No. 23442

BELGIUM and ROMANIA

Convention relating to extradition and judicial assistance in criminal matters (with exchange of letters and additional protocol of 26 March 1982). Signed at Bucharest on 14 October 1976

Authentic texts: Dutch, French and Romanian. Registered by Belgium on 10 July 1985.

BELGIQUE et ROUMANIE

Convention relative à l'extradition et à l'entraide judiciaire en matière pénale (avec échange de lettres et protocole additionnel du 26 mars 1982). Signée à Bucarest le 14 octobre 1976

Textes authentiques : néerlandais, français et roumain. Enregistrée par la Belgique le 10 juillet 1985. [TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE KINGDOM OF BELGIUM AND THE SOCIALIST REPUBLIC OF ROMANIA RELATING TO EXTRADITION AND JUDICIAL ASSISTANCE IN CRIMINAL MATTERS

His Majesty the King of the Belgians and

The President of the Socialist Republic of Romania,

Desiring to contribute to the development of friendly relations between the two countries on the basis of the principles of respect for sovereignty and national independence, non-interference in internal affairs, equal rights and reciprocal benefits; desiring to regulate by common agreement questions relating to extradition and judicial assistance in criminal matters,

Have decided to conclude this Convention and have appointed as their plenipotentiaries for this purpose:

- His Majesty the King of the Belgians: Mr. Renaat Van Elslande, Minister for Foreign Affairs,
- The President of the Socialist Republic of Romania: Mr. George Macovescu, Minister for Foreign Affairs,

who, having exchanged their full powers, recognized in good and due form, have agreed on the following provisions:

TITLE I. EXTRADITION

Article 1. The Contracting Parties undertake to surrender to each other, in accordance with the conditions laid down in this Convention, persons in the territory of either State who are being proceeded against by the judicial authorities of the other State in respect of an offence or who are wanted by the said authorities for the carrying out of a sentence.

Article 2. Extradition shall be granted in respect of:

- (a) Acts which, under the law of both States, constitute offences punishable by deprivation of liberty for a maximum period of at least two years or by a more severe penalty;
- (b) Sentences involving deprivation of liberty for a period of at least one year imposed by the courts of the requesting State for the offences mentioned in sub-paragraph (a) above.

Article 3. The requested State shall not extradite its own nationals, Stateless persons who are resident in its territory or persons who have been granted asylum in its territory.

¹ Came into force on T September 1984, i.e., the first day of the second month following the exchange of the instruments of ratification, which took place at Neptun, Romania, on 31 July 1984, in accordance with article 37 (1).

Article 4. Extradition shall not be granted:

- (a) If the offence for which it is requested is regarded by the requested Party as a political offence or an offence allied to a political offence. The taking or attempted taking of the life of a head of State or of members of his family shall not be deemed to be such an offence;
- (b) If the offence for which extradition is requested is regarded by the requested Party as a military offence which does not constitute an offence under ordinary law;
- (c) For offences in connection with customs, taxes, duties and exchange. However, it may be decided otherwise by an exchange of letters for some of these offences or categories of offences.

Article 5. Extradition shall not be granted:

- (a) If the offence was committed in the territory of the requested State;
- (b) If the offence for which extradition is requested was committed outside the territory of the requesting State and the law of the requested State does not authorize prosecution for offences of the same nature committed outside its territory or does not authorize extradition for the offence for which extradition is requested;
- (c) If, according to the law of either State, criminal proceedings are contingent upon the existence of a complaint by a private person;
- (d) If, according to the law of either State, the person claimed has become immune by reason of lapse of time from prosecution or punishment;
- (e) If an amnesty has been granted in either State;
- (f) If, in the requested State, a decision which has become *res judicata* has already been taken in respect of the same offence against the person claimed.

Article 6. Extradition may be refused if the person claimed is the subject of proceedings in the requested State in respect of the offence for which extradition is requested or if the competent authorities of that State have decided either not to institute or to terminate proceedings in respect of that offence.

Article 7. If the offence for which extradition is requested is punishable by death under the law of the requesting Party, extradition may be refused unless the requesting Party gives such assurance as the requested Party considers sufficient that the death penalty will not be carried out.

Article 8. In matters relating to extradition, the Contracting Parties shall communicate with each other through the diplomatic channel unless otherwise provided in this Convention.

Article 9. 1. The request for the extradition of a person against whom proceedings have been instituted shall be accompanied by the original or an authenticated copy of a warrant of arrest or other order having the same effect issued in accordance with the procedure laid down in the law of the requesting State. This document must indicate or be accompanied by another document issued by the judicial authorities indicating the circumstances in which the offence was committed, the time and place of its commission, its legal description and a reference to the relevant legal provisions, and, where the offence has entailed material damage, all possible details concerning the nature and scope of such damage. 2. The request for the extradition of a sentenced person shall be accompanied by the original or an authenticated copy of the sentence which has become *res judicata*.

3. In both cases, the request shall be accompanied by the text of the enactments relevant to the offence and, if possible, a description and photograph of the person concerned, together with any other information which will help to establish his identity and nationality.

Article 10. 1. In case of urgency, the judicial authorities of the requesting state may, for purposes of extradition, request the provisional arrest of the person sought.

2. The request for provisional arrest shall state the offence committed, the duration of the penalty incurred or pronounced, and when and where the offence was committed and shall, so far as possible, give a description of the person sought.

3. It shall be sent to the judicial authorities of the requested state, either direct by post or telegraph or through the International Criminal Police Organization (INTERPOL), or by any other appropriate means.

4. If the request is deemed to be justified, the judicial authorities of the requested State shall act upon it in accordance with the law of that State.

5. The requesting Party shall be informed without delay of the action taken with regard to its request for provisional arrest. Provisional arrest may be terminated if, within a period of 18 days after arrest, the requested Party has not received the request for extradition and the documents mentioned in article 9.

6. Release shall not prejudice rearrest if the request arrives after the expiry of the time-limits set in the preceding paragraph.

Article 11. If the information communicated by the requesting State is found to be insufficient to allow the requested State to make a decision in pursuance of this Convention, the latter State shall request, through the diplomatic channel, the necessary supplementary information before rejecting the request. It may fix a time-limit for the receipt of such information.

Article 12. After receiving the request for extradition or the request for provisional arrest and provided that the conditions laid down in title I of this Convention are fulfilled, the requested Party shall take all appropriate steps with a view to seeking the person claimed and, if appropriate, arresting him.

Article 13. 1. The requested Party shall inform the requesting Party of its decision with regard to the request for extradition within a reasonable period of time.

2. If the requested Party rejects the request for extradition wholly or in part, it shall indicate the provisions of this Convention on which it has based its decision.

3. If extradition is granted, the requested Party shall inform the requesting Party of the place and date of surrender of the person claimed and of the length of time for which that person was detained.

4. The Contracting Parties may, following a request submitted in due time by either Party and when justified by circumstances, agree on a new date, and, possibly, a new place for the surrender of the person claimed. 5. If the requesting Party does not take over the person in the place and on the date mentioned in paragraph 3 or 4 of this article, he shall be released after the expiry of five days: upon receipt of a request from the requesting Party citing unusual circumstances, the period may be extended to 15 days. If the request for extradition is renewed for the same offence, it may be rejected.

6. If necessary, communications relating to the implementation of paragraphs 4 and 5 of this article may be effected through the channels mentioned in article 10, paragraph 3, of this Convention.

7. The provisions of this article shall also be applicable in the case of transport by air.

Article 14. 1. If extradition is requested concurrently by more than one State, either for the same offence or for different offences, the requested Party shall make its decision freely, having regard to all the circumstances and especially the nationality of the person claimed, the place of commission and the seriousness of the offence and the respective dates of the requests.

2. In the case mentioned in the preceding paragraph, the requested Party may, in granting extradition, authorize the requesting Party to surrender the extradited person to the third State which requested him concurrently.

Article 15. 1. 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, the latter State shall none the less consider the request and inform the requesting State of its decision with regard to extradition, in the manner prescribed in article 13.

Surrender of the person claimed may be deferred until he has fulfilled the requirements of justice in the requested State.

2. Surrender shall take place on a date to be determined in accordance with the provisions of article 13.

Article 16. 1. The Contracting Party to whom the person claimed has been surrendered shall inform the Contracting Party of the outcome of the criminal proceedings instituted against that person.

2. If the person is convicted, an authenticated copy of the judgement which has become *res judicata* shall be transmitted.

Article 17. A person who has been extradited shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence, nor shall he be for any other reason restricted in his personal freedom or surrendered to a third State for an offence committed prior to surrender other than that for which extradition was requested, except in the following cases:

(a) When the requested State consents;

- (b) When the extradited person does not leave the territory of the requesting State within 30 days of his final discharge; that period does not include the time during which the person surrendered was unable to leave the territory of that State for reasons beyond his control;
- (c) When the person has returned of his own free will to the territory of the State to which he was surrendered after having left it.

Article 18. 1. When the consent of the requested Party is requested for the purpose of proceedings, or the carrying out of a sentence for an offence

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committed prior to surrender other than that for which extradition was requested, the requesting Party shall conform with the provisions of articles 8 and 9 of this Convention.

2. When the consent of the requested Party is requested with a view to the surrender of the extradited person to a third State, the requesting Party shall address to the requested Party the request for extradition submitted by the third State, accompanied by all the relevant documents.

Article 19. When the description of the offence charged is altered in the course of proceedings, the extradited person shall only be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence which would allow extradition.

Article 20. 1. When extradition is granted, property which was used in the commission of the offence or was acquired as a result of the offence or in exchange for property so acquired shall be handed over to the requesting Party.

2. The property mentioned in the preceding paragraph shall, however, be handed over even if extradition cannot be carried out owing to the death or escape of the person claimed or for any other reason.

3. The rights which third parties have acquired in the said property shall be preserved. At the end of the proceedings, the property shall be returned to the person to whom it belongs. If the identity of that person cannot be established, the property shall be returned to the requested Party.

4. The requested Party may temporarily retain the property mentioned in paragraph 1 of this article if it deems it necessary for the purpose of criminal proceedings.

It may request that the property handed over be returned to it if it undertakes to return the property as soon as the proceedings instituted in its territory permit.

5. The requested Party shall not be obliged to return the property mentioned in the preceding paragraph when its authorities have ordered that it be confiscated or destroyed.

Article 21. 1. Each Contracting Party shall, at the request of the other Party, grant transit through its territory for a person surrendered to the latter party by a third State. The request shall be accompanied by supporting documents proving that the offence in question is extraditable under this Convention. However, no account shall be taken of the provisions of article 2 concerning the duration of the sentence.

2. The requested Party shall authorize transit by means of transport and according to the arrangements which suit it best.

3. The Contracting Parties shall not be obliged to authorize the transit of persons whose extradition may not take place under this Convention.

Article 22. 1. Expenses incurred by reason of extradition shall be borne by the State in whose territory they were occasioned.

2. Expenses incurred by reason of transit shall be borne by the requesting Party.

TITLE II. JUDICIAL ASSISTANCE

Article 23. The Contracting Parties undertake to afford each other the widest possible measure of judicial assistance in respect of offences in accordance with the conditions laid down in this Convention, especially with regard to the execution of letters rogatory, the service of judicial documents and the exchange of extracts from judicial records.

Article 24. The provisions of title II of this Convention shall not apply:

- (a) To offences which the requested Party considers political offences, offences connected with a political offence, military offences or fiscal offences;
- (b) When the requested Party considers that execution of the request for judicial assistance is likely to prejudice its sovereignty, security or *ordre public*.

Article 25. Communications concerning judicial assistance referred to in this title shall be transmitted direct between the Ministries of Justice.

Article 26. 1. The Contracting Parties shall cause to be executed, in the manner prescribed by the law of the requested State, any letters rogatory relating to a criminal matter addressed to the authorities of one Party by the authorities of the other Party whose purpose is the conduct of pre-trial proceedings or the transmittal of evidence, records or documents.

2. The letters rogatory shall indicate the nature of the charge as well as the purpose of the request and shall contain a brief statement of the facts in the case.

3. Letters rogatory which request the carrying out of a search or seizure shall be executed only if the offence in question is one in respect of which extradition may take place under the provisions of this Convention.

4. The handing over of property may be made subject to its being returned as soon as it is no longer required for the administration of justice.

Article 27. 1. An authority which has been requested to serve a judicial document shall, unless the requesting authority requests some other form of service, effect service by simple delivery of the document in question to the person named in it.

2. Proof of service shall consist of a receipt dated and signed by the person named or of a statement by the requested authority that service has been effected, with particulars of the form and date thereof, or that the person named refused to accept service.

3. If service cannot be effected, the requested authority shall return the document forthwith to the requesting authority, indicating the reason which prevented service from being effected.

4. Where a summons directing a person to appear as a witness or an expert provides for the use of measures of compulsion in the event of failure to appear, the requested authority shall have the responsibility of informing the said person that the provision in question does not apply in his case.

Article 28. 1. If, in a criminal matter, the requesting Party considers the personal appearance of a witness or expert before its judicial authorities especially necessary, it shall so mention in its request for service of the summons and the requested Party shall recommend to the witness or expert that he appear.

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The requested Party shall inform the requesting Party whether the witness or expert intends to appear.

2. The witness or expert shall be entitled to reimbursement of his travelling and subsistence expenses, and to equitable compensation, which shall be paid by the requesting party.

Article 29. A witness or expert, whatever his nationality, who, being resident in the territory of one of the Parties, appears before the authorities of the other Party in compliance with a summons addressed to him, shall not be prosecuted or subjected to any other restriction of his personal liberty in respect of acts or convictions anterior to his arrival, unless, although he has had the opportunity to do so, he fails to leave the territory of the requesting Party within 30 days after ceasing to serve as witness or expert.

Article 30. Each Contracting Party shall notify the other Party at least once a year of decisions which have been rendered with respect to nationals of the latter Party and have been entered in the judicial records. If expressly requested, a copy of the decision shall be transmitted.

Article 31. 1. Where information from the judicial records is requested in a criminal matter, such information shall be provided as if it had been requested by a judicial authority of the requested State.

2. If these requests are made by a civil court or an administrative authority they shall be accompanied by a statement of the reasons for which they are made.

They shall be granted in accordance with the internal legislative provisions or administrative regulations of the requested State.

Article 32. Requests for mutual assistance in judicial matters relating to the service of judicial documents, summonses addressed to witnesses or experts, extracts from the judicial records or the provision of ordinary information shall contain the following particulars:

(a) The name of the requesting authority;

- (b) The purpose of the request;
- (c) The offence in respect of which the request is made;
- (d) The family name, first name, place and date of birth and, where possible, the nationality of the person concerned;
- (e) Where appropriate, the name and address of the person to be served.

Article 33. 1. Each Contracting Party may notify the other Party, with a view to proceedings, of offences committed in its territory by nationals of the other State who have returned to the territory of the latter State.

2. To that end, files, information and property relating to the offence shall be transmitted free of charge.

3. The requested Party shall inform the requesting Party of the action taken with regard to its request.

Article 34. The requested Party shall waive refund of the cost of judicial assistance granted in application of title II of this Convention, except for the expenses and fees of experts.

Article 35. 1. Where the authority which receives a request for judicial assistance has no jurisdiction to comply therewith, it shall transmit the request to the competent authority.

2. If the requested authority cannot execute the request for judicial assistance, it shall immediately so inform the requesting authority, stating the reasons why the request could not be executed.

TITLE III. COMMON PROVISIONS

Article 36. For the implementation of this Convention:

1. Documents to be produced for purposes of extradition and letters rogatory shall be accompanied by a translation into the language or one of the languages of the requested Party.

2. Judicial documents shall be accompanied by a translation into the language or one of the languages of the requested Party, unless they are to be served on nationals of the requesting Party.

3. In their relations, the Ministries of Justice shall each correspond in their own language and, where necessary, their communications shall be accompanied by a translation into the French language.

TITLE IV. FINAL PROVISIONS

Article 37. 1. Each Contracting Party shall notify the other of the completion of the procedures required under its Constitution for the entry into force of this Convention. The Convention shall take effect on the first day of the second month following the date of the last of the notifications.

2. With the entry into force of this Convention, the Convention on Extradition concluded between Belgium and Romania on 15 August 1880 shall be abrogated.¹

Article 38. 1. This Convention is concluded for an unlimited period of time.

2. Each Contracting Party may denounce it at any time and the denunciation shall take effect six months after the date of receipt of its notification by the other Contracting Party.

DONE at Bucharest, on 14 October 1976, in duplicate, in the Dutch, French and Romanian languages, the three texts being equally authentic.

For the Kingdom of Belgium:

[Signed]

RENAAT VAN ELSLANDE Minister for Foreign Affairs For the Socialist Republic of Romania:

[Signed]

GEORGE MACOVESCU Minister for Foreign Affairs

¹ British and Foreign State Papers, vol. 7, p. 112 (Dutch, French and Romanian only).

EXCHANGE OF LETTERS

I

SOCIALIST REPUBLIC OF ROMANIA MINISTRY OF FOREIGN AFFAIRS

Bucharest, 14 October 1976

Sir,

During the negotiations for the conclusion of the Convention between the Socialist Republic of Romania and the Kingdom of Belgium relating to Extradition and Judicial Assistance in Criminal Matters, signed today, it was agreed that, for the purpose of implementing the provisions of article 4, when extradition is requested for the hijacking of an aircraft, the requested State shall consider the request in the light of the circumstances and consequences of the offence.

If extradition is refused, the requested State undertakes to refer the matter to its prosecuting authorities in accordance with the conditions laid down in its legislation.

I have the honour to propose to you that this letter and your reply shall constitute an agreement between the two Parties in this matter.

Accept, Sir, etc.

[Signed]

GEORGE MACOVESCU Minister for Foreign Affairs

His Excellency Mr. Renaat Van Elslande Minister for Foreign Affairs of the Kingdom of Belgium

II

KINGDOM OF BELGIUM MINISTRY OF FOREIGN AFFAIRS

Bucharest, 14 October 1976

Sir,

Today you transmitted to me the following letter:

[See letter I]

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* I have the honour to inform you that your above-mentioned letter and this reply constitute an agreement between the two Parties in this matter.

Accept, Sir, etc.

[Signed] RENAAT VAN ELSLANDE Minister for Foreign Affairs

His Excellency Mr. George Macovescu Minister for Foreign Affairs of the Socialist Republic of Romania

ADDITIONAL PROTOCOL TO THE CONVENTION BETWEEN THE KINGDOM OF BELGIUM AND THE SOCIALIST REPUBLIC OF ROMANIA RELATING TO EXTRADITION AND JUDICIAL ASSIST-ANCE IN CRIMINAL MATTERS DONE AT BUCHAREST ON 14 OCTO-BER 1976

His Majesty the King of the Belgians and

The President of the Socialist Republic of Romania,

Desiring to facilitate the implementation of the Convention between the Socialist Republic of Romania and the Kingdom of Belgium relating to Extradition and Judicial Assistance in Criminal Matters, done at Bucharest on 14 October 1976, which shall hereinafter be referred to as the Convention,

Have decided to conclude this Protocol and have appointed as their Plenipotentiaries for this purpose:

- His Majesty the King of the Belgians: Mr. Léo Tindemans, Minister for Foreign Affairs;
- The President of the Socialist Republic of Romania: Mr. Iulian Vacarel, Ambassador Extraordinary and Plenipotentiary of the Socialist Republic of Romania in Brussels,

who, having exchanged their full powers, recognized in good and due form, have agreed as follows:

Article 1. To the extent that they are provided for in the penal provisions mentioned below or in international conventions to which the two States are parties, the offences to which article 2 of the Convention refers are as follows:

Offences		Romanian legislation	Belgian legislation	
1.	Homicide	Articles 174 to 177 of the Penal Code	Articles 393 to 397 of the Penal Code	
2.	Physical injury or im- pairment of health	Articles 182 and 183 of the Penal Code	Articles 400 to 404 and 406 to 410 of the Penal Code	
3.	Offences against per- sonal freedom or tres- pass	Article 192, paragraph 2, and articles 266 to 268 of the Penal Code	Articles 347 <i>bis</i> , 434 to 438, 440 and 442 of the Penal Code	
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	Offences	Romanian legislation	Belgian legislation
4.	Counterfeiting of cur- rency and other secu- rities	Articles 282 to 287 of the Penal Code	Articles 160 to 162, 168, 169, paragraph 1, and 171 to 177 of the Penal Code
5.	Forgery and uttering what is forged	Articles 288 to 293 of the Penal Code	Articles 193 to 197, 200 and 201, 202, paragraphs 2 to 4, 204, 206, paragraph 1, 207 to 209, 211, and 212 of the Penal Code
6.	False witness	Articles 260 and 261 of the Penal Code	Articles 215 to 218, and 220 to 224 of the Penal Code
7.	Bribery, misappropria- tion of funds, extortion committed by public officials	Articles 168, 223, 242, pa- ragraphs 1 and 3, articles 254, 255 and 272 of the Penal Code	Articles 240, paragraph 1, 241, 243 to 245 and 247 to 252 of the Penal Code
8.	Conspiracy	Article 323 of the Penal Code	Articles 322 to 324 of the Penal Code
9.	Bigamy	Article 303 of the Penal Code	Article 391 of the Penal Code
10.	Abandoning a child	Article 314 of the Penal Code	Articles 355 to 360 of the Penal Code
11.	Abduction and unlaw- ful detention of minors	Articles 189 and 306 of the Penal Code	Articles 368 to 370 of the Penal Code
12.	Rape	Article 197, paragraphs 2 to 5, of the Penal Code	Articles 375 to 377 of the Penal Code
13.	Indecent assault and sex offences	Articles 198, 202 and 321 of the Penal Code	Articles 372, 372 <i>bis</i> , 373, 376, 377, 385, paragraph 2, and article 386 of the Penal Code
14.	Procuring and corrup- tion of minors	Article 329 of the Penal Code	Article 379, 380, 380 bis, and 380 ter of the Penal Code
15.	Larceny, false preten- ces and extortion	Articles 194, 208, 209, 211, 214, 215, 224, 225, 228, 229 and 257 of the Penal Code	Articles 461, 463, 464, 467 to 475, 496 and 497 of the Penal Code
16.	Breach of trust	Article 277 of the Penal Code	Articles 491 and 493 of the Penal Code
17.	Destroying or causing damage to property	Article 217, paragraphs 2 to 5, 218, 219, paragraphs 3 and 4, 231 and 232 of the Penal Code and article 43 of Act No. 7/1974	Articles 510 to 523, 525, 527 to 532, 533, paragraph 2, 534 to 536, 538 and 547 of the Penal Code
18.	Offences against rail- way security	Articles 273 to 276 of the Penal Code	Articles 406 to 408 and article 422, paragraphs 2 and 3, of the Penal Code

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	Offences	Romanian legislation	Belgian legislation
19.	Illegal traffic in nar- cotic drugs	Article 312 of the Penal Code and article 17 of Act No. 73/1969	Articles 2 bis, 3 and 8, paragraph 2, of the Act of 24 February 1921 on traf- fic in poisonous, sleep- inducing, narcotic, disinfec- tant or antiseptic substan- ces, amended by the Act of 9 July 1975
20.	Receiving objects ob- tained through the commission of an extraditable offence under the terms of the Convention	Articles 221 and 234 of the Penal Code	Articles 505 and 506 of the Penal Code
21.	Offences relating to maritime navigation	Articles 113, 115, 117, 118 and 123 of Decree No. 443/ 172	Articles 14, 18, 19, 20, pa- ragraph 2, 21, 24, 26, pa- ragraph 2, 28, 29, 31 to 37, and 63 to 69 of the Act of 5 June 1928 revising the Disciplinary and Penal Code for the Merchant Navy and Fisheries

22. Any offence which is extraditable under the terms of other international conventions to which the two States are parties.

Article 2. The two Contracting States may agree, by an exchange of letters, to amend the provisions of article 1 or to abrogate this Protocol.

Article 3. This Protocol is an integral part of the Convention. It shall be ratified. The exchange of instruments of ratification of the Convention and the Protocol shall take place simultaneously. The Protocol shall enter into force at the same time as the Convention.

DONE at Brussels, on 26 March 1982, in duplicate in the Dutch, French and Romanian languages, the three texts being equally authentic.

For Belgium: [Signed] LEO TINDEMANS For Romania: [Signed] IULIAN VACAREL