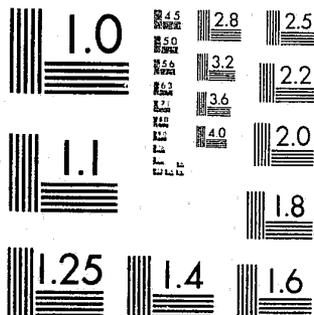


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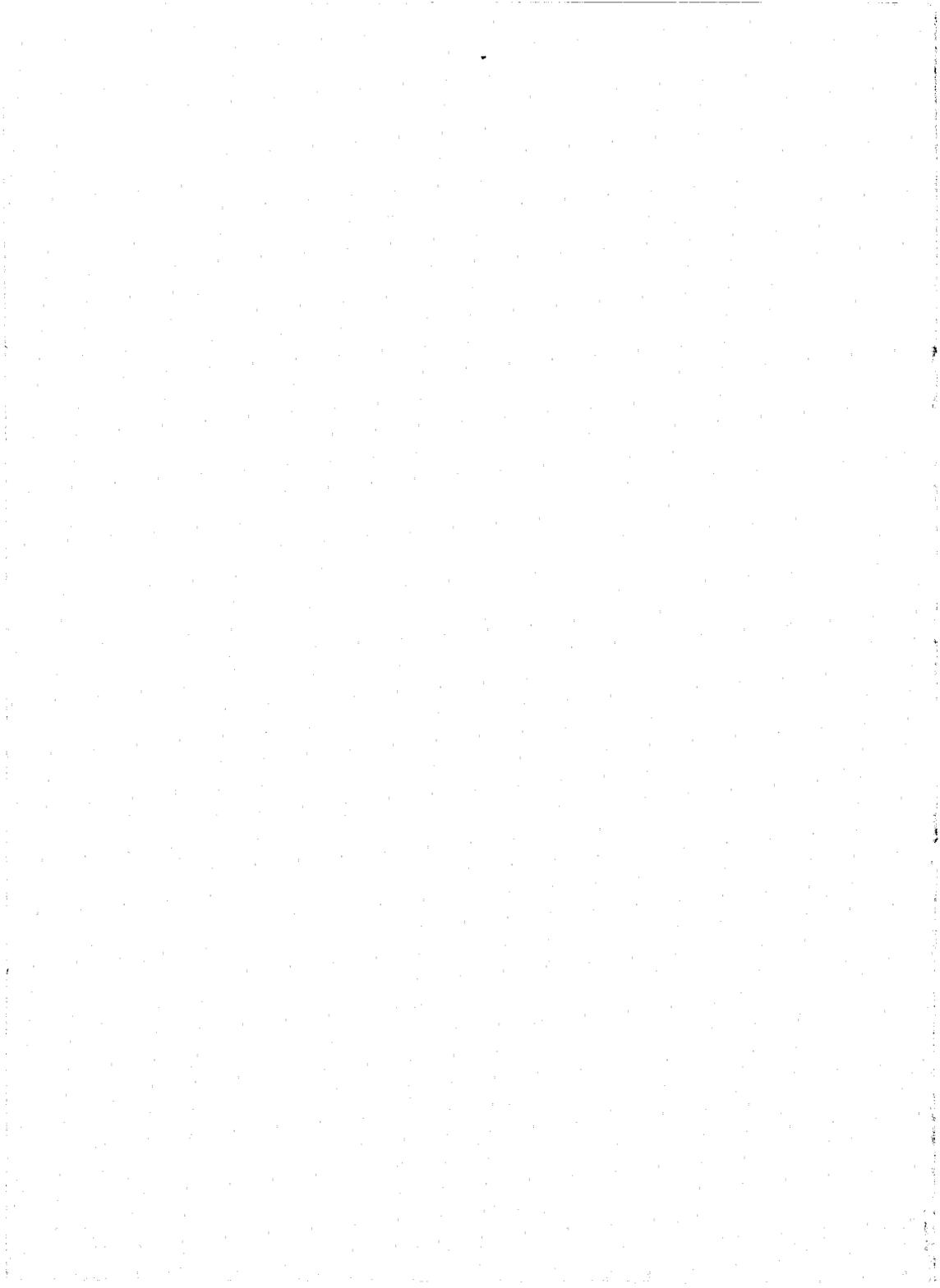
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**ACQUISITIONS**

**Explanatory report  
on the European Convention  
on the Suppression  
of Terrorism**

I. The European Convention on the Suppression of Terrorism, drawn up within the Council of Europe by a committee of governmental experts under the authority of the European Committee on Crime Problems (ECCP) was opened to signature by the member states of the Council of Europe on 27 January 1977.

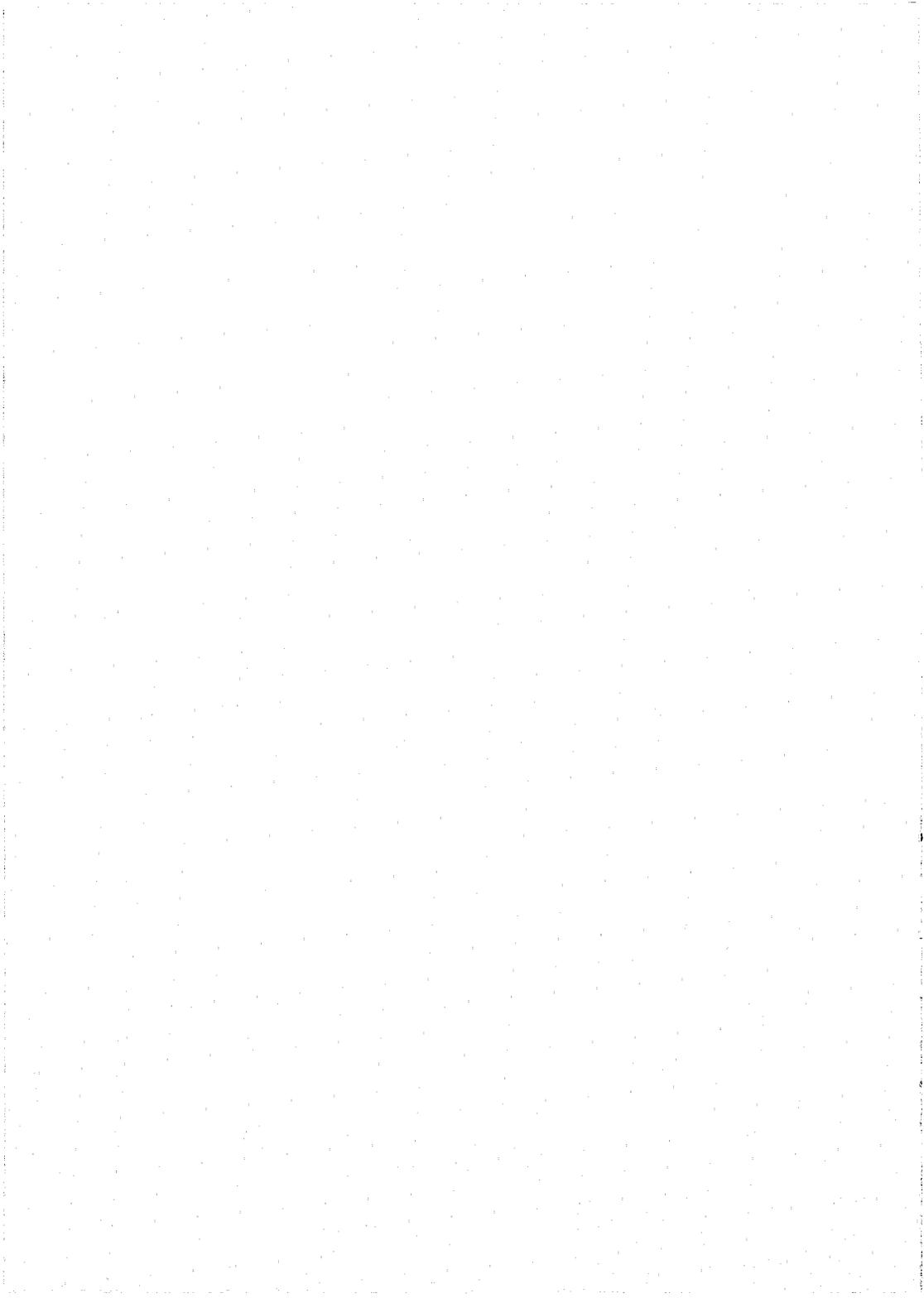
II. This publication contains the text of the explanatory report prepared on the basis of that committee's discussions and submitted to the Committee of Ministers of the Council of Europe. This report does not constitute an instrument providing an authoritative interpretation of the text of the Convention although it may facilitate the understanding of the Convention's provisions.

III. The text of the European Convention on the Suppression of Terrorism is also reproduced in this publication.

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## EXPLANATORY REPORT

### Introduction

1. During its 25th Session in May 1973, the Consultative Assembly of the Council of Europe adopted Recommendation 703 (1973) on international terrorism "condemning international terrorist acts which, regardless of their cause, should be punished as serious criminal offences involving the killing or endangering of the lives of innocent people" and accordingly calling on the Committee of Ministers of the Council to invite the governments of member States *inter alia* "to establish a common definition for the notion of 'political offence' in order to be able to refute any 'political' justification whenever an act of terrorism endangers the life of innocent persons".

2. Having examined this recommendation, the Committee of Ministers of the Council of Europe adopted at its 53rd meeting on 24 January 1974, Resolution (74) 3 on international terrorism<sup>1</sup> which recommends the governments of member States to take into account certain principles when dealing with requests for extradition of persons accused or convicted of terrorist acts.

The idea underlying this resolution is that certain crimes are so odious in their methods or results in relation to their motives, that it is no longer justifiable to classify them as "political offences" for which extradition is not possible. States receiving extradition requests related to terrorist acts are therefore recommended to take into account the particular gravity of these acts. If extradition is not granted, States should submit the case to their competent authorities for the purpose of prosecution. As many States have only limited jurisdiction

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1. See text of Resolution (74) 3, in the Appendix.

over crimes committed abroad it is furthermore recommended that they envisage the possibility of establishing it in these cases to ensure that terrorists do not escape both extradition and prosecution.

3. At a meeting in Obernai (France) on 22 May 1975, the Ministers of Justice of the member States of the Council of Europe stressed the need for co-ordinated and forceful action in this field. They drew attention to the fact that acts of terrorism were today indigenous, i. e. committed for specific "political" objectives within the member States of the Council of Europe, which may threaten the very existence of the State by paralysing its democratic institutions and striking at the rule of law. Accordingly, they called for specifically European action.

4. Following this initiative, the 24th Plenary Session of the European Committee on Crime Problems (ECCP) held in May 1975, decided to propose to the Committee of Ministers of the Council of Europe the setting up of a committee of governmental experts to study the problems raised by certain new forms of concerted acts of violence.

5. At the 246th meeting of their Deputies in June 1975, the Committee of Ministers authorised the convocation of a committee of governmental experts.

6. Mrs S. Oschinsky (Belgium) was elected Chairman of the committee. The Secretariat was provided by the Directorate of Legal Affairs of the Council of Europe.

7. During its first two meetings, held from 6 to 8 October 1975 and from 2 to 6 February 1976, the committee prepared a European Convention on the Suppression of Terrorism.

8. The draft convention was submitted to the 25th Plenary Session of the ECCP in May 1976 which decided to forward the result of the committee's work to the Committee of Ministers for approval.

9. At their 10th Conference, held on 3 and 4 June 1976 in Brussels, the European Ministers of Justice took note of the draft convention and expressed the hope that its examination by the Committee of Ministers be completed as quickly as possible.

10. At the 262nd meeting of their Deputies in November 1976, the Committee of Ministers approved the text which is the subject of this report and decided to open the Convention to the signature of member States.

## General considerations

11. The purpose of the Convention is to assist in the suppression of terrorism by complementing and, where necessary, modifying existing extradition and mutual assistance arrangements concluded between member States of the Council of Europe, including the European Convention on Extradition of 13 December 1957 and the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, in that it seeks to overcome the difficulties which may arise in the case of extradition or mutual assistance concerning persons accused or convicted of acts of terrorism.

12. It was felt that the climate of mutual confidence among the like-minded member States of the Council of Europe, their democratic nature and their respect for human rights safeguarded by the institutions set up under the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, justify opening the possibility and, in certain cases, imposing an obligation to disregard, for the purposes of extradition, the political nature of the particularly odious crimes mentioned in Articles 1 and 2 of the Convention. The human rights to which regard has to be had are not only the rights of those accused or convicted of acts of terrorism but also of the victims or potential victims of those acts (cf. Article 17 of the European Convention on Human Rights).

13. One of the characteristics of these crimes is their increasing internationalisation; their perpetrators are frequently found in a State other than that in which the act was committed. For that reason extradition is a particularly effective measure for combating terrorism.

14. If the act is an offence which falls within the scope of application of existing extradition treaties the requested State will have no difficulty, subject to the provisions of its extradition law, in complying with a request for extradition from the State which has jurisdiction to prosecute. However, terrorist acts might be considered "political offences", and it is a principle – laid down in most existing extradition treaties as well as in the European Convention on Extradition (cf. Article 3 paragraph 1) – that extradition shall not be granted in respect of a political offence.

Moreover, there is no generally accepted definition of the term "political offence". It is for the requested State to interpret it.

15. It follows that there is a serious lacuna in existing international agreements with regard to the possibility of extraditing persons accused or convicted of acts of terrorism.

16. The European Convention on the Suppression of Terrorism aims at filling this lacuna by eliminating or restricting the possibility for the requested State of invoking the political nature of an offence in order to oppose an extradition request. This aim is achieved by providing that, for extradition purposes, certain specified offences *shall never* be regarded as "political" (Article 1) and other specified offences *may not* be (Article 2), notwithstanding their political content or motivation.

17. The system established by Articles 1 and 2 of the Convention reflects the consensus which reconciles the arguments put forward in favour of an obligation, on the one hand, and an option, on the other hand, not to consider, for the purposes of the application of the Convention, certain offences as political.

18. In favour of an obligation, it was pointed out that it alone would give States new and really effective possibilities for extradition, by eliminating explicitly the plea of "political offence", a solution that was perfectly feasible in the climate of mutual confidence that reigned amongst the member States of the Council of Europe having similar democratic institutions. It would ensure that terrorists were extradited for trial to the State which had jurisdiction to prosecute. A mere option could never provide a guarantee that extradition would take place and, moreover, the criteria concerning the seriousness of the offence would not be precise.

19. In favour of an option, reference was made to the difficulty in accepting a rigid solution which would amount to obligatory extradition for political offences. Each case should be examined on its merits.

20. The solution adopted consists of an obligation for some offences (Article 1), and an option for others (Article 2).

21. The Convention applies only to particularly odious and serious acts often affecting persons foreign to the motives behind them. The seriousness of these acts and their consequences are such that their criminal element outweighs their possible political aspects.

22. This method, which was already applied to genocide, war crimes and other comparable crimes in the Additional Protocol to the European Convention on Extradition of 15 October 1975 as well as to the taking or attempted taking of the life of a head of State or a member of

his family in Article 3.3 of the European Convention on Extradition, accordingly overcomes for acts of terrorism not only the obstacles to extradition due to the plea of the political nature of the offence but also the difficulties inherent in the absence of a uniform interpretation of the term "political offence".

23. Although the Convention is clearly aimed at not taking into consideration the political character of the offence for the purposes of extradition, it does recognise that a Contracting State might be impeded, e.g. for legal or constitutional reasons, from fully accepting the obligations arising from Article 1. For this reason Article 13 expressly allows Contracting States to make certain reservations.

24. It should be noted that there is no obligation to extradite if the requested State has substantial grounds for believing that the request for extradition has been inspired by the considerations mentioned in Article 5, or that the position of the person whose extradition is requested may be prejudiced by these considerations.

25. In the case of an offence mentioned in Article 1, a State refusing extradition would have to submit the case to its competent authorities for the purpose of prosecution, after having taken the measures necessary to establish its jurisdiction in these circumstances (Articles 6 and 7).

26. These provisions reflect the maxim *aut dedere aut iudicare*. It is to be noted, however, that the Convention does not grant Contracting States a general choice either to extradite or to prosecute. The obligation to submit the case to the competent authorities for the purpose of prosecution is subsidiary in that it is conditional on the preceding refusal of extradition in a given case, which is possible only under the conditions laid down by the Convention or by other relevant treaty or legal provisions.

27. In fact, the Convention is not an extradition treaty as such. Whilst the character of an offence may be modified by virtue of Articles 1 and 2, the legal basis for extradition remains the extradition treaty or other law concerned. It follows that a State which has been asked to extradite a terrorist may, notwithstanding the provisions of the Convention, still not do so if the other conditions for extradition are not fulfilled; for example, the offender may be a national of the requested State, or there may be time limitation.

28. On the other hand, the Convention is not exhaustive in the sense that it does not prevent States, if their law so allows, extraditing in cases

other than those provided for by the Convention, or to take other measures such as expelling the offender or sending him back, if in a specific case the State concerned is not in possession of an extradition request made in accordance with the Convention, or if it considers that a measure other than extradition is warranted under another international agreement or particular arrangement.

29. The obligation which Contracting States undertake by adhering to the Convention are closely linked with the special climate of mutual confidence among the Members of the Council of Europe which is based on their collective recognition of the rule of law and the protection of human rights manifested by Article 3 of the Council's Statute and by the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 which all member States have signed.

For that reason it was thought necessary to restrict the circle of Contracting Parties to the member States of the Council, in spite of the fact that terrorism is a global problem.

30. It goes without saying that the Convention does not affect the traditional rights of political refugees and of persons enjoying political asylum in accordance with other international undertakings to which the member States are party.

## Commentaries on the articles of the Convention

### Article 1

31. Article 1 lists the offences each of which, for the purposes of extradition, shall not be regarded as a political offence, or as an offence connected with a political offence, or as an offence inspired by political motives.

It thus modifies the consequences of existing extradition agreements and arrangements as concerns the evaluation of the nature of these offences. It eliminates the possibility for the requested State of invoking the political nature of the offence in order to oppose an extradition request. It does not, however, create for itself an obligation to extradite, as the Convention is not an extradition treaty as such. The legal basis for extradition remains the extradition treaty, arrangement or law concerned.

32. The phrases "political offence" and "offence connected with a political offence" were taken from Article 3.1 of the European Convention on Extradition which is modified to the effect that Contracting Parties to the European Convention on the Suppression of Terrorism may no longer consider as "political" any of the offences enumerated in Article 1.

33. The phrase "offence inspired by political motives" is meant to complement the list of cases in which the political nature of an offence cannot be invoked; reference to the political motives of an act of terrorism is made in Resolution (74) 3 on international terrorism, adopted by the Committee of Ministers of the Council of Europe on 24 January 1974.<sup>1</sup>

34. Article 1 reflects a tendency not to allow the requested State to invoke the political nature of the offence in order to oppose requests for extradition in respect of certain particularly odious crimes. This tendency has already been implemented in international treaties, for instance in Article 3.3 of the European Convention on Extradition for the taking or attempted taking of the life of a Head of State or of a member of his family, in Article 1 of the Additional Protocol to the European Convention on Extradition for certain crimes against humanity and for

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1. See Appendix.

violations of the laws and customs of war, as well as in Article VII of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide.

35. Article 1 lists two categories of crimes: the first, contained in paragraphs *a*, *b* and *c*, comprises offences which are already included in international treaties, the second, contained in paragraphs *d* and *e*, concerns offences which were considered as serious so that it was deemed necessary to assimilate them to the offences of the first category. Paragraph *f* concerns attempt to commit any of the offences listed in Article 1 and the participation therein.

36. While in paragraphs *a* and *b* the offences in question are described by simple reference to the titles of the Hague Convention of 16 December 1970 and the Montreal Convention of 23 September 1971, paragraph *c* enumerates some of the offences which are contained in the New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 14 December 1973 instead of referring to the Convention by name. This was done because the New York Convention had not entered into force when the European Convention was drafted, and several Council of Europe member States have not ratified it. Another reason for enumerating the acts to which paragraph *c* is to apply rather than merely referring to the title of the New York Convention is the wider scope of application of that Convention: it covers attacks on premises, accomodation and means of transport of internationally protected persons which Article 1.c does not. The phrase "serious offence" is meant to limit the application of the provision to particularly odious forms of violence. This idea is furthermore emphasised by the use of the term "attack" taken from the New York Convention.

37. Paragraph *d* uses the phrase "an offence involving . . ." to cover the case of a State whose laws do not include the specific offences of kidnapping or taking of a hostage. In the English text the phrase "unlawful detention" has been qualified by adding the word "serious" so as to ensure conformity with the French expression *séquestration arbitraire* which always implies a serious offence.

38. Paragraph *e* covers offences involving the use of bombs and other instruments capable of killing indiscriminately. It applies only if the use endangered persons, i.e. created a risk for persons, even without actually injuring them.

39. The attempt to commit any of the offences listed in paragraphs a to e, as well as the participation as an accomplice in their commission or attempt, are covered by virtue of paragraph f. Provisions of a similar nature are to be found in the Hague Convention on Seizure of Aircraft, the Montreal Convention on Safety of Civil Aircraft and the New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons.

"Attempt" means only a punishable attempt; under some laws not all attempts to commit an offence constitute punishable offences.

The English expression "accomplice" covers both *co-auteur* and *complice* in the French text.

## Article 2

40. Paragraph 1 of Article 2 opens the possibility for Contracting Parties not to consider "political" certain serious offences which, without falling within the scope of the obligatory rule in Article 1, involve an act of violence against the life, physical integrity or liberty of a person. This possibility derogates from the traditional principle according to which the refusal to extradite is obligatory in political matters.

The term "act of violence" used to describe the offences which may be regarded as "non-political" was drafted along the lines of Article 4 of the Hague Convention for the Suppression of Unlawful Seizure of Aircraft.

41. By virtue of paragraph 2, inspired by Resolution (74) 3 of the Committee of Ministers,<sup>1</sup> an act against property is covered only if it created a "collective" danger for persons, e.g. as the result of an explosion of a nuclear installation or of a dam.

42. The flexible wording of Article 2 allows three possibilities for acting on a request for extradition:

– the requested State may not regard the offence as "political" within the meaning of Article 2 and extradite the person concerned;

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1. See Appendix.

– it may not regard the offence as "political" within the meaning of Article 2, but nevertheless refuse extradition for a reason other than political;

– it may regard the offence as "political", but refuse extradition.

43. It is obvious that a State may always decide on the extradition request independently of Article 2, i.e. without expressing an opinion on whether the conditions of this Article are fulfilled.

#### *Article 3*

44. Article 3 concerns the Convention's effects on existing extradition treaties and arrangements.

45. The word "arrangements" is intended to include extradition procedures which are not enshrined in a formal treaty, such as those in force between Ireland and the United Kingdom. For that reason, the term *accords* in the French text is not to be understood as meaning a formal international instrument.

46. One of the consequences of Article 3 is the modification of Article 3.1 of the European Convention on Extradition; between States which are Parties to both the European Convention on the Suppression of Terrorism and the European Convention on Extradition, Article 3.1 of the latter Convention is modified insofar as it is incompatible with the obligations arising from the former. The same applies to similar provisions contained in bilateral treaties and arrangements which are applicable between States Parties to this Convention.

#### *Article 4*

47. Article 4 provides for the automatic inclusion, as an extraditable offence, of any of the offences referred to in Articles 1 and 2 in any existing extradition treaty concluded between Contracting States which does not contain such an offence as an extraditable offence.

#### *Article 5*

48. Article 5 is intended to emphasise the aim of the Convention which is to assist in the suppression of acts of terrorism where they constitute an attack on the fundamental rights to life and liberty of persons. The Convention is to be interpreted as a means of strengthening the

protection of human rights. In conformity with this basic idea, Article 5 ensures that the Convention complies with the requirements of the protection of human rights and fundamental freedoms as they are enshrined in the European Convention of 4 November 1950.

49. One of the purposes of Article 5 is to safeguard the traditional right of asylum. Although in the member States of the Council of Europe of which all but one have ratified the European Convention on Human Rights, the prosecution, punishment or discrimination of a person on account of his race, religion, nationality or political opinion is unlikely to occur, it was deemed appropriate to insert this traditional clause also in this Convention; it is already contained in Article 3.2 of the European Convention on Extradition.

50. If, in a given case, the requested State has substantial grounds for believing that the real purpose of an extradition request, made for one of the offences mentioned in Article 1 or 2, is to enable the requesting State to prosecute or punish the person concerned for the political opinions he holds, the requested State may refuse extradition.

The same applies where the requested State has substantial grounds for believing that the person's position may be prejudiced for political or any of the other reasons mentioned in Article 5. This would be the case, for instance, if the person to be extradited would, in the requesting State, be deprived of the rights of defence as they are guaranteed by the European Convention on Human Rights.

51. It is obvious that a State applying this Article should provide the requesting State with reasons for its having refused to comply with the extradition request. It is by virtue of the same principle that Article 18.2 of the European Convention on Extradition provides that "reasons shall be given for any complete or partial rejection" and that Article 19 of the European Convention on Mutual Assistance in Criminal Matters states that "reasons shall be given for any refusal of mutual assistance".

52. If extradition is refused, Article 7 applies; the requested State must submit the case to its competent authorities for the purpose of prosecution.

#### *Article 6*

53. Paragraph 1 of Article 6 concerns the obligation on Contracting States to establish jurisdiction in respect of the offences mentioned in Article 1.

54. This jurisdiction is exercised only where:

– the suspected offender is present in the territory of the requested State, and

– that State does not extradite him after receiving a request for extradition from a Contracting State "whose jurisdiction is based on a rule of jurisdiction existing equally in the law of the requested State".

55. In order to comply with the second requirement there must be a correspondence between the rules of jurisdiction applied by the requesting State and by the requested State.

The principal effect of this limitation appears in relation to the differences in the principles of jurisdiction between those States whose domestic courts have, under their criminal law, jurisdiction over offences committed by nationals wherever committed and those where the competence of the domestic courts is based generally on the principle of territoriality (i. e. where the offence is committed within its own territory, including offences committed on ships, aircraft and offshore installations, treated as part of the territory). Thus, in the case where there has been a refusal of a request for extradition received from a State wishing to exercise its jurisdiction to try a national for an offence committed outside its territory, the obligation under Article 6 arises only if the law of the requested State also provides as a domestic rule of jurisdiction for the trial by its courts of its own nationals for offences committed outside its territory.

56. This provision is not to be interpreted as requiring complete correspondence of the rules of jurisdiction of the States concerned. Article 6 requires this correspondence only insofar as it relates to the circumstances and nature of the offence for which extradition was requested. Where, for example, the requested State has jurisdiction over some offences committed abroad by its own nationals, the obligation under Article 6 would arise if it refused extradition to a State wishing to exercise a similar jurisdiction in respect of any of those offences.

For example, the United Kingdom extradition arrangements are generally based on the territorial principle. Similarly the jurisdiction of the domestic courts is generally based on the territorial principle. In general there is no jurisdiction over offences committed by nationals abroad but there are certain exceptions, notably murder. Because of this jurisdictional limitation the United Kingdom in most cases cannot claim extradition of a national for an offence committed abroad. In the

reverse situation there would be no obligation for the United Kingdom under Article 6 arising from a request for extradition from a State able to exercise such a jurisdiction. If, however, the request was for extradition of a national for a murder falling under Article 1 and committed abroad, the obligation under Article 6 would apply because the United Kingdom has a similar jurisdiction in respect of this offence.

57. Paragraph 2 makes clear that any criminal jurisdiction exercised in accordance with national law is not excluded by the Convention.

58. In the case of a refusal to extradite in respect of an offence referred to in Article 2, the Convention contains neither obligation nor impediment for the requested State to take, in the light of the rules laid down in Articles 6 and 7, the measures necessary for the prosecution of the offender.

#### *Article 7*

59. Article 7 establishes an obligation for the requested State to submit the case to its competent authorities for the purpose of prosecution if it refuses extradition.

60. This obligation is subject to conditions similar to those laid down in paragraph 1 of Article 6: the suspected offender must have been found in the territory of the requested State which must have received a request for extradition from a Contracting State whose jurisdiction is based on a rule of jurisdiction existing equally in its own law.

61. The case must be submitted to the prosecuting authority without undue delay, and no exception may be invoked. Prosecution itself follows the rules of law and procedure in force in the requested State for offences of comparable seriousness.

#### *Article 8*

62. Article 8 deals with mutual assistance, within the meaning of the European Convention on Mutual Assistance in Criminal Matters, in connection with criminal proceedings concerning the offences mentioned in Articles 1 and 2. The Article lays down an obligation to grant assistance whether it concerns an offence under Article 1 or an offence under Article 2.

63. Under paragraph 1, Contracting States undertake to afford each other the widest measure of mutual assistance (first sentence); the wording of this provision was taken from Article 1.1 of the European Convention on Mutual Assistance in Criminal Matters. Mutual assistance granted in compliance with Article 8 is governed by the relevant law of the requested State (second sentence), but may not be refused on the sole ground that the request concerns an offence of a political character (third sentence), the description of the political character of the offence being the same as in Article 1 (cf. paragraphs 32 and 33 of this report).

64. Paragraph 2 repeats for mutual assistance the rule of Article 5. The scope and meaning of this provision being the same, the comments on Article 5 apply *mutatis mutandis* (cf. paragraphs 48 to 51 of this report).

65. Paragraph 3 concerns the Convention's effects on existing treaties and arrangements in the field of mutual assistance. It repeats the rules laid down in Article 3 for extradition treaties and arrangements (cf. paragraphs 45 and 46 of this report).

66. The principal consequence of paragraph 3 is the modification of Article 2.a of the European Convention on Mutual Assistance in Criminal Matters insofar as it permits refusal of assistance "if the request concerns an offence which the requested Party considers a political offence" or "an offence connected with a political offence". Consequently this provision and similar provisions in bilateral treaties on mutual assistance between Contracting Parties to this Convention can no longer be invoked in order to refuse assistance with regard to an offence mentioned in Articles 1 and 2.

#### Article 9

67. This Article which makes the European Committee on Crime Problems of the Council of Europe the guardian over the application of the Convention follows the precedents established in other European Conventions in the penal field as, for instance, in Article 28 of the European Convention on the Punishment of Road Traffic Offences, in Article 65 of the European Convention on the International Validity of Criminal Judgments, in Article 44 of the European Convention on the Transfer of Proceedings in Criminal Matters, and in Article 7 of the Additional Protocol to the European Convention on Extradition.

68. The reporting requirement which Article 9 lays down is intended to keep the European Committee on Crime Problems informed about possible difficulties in interpreting and applying the Convention so that it may contribute to facilitating friendly settlements and proposing amendments to the Convention which might prove necessary.

#### *Article 10*

69. Article 10 concerns the settlement, by means of arbitration, of those disputes over the interpretation or application of the Convention which have not been already settled through the intervention of the European Committee on Crime Problems according to Article 9.2.

70. The provisions of Article 10 which are self-explanatory provide for the setting up of an arbitration tribunal on the lines of Article 47.2 of the European Convention for the Protection of Animals during International Transport of 13 December 1968 where this system of arbitration was for the first time introduced.

#### *Articles 11 to 16*

71. These Articles are, for the most part, based on the model final clauses of agreements and conventions which were approved by the Committee of Ministers of the Council of Europe at the 113th meeting of Deputies. Most of these Articles do not call for specific comments, but the following points require some explanation.

72. *Article 13*, paragraph 1, allows Contracting States to make reservations in respect of the application of Article 1. The Convention thus recognises that a Contracting State might be impeded, e.g. for legal or constitutional reasons, from fully accepting the obligations arising from Article 1 whereby certain offences cannot be regarded as political for the purposes of extradition.

73. The offence or offences in respect of which the reservation is to apply should be stated in the declaration.

74. If a State avails itself of this possibility of making a reservation it can, in respect of the offences mentioned in Article 1, refuse extradition. Before deciding on the request for extradition it must, however, when evaluating the nature of the offence, take into due consideration a number of elements relative to the character and

effects of the offence in question which are enumerated by way of example in Article 13.1 paragraphs a to c. Having taken these elements into account the requested State remains free to grant or to refuse extradition.

75. These elements which describe some of the particularly serious aspects of the offence were drafted along the lines of paragraph 1 of the recommendation contained in Resolution (74) 3 of the Committee of Ministers.<sup>1</sup> As regards the phrase "collective danger to the life, physical integrity or liberty of persons" used in Article 13.1.a, examples have been given in paragraph 41 of this report.

76. If extradition is refused on the grounds of a reservation made in accordance with Article 13, Articles 6 and 7 apply.

77. Paragraph 3 of Article 13 which lays down the rule of reciprocity in respect of the application of Article 1 by a State having availed itself of a reservation, repeats the provisions contained in Article 26.3 of the European Convention on Extradition.

The rule of reciprocity applies equally to reservations not provided for in Article 13.

78. *Article 14* which is unusual among the final clauses of conventions elaborated within the Council of Europe aims at allowing any Contracting State to denounce this Convention in exceptional cases, in particular if in another Contracting State the effective democratic regime within the meaning of the European Convention on Human Rights is overthrown. This denunciation may, at the choice of the State declaring it, take effect immediately, i.e. as from the reception of the notification by the Secretary General of the Council of Europe, or at a later date.

79. *Article 15* which ensures that only Members of the Council of Europe can be Parties to the Convention is the consequence of the closed character of the Convention (cf. paragraph 29 of this report).

80. *Article 16* concerns notifications to member States. It goes without saying that the Secretary General must inform States also of any other acts, notifications and communications within the meaning of Article 77 of the Vienna Convention on the Law of Treaties<sup>2</sup> relating to the Convention and not expressly provided for by Article 16.

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1. See Appendix.

2. The Vienna Convention of 23 May 1969 has not yet entered into force.

## TEXT OF THE CONVENTION ON THE SUPPRESSION OF TERRORISM

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its Members;

Aware of the growing concern caused by the increase in acts of terrorism;

Wishing to take effective measures to ensure that the perpetrators of such acts do not escape prosecution and punishment;

Convinced that extradition is a particularly effective measure for achieving this result,

Have agreed as follows:

### *Article 1*

For the purposes of extradition between Contracting States, none of the following offences shall be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives:

a. an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970;

b. an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971;

c. a serious offence involving an attack against the life, physical integrity or liberty of internationally protected persons, including diplomatic agents;

d. an offence involving kidnapping, the taking of a hostage or serious unlawful detention;

e. an offence involving the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons;

f. an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

#### *Article 2*

1. For the purposes of extradition between Contracting States, a Contracting State may decide not to regard as a political offence or as an offence connected with a political offence or as an offence inspired by political motives a serious offence involving an act of violence, other than one covered by Article 1, against the life, physical integrity or liberty of a person.

2. The same shall apply to a serious offence involving an act against property, other than one covered by Article 1, if the act created a collective danger for persons.

3. The same shall apply to an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

#### *Article 3*

The provisions of all extradition treaties and arrangements applicable between Contracting States, including the European Convention on Extradition, are modified as between Contracting States to the extent that they are incompatible with this Convention.

#### *Article 4*

For the purposes of this Convention and to the extent that any offence mentioned in Article 1 or 2 is not listed as an extraditable offence in any extradition convention or treaty existing between Contracting States, it shall be deemed to be included as such therein.

*Article 5*

Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State has substantial grounds for believing that the request for extradition for an offence mentioned in Article 1 or 2 has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons.

*Article 6*

1. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over an offence mentioned in Article 1 in the case where the suspected offender is present in its territory and it does not extradite him after receiving a request for extradition from a Contracting State whose jurisdiction is based on a rule of jurisdiction existing equally in the law of the requested State.
2. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

*Article 7*

A Contracting State in whose territory a person suspected to have committed an offence mentioned in Article 1 is found and which has received a request for extradition under the conditions mentioned in Article 6, paragraph 1, shall, if it does not extradite that person, submit the case, without exception whatsoever and without undue delay, to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any offence of a serious nature under the law of that State.

*Article 8*

1. Contracting States shall afford one another the widest measure of mutual assistance in criminal matters in connection with proceedings brought in respect of the offences mentioned in Article 1 or 2. The law of the requested State concerning mutual assistance in criminal matters shall apply in all cases. Nevertheless this assistance may not be

refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

2. Nothing in this Convention shall be interpreted as imposing an obligation to afford mutual assistance if the requested State has substantial grounds for believing that the request for mutual assistance in respect of an offence mentioned in Article 1 or 2 has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion or that that person's position may be prejudiced for any of these reasons.

3. The provisions of all treaties and arrangements concerning mutual assistance in criminal matters applicable between Contracting States, including the European Convention on Mutual Assistance in Criminal Matters, are modified as between Contracting States to the extent that they are incompatible with this Convention.

#### *Article 9*

1. The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Convention.

2. It shall do whatever is needful to facilitate a friendly settlement of any difficulty which may arise out of its execution.

#### *Article 10*

1. Any dispute between Contracting States concerning the interpretation or application of this Convention, which has not been settled in the framework of Article 9, paragraph 2, shall, at the request of any Party to the dispute, be referred to arbitration. Each Party shall nominate an arbitrator and the two arbitrators shall nominate a referee. If any Party has not nominated its arbitrator within the three months following the request for arbitration, he shall be nominated at the request of the other Party by the President of the European Court of Human Rights. If the latter should be a national of one of the Parties to the dispute this duty shall be carried out by the Vice-President of the Court or, if the Vice-President is a national of one of the Parties to the

dispute, by the most senior judge of the Court not being a national of one of the Parties to the dispute. The same procedure shall be observed if the arbitrators cannot agree on the choice of referee.

2. The arbitration tribunal shall lay down its own procedure. Its decisions shall be taken by majority vote. Its award shall be final.

#### *Article 11*

1. This Convention shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2. The Convention shall enter into force three months after the date of the deposit of the third instrument of ratification, acceptance or approval.

3. In respect of a signatory State ratifying, accepting or approving subsequently, the Convention shall come into force three months after the date of the deposit of its instrument of ratification, acceptance or approval.

#### *Article 12*

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Convention shall apply.

2. Any State may, when depositing its instrument of ratification, acceptance or approval or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.

3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn by means of a notification addressed to the Secretary General of the Council of Europe. Such withdrawal shall take effect immediately or at such later date as may be specified in the notification.

*Article 13*

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, declare that it reserves the right to refuse extradition in respect of any offence mentioned in Article 1 which it considers to be a political offence, an offence connected with a political offence or an offence inspired by political motives, provided that it undertakes to take into due consideration, when evaluating the character of the offence, any particularly serious aspects of the offence, including:

a. that it created a collective danger to the life, physical integrity or liberty of persons; or

b. that it affected persons foreign to the motives behind it; or

c. that cruel or vicious means have been used in the commission of the offence.

2. Any State may wholly or partly withdraw a reservation it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.

3. A State which has made a reservation in accordance with paragraph 1 of this article may not claim the application of Article 1 by any other State; it may, however, if its reservation is partial or conditional, claim the application of that article in so far as it has itself accepted it.

*Article 14*

Any Contracting State may denounce this Convention by means of a written notification addressed to the Secretary General of the Council of Europe. Any such denunciation shall take effect immediately or at such later date as may be specified in the notification.

*Article 15*

This Convention ceases to have effect in respect of any Contracting State which withdraws from or ceases to be a Member of the Council of Europe.

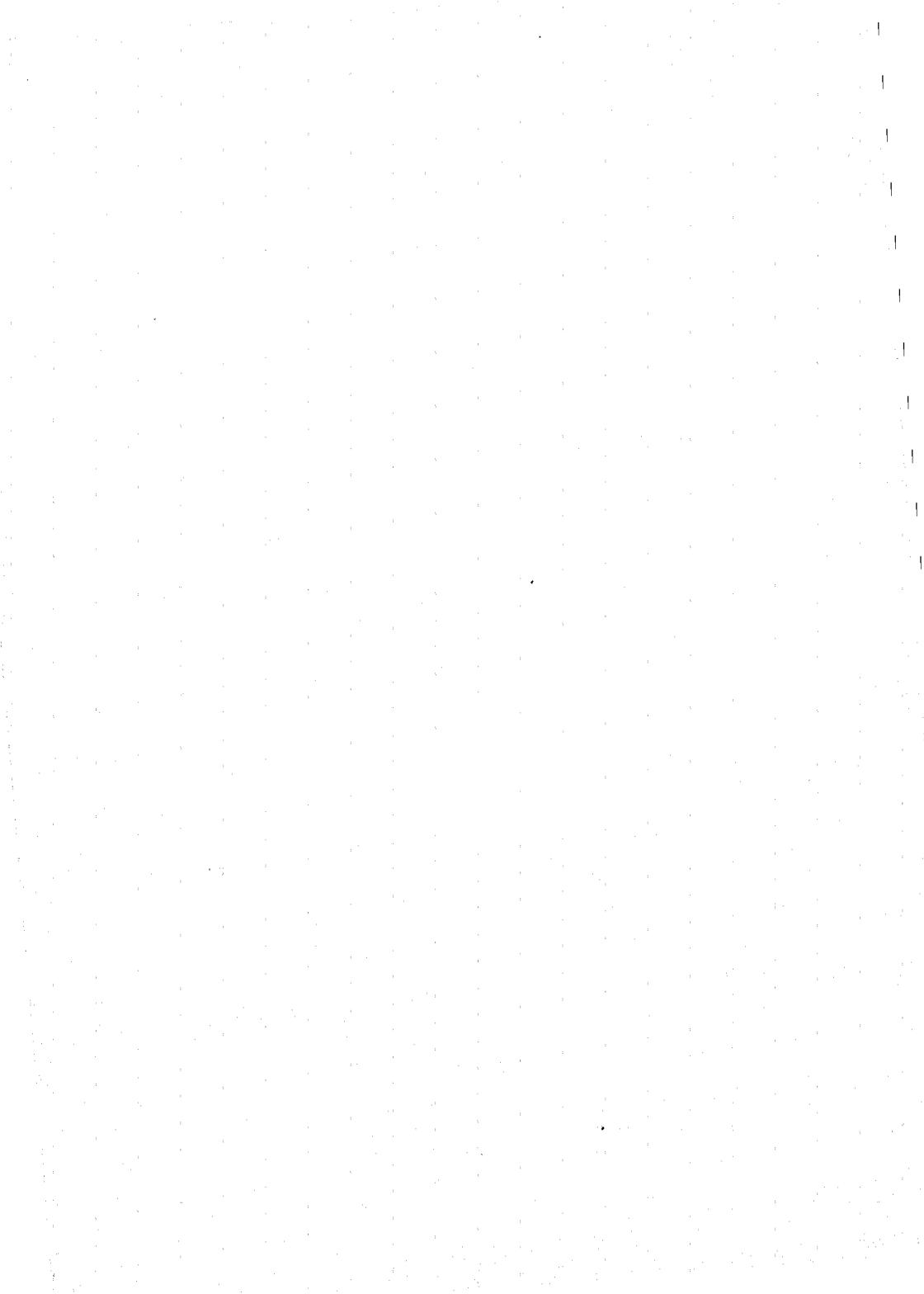
*Article 16*

The Secretary General of the Council of Europe shall notify the member States of the Council of:

- a. any signature;
- b. any deposit of an instrument of ratification, acceptance or approval;
- c. any date of entry into force of this Convention in accordance with Article 11 thereof;
- d. any declaration or notification received in pursuance of the provisions of Article 12;
- e. any reservation made in pursuance of the provisions of Article 13, paragraph 1;
- f. the withdrawal of any reservation effected in pursuance of the provisions of Article 13, paragraph 2;
- g. any notification received in pursuance of Article 14 and the date on which denunciation takes effect;
- h. any cessation of the effects of the Convention pursuant to Article 15.

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

Done at Strasbourg, this 27th day of January 1977, in English and in French, both texts being equally authoritative, 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 each of the signatory States.



## APPENDIX

### **Resolution (74) 3**

#### **on international terrorism**

*(Adopted by the Committee of Ministers on 24 January 1974  
at its 53rd Session)*

The Committee of Ministers,

Considering the recommendations of the Consultative Assembly on international terrorism and in particular Recommendation 703 (1973);

Aware of the growing concern caused by the multiplication of acts of international terrorism which jeopardise the safety of persons;

Desirous that effective measures be taken in order that the authors of such acts do not escape punishment;

Convinced that extradition is a particularly effective measure for achieving this result and that the political motive alleged by the authors of certain acts of terrorism should not have as a result that they are neither extradited nor punished,

Recommends that governments of member states be guided by the following principles:

1. When they receive a request for extradition concerning offences covered by the Conventions of The Hague for the suppression of unlawful seizure of aircraft and of Montreal for the suppression of unlawful acts against the safety of civil aviation, offences against diplomatic agents and other internationally protected persons, the taking of hostages or any terrorist act, they should, when applying international agreements or conventions on the subject, and

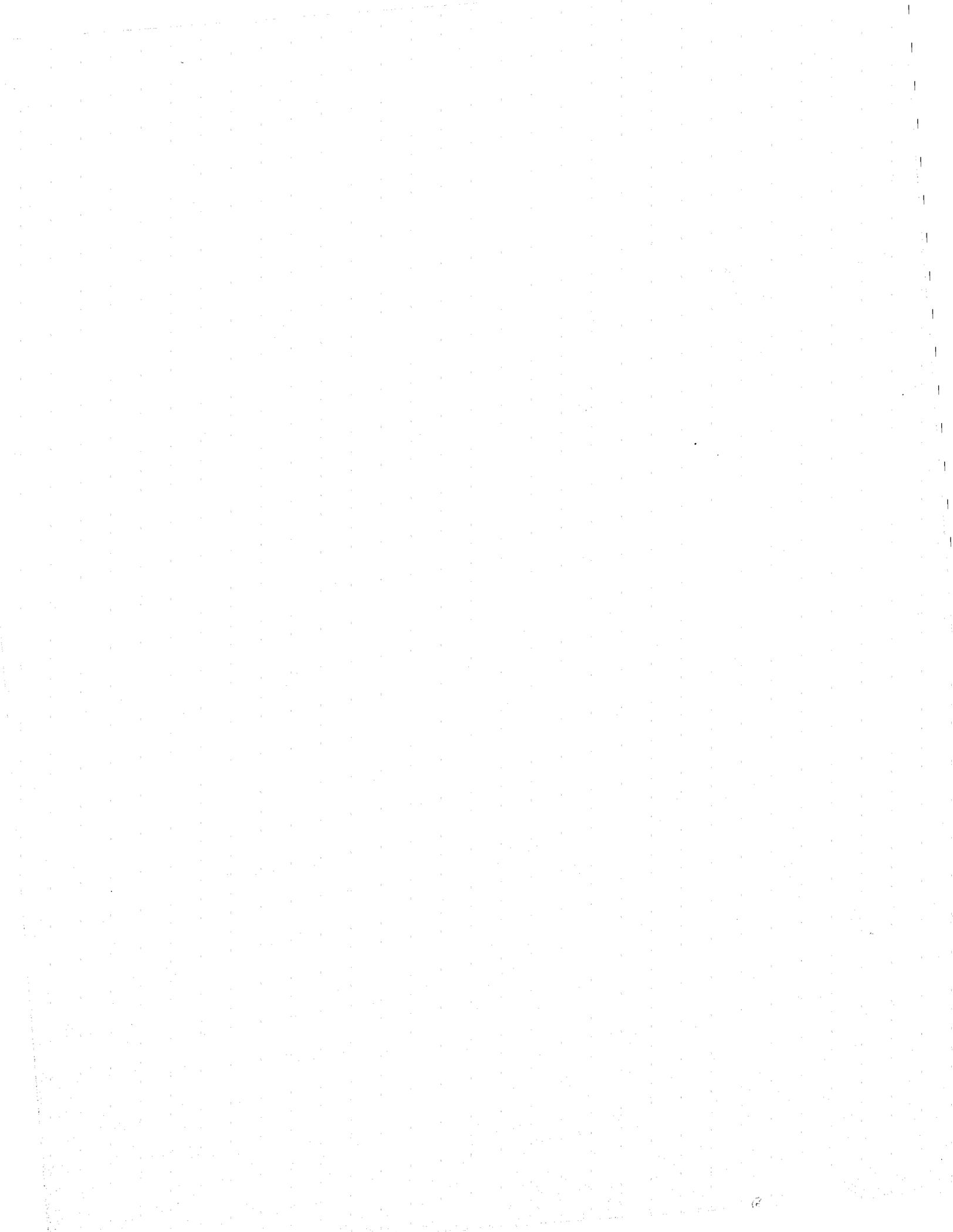
especially the European Convention on Extradition, or when applying their domestic law, take into consideration the particularly serious nature of these acts, inter alia:

- when they create a collective danger to human life, liberty or safety;
- when they affect innocent persons foreign to the motives behind them;
- when cruel or vicious means are used in the commission of those acts.

2. If it refuses extradition in a case of the kind mentioned above and if its jurisdiction rules permit, the government of the requested state should submit the case to its competent authorities for the purpose of prosecution. Those authorities should take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that state.

3. The governments of member states in which such jurisdiction is lacking should envisage the possibility of establishing it.

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**END**