM/390

COUNCIL OF MINISTERS
Seventeenth Ordinary Session
JUNE 1971

REPORT OF THE SECRETARY-GENERAL ON
INTERAFRICAN LEGAL CO-OPERATION

CM0390

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REPORT OF THE SECRETARY-GENERAL ON
INTERAFRICAN LEGAL CO-OPERATION

On several occasions during the General Assemblies and Regional Conferences in Africa of the international Criminal Police Organization, the difficulties encountered by the African Governments in their struggle against international common law crimes were noted. These difficulties are, no doubt, due to the paucity of bilateral and multilateral extradition treaties between African countries.

In fact, the only existing multilateral convention on legal co-operation is the one signed in Tananarive on 12 September 1961 by OCAMM (formerly UAM) Member States.

Although there may be bilateral conventions on legal co-operation or extradition, these are few and there are still many African countries who have not concluded any type of convention, either on legal co-operation or even simply on extradition, with others.

With the development of rapid means of communication and increasingly closer relations among African States, this situation renders the campaign against common law criminals exceptionally difficult. After committing crime in

a country, these criminals only have to seek refuge in another country which does not have an extradition treaty with the first and thus flee from justice.

Co-operation between African States is indispensable in order to change this state of affairs.

International co-operation in the campaign against international crime is now made possible the world over through the efforts of the international Criminal Police Organization (Interpol).

As it were, even if Interpol's resources have been proved extremely efficient they are still not enough to stamp out international crimes which multiply as society becomes more and more diversified and complex. The hardened criminals use their ingenuity to discover the best means of circumventing the law or render its application problematical if not completely ineffective by using the modern techniques devised by society for its well-being.

Perhaps, this is why, on the basis of the experience acquired in this field particularly in Europe, the General Secretariat of Interpol requested the Imperial Ethiopian Government to kindly refer to the OAU Assembly of Heads of State and Government, the problem of the possible conclusion of an extradition treaty between African countries. Following this invitation, the Ethiopian Government, in a first memorandum, drew the attention of OAU Member States to the considerable handicap which this absence of extradition treaties between the majority of African countries constitutes and to the dangers that it represented with regard to the efficiency of the campaign against international common law crimes on the African continent. This memorandum is contained in document CM/167 which was communicated to all Member States.

Subsequently, the Imperial Ethiopian Government proposed the inclusion, for the first time, in the agenda of the 8th ordinary session of the Council of Ministers an item entitled : "Conclusion of bilateral treaties or/and a multilateral extradition treaty between African countries. The Imperial Ethiopian Government submitted second memorandum together with the European Extradition Treaty for the consideration of the Governments of Member States, as a document which might serve as basis for their discussions on the future African extradition treaty.

The Eighth Ordinary Session of the Council of Ministers felt that it did not have sufficient information on the matter and decided to postpone consideration thereof to its Ninth Ordinary Session.

At the Ninth Ordinary Session of the Council of Ministers held in Kinshasa from 4 to 10 September 1967 it was decided, following a proposal by Morocco, that the matter be extended to cover the over-all problem of legal co-operation, of which extradition is only one aspect. At the end of that session, resolution CM/Res.107 (IX) was adopted.

It :

"2) Recommends that the Ethiopian proposal, as complemented by the debate, which extended the scope of the subject to cover the whole body of inter-African co-operation in legal matters, be transmitted, with all other proposals relating to this question, to Member States at the close of the present session;

"3) Invites the Member States to proceed to make an urgent study of these various proposals and to convey their observations and suggestions to the General Secretariat;

" 4) Entrusts the General Secretariat with the task of compiling the observations and suggestions, and of communicating them again to Member States, which are requested to convey their opinions to the General Secretariat before the end of June 1968;

" 5) Finally charges the Administrative Secretary-General with making a report synthesizing the various opinions of the Member States of this Assembly to the Council of Ministers prior to the next Assembly of the Heads of State and Government.

Following the adoption of this resolution, the General Secretariat prepared for Member States, a document containing both the text of the Ethiopian proposal and the full text of Resolution CM/Res.107 (IX); when forwarding these documents to Member States, it invited them to send their observations on the Ethiopian proposal, as far as possible, before 31 December 1967.

In response to the Secretariat's communication, nine States forwarded their observations and suggestions which were immediately compiled and transmitted to all the other Member States.

At that time, the Secretariat requested Member States to send their observations on the proposals of the Imperial Ethiopian Government before the end of June 1968 so that it could prepare, for the Eleventh Ordinary Session of the Council of Ministers scheduled to be held in Algiers in September 1968, the synoptic report which had been requested by the Council under paragraph 5 of resolution CM/Res.107 (IX).

Despite the scant number of replies received before the Eleventh Ordinary Session of the Council, the Secretariat was nonetheless able to give in a progress report, the broad outlines of the replies it had received. This synoptic report is contained in document CM/233 (XI), CM/233 Annex I and CM/233 Annex II. Although the item was included in the agenda of the Eleventh Ordinary Session of the Council held in Algiers, it was not discussed since the Council felt that an insufficient number of Member States had sent their observations and suggestions.

The matter was not included in the agenda of the Twelfth Ordinary Session for the same reason. However, prior to that session, Upper Volta and Liberia sent their observations and suggestions to the General Secretariat who immediately transmitted them to Member States under cover of note ORG-120 of 13 June 1969. In this note to Member States, the General Secretariat reminded them of the terms of resolution CM/Res.107 (IX) and requested those who had not yet done so to kindly forward their comments and suggestions on the draft convention on inter-African legal co-operation.

The OAU General Secretariat later prepared progress report CM/291 (XIII) which was submitted to and discussed at the Thirteenth Ordinary Session of the Council held in Addis Ababa from 27 August to 6 September 1969.

In this document, the General Secretariat summed up the situation and once more drew the attention of Member States to the insufficient number of Governments who had expressed their views on the problems posed by the possible conclusion, within the framework of OAU, of a convention on legal co-operation and urged all States to forward their observations and suggestions on this matter.

During the Thirteenth Ordinary Session, the Imperial Ethiopian Government, to whom we owe the initiative to include this item in the Council's agenda, communicated to the General Secretariat, for onward transmission to Member States, legal texts governing extradition in thirteen OAU Member States. It should be noted that owing to technical difficulties, the Secretariat has not been able to make these texts available to Member States.

At the end of the debates on the projected conclusion of a convention on legal co-operation, the Thirteenth Ordinary Session of the Council of Ministers adopted resolution CM/Res.198 (XIII) postponing the consideration of this matter to its Fourteenth Ordinary Session; at the same time the Council called upon "all Member States who have not yet complied with resolution CM/Res.107 to convey to the General Secretariat as soon as possible their comments and suggestions on the projected conclusion of a treaty on inter-African legal co-operation".

This problem was therefore included once more in the agenda of the Fourteenth Ordinary Session of the Council held in Addis Ababa in February/March 1970 and was presented in document CM/319 in which the Secretariat summed up the situation on the draft convention on legal co-operation. This session decided (decision CM/Dec.108).

"i) to postpone the consideration of this question to its fifteenth Ordinary Session;"

"ii) to request the Administrative Secretary-General to prepare a questionnaire with a view to determining areas of co-operation and problems, which would eventually form the basis of a convention on inter-African legal co-operation, including the problem of extradition, as originally proposed by Ethiopia."

As requested of it, the General Secretariat prepared a questionnaire on inter-African legal co-operation which was forwarded to all Member States together with an explanatory Note. These two documents constituted the subject of Note ORG/120/1/847-70 of June, 1970.

Following discussions on the proposed conclusion of a Convention on inter-African legal co-operation at its Fifteenth Ordinary Session, the Council of Ministers decided (decision CM/Dec.127 (XV) to :

1. "Defer consideration of the question on this matter, and especially decision CM/Dec.108 (XIV);
2. Request Member States that have not yet done so, to forward to the General Secretariat, as far as possible before the Sixteenth Ordinary Session of the Council their answers to the questionnaire prepared by the Secretariat in accordance with decision CM/Dec.108 (XIV).
3. Recommend the constitution of a Committee of Experts composed of nine Members to study the synoptic report of the Secretariat and to submit to the Council a draft convention or conventions on co-operation in legal matters.
4. Request the Administrative Secretary-General to prepare a report on the financial implication of setting up the aforementioned Committee of Experts for the Sixteenth Ordinary Session of the Council".

The reports mentioned in paragraphs 3 and 4 of the decision, CM/Dec.127 (XV) were the subject of document CM/366/Rev.1, which was circulated to Member States on 22 January, 1971. Meanwhile, the following States had sent their replies to the questionnaire prepared by the General Secretariat in accordance with decision CM/Dec.108 (XIV).

These are : Gabon, Botswana, Gambia, Ghana, Mauritius, Chad, Nigeria, Tunisia, Niger, Morocco, Sudan, Rwanda, Dahoméy and Burundi.

Since the Ethiopian Government had already expressed its views on the conclusion of a convention on inter-African legal co-operation in its two Memoranda which were at the basis of placing the question on the Agenda of the Council and which were forwarded to Member States under the symbol, CM/167-1 and 2, the Governments of twenty-one Member States in one way or the other, pursuant to resolution CM/Res.107 (IX) and decision CM/Dec.108 (XIV), expressed their viewpoints on the proposed conclusion of a multilateral extradition treaty or a general convention on co-operation in legal matters within the framework of OAU. These are the Governments of the following Member States : Mauritania, Senegal, Somalia, Dahomey, Burundi, Nigeria, Morocco, Tunisia, Botswana, Tanzania, Niger, Rwanda, Sudan, Gabon, Chad, Mauritius, Gambia, Kenya, Ghana, Liberia and Upper Volta.

On the whole, the comments and suggestions of Member States on the proposed convention on inter-African legal co-operation could be summarized thus :

Most of the countries which had forwarded their views on the Ethiopian proposal to the General Secretariat in accordance with resolution CM/Res.107 (IX) or their replies to the questionnaire prepared by the Secretariat pursuant to decision CM/Dec.108 (XV) thought that it would be necessary to encourage Member States which did not have national extradition laws to promulgate these as a first measure toward rendering effective, the struggle of African countries against the criminality of ordinary law.

The majority of these States also felt that whenever possible, the conclusion of as many bilateral extradition treaties as possible should be encouraged since these bilateral treaties constituted a positive improvement on the extradition laws passed only within the national framework. They also welcomed the idea of concluding multilateral treaties of regional or sub-regional nature whenever possible.

Most of these countries expressed doubts about the possibility and opportuneness for OAU Member States to conclude a general convention on legal co-operation. They supported their scepticism with political, traditional and social structural differences, cultural habits, language differences and inherited systems, in most cases, from the colonial regime.

Countries which did not think of the possibility of concluding a multilateral treaty on co-operation in legal matters held the view that these difficulties would be less if the scope of the proposed convention was limited to extradition.

With regard to language difficulties and legal systems, one Member State considered that these differences did not in fact, constitute an obstacle and to substantiate this, related its own experience and that of Europe and the European Extradition Convention to which countries with the Roman law and the ordinary law were parties.

Several countries, about ten, thought it desirable and hoped that efforts towards the conclusion of a multilateral convention on legal co-operation binding all African States, Members of OAU, would be pursued. Some of these countries did not however, overlook the inherent difficulties of such a venture, but felt that these difficulties did not justify the abandoning of the main idea of a multilateral convention on legal co-operation.

Some of the countries which welcomed the idea of a general convention on co-operation in legal matters held the view that its scope should be limited to extradition.

Most of the advocates of a general convention on legal co-operation thought that besides extradition, the convention should cover access to the courts, enforcement of judgement, execution of rogatory commission and exchange of documents and information.

Other countries expressed their views on the substance of the proposed extradition convention and on a general convention on co-operation in legal matters by specifying for instance, crimes for which those convicted are liable to be extradited, conditions to be fulfilled to secure extradition, method to be adopted with regard to the definition and determination of crimes for which those convicted could be extradited, drawing up a list of crimes for which those convicted could be extradited or defining general categories of crimes for which those convicted are liable to be extradited.

Some of these States also advanced a number of principles that should govern the proposed Convention whether it was limited to extradition or covered legal co-operation in general: assassination and death of politicians should never be considered as political crimes, non-extradition for crimes of political nature, non-extradition of nationals, principle of reciprocity in respect of extradition, limitation of extradition to only persons charged and whose sentences implied privation of liberty, the principle of speciality, etc..

In another context, a great majority of the twenty-one States which had forwarded their observations and suggestions to the General Secretariat on the proposed convention on legal co-operation between OAU Member States held the view that it was neither possible nor practical to envisage uniformity of extradition procedures in the Convention since these were closely linked with the laws of individual States and since any eventual uniformity would entail serious modifications in the legislations of several Member States.

However, for practical reasons, seven countries deemed as highly desirable, the standardization of extradition procedures in the various Member States of OAU which would be parties to the proposed convention on inter-African legal co-operation.

Furthermore, it should be pointed out that a certain number of countries expressed no opinion on this point.

With regard to the method to be adopted to achieve the conclusion of multilateral extradition convention or a general convention covering legal co-operation in every field, all the States, with the exception of three, considered that the best method would be to entrust a Committee of Experts with the task of studying the question and submitting a proposal and a report to the Council of Ministers and the Assembly of Heads of State and Government.

This viewpoint is justified by the highly technical nature of the problem and by its serious political implications. However, a minority of two or three Member States held the view that it would be necessary to maintain the present method and to leave the General Secretariat with the task of preparing a synoptic report and a proposal on the basis of the views expressed by Member States.

It should be recalled in this respect, that the Fifteenth Ordinary Session of Council of Ministers recommended the setting up of a Committee of Experts and requested the General Secretariat to prepare a report on the financial implications of setting up the said Committee on the basis of which the Council of Ministers would take a final decision at its Sixteenth Ordinary Session.

What is more. On the question as to which existing Convention should serve as basis for the proposed inter-African Extradition Convention or legal co-operation, views varied greatly among the advocates of the European Extradition Convention, the Tunisian draft inter-African Extradition Convention, the Commonwealth extradition system and the Extradition Convention between Senegal and Morocco.

Certain countries just simply proposed that these conventions should all be taken as basis of discussions for the preparation of the draft inter-African Extradition Convention or legal co-operation.

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ADDIS ABABA

Council of Ministers

17th Ordinary Session

Addis Ababa - June 1971

CM/390/Add.1

The Council of Ministers will find herewith attached, a copy of Notes 009/V.P.3 - AE/AP/OUA of 10 May 1971 and ZE/D/15/I -- 549 of 20 May 1971 containing the replies from the Governments of the Malagasy Republic and of the Republic of Zambia to the questionnaire prepared by the Secretariat in conformity with Decision CM/Dec.108 (XIV).

Tananarive, 10 May 1971

No. 009/VP.3 - AE/AP/OUA

NOTE

The MINISTRY OF FOREIGN AFFAIRS OF THE REPUBLIC OF MADAGASCAR presents its compliments to the GENERAL SECRETARIAT OF THE ORGANIZATION OF AFRICAN UNITY and has the honour to acknowledge receipt of Note ORG.120/1/847-70 of 29 June 1970 through which it kindly communicated the Questionnaire on Inter-African Legal Co-operation, in conformity with decisions CM/Dec.108 (XIV) of the Fourteenth Session of the Council of Ministers and CM/Cttee B/Dec.i (XV) of the Fifteenth Session of the Council of Ministers.

In this connexion, the Ministry of Foreign Affairs wishes to inform the OAU General Secretariat that the Malagasy Government has decided to adhere to the practice of concluding bilateral agreements on legal co-operation. It therefore believes that it should confine itself to replying in the affirmative to the first two questions of the Questionnaire. It feels, however, that OAU should encourage those States which have not yet done so, to promulgate national extradition laws under the terms and conditions recommended by the Imperial Ethiopian Government and, also promote the conclusion of bilateral treaties on legal co-operation among OAU Member States.

The Ministry of Foreign Affairs wishes to call, once more, the attention of the OAU General Secretariat to the fact that the Malagasy's Government decision to opt for bilateral treaties on legal matters reflects the stand taken by its delegation during the OAU Summit Conference in September 1967 in Kinshasa. Indeed, in the opinion of the Malagasy Government, the difference of language, political, economic

and social structures of African States constitute, at present, an insurmountable obstacle to the conclusion of a multilateral treaty as the system of some countries is based on the French legal system and that of others on Anglo-Saxon law.

Consequently, the Malagasy Government recommends one method of approach. Indeed, it would be advisable to first reduce gradually the above-mentioned differences by adopting the more flexible formula of bilateral agreements which make it possible to take into consideration the characteristics of each State and, thereby temporarily remedy the shortcomings of inter-African legal co-operation. The series of bilateral agreements would, in the long run, establish common practices leading to the conclusion by a group or groups of States, of treaties on general or specific legal matters, like that signed by OCAM in 1961 in Tananarive, which could be integrated into the framework of a multilateral treaty between OCAM Member States.

The MINISTRY OF FOREIGN AFFAIRS OF THE MALAGASY REPUBLIC avails itself of this opportunity to renew to the GENERAL SECRETARIAT OF THE ORGANIZATION OF AFRICAN UNITY, the assurances of its high consideration.

The Embassy of the Republic of Zambia in Addis Ababa presents its compliments to the General Secretariat of the Organization of African Unity and has the honour to append hereunder, the full text of a communication from the Government of the Republic of Zambia in response to the latter's Note Verbale No.ORG.120/1/847-70 dated the 29th June, 1970.

"The following are the Zambian answers to the questionnaire : -

I. TYPE OF CONVENTION

- (1) Yes
- (2) Yes
- (3) Yes, as a first step.
- (4) Yes

II. SUBJECT OF THE CONVENTION

- (1) Yes, as a first step.
- (2 & 3) The overall problem of legal co-operation merits detailed examination. It would therefore, be advisable to go step by step in the coverage of other fields, e.g. reciprocal enforcement of judgments, service of judicial process and exchange of documents and information.

III. METHODS

- (1) Yes, although it may be easier to reach agreement if the procedure for extradition was left to the laws of the requested State.
- (2) It is suggested that the preparation of a draft Convention be entrusted to a Committee of Experts who would request comments and observations from member States, both before and after the preparation of a draft Convention and prior to its consideration by the O.A.U."

The Embassy of the Republic of Zambia avails itself of this opportunity to renew to the General Secretariat of the Organization of African Unity, the assurances of its highest consideration.

Addis Ababa
20th May, 1971.

The General Secretariat, O. A. U.,

ADDIS ABABA

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CM/390 Add.2

Ref. LEG. 10/1/691-71

The Council of Ministers will please find attached hereto a copy of Memorandum No. 246/NV/8A/00/ACE/PS of 3 June 1971 from the Embassy of the Federal Republic of Cameroon and Memorandum No. 533/MAE/PROT from the Ministry of Foreign Affairs of the Islamic Republic of Mauritania expressing the views of the two Governments on the proposed Convention on Inter-African Legal Co-operation.



The Embassy of the Federal Republic of Cameroon presents its compliments to the General Secretariat of the Organisation of African Unity and, referring to the questionnaire relating to Inter-African Legal Co-operation, has the honour to forward to it hereunder the replies thereto of the Government of Cameroon.

I. Nature of the Convention

The Government of the Federal Republic of Cameroon is of the opinion that OAU should work toward the conclusion of a multilateral treaty binding all Member States. Such a treaty could, to a great extent, be based on that signed on 12 September 1961 in Tananarive by the former AMU States, now OCAMM.

The Tananarive Convention has already been applied on several occasions by Cameroon (several extraditions and exequaturs as well as delivery of legal and other documents).

With regard to the nature of the Convention, we subscribe to Solution 4.

II. Object of the Convention

The Government of Cameroon is of the opinion that the object of the proposed Convention should be :

- Access to courts (equal guarantees to nationals of Member States),
- Transmission and delivery of legal and extra-legal documents,
- Transmission and execution of regatory commissions,
- Calling of witnesses in penal cases,
- Exchange of police records,

- . - Reciprocal exequatur on judgement passed in civil cases
in Member States,
- Execution of penal sentences on territories of Member States,
- Simplified extradition, etc ...

As regards to method, it would be proper to include in the Convention provisions relating to the unification of extradition procedures for all OAU Member States. Furthermore, it would be preferable to maintain the present method of communicating the preliminary draft of the Convention to Member States for their observations.

Among the Conventions suggested by the various countries, that of Tananarive seems suited to meet the purpose of the proposed Convention.

The Embassy of the Federal Republic of Cameroon avails itself of this opportunity to renew to the General Secretariat of the Organisation of African Unity, the assurances of its highest consideration.

Addis Ababa, 3 June, 1971.

No. 533 MAE-PROT.

The Ministry of Foreign Affairs of the Islamic Republic of Mauritania presents its compliments to the General Secretariat of the O.A.U. and, referring to its Memorandum relating to Inter-African Legal Co-operation, has the honour to inform the General Secretariat that the Government of the Islamic Republic of Mauritania subscribes fully to the Kenyan proposals on the subject.

The Ministry of Foreign Affairs wishes to add that it would, however, be useful for the General Secretariat to take note of, and base the Convention on, the General Convention on Co-operation in Legal Matters signed in Tananarive on 12 September 1971 between the African and Malagasy States.

The Ministry of Foreign Affairs of the Islamic Republic of Mauritania avails itself of this opportunity to renew to the General Secretariat of O.A.U. the assurances of its highest consideration.

Nouakchott, 28 May 1971.

O.A.U. General Secretariat,
ADDIS ABABA. -

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CM/390 Add.3

The Council of Ministers is kindly requested to find attached here to a copy of memorandum No. 299/AEC-DJ of 27th May 1971 from the Ministry of Foreign Affairs and Co-operation of the Republic of Mali expressing the viewpoint of the Government of Mali on Inter-African Legal Co-operation.

General Directorate of Political, Legal, Administration and Financial Affairs

Legal Division:

MEMORANDUM RELATING TO QUESTIONS OF INTER-AFRICAN
LEGAL CO-OPERATION AND EXTRADITION BETWEEN AFRICAN
COUNTRIES

If one were to draw up a list of international measures that bear the indelible mark of the sovereignty of States, the principle of extradition would undoubtedly feature prominently.

In effect, no indentity of view in this field has been attained in the past owing to the importance attached to the doctrine of protecting the human person. And we have always shrunk back in face of the difficulties, and risks involved in the undertaking.

With the far-reaching changes in International Law, the right of extradition has been accepted virtually by all States - a right whose principles must be recognized in the face of a more manifest social necessity.

This is due, to a large extent, to the fact that international organizations have ushered in a new era of international sociology, at time when men have become increasingly aware of belonging to one larger, African, European and world community, and that economic, cultural and social relations and humanitarian activities are daily lending further strength to international social solidarity.

This transition from national communities, closed in behind their frontiers, their legal systems, by the distinction that they draw between nationals and foreigners, and by their outlook, to an open international society has brought with it a transformation in international relations. We are witnessing the blossoming of a new set of principles of the law of Nations based on a new ultimate purpose.

Ubi societas, ibi jus; where there are societies and human relations, law comes into being spontaneously. In this way, any country whose penal law has been broken has the right to request that the culprit, who has taken refuge abroad to escape justice, be brought back to be tried. It therefore appears necessary for OAU Member States to achieve true co-operation between their judicial organizations.

In this connexion, and because it is bound to have both a political and a legal impact, such co-operation assumes a particularly important character. The Republic of Mali, traditionally attached to the universal nature that the principles of the Law of Nations must have, to the security of international relations and to the fundamental rules under which African societies are organized is in favour of drawing up a single general convention on co-operation in legal matters between OAU Member States.

I. NATURE OF THE CONVENTION

(1) It is desirable, as suggested by the Imperial Government of Ethiopia, that OAU should encourage the promulgation of national extradition Laws by States which do not yet have them. The vacuum resulting from an absence of domestic laws governing extradition, far from promoting co-operation and understanding between States, threatens to be an additional element of dissension since it is likely to prompt any State at any moment to point out the incompatibility of a general convention on extradition with its domestic law.

The promulgation of national laws would not only facilitate implementation of the judicial decisions made by one country in another, but would also lead more easily to the conclusion of a multilateral agreement. Furthermore, it will encourage adaptation of domestic legislations to the new dimensions and to the demands of inter-African co-operation in legal matters.

(2) Inter-State legal principles are based on treaties, as treaties are considered to be an expression of democracy and peace in international life. Without treaties, International Law would be inconceivable.

Co-operation in the sphere of extradition is determined by bilateral treaties. The Republic of Mali has concluded agreements in this field with several African countries.

Guinea 1964	Mauritania 1963
Senegal 1965	Upper Volta 1963
Ivory Coast 1964	Tunisia 1965
Peoples Republic of Congo 1964	Cameroon 1964
Niger 1964	

The value of conventions of this nature, as well as the importance of the contribution made to international co-operation, are explained by the fact that it is founded on manifold expressions of solidarity and consequently helps, in no small measure, to enhance international social solidarity.

In the interest of the African community itself, OAU must endeavour to encourage and promote the conclusion of bilateral treaties, so that our community may become one of law and justice, of freedom and democracy.

(3) and (4) The conclusion of a multilateral extradition treaty binding OAU Member States is becoming increasingly urgent. In fact, the development of trade, science, technology and, today, of space research, constantly creates new legal problems which must be covered by treaties, especially as the network of international legal relations is becoming more and more comprehensive. The fate of the African family cannot, therefore, be left to chance.

That is why OAU must endeavour to see that a multilateral treaty on co-operation in legal matters is concluded.

Admittedly, the difficulties involved in this undertaking should not be disguised, both because of the diversity of legal concepts in this matter and because of its particularly vital constitutional aspect.

In the present context, it would perhaps be more expedient to concentrate on the conclusion of multilateral treaties at regional or sub-regional level.

The conclusion of treaties of this nature would, however, only result in delaying the conclusion of a multilateral treaty.

II. OBJECT OF THE CONVENTION

The future convention should not be restricted to extradition questions only, but should also cover all problems relating to co-operation in legal matters, as was decided by the Ninth Session of the OAU Council of Ministers on the proposal of the Moroccan Delegation.

Such co-operation could be extended to include extradition, the transmission and delivery of legal and extra-legal instruments, the transmission of the execution of rogatory commissions and warrants to execute court orders, the appearance of lists of sentences or any other legal information, the exchange of law reports etc., judicatum solvi bonds, legal assistance and exequatur in civil, commercial and administrative matters.

Such co-operation would not only aim at ensuring the security of relations between Member States, but would perform a threefold function of legal integration:

Firstly, it would add to the effectiveness of the struggle against criminals.

Secondly, it would serve as an expression of social solidarity in international co-operation and would give legal access on an equal footing, to the administration of justice in Member States to nationals of those States.

Lastly, it would create and maintain favourable conditions between Member States for the achievement of OAU objectives in this field and, as a consequence, would obviously constitute an objective approach to, and a realistic basis for, African unity.

A legal instrument like that envisaged should not be framed to suit transient situations, but should be inspired by the desire to define, with an objective view to the future, the exact framework which alone could help to consolidate international commitments and encourage the harmonious development of relations between States.

III.

METHODS

1. At the present stage, it is important to recognize simultaneously the demands of legal realism, the need to conform with the rule of international solidarity and the susceptibilities of States with regard to their sovereignty.

The error of legal policy must at all cost be avoided – in other words, we must not proceed with undue haste so as to jeopardize the fundamental solidarity which underlies co-operation.

The extradition conventions concluded between States provide for extradition procedures.

It should not be impossible to arrive at a single extradition procedure that would be applicable to all Africans. But the problem involved in establishing such co-operation consists rather in seeking a solid basis for its legal rules which would justify them and make them essential in inter-African social relations.

(2) In our opinion, it is indispensable, for OAU, when drawing up the draft Convention, to collect, at the initial stage, the views and suggestions of each State and to communicate them to the other Members.

At the second stage, the framing of the draft convention shall be entrusted to a committee of experts composed of legal experts, chosen on the basis of their competence and experience in international public and private law.

This practice, which is employed by the international organizations, has proved to be effective.

(3) We feel that any legal instrument which might serve to facilitate the drawing up of the inter-African Convention could be used as a working document, whether it be the General Convention on Co-operation in Legal Matters signed in Tananarive, or that concluded between Morocco and Senegal, or even the European Convention which reflects many European legal systems on which those of most African countries are based.



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