

**No. 11715**

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**FRANCE  
and  
MADAGASCAR**

**Agreement on co-operation in judicial matters (with annexes).  
Signed at Tananarive on 27 June 1960**

*Authentic text : French.*

*Registered by France on 19 April 1972.*

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**FRANCE  
et  
MADAGASCAR**

**Accord de coopération en matière de justice (avec annexes). Signé  
à Tananarive le 27 juin 1960**

*Texte authentique : français.*

*Enregistré par la France le 19 avril 1972.*

[TRANSLATION — TRADUCTION]

AGREEMENT<sup>1</sup> ON CO-OPERATION IN JUDICIAL MATTERS  
BETWEEN THE FRENCH REPUBLIC AND THE MALAGASY  
REPUBLIC

The Government of the French Republic and the Government of the Malagasy Republic,

Considering that under the terms of the joint declaration of 26 April 1960\* the Malagasy Republic has acceded to independence and that the French Republic has recognized it as an independent and sovereign State,

Considering that the Malagasy Republic has stated its intention to co-operate with the French Republic within the Community, in which it shall henceforth participate under the conditions laid down in the Franco-Malagasy agreements of today's date,<sup>2</sup>

Considering the similarity of the general principles underlying the legislation, judicial organization and status of judicial personnel of the French Republic and the Malagasy Republic, which are devoted to the same ideal of justice and liberty,

Considering their common desire to maintain and strengthen the ties which link them in the legal and judicial fields as in others,

Have agreed as follows :

*Article 1*

The courts of cassation of the Malagasy Republic shall have exclusive competence to review decisions rendered by Malagasy courts of justice and administrative courts.

*Article 2*

In order that the Malagasy Republic may ensure the operation of its courts, the French Government undertakes, in so far as possible, to make available to the Malagasy Government the judicial personnel it requires.

Such personnel shall be made available within the framework of the Franco-Malagasy Agreement of 22 July 1959 concerning the employment of judicial personnel.

\* Should read : " 26 June 1960 ".

<sup>1</sup> Came into force on 18 July 1960, the date of the last of the communications by which each Contracting Party notified the other of the completion of the procedures required under its Constitution, in accordance with article 10.

<sup>2</sup> See pp. 241, 247, 273, 291, 335, 343, 349, 357 and 363 of this volume.

The French Republic shall co-operate closely with the Malagasy Republic in the training of future judicial personnel and the organization of training courses for judicial personnel.

*Article 3*

The French Republic and the Malagasy Republic shall initiate a regular exchange of information concerning judicial organization, legislation and judicial decisions.

*Article 4*

In the absence of Malagasy texts, French laws and regulations in force in Madagascar on the date when this Agreement takes effect shall continue to be applied by the Malagasy courts.

*Article 5*

The French Republic and the Malagasy Republic undertake to adopt all appropriate measures to harmonize their respective bodies of trade law to the extent consistent with the requirements arising from their special circumstances.

*Article 6*

Any French national who has been sentenced by a Malagasy court to a term of imprisonment of more than one year or to a more severe penalty shall be surrendered to the French authorities if the French Government so requests the Malagasy Government.

Any Malagasy national who has been sentenced by a French court to a term of imprisonment of more than one year or to a more severe penalty shall be surrendered to the Malagasy authorities if the Malagasy Government so requests the French Government.

*Article 7*

Judicial documents relating to the implementation of this Agreement and its annexes shall be transmitted, save as otherwise provided herein, directly between the Ministers of Justice of the two States.

*Article 8*

The courts of justice of each State shall have exclusive competence to deal with disputes in which the principal issue is that of establishing whether an individual is a national of that State.

*Article 9*

The rules applicable as between the Contracting Parties in the matter of reciprocal legal assistance, grants of execution and simplified extradition shall be laid down in annexes.

*Article 10*

Each Contracting Party shall notify the other of the completion of the procedures required under its Constitution for the entry into force of this Agreement and its annexes, which shall take effect on the date of the second such notification.

DONE at Tananarive, on 27 June 1960.

For the Government  
of the French Republic :  
J. FOYER

For the Government  
of the Malagasy Republic :  
[P. TSIRANANA]

*AGREEMENT ON CO-OPERATION IN JUDICIAL MATTERS*

## ANNEX I

## RECIPROCAL LEGAL ASSISTANCE

## TITLE I

## TRANSMITTAL AND SERVICE OF WRITS AND EXTRA-JUDICIAL DOCUMENTS

*Article 1*

Writs and extra-judicial documents, both in civil and commercial and in criminal and administrative matters, which are to be served on persons resident in the territory of one of the Contracting Parties shall be transmitted direct by the competent authority to the *parquet* having jurisdiction over the person on whom the document is to be served.

The provisions of this article shall be without prejudice to the right of the Contracting Parties to cause writs and extra-judicial documents addressed to their own nationals to be served direct by their representatives or deputies. Where there is a conflict between the legislation of the two countries, the nationality of the addressee shall be determined by the law of the State in which service is to be effected.

*Article 2*

If the requested authority is not the competent body, it shall automatically transmit the document to the competent authority and so inform the requesting authority forthwith.

*Article 3*

The requested authority shall confine itself to having the document served on the addressee.

If the addressee accepts it voluntarily, proof of service shall consist either of a dated receipt signed by him or of a certificate by the requested authority confirming that service has been effected and indicating the manner and date thereof. One or the other of these documents shall be sent to the requesting authority.

If the addressee refuses to accept the document, the requested authority shall return it to the requesting authority forthwith, stating the reason why service could not be effected.

*Article 4*

The cost of serving writs and extra-judicial documents shall not be refunded.

*Article 5*

The provisions of the preceding articles shall, in civil and commercial matters, be without prejudice to the right of interested parties resident in the territory of one of the Contracting Parties to have documents served on persons in one of the States through law officials.

## TITLE II

## TRANSMITTAL AND EXECUTION OF LETTERS ROGATORY

*Article 6*

Letters rogatory, both in civil and commercial and in criminal and administrative matters, which are to be executed in the territory of one of the Contracting Parties shall be executed by the judicial authorities.

They shall be sent direct to the competent *parquet*. If the requested authority is not the competent body, it shall automatically transmit the letter rogatory to the competent authority and so inform the requesting authority forthwith.

The provisions of this article shall be without prejudice to the right of the Contracting Parties to cause letters rogatory concerning the hearing of their nationals to be executed direct by their representatives or deputies. Where there is a conflict between the legislation of the two countries, the nationality of the person in respect of whom the hearing is requested shall be determined by the law of the State in which the letter rogatory is to be executed.

*Article 7*

The requested authority may refuse to execute a letter rogatory if, under its national legislation, the letter rogatory does not fall within its competence or is liable to impair the sovereignty, security or public policy of the State in which it is to be executed.

*Article 8*

Persons whose testimony is requested shall be invited to appear by a regular administrative notice; if they refuse to comply with such notice, the requested authority shall employ the means of coercion provided for in the legislation of the State in which they are to appear.

*Article 9*

The requested authority shall, at the express wish of the requesting authority :

- (1) Execute the letter rogatory by means of a special formality, if that formality does not conflict with the legislation of the State in which the letter rogatory is to be executed;
- (2) Inform the requesting authority in good time of the date and place of execution of the letter rogatory, so that the interested parties may be present in accordance with the legislation of the State of the requested authority.

*Article 10*

The execution of letters rogatory shall not give rise to the refunding of any costs with the exception of experts' fees.

## TITLE III

## APPEARANCE OF WITNESSES IN CRIMINAL MATTERS

*Article 11*

If, in a criminal case, the personal appearance of a witness is necessary, the Government of the State in which he is resident shall urge him to accept the invitation extended to him. If he does, his travel expenses and subsistence allowance, which shall be calculated from his place of residence, shall be at least equal to those provided for under the scales and regulations in force in the State in which the hearing is to take place; at his request, he shall be advanced all or part of the travel expenses by the consular authorities of the State of the requesting authority.

No witness who is summoned in one of the two States and voluntarily appears before the judicial authorities of the other State may be prosecuted or detained in the latter State for offences or convictions antedating his departure from the territory of the State of the requested authority. This immunity shall cease 30 days after the date on which the testimony has been completed and/or the return of the witness has become possible.

*Article 12*

Requests for the sending of witnesses who are in custody shall be addressed direct to the competent *parquet*.

Such requests shall be compiled with, unless there are special objections, on the understanding that the said persons in custody will be returned promptly.

## TITLE IV

## JUDICIAL RECORDS

*Article 13*

The Contracting Parties shall report to each other all sentences entered in the judicial records which were imposed by their respective courts on nationals of the other Party and on persons born in the territory of the other State.

*Article 14*

In proceedings before a court of one of the Contracting Parties, the *parquet* of that court may obtain direct from the competent authorities of the other Party an extract from the judicial records relating to the person against whom the proceedings are being taken.

*Article 15*

Where, other than in the case of proceedings, the judicial or administrative authorities of one of the Contracting Parties wish to receive an extract from the judicial records of the other Party, they may obtain it direct from the competent authorities, in the instances and within the limits prescribed in the legislation of the other Party.

## TITLE V

## CIVIL REGISTER AND AUTHENTICATION

*Article 16*

The French Government shall, at the times specified below, transmit to the Malagasy Government a copy or the original of certificates of civil registration and, in particular, certificates of recognition of natural children, marriage certificates, death certificates and certificates of legitimation issued in the territory of the French Republic, as well as extracts of judgements and decisions rendered in that territory in matters of divorce, separation, filiation, civil registration and deprivation of legal capacity which concern persons born in the territory of the Malagasy Republic.

Extracts of judgements and decisions rendered in matters of divorce and separation shall also be transmitted to the Malagasy Government when they concern persons who were married in Madagascar.

Each quarter, copies and extracts of such documents, certificates, judgements and decisions issued or rendered during the preceding quarter shall be transmitted by the French Government to the Malagasy Government.

The Malagasy Government shall enter in the civil register appropriate particulars from such copies and extracts in the margin of the birth or marriage certificates of the persons concerned. In the absence of a grant of execution, particulars of judgements and decisions shall be included merely for information purposes.

#### *Article 17*

The Malagasy Government shall, at the times specified below, transmit to the French Government a copy or the original of certificates of civil registration and, in particular, certificates of recognition of natural children, marriage certificates, death certificates and certificates of legitimation issued in Madagascar, as well as extracts of judgements and decisions rendered in Madagascar in matters of divorce, separation, filiation, civil registration and deprivation of legal capacity which concern persons born in the territory of the French Republic.

Extracts of judgements and decisions rendered in matters of divorce and separation shall also be transmitted to the French Government when they concern persons who were married in the territory of the French Republic.

Each quarter, copies and extracts of such documents, certificates, judgements and decisions issued or rendered during the preceding quarter shall be transmitted by the Malagasy Government to the French Government.

The French Government shall enter in the civil register appropriate particulars from such copies and extracts in the margin of the birth or marriage certificates of the persons concerned. In the absence of a grant of execution, particulars of judgements and decisions shall be included merely for information purposes.

#### *Article 18*

The competent French and Malagasy authorities shall issue free of charge copies of extracts from the civil register made out in the respective territories of the two States, when so requested, for a duly specified administrative reason or for needy nationals.

They shall also issue free of charge copies of extracts from the civil register made out in the respective territories of the two States, where such extracts relate to aliens who are nationals of a third country and are requested for a duly specified administrative reason.

Extracts from the civil register made out or transcribed at diplomatic and consular posts shall be deemed to be equivalent to extracts from the civil register made out in the respective territories of the two States.

The fact that copies of extracts from the civil register have been issued shall in no way prejudice the question of the nationality of the person concerned in so far as the two States are concerned.



*Article 19*

Requests made by the French authorities and by the Malagasy authorities respectively shall be transmitted to the local Malagasy authorities and to the local French authorities by the representatives of the Contracting Parties or their deputies for the territory.

Requests shall state briefly the grounds on which they are made.

*Article 20*

Extracts from the civil register, as referred to in articles 18 and 19 above, shall mean :

- Birth certificates;
- Declarations of still births;
- Certificates of recognition of natural children made out by civil registrars;
  
- Certificates of legitimation;
- Marriage certificates;
- Death certificates;
- Transcripts of judgements or decisions relating to divorce and separation;
- Transcripts of court orders, judgements or decisions in matters relating to the civil register.

*Article 21*

The following documents, made out by the authorities in either State, shall be accepted, without the necessity of authentication, in the respective territories of the French Republic and the Malagasy Republic :

- Copies of extracts from the civil register, as enumerated in article 20 above;
  
- Copies of decisions, orders, judgements and other judicial documents of the French and Malagasy courts;
- Affidavits, written statements or other judicial documents registered or filed in the said courts;
- Notarized documents;
- Certificates of entitlement for annuitants.

The foregoing documents shall bear the signature and the official seal of the authority competent to issue them and, in the case of copies, shall be certified as true copies of the original by the said authority. In all cases, they shall be made out in such a way as to establish their authenticity.

J. FOYER

[P. TSIRANANA]

## AGREEMENT ON CO-OPERATION IN JUDICIAL MATTERS

## ANNEX II

## GRANT OF EXECUTION

*Article 1*

In civil and commercial matters, decisions in adversary and non-adversary proceedings rendered by the courts in the territory of the French Republic and the territory of the Malagasy Republic shall automatically have the force of *res judicata* in the territory of the other State provided that they satisfy the following conditions :

- (a) The decision was rendered by a court competent under the rules concerning conflicts of jurisdiction which are accepted in the State in which the decision is to be executed;
- (b) The decision applies the law applicable to the dispute under the rules for the solution of conflicts of legislation accepted in the State in which the decision is to be executed;
- (c) The decision has, under the law of the State in which it was rendered, acquired the force of *res judicata* and is enforceable;
- (d) The parties have been duly summoned, represented or declared in default;
- (e) The decision contains nothing contrary to the public policy of the State in which it is invoked and does not conflict with a judicial decision which has been rendered in that State and has the force of *res judicata*.

*Article 2*

The decisions referred to in the preceding article may give rise to measures of distraint by the authorities of the other State or be the subject of a formal procedure initiated by those authorities, for example, by entries, transcripts or corrections in the civil register, only if they have been declared in that State to be enforceable.

*Article 3*

Execution shall, irrespective of the value in dispute, be granted by the president of the *tribunal de grande instance* or corresponding court at the place where the decision is to be executed.

The president shall consider the case and make his ruling in the manner prescribed for summary proceedings (*référés*).

The ruling shall be subject to appeal only to the Court of Cassation.

*Article 4*

The president shall confine himself to establishing whether the decision for which a grant of execution is requested satisfies the conditions laid down in article 1 in order for it to have automatically the force of *res judicata*.

He shall automatically proceed with such an examination and report the outcome in his ruling.

He shall, where necessary, order the requisite measures to ensure that the decision for which execution is granted is publicized in the same way as if it had been rendered in the State in which it is declared enforceable.

Execution may be granted for only part of the decision invoked.

#### *Article 5*

The ruling granting execution shall be binding on all parties concerned and throughout the territory to which this annex applies.

The ruling granting execution shall, as from the date on which the grant of execution is obtained, make it possible for the decision which has been rendered enforceable to have, in so far as enforcement measures are concerned, the same effect as if it had been rendered by the court which has granted execution on the date on which execution was granted.

#### *Article 6*

The party to the proceedings which invokes the authority of a judicial decision or requests execution thereof shall produce :

- (a) A duly certified copy of the decision;
- (b) The original of the certificate of service of the decision or of any other equivalent document;
- (c) A certificate of the competent clerk of court establishing that there is no objection to or appeal against the decision;
- (d) Where applicable, a copy of the summons served on the defaulting party, certified as a true copy by the clerk of the court which rendered the decision.

#### *Article 7*

Arbitral awards rendered in either State shall be recognized and enforced in the other State in accordance with the provisions of the New York Convention of 10 June 1958<sup>1</sup> on the Recognition and Enforcement of Foreign Arbitral Awards.

#### *Article 8*

Legal instruments, including notarized documents, which are enforceable in either State shall be declared enforceable in the other State by the competent authority in accordance with the law of the State in which it is to be executed.

The said authority shall merely ascertain whether the instruments meet the requirements for authenticity in the State in which they have been received and whether enforcement of their provisions is contrary to the public policy of the State where execution is requested or to the principles of public law applicable in that State.

<sup>1</sup> United Nations, *Treaty Series*, vol. 330, p. 3.

*Article 9*

The following shall be considered competent, within the meaning of article 1 (a) above, to deal with litigation :

- In matters of personal status and in personal and movable property matters : the courts of the State in which the defendant has his domicile or, in the absence thereof, in which he is resident;
- In matters of contracts : the court which the two parties have duly agreed to recognize, expressly and separately, for each contract; in the absence of such recognition, the courts of the State in which the contract was concluded and, in commercial matters, of the State in which the contract is to be executed;
- In matters of delicts or quasi-delicts : the courts of the State in which the tort occurred;
- In matters of alimony : the courts of the State in which the plaintiff has his domicile;
- In matters of succession : the courts of the State in which the succession is contested;
- In matters of immovable property : the courts of the State in which the immovable property is situated.

*Article 10*

In the case of proceedings relating to obligations arising out of a contract or quasi-contract or a delict or quasi-delict, the rules by which the legislation of either State declares its courts competent solely by virtue of the nationality of the plaintiff and without any other grounds for competence shall not apply to nationals of the other State in the following cases :

- (1) Where the defendant has his domicile or is resident in the State of which he is a national;
- (2) Where the obligation arises or is to be discharged in the State of which the defendant is a national.

This provision shall automatically be applied by the courts of the two States.

J. FOYER

[P. TSIRANANA]

*AGREEMENT ON CO-OPERATION IN JUDICIAL MATTERS*

## ANNEX III

## SIMPLIFIED EXTRADITION

*Article 1*

The Contracting Parties undertake to surrender to each other, in accordance with the rules and conditions laid down in this annex, persons in the territory of either

State who are the subject of proceedings or have been sentenced by the judicial authorities of the other State.

#### Article 2

The Contracting Parties shall not extradite their own nationals. Nationality shall mean the nationality at the time of commission of the offence for which extradition is requested.

The requested Party undertakes, however, in so far as it is competent to try them, to institute proceedings against any of its own nationals who, in the territory of the other State, have committed offences which are punishable as crimes or correctional offences in the two States, when it has received from the other Party a request for the institution of proceedings accompanied by the files, documents, exhibits and information in its possession. The requesting Party shall be informed of the result of its request.

#### Article 3

The following shall be subject to extradition :

- (1) Persons against whom proceedings are being taken for crimes or correctional offences punishable under the law of the Contracting Parties by at least one year's imprisonment;
- (2) Persons who, for crimes or correctional offences punishable under the law of the requested State, are sentenced *audiatur et altera pars* or in default by the courts of the requesting State to at least two months' imprisonment.

#### Article 4

Extradition may be refused if the offence for which it is requested is regarded by the requested Party as a political offence or as an offence allied to a political offence.

#### Article 5

Extradition shall be granted, under the conditions laid down in this annex, in matters relating to taxes, duties, customs and foreign exchange, when so decided by a simple exchange of letters for each specially designated offence or category of offences.

#### Article 6

Extradition shall be refused :

- (a) If final judgement on the offences has been rendered in the requested State;
- (b) If the act or the sentence falls under the statute of limitations in accordance with the legislation of the requesting State or of the requested State at the time of the latter's receipt of the request;

- (c) If the offences have been committed outside the territory of the requesting State by a person who is not a national of that State and the legislation of the requested State does not authorize proceedings in connexion with such offences when they are committed outside its territory by an alien;
- (d) If an amnesty has been declared in the requesting State or if an amnesty has been declared in the requested State, provided, in the latter case, that the offence is one for which proceedings may be instituted in that State when it has been committed outside the territory of that State by an alien.

Extradition may be refused if the offences are the subject of proceedings in the requested State or judgement on them has been rendered in a third State.

#### Article 7

The request for extradition shall be addressed direct to the competent *parquet* of the requested State.

It shall be accompanied by the original or a certified copy of either an enforceable sentence or a warrant of arrest or other document having the same force and issued in the manner prescribed by the law of the requesting State.

The acts in respect of which extradition is requested, the time, place and circumstances of their commission, their designation and references to the legal provisions applicable thereto shall be stated as accurately as possible. A copy of such provisions shall also be attached and, so far as possible, the particulars of the person claimed and any information which will help to establish his identity and nationality.

#### Article 8

In urgent cases, provisional arrest shall be made at the request of the competent authorities of the requesting State, pending receipt of the request for extradition and the documents referred to in the second and third paragraphs of article 7.

A request for provisional arrest shall be sent to the competent authorities of the requested State either direct by post or telegraph or by any other means affording evidence in writing.

It shall state that one of the documents mentioned in the second paragraph of article 7 exists and that it is intended to send a request for extradition. It shall state the offence in respect of which extradition is requested, when and where it was committed and the particulars of the person claimed. The requesting authority shall be informed without delay of the result of its request.

#### Article 9

Provisional arrest may be terminated if, within a period of 20 days after the arrest, the requested authority has not received any of the documents mentioned in the second paragraph of article 7.

Release shall not preclude recourse to the extradition procedures laid down in this annex if a request for extradition is received subsequently.

*Article 10*

Within 24 hours of receipt of the documents produced in support of the request for extradition, the public prosecutor of the Republic shall notify the person concerned of the provision under which the arrest will take place.

*Article 11*

Within a maximum of eight days from such notification, the person concerned shall appear before the court. There shall be an interrogation of which a record shall be made. The hearing shall be public. The public prosecutor and the person concerned shall be heard. The latter may be assisted by counsel and by an interpreter. He may be conditionally released at any time during the proceedings.

*Article 12*

If, during his hearing, the person concerned waives the benefit of the provisions of this annex and formally consents to be surrendered to the authorities of the requesting State, the court shall duly record his statement to that effect.

The public prosecutor of the Republic shall then take all necessary steps to ensure that the person concerned is surrendered to the authorities of the requesting State as soon as possible.

*Article 13*

If the person concerned does not make such a waiver, the court shall render an opinion on the request for extradition, stating its grounds. It shall render an unfavourable opinion if it considers that the legal conditions have not been fulfilled or that there is an obvious error.

The file shall be transmitted to the Minister of Justice within eight days from the expiration of the time-limit specified in article 11.

*Article 14*

After taking note of the court's opinion, the Minister of Justice shall decide whether or not to surrender the person concerned to the authorities of the requesting State. Should he decide to do so, he shall issue an order authorizing extradition.

*Article 15*

Where supplementary information is essential to ensure that the conditions laid down in this annex are fulfilled, the authorities of the requested State, when they feel that the omission can be rectified, shall advise the authorities of the requesting State before they refuse the request. A time-limit may be set by the authorities of the requested State for the receipt of such information.

*Article 16*

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

*Article 17*

When there are grounds for extradition, all property which may serve as evidence or has been acquired as a result of the offence and is found at the time of his arrest in the possession of the person claimed, or is discovered subsequently, shall, at the request of the authorities of the requesting State, be confiscated and handed over to those authorities.

Property may be handed over even if extradition cannot take place as a result of the escape or death of the person claimed.

Rights to such property acquired by third persons shall, however, not be affected; such property shall, where such rights exist, be returned as soon as possible and without charge to the requested State upon the completion of proceedings in the requesting State.

If they deem such action necessary in connexion with criminal proceedings, the authorities of the requested State may temporarily retain the confiscated property.

When transmitting it, they may reserve the right to request its return for the same purpose, while undertaking to send it back as soon as possible.

*Article 18*

The requested State shall inform the requesting State of its decision with regard to extradition.

Reasons shall be given for any complete or partial refusal.

If the request is agreed to, the requesting State shall be informed of the place and date of surrender. Unless otherwise agreed, the person extradited shall be conducted by the requested State to the place designated by the requesting State.

Except as provided for in the last paragraph of this article, the requesting State shall have its agents accept the person to be extradited within a period of one month from the date determined in accordance with the third paragraph of this article. Once that period has expired, the person in question shall be released and cannot be claimed again for the same offence.

If exceptional circumstances prevent the person who is to be extradited from being surrendered or accepted, the State pleading such circumstances shall inform the other State before the period expires. The two States shall agree on another date for surrender, and the provision of the preceding paragraph shall apply.

*Article 19*

If the person claimed is the subject of proceedings or has been sentenced in the requested State for an offence other than the one giving rise to the request for extradition, that State shall none the less rule on the request and inform the requesting State



of its decision regarding extradition. If the request is agreed to, surrender shall, however, be deferred until the legal requirements of the requested State have been met.

Surrender shall take place in accordance with the provisions of article 18.

The provisions of this article shall not prevent the person concerned from being sent to appear before the judicial authorities of the requesting State, on the express condition that he shall be returned once those authorities have rendered their judgement.

#### *Article 20*

A person who has been extradited may not be the subject of proceedings or be sentenced or detained for the purpose of carrying out a sentence for any offence committed prior to his surrender other than the offence which has given rise to the extradition, except in the following cases :

- (1) When the person who is extradited, having been free to leave the territory of the State to which he has been surrendered, has not done so within 30 days of his final discharge, or has returned to that territory after leaving it;
- (2) When the State which has surrendered him consents.

A request for consent shall be submitted, accompanied by the documents referred to in the second paragraph of article 7 and by a legal record containing any statement by the extradited person on the extension of the extradition and mentioning the opportunity afforded him to submit a memorandum in his own defence to the authorities of the requested State.

When the designation of the offence is altered in the course of the proceedings, the person extradited shall be the subject of proceedings or sentenced only in so far as the factors constituting the newly designated offence would permit extradition.

#### *Article 21*

Except in cases where the person concerned has remained in or has returned to the territory of the requesting State under the conditions laid down in the preceding article, the consent of the requested State shall be required to enable the requesting State to hand over the person surrendered to it to a third State.

#### *Article 22*

Extradition involving transit through the territory of one Contracting Party of a person surrendered to the other Party shall be granted at the request of the requesting State. The documents necessary to establish that the offence gives rise to extradition shall be furnished in support of such a request. The conditions laid down in article 3 with regard to the length of sentences shall be disregarded.

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

- (1) When a stop-over is scheduled, the requesting State shall submit a request for the transit of the person concerned to the State in whose territory the stop-over is to take place.

When the State of which transit is requested also requests extradition of the person concerned, transit may be interrupted until such time as the person claimed has fulfilled the requirements of the law of that State.

- (2) When no stop-over is scheduled, the requesting State shall notify the State over whose territory the flight is to be made and shall certify that one of the documents mentioned in the second paragraph of article 7 exists.

In the case of an unscheduled landing, such notification shall have the effect of a request for provisional arrest as referred to in article 8 and the requesting State shall submit a request for transit under the conditions laid down in the first paragraph of this article.

#### *Article 23*

Expenses arising out of the application of the provisions of this annex, with the exception of the costs of proceedings or of imprisonment, shall be borne by the requesting State.

J. FOYER

[P. TSIRANANA]