



**ORGANIZATION OF
AFRICAN UNITY**

Secretariat
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**ORGANISATION DE L'UNITE
AFRICAINNE**

Secretariat
B. P. 3243

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REPORT OF THE ADMINISTRATIVE SECRETARY-GENERAL

ON COOPERATION IN LEGAL MATTERS



REPORT OF THE ADMINISTRATIVE SECRETARY-GENERAL
ON COOPERATION IN LEGAL MATTERS

1. The difficulties encountered by many Member States of the Organization of African Unity in the field of the fight against International common law crimes are at the origin of the initiative by the Imperial Ethiopian Government to ask that the problem of the conclusion of an African extradition convention be inscribed on the Agenda at the 8th ordinary session of the Council of Ministers.
2. The absence of a treaty of cooperation in legal matters or at the least an extradition treaty binding all OAU Member States has often been observed and deplored, particularly in the course of the General and Regional Conferences of the International Criminal Police Organization (Interpol).
3. It was for this reason that the Secretary-General of this Organization approached the Imperial Ethiopian Government to ask it to be so kind as to submit for the consideration of the Conference of OAU Heads of State and Government the problem of the eventual conclusion of an extradition treaty binding all OAU Member States.
4. For it is to be noted that if, in this domain, there exist bilateral extradition treaties linking some OAU Member States, yet the number of these treaties remains insufficient. Thus, in a wider field, that of legal cooperation in general, there exists only one example at the present time: that of the multilateral convention of cooperation in legal matters signed at Tananarive on September 12th 1961 and linking member States of OCAMM (formerly UAM).

5. The Imperial Ethiopian Government, agreeing to Interpol's request, drew up a memorandum to draw the attention of OAU Member States to the important shortcoming constituted by the lack of extradition treaties between most African countries and the dangers this represented for the fight against common law criminals. This memorandum was communicated to all Member States under Number CM/167.
6. It was during the 8th Ordinary session that the Council of Ministers for the first time had to consider an item on the conclusion "of bilateral treaties on/and a multilateral extradition treaty between African countries". The inscription of this item on the agenda was due to the initiative of the Imperial Ethiopian Government which at the same time submitted for the consideration of Member States a second memorandum on the problem. It further suggested that the African extradition convention should, to a great extent, be inspired by the European extradition convention.
7. The Council of Ministers, nevertheless, believing itself insufficiently informed, had decided to postpone examination of the question to its 9th ordinary session.
8. During the 9th ordinary session of the Council held in Kinshassa from the 4th to 10th September 1967, it was decided, following a Moroccan proposal, to extend the scope of the question to the entire problem of cooperation in legal matters. For resolution CM/Res.107(IX):
 - "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 cooperation 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 tasks 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."
9. In a note to the Member States, the OAU General Secretariat, while communicating to them the text of the second Ethiopian memorandum and that of the afore-mentioned resolution, requested the latter to acquaint it with their observations as soon as possible before the 31st December 1967.
10. Although only nine States had conveyed their observations and suggestions on this question to the Secretariat these were, nevertheless, compiled and circulated to all the Member States.
11. The Secretariat seized this occasion to request Member States to convey it their observations on the proposals of the Imperial Ethiopian Government before the end of June 1968 so it could prepare a synoptic report for the 11th session of the Council of Ministers.
12. In interim report CM/233 and Appendixes 1 and 2 submitted to this same Council session, the General Secretariat had sorted out the main lines of the replies it had then received. The Council of Ministers, however, feeling the number of these replies insufficient to enable it to give an opinion on the question, had decided to delay study of the Imperial Ethiopian Government's proposal.

Since

13. Prior to the 12th ordinary session of the Council only two States, Liberia and Upper Volta, had conveyed their observations and suggestions to the Secretariat, the question was not included in this session's agenda.

14. During the 13th ordinary session held at Addis Ababa from August 27th to September 6th the Council discussed interim report CM/291 submitted by the Secretariat in which it once more drew the States' attention to the insufficient number of governments that had expressed their viewpoints on the problem of the conclusion of a legal cooperation convention.

15. During this same session, the Imperial Ethiopian Government communicated to the General Secretariat, for transmission to the Member States, legislative texts governing extradition in thirteen OAU Member States. Because of difficulties of a technical order that were, at the time, brought to the knowledge of the Member States, these texts could not be reproduced.

16. At the end of this same session, resolution CM/Res.198 (XIII) was adopted, referring study of the problem to the 14th Ordinary Session of the Council and further requesting all the Member States that had not yet done so to follow up resolution CM/Res.107 (IX).

17. Once more the Council of Ministers, during its 14th ordinary session held in Addis Ababa in February/March 1970, had to study the entire question in the light of report CM/319 drawn up by the Secretariat.

18. This time, to induce the Member States to make known their comments and suggestions, the Council of Ministers decided (decision CM/Dec.108 (XIV)):

- 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 cooperation and problems, which would eventually form the basis of a convention on Inter-African Legal Cooperation, including the problem of extradition, as originally proposed by Ethiopia".

19. Following this decision a questionnaire on cooperation in legal matters was drawn up by the Secretariat and sent to the Member States annexed to note ORG/120/1/847-70 of ...

20. During its 15th ordinary session, the Council of Ministers once more decided to postpone examination of the question to the 16th ordinary session (decision CM/Dec.127(XV)).

21. It had, nevertheless, requested the Member States which had not already done so to communicate to the General Secretariat as soon as possible before the 16th ordinary session of the Council their replies to the questionnaire drawn up by the Secretariat and at the same time recommended the setting up of a Committee of nine legal experts who would be charged with examining "the synoptic report of the Secretariat and to submit to the Council a draft convention or conventions on cooperation in legal matters".

22. It further called upon the General Secretariat to "prepare a report on the financial implications of setting up the aforementioned Committee of Experts for the Sixteenth Ordinary Session of the Council.

23. In accordance with decision CM/Dec.127 the General Secretariat prepared a synoptic report, which was dealt with by document CM/366/Rev.1 sent to the Member States on January 22nd 1971. Next it had to communicate to them the replies of the Member States to the questionnaire prepared by the Secretariat.

24. In report (CM/390) submitted to the 17th ordinary session of the Council of Ministers, the Administrative Secretary-General clarified the main outlines of the replies of the Member States to this question.

He had then stressed that:

a) most of the States "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".

b) most of the States thought that the conclusion of the greatest possible number of bilateral extradition treaties would constitute a positive improvement on the national extradition laws.

c) most of the States felt that, in view of differences in political and social structure, in traditions, cultural habits and legal systems, it would be difficult, at the present time, to conclude a general cooperation convention on legal matters. For this reason these States feel that the conclusion of multi-lateral treaties of a regional or sub-regional character should be encouraged as much as possible.

d) Many States nevertheless felt that these differences should not constitute any real obstacle to the conclusion of an African extradition convention. The Member States favouring the conclusion of a general convention in the matter of legal cooperation give as an example the European extradition convention to which belong countries obeying the system of Roman law and those of "Common Law".

e) They believe that a general convention of legal cooperation should bear not only on extradition but also on access to the courts, enforcement of judgement, execution of rogatory commission and exchange of documents and information.

25. During the sixteenth ordinary session held in Addis Ababa from February 26th to March 1st 1971, the Council of Ministers decided to set up "a Committee of nine Experts to draw up a draft convention or draft conventions in co-operation in legal matters" (Decision CM/Dec. 145 (XVI)).

26. It had, by the same decision, instructed "the General Secretariat to convene a meeting of the Experts to prepare the required documents on Inter-African Legal Co-operation".

27. In accordance with this decision and the directives of the Council of Ministers, the Administrative Secretary-General conveyed to the Member States many verbal notes in which it requested them to submit candidatures to the Committee of the nine legal Experts.

28. The Administrative Secretary-General, after having studied the candidatures that had been submitted to him proceeded to the appointment of the nine experts and informed them of this personally by letter dated November 6th 1971.

29. The choice of the Administrative Secretary-General fell upon the following personalities:

- 1) Prof. AHMED FATHI MORSI (EGYPT)
Justice at the Supreme Court
- 2) H.E. ATO MOHAMED ABDURAHMAN (ETHIOPIA)
Minister of State in the
Ministry of Justice
- 3) MR. MARCEL MARTIN (GUINEA)
Attorney General
- 4) MR. OYEWOLA JEMIYO (NIGERIA)
Senior State Counsel
Federal Ministry of Justice

- 5) MR. SAMBA MADEMBA SY (SENEGAL)
Counsellor at the Supreme Court
- 6) MR. SAYED KHALAFALLA ELRASHED (SUDAN)
Advocate General
- 7) MR. NIMROD MASOMA LUGOE (TANZANIA)
Legal Secretary at the Embassy of
the U.R. of Tanzania in Addis Ababa
- 8) MR. FATHI ZOUIR (TUNISIA)
Vice-President of the National Assembly
- 9) MR. A.M. MIS (ZAMBIA)
Legal Adviser on International Law

At the convening of the Administrative Secretary-General, the above nine Experts met in Addis Ababa from 10th to 26th January 1972.

36. Professor Fathi Mersi of Egypt was unable to attend at the last moment for health reasons.

31. A. Draft African Convention on Extradition

The Committee of nine Experts, feeling that the time granted it would not allow it to tackle all the aspects of co-operation in legal matters, decided to confine themselves, as a first step, to the task of drawing up a draft African convention on extradition.

32. It had not, however, excluded the possibility of beginning a study of the other aspects of legal co-operation if it should later appear that it had the time to do so. The rest of the Committee's work, however, subsequently showed that the Experts were right to adopt this prudent attitude.

33. The Council of Ministers would like to find annexed to the present report the text of the draft African convention on extradition as well as the Experts' report relating to this draft.
34. The Administrative Secretary-General, in his report CM/432 to the eighteenth ordinary session of the Council had suggested that, in view of the complexity and delicate nature of the subject, examination of the draft African convention on extradition be postponed to the nineteenth ordinary session of the Council of Ministers.
35. The Council of Ministers, in accordance with this suggestion, decided to postpone study of the draft African convention on extradition to its nineteenth ordinary session.
36. It also requested the General Secretariat to define, in a report to be submitted to it during its 19th ordinary session, the other aspects of co-operation in legal matters and the financial implications of the holding of another meeting of the nine legal experts.
37. B. The other aspects of co-operation in legal matters and the financial implications of the holding of a further meeting of the Committee of Experts.

In a previous report to the Council of Ministers (CM/390), the Administrative Secretary-General had already defined the various aspects of co-operation in legal matters.

He had then stressed that, besides extradition, co-operation among Member States in this domain could cover access to the courts, execution of rogatory commission and, finally, exchange of documents and information.

As regards the financial implications of the holding of a further meeting of the Committee of nine Experts, given the complexity

of the subject and the difficulties encountered during the first meeting, it was to be expected that it would be held during fifteen days at least.

For this reason, the Council of Ministers was being asked for a credit of 26,174.16 American dollars to be distributed as follows:

1 -	Transport of the Experts	4,204.10
2 -	Daily expenses of the Experts	2,592.00
3 -	Technical Services	19,378.00
	TOTAL:	<u>26,174.10</u>



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