INTERNATIONAL JUDICIAL ASSISTANCE IN CRIMINAL MATTERS†

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ON AUGUST 23, 1961, Italy became the first member nation of the Council of Europe to ratify the European Convention on Mutual Assistance in Criminal Matters,1 thus reaffirming the spirit of leadership in matters of the ius gentium which has been typical of the Romans since the days of the praetor peregrinus.2 By this European Convention, which will enter into force after the deposit of two further ratifications, the member nations undertake to afford each other the widest measure of assistance with regard to the following: letters rogatory; service of writs and records of judicial verdicts; appearance of witnesses, experts and prosecuted persons; communication of extracts from official records; laying of information in connection with proceedings; exchanging information on convictions entered in judicial records.

The Convention extends to all the criminal law of the civil jurisdiction. Military offenses are not covered,3 and assistance may be refused in offenses of political or fiscal nature.

This convention imposes obligations upon the Nations of the Council of Europe which, in most respects, are comparable to the mutual obligations of the member states of the United States of

† Based on a conference paper, Report on International Judicial Assistance in Criminal Matters, the research for which was conducted with the assistance of Mr. Donald A. Statland, senior at New York University School of Law. Particular emphasis will be given to Italian-American affairs.
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2. Praetor Peregrinus: The Roman judge with jurisdiction over disputes involving non-Romans, who "received", applied and developed the ius gentium or international law. His office was instituted in 242 B.C.
3. The Romans were also the first to use the institution of depositions of witnesses taken in other provinces before the local judge, on request of the judge of the forum. CODE 4.20.16 T ord.; 20 Digest 22.5.3.3.4.; and see 2 SHERMAN, ROMAN LAW IN THE MODERN WORLD 419 (3rd ed. 1937).
4. Italian leadership in international judicial cooperation was also evidenced in the 19th century, when the Italian government was instrumental in bringing about international conferences on judicial assistance (1861-1866; 1881-1885). See Harvard Research in International Law, Draft Convention on Judicial Assistance 33 AM. J. INT'L L. SPEC. SUPP. 3 (1939).
5. European Convention on Mutual Assistance in Criminal Matters, art. 1, para. 2 (hereinafter cited as European Convention), reproduced in the appendix.
America. This, of course, is only one more piece of evidence indicating that the Council of Europe is a political reality, a political entity, and not a debating society.

Three days after Italy’s historic ratification of the European Convention on Mutual Assistance in Criminal Matters, an Italian and a United States delegation of 40 and 28 members, respectively, composed of judges, government and bar officials, military jurists and law professors, began a conference in Milan, Italy, on the topic of international judicial assistance between the United States and Italy. This conference was cosponsored by the Institute of Judicial Administration (Professor Sheldon E. Elliott, Director) and the Italian-United States Center of Judicial Studies (Dr. Carlo Lombardo, Director). While most of the discussions dealt with international judicial assistance in civil matters, a special committee was appointed to deal with the much neglected topic of international judicial assistance in criminal matters.

Over the years the Italian experience in dealing with American criminal courts had been something less than pleasant. In addition to

4. At the same time it should be mentioned that the provisions of this convention do not differ materially from those of the modern bilateral treaties concluded during the last decade among friendly nations. Compare Vertrag über die Auslieferung und Rechtshilfe in Strafsachen zwischen der Bundesrepublik Deutschland und dem Königreich Belgien, unterzeichnet in Brüssel, am 17. Januar 1958 [Convention d’extradition et d’entraide judiciaire en matière pénale entre la République Fédérale d’Allemagne et le Royaume de Belgique, Signée à Bruxelles, le 17 Janvier 1958], B.G.Bl. 11 27-40, esp. 36-40 (1959); and notification about effectiveness of the treaty, B.G.Bl. II 582 (1959). Besides extradition, this typical bilateral treaty on international judicial assistance covers exchange and transmission of documents, search and seizure, service of writs and process, subpoena of witnesses or experts, information about previous convictions, requests for prosecution, and other topics.


5. Within the sphere of criminal law, other noteworthy European institutions are:


6. The Committee consisted of His Exc., Gen. E. Santacroce (Attorney General, Supreme Military Court of Italy), Judges S. Alagna and P. Curatello (Court of Appeals, Milan), Dr. V. Malcani (President, Italian Bar Association), and Drs. G. L. Cavalla, R. Collino Panso and N. Veratti (Attorneys, Milan), and Cols. L. J. Fuller, E. Feldman and J. Lynch (Judge Advocates Corps. U. S. Army), under the co-chairmanship of Hon. G. Rosso (Justice, Supreme Court of Cassation of Italy) and Prof. G. 0. W. Mueller (New York University).
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the deportation of denaturalized American citizens to Italy, which will
not be discussed further, there had been very little American compliance
with friendly Italian requests for depositions and other judicial as-
sistance. This lack of judicial assistance is vividly demonstrated by
the Archina case.7 Indicted for the murder of four persons, in the
District Court for the City and County of Denver, Colorado, Archina
was convicted of the murder of two and found to be sane. On appeal
for failure to grant a new trial, the Colorado Supreme Court reversed
and remanded for a new trial.8 In the new trial Archina was found not
guilty by reason of insanity. Thereafter he was handed over to Italian
authorities and deported to Italy. The Italian judicial authorities, as
they lawfully might, then instituted proceedings against Archina for
the purpose of subjecting him to security measures and requested the
Colorado trial court to re-examine some witnesses residing in
Colorado. The Colorado court denied the request, stating that
courtesy could not be extended because the acts required to be per-
formed were contrary to the constitutional principles of the State of
Colorado, to the effect that “in criminal prosecutions, the accused shall
have the right to appear and defend, in person and by counsel . . . and
to meet the witnesses against him face to face.”9

Obviously, such a denial was not greeted with enthusiasm in
Italy. Indeed, Italians might consider it arrogant for an American
jurisdiction to tell a foreign jurisdiction how to run its courts. Why
should American due process guarantees, applicable to criminal pro-
cedings, govern security proceedings in Italy?10

In view of such frustrations of Italian judicial processes by
American state court refusals to render international judicial assistance
in criminal matters on the basis of comity, whether for failure of
proper communication, or for any other reason, the Italian delegation
approached the Italian-American conference with the conviction that
a treaty between the two nations should be negotiated. This position
is particularly understandable in view of Italy’s immediately preceding
ratification of the European Convention. Besides, it is the tradition

7. Rosso, op. cit. supra Note 4, at 3-5.
Italy, Dist. Ct. Colo., Jan. 12, 1960 (made available to the author through the
courtesy of Judge, now Mr. Justice, Pringle, of the Supreme Court of the State
of Colorado). See also Rosso, op. cit. supra Note 4, at 4.
10. Codice di Procedura Penale, art. 41 (Italian Code of Criminal Procedure
hereinafter cited as C.P.P.) provides for Italian proceedings on foreign records
and foreign testimony, when questions of indemnity or the imposition of security
measures are in issue. Rosso, op. cit. supra Note 4, at 4.

As Judge Pringle’s opinion, supra Note 9, indicates, the Italian court
apparently failed to explain to the Colorado court the nature of the Italian proceedings
for which the depositions were sought.
of civilians to prefer regulation by written law of that which in
the common law world is frequently left to customary or judge-made
law. The discussions of the committee rested primarily on the Italian
report by Dr. Rosso\textsuperscript{11} and an American report, prepared at the Institute
of Judicial Administration and the Comparative Criminal Law Project
of New York University.\textsuperscript{12} Neither those reports, nor this article,
pretend to solve nor even touch upon all problems of international
judicial assistance in criminal matters, either in general, or insofar
as Italian-United States relations are concerned. The scope of this
article is limited to an attempt to assess presently existing relations,
with an occasional suggestion for possible improvements.

The topic of international judicial assistance in civil cases has been
the subject of an excellent report by Smit and Miller, which shall be
referred to whenever the rules governing criminal matters are sub-
stantially like those governing civil matters.\textsuperscript{13} However, the conflict
of laws rule that the criminal law of one nation will not be given effect
by any other nation,\textsuperscript{14} made it mandatory to examine most problems
de novo, although reference will be made to the Draft Convention on
Judicial Assistance\textsuperscript{15} [Draft Convention] where relevant.

\textbf{International Judicial Assistance in Criminal Matters —
General Comment.}

International judicial assistance, also referred to as international
judicial cooperation, is defined as "... aid rendered by one nation to
another in support of judicial or quasi-judicial proceedings in the
recipient country's tribunals."\textsuperscript{16} It should be distinguished from official
assistance which refers to international cooperation among the executive
branches of governments outside the sphere of court processes.\textsuperscript{17}

\begin{enumerate}
\item Rosso, \textit{op. cit. supra} Note 4.
\item Mueller & Statland, Report on International Judicial Assistance in Criminal
Matters, Institute of Judicial Administration, August 18, 1961.
\item Smit & Miller, International Co-operation in Civil Litigation — A Report
on Practices and Procedures Prevailing in the United States, Project on International
Procedure, Columbia University, July 1, 1961 (hereinafter cited as Smit-Miller
Report).
\item The Antelope, 23 U.S. 66, 123 (1828); See also Goodrich, \textit{Conflict of
Laws} 24-29 (3rd ed. 1949).
\item The topic of international judicial assistance was covered by Harvard
Research in International Law, \textit{Draft Convention on Judicial Assistance} [herein-
\item Jones, \textit{International Judicial Assistance: Procedural Chaos and a Program
\item See Grützner, \textit{Auslieferung und Internationaler Rechtshilfeverkehr,
insbesondere durch Dienststellen der Polizei in Bundeskriminalamt, Internationale
Verbrechensbekämpfung} 199, 202 (1960), distinguishing between Rechtshilfe and
Amtshilfe.
\end{enumerate}
national judicial assistance in criminal matters is designed to counteract frustration of criminal policy by territorial limitations of criminal jurisdiction. Despite the growing need for mutual assistance among the judiciaries of the world, it appears that the American courts neither give nor receive (nor ask for) adequate judicial assistance in criminal matters, American treaties on the topic being non-existent, and statutory provisions scarce.

The term "criminal matters" needs some clarification. We understand the term to include not only proceedings before criminal courts proper, but also proceedings before grand juries and United States Commissioners or before judges d'instruction (examining magistrates). The American Draft Convention of 1939 excludes proceedings before or by prosecuting attorneys, while the European Convention might be taken to include such proceedings, at least the French government wishes it to be understood that way. We also include among "criminal matters" those criminal charges prosecuted wholly or partially by private complainants, as well as those in which civil damages may be awarded in addition to the imposition of punishment.

There is some doubt about the common law duty or power of courts to grant judicial assistance to foreign courts in criminal proceedings. Meili regarded it as a duty of international law: "Under the present-day view of international law, the civilized States are obligated to lend each other mutual judicial assistance in criminal pro-

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18. Limited exceptions are the Convention with Cuba for Suppression of smuggling, March 11, 1926, 44 Stat. 2402, T.S. No. 739; and the Convention with Great Britian in Respect of Canada to Suppress Smuggling, June 6, 1924, 44 Stat. 2097, T.S. No. 718.

19. E.g., 1912. CIV. PRAC. ACT § 294 (governing depositions), N.Y. CONG CRIM. PROC. § 618a (Uniform Act to Secure the Attendance of Witnesses from Without the State in Criminal Cases), held constitutional in New York v. O'Neil, 359 U.S. 1 (1959). But the statute does not cover international assistance.

20. The principal exception is 28 U.S.C. §§ 1781-85 (1958), which will be cited in context, below.


23. Draft Convention, art. 1 (g).

ceedings." Lord Mansfield took it for granted that international judicial assistance could be granted in criminal cases, though there is authority contra, American as well as foreign.

Absent treaty or statute, American courts, in general, have been reluctant to cooperate with foreign criminal tribunals. The reasons may be found in traditional isolationism, ignorance of foreign criminal law and procedure — which often is suspected of being inquisitorial — or simple unfamiliarity with a court’s own express or implied powers to grant judicial assistance.

The present unsatisfactory state of affairs could, therefore, be overcome by three methods:

1. Enlightening the judiciary as to their common law power to cooperate with foreign criminal tribunals, and educating the bar to the availability of judicial assistance from abroad. No lasting and complete improvement, however, can be expected by this method alone.

2. Legislation enacted with a view toward bringing American practice in line with that generally prevailing in other civilized nations. This approach was favored among the American delegation at the Italo-American conference, in view of the encouraging experience had with American federal law, and in view of the availability of judicial assistance under the codes of criminal procedure of many foreign nations.

3. Treaty or multi-partite convention. In order to establish the smoothest exchange of the maximum amount of judicial assistance in criminal matters, a treaty, unquestionably, is ultimately called for. Indeed, it is this consideration which prompted the European Convention.

While the European Convention is open only to signatory members of the Council of Europe the Committee of Ministers may invite non-signatories, e.g., the United States of America, to accede to the
Convention, provided that there is unanimous agreement among the members of the Council who have ratified the Convention. There is little question that the United States would be invited to accede if it were to indicate its willingness to do so.

Until such time, however, foreign nations seeking American judicial assistance must avail themselves of prevailing American law, and American courts must avail themselves of the procedural provisions of foreign codes of criminal procedure. These, in turn, are likely to specify an echelon of sources of law governing international judicial assistance in criminal matters. Thus, typically, the Italian Code of Criminal Procedure specifies that:

1. Conventions are the primary source of law for the regulation of international judicial assistance in criminal matters;
2. International usage is the secondary source, and absent either:
3. The specific provisions of local law are to be applied.

A. Service of Process and of Documents Abroad.

Generally speaking, foreign documents may be served on anyone within the United States, be it by a foreign consular officer or merely a foreign citizen. This is an example of what frequently is referred to as passive judicial assistance, consisting solely of sufferance of the acts of foreign sovereigns. As to active judicial assistance with respect to the service of documents, i.e. where a foreign sovereign seeks the aid of an American court in order to effectuate service of process of a foreign document within the United States, two respected courts have held that an American court may refuse to comply with the request of a foreign tribunal to assist in effectuating service in the United

33. European Convention, arts. 27, 28. (See appendix.)
34. E.g., C.P.P. §§ 657-75.
35. C.P.P. § 656.
36. Hereinafter the word "abroad" is intended to refer to both Italian-American and American-Italian relationships.
37. It is a well settled rule that authenticated copies are equally as valid as the originals. 28 U.S.C. § 1741 (1958). Agenda Item No. XIV of the Commission and Advisory Committee on International Rules of Judicial Procedure, Draft of October 7, 1961, would simplify the law by providing that any mode of authentication in conformity with the Federal Rules of Civil Procedure would do.
States on an American citizen or resident.\textsuperscript{39} Since these two cases were civil cases, it is quite obvious that documents connected with criminal proceedings would be subject to no less an onerous rule, since generally, the rules governing judicial assistance in criminal matters are never more lenient than those governing civil matters. These decisions have been criticized and it has been suggested that the courts adopt a more liberal view.\textsuperscript{40}

There is no reason why, as a matter of comity,\textsuperscript{41} the United States should not aid foreign criminal proceedings by making available the benefits of American judicial intervention, utilizing such devices as the contempt power of the court.\textsuperscript{42} Abuses could easily be guarded against by invoking the principles of \textit{ordre public},\textsuperscript{43} and reciprocity.\textsuperscript{44}

We note with pleasure, that a draft before the Commission and Advisory Committee on International Rules of Judicial Procedure proposes the incorporation of a new section (§ 1696) into Title 28 U.S.C., which would make it clear that United States courts have the inherent power to grant international judicial assistance, by complying with requests for service of process contained in letters rogatory.\textsuperscript{45} The draft seems to grant a discretionary power to the federal district judge

\begin{itemize}
\item \textsuperscript{39} In re Letters Rogatory First Civil Court, City of Mexico, 261 Fed. 652 (S.D.N.Y. 1919); Matter of Romero, 56 Misc. 319, 107 N.Y. Supp. 621 (Sup. Ct. 1907).
\item \textsuperscript{40} Smit-Miller Report, \textit{passim}. McCusker, \textit{op. cit. supra} Note 38, at 811; Jones, \textit{supra} Note 16, at 544-45.
\item \textsuperscript{41} "Comity is a kind of courtesy which, subject to exceptions, is administered by fixed rules of law and rises to the dignity of a legal right, as over against mere politeness and social intercourse." Hughes v. Winkelman, 243 Mo. 81, 92, 147 S.W. 994, 997 (1912).
\item \textsuperscript{42} 18 U.S.C. §§ 401-2 (1958).
\item \textsuperscript{43} "... Public policy [\textit{ordre public}] should connote more than local fancy as regards local internal affairs. Foreign law, if otherwise appropriate reference is to be refused on public policy grounds, must at the least 'violate some fundamental principle of justice, some prevalent conception of good morals, some deep rooted tradition of the common weal.'" Goodrich, \textit{Conflict of Laws} 22 (3rd ed. 1949), citing Loucks v. Standard Oil of New York, 224 N.Y. 99, 111, 120 N.E. 198, 202 (1918).
\item \textsuperscript{44} Violations of the \textit{ordre public} are recognized exceptions to the granting of international judicial assistance in criminal matters, by treaty, \textit{e.g.}, German-Belgian Treaty, \textit{supra} Note 4, art. 23; as well as by convention, \textit{e.g.}, Draft Convention art. 2, § 6; European Convention, art. 2 (b), and by internal law, \textit{e.g.}, C.P.P. §§ 658, 674(3), whether pertaining to the grant of aid or to the recognition of foreign judgments.
\item \textsuperscript{45} This, of course, is precisely the advantage of a bilateral or multi-lateral agreement, where reciprocity is ipso facto guaranteed, unless, of course, one of the signatories makes reservations not made by other contracting parties. The European Convention art. 23, para. 3, provides for such cases: "Any contracting party which has made a reservation in respect of a provision of the Convention may not claim application of the said provision by another party save insofar as it has itself accepted the provision."
\item \textsuperscript{46} Agenda Item No. VIII, Commission and Advisory Committee on International Rules of Judicial Procedure, Draft of October 7, 1961; Proposed 28 U.S.C. § 1696. Compliance does not invest a judgment rendered in such an action with any more authority than it would otherwise have. The Section leaves service of process without United States aid unaffected.
\end{itemize}
as to whether to execute foreign letters rogatory, or to comply with foreign requests for aid in the service of process. This would permit him to deny such aid in cases violative of our ordre public.

Similarly, Article 658 of the Italian Code of Criminal Procedure, provides for the execution of foreign letters rogatory only if the request does not run counter to law or the ordre public of Italy.

The Draft Convention provided a safe and relatively conservative rule for the service of documents:


Section 1. When for the purpose of a criminal proceeding a tribunal of a State requires a document to be served on a person in the territory of another State, the service may be affected by the method provided for in Article 2 of this Convention.

Section 2. The execution of a request may be refused, however,

(a) If the person sought to be served is the person accused of crime in the proceeding in the State of origin; or

(b) If the proceeding in the State of origin deals with a political offense.

This provision will satisfy most of the interests of the state seeking assistance, as well as protect the sovereignty of the state whose assistance is sought. Unfortunately, as of now, the Draft Convention has not been acted upon by any political body of the United States. Whether or not a multi-partite convention, comparable to the European Convention, or a bi-partite treaty between Italy and the United States, or

46. Italy seemingly would not respond to mere requests without letters rogatory, the code being silent on those.
47. The Accusation Chamber of the Court of Appeals of the District where the letters rogatory are to be executed passes on that question and remits its requisition for execution only if there are no such obstacles. Ultimately it is the duty of the district attorney to make execution. C.P.P. § 660.
48. For comments and reasoning see Draft Convention, at 91-4.
49. See Draft Convention and references there, especially to treaties containing such provisions. The incorporation of Article 2 in the provision for service of documents in criminal proceedings, makes applicable the provision for service of documents arising from civil litigation by foreign courts. Note that Article 7 contains a further limitation on the sweep of Article 6. It reads as follows:

"When in accordance with the provisions of Article 6, a summons to appear as a witness in the territory of the State of origin, has been served on a person in the territory of the State of execution, and where such person has responded to the summons, he shall not be subject, while in the territory of the State of origin, to arrest or service of civil or criminal process in connection with matters which arose prior to his arrival in the State of origin in response to the summons. This provision shall not apply, however, if such person voluntarily remains in the territory of the State of origin for a period of thirty days after having given his evidence."
between the United States and any other nation, is preferrable, cannot be decided at this point. It is submitted, however, that Article 6 of the Draft Convention requires one improvement in order to constitute a modern working rule, and that is the expurgation of proviso (a) of Section 2, at least for treaties with nations of the Western civilization. It would be arrogant on our part to maintain a proviso not recognized by the European Convention, and one which seems to rest solely on ignorance of modern continental criminal procedure. The rack and the thumbscrew are no more part of continental criminal procedure than they are of American criminal procedure. But it is precisely such bias, born of ignorance, which has prevented the United States, as well as other nations, from extending a full measure of international judicial assistance in the past.

Fortunately, the Commission and Advisory Committee on International Rules of Judicial Procedure, in their draft section 1696, would treat service of process for foreign civil and criminal proceedings alike.

B. Obtaining Testimonial Evidence Abroad.


The United States Department of State will not aid in the transmission of requests from a foreign court, generally in the form of letters rogatory, to an American court for aid in the acquisition of evidence to be used in either civil or criminal proceedings abroad. This unique avoidance of customary diplomatic procedures on the part of the executive branch of the United States Government is a result of the lack of specific authorization from Congress directing the executive branch to act as an intermediary between foreign and domestic courts. However, this State Department position does not prevent foreign tribunals from acquiring the aid of our courts in obtaining evidence, if the necessity should arise. Letters rogatory may be forwarded directly to the courts by which they are to be executed, by the appropriate diplomatic consular officer of the country in which the depositions are intended to be used. The degree of compliance with

50. European Convention, art. 7. (See appendix.)
51. This nefarious practice would be changed by proposed Sec. 1781, as contained in Agenda Item No. IX, Commission and Advisory Committee on International Rules of Judicial Procedure, Draft of October 7, 1961.
52. McCusker, op. cit. supra Note 38, at 810.
53. 22 C.F.R. § 92.67 (d) (1958).
such a request on the part of state courts is not always certain. Federal courts are statutorily empowered to comply, as shall be observed instantly.

2. Obtaining of Voluntary Testimony.

It is unnecessary for letters rogatory to be submitted to an American court, when the witness whose testimony is being sought has volunteered to give such testimony. The United States permits a foreign consular officer to receive the testimony of any person, including an American citizen, when requested to do so by a court in his own country.

This procedure is advantageous, for it permits use of the method of examination customary to the foreign court before which the action is pending and it eliminates the expense of American counsel and filing fees.54

3. Compelling Testimony.

The authors of the Draft Convention, well aware of the deficiencies of American common law as regards compelling unwilling witnesses to testify for foreign criminal proceedings, provided that: “When for the purpose of a criminal proceeding a tribunal of a State requires that evidence be obtained in the territory of another State, such evidence may be obtained in any one or more of the methods provided for in Articles 4 and 5 of this Convention.”55

In effect, the draftsmen made the rules governing civil proceedings applicable to the obtaining of evidence abroad in criminal proceedings, namely by letters rogatory under Article 4, or by commission under Article 5.

This Article was regarded as revolutionary, since, almost universally, American law had regarded the use of letters rogatory in criminal proceedings to aid a foreign sovereign as amounting to a

54. McCusker, op. cit. supra Note 38, at 809.
55. Draft Convention, art. 8, § 1. § 2 of Article 8 contains the typical protective rules by providing as follows:
    “The execution of a letter rogatory or of a petition for compulsive measures made by a commissioner appointed under Article 5 may be refused, however,
    (a) If evidence is sought from a person accused of crime in the proceeding in State of origin; or
    (b) If the proceeding in the State of origin deals with a political offense.”

The latter reasons are in addition to the reasons entitling the courts to refuse execution of letters rogatory in civil cases, i.e., execution is impossible, execution of letters rogatory is contrary to the public interest of the state requested to execute the letters rogatory; the evidence requested is patently irrelevant; the giving of evidence would violate a testimonial privilege.
violation of the federal constitutional right that the accused must be confronted by the witnesses against him. 56 It should be observed, however, that American courts often overlooked the confrontation principle in domestic proceedings. Wigmore found and cited numerous cases in which depositions and former testimony of absent witnesses had been admitted against the accused, where there had been due cross examination. 57 In any event, as far as criminal cases are concerned, the American common law doctrine is to the effect that the power to execute letters rogatory or a commission issued by a foreign court "is confined to civil suits and does not extend to criminal proceedings; criminal law being strictly local and a subject to which the comity of states does not extend." 58

In view of the most unsatisfactory common law rule, Article 8 of the Draft Convention, with its proposed liberalization, was very much welcomed. It is believed to have been partially in response to the demands of the Draft Convention that the federal procedure was changed to provide as follows:

The deposition of any witness within the United States to be used in any judicial proceeding pending in any court in a foreign country with which the U.S. is at peace may be taken before a person authorized to administer oaths designated by the district court of any district where the witness resides or may be found.

The practice and procedure in taking such depositions shall conform generally to the practice and procedure for taking depositions to be used in courts of the United States. 59

The availability of this statute is, in itself, a serious suggestion to foreign counsel wishing to obtain testimony in the United States, to avail themselves of the services of federal courts governed by this statute, 60 rather than of the services of state courts which are subject

57. See 5 Wigmore, EVIDENCE § 1398 (3rd ed. 1940).
58. In the Matter of Jenckes, 6 R.I. 18, 21 (1859). See also In re Spanish Consul's Petition, 22 Fed. Cas. 854 (C.C.S.D.N.Y. 1867); In re Letters Rogatory, First District Judge, Vera Cruz. 36 Fed. 306 (C.C.S.D.N.Y. 1888) (as to applicability of the rule to proceedings to investigate the commission of a crime); see also In re Letters Rogatory of Republic of Columbia, 4 Fed. Supp. 163 (S.D.N.Y. 1933); Draft Convention, at 100.
60. Proceedings in the nature of the old writ of mandamus could be brought in case of refusal of a district judge to entertain a motion, by letters rogatory, or otherwise, for the taking of depositions. But an order denying the request for the taking of depositions, in the exercise of judicial discretion, is merely appealable, and solely in case of abuse of discretion.

61. The details as to the taking of depositions and as to subpoena may be found in Fed. R. CRIM. P. 15, 17, with incorporation, by reference, of the provisions governing civil proceedings.
to the old rule. A minority of states, however, have adopted a practice analogous to that now existing in the federal courts. The state statute which has facilitated this practice, known as the Uniform Foreign Depositions Act, provides as follows:

Whenever any mandate, writ or commission, is issued out of a court of record of any state . . . or foreign jurisdiction . . . [requiring the taking of] . . . testimony of a witness or witnesses in this state, witnesses may be compelled to appear and testify in the same manner and by the same process . . . as may be employed for the purpose of taking testimony in proceedings pending in this state.

Several other states employ independent statutes to approximate the same result. Thus, in New York the courts will give effect to letters rogatory or commissions issued by a foreign court in criminal proceedings, since the statute is expressly applicable to any "action, suit, or proceeding, civil or criminal."

There is no doubt that the federal statute is meant to cover criminal proceedings as well as civil. The original wording referred to "civil actions," but these words were subsequently stricken and replaced by the words "any judicial proceeding." The advantages arising from the employment of the federal statute are manifold. In view of this statute, there is, perhaps, no further need for insistence on provisions like those of Article 8 of the Draft Convention. Federal courts are perfectly qualified, to the exclusion of state courts, to examine witnesses for foreign criminal proceedings, and the federal contempt as well as subpoena power are a perfect protection for these proceedings. It is to be noted that the federal statute does not depend on any reciprocity.

On the negative side it appears that the federal statute is deficient in a number of respects. The draftsmen were probably unfamiliar with European proceedings in criminal matters. Thus, it remains doubtful whether proceedings before investigating magistrates (juges d'instruction), as well as proceedings before quasi-criminal tribunals and administrative agencies are covered. It further remains

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61. The minority of states are composed of: Alaska, Arizona, California, Louisiana, Maryland, Michigan, Nebraska, Nevada, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee and Wyoming.
62. 9B UNIFORM LAWS ANN. 41 (1957).
63. N.Y. CIV. PRAC. ACT § 310.
65. The redraft of § 1782, by the Commission and Advisory Committee on International Rules of Judicial Procedure, Agenda Item VII, Draft of October 7, 1961, would here clarify matters. The draft speaks of "any proceeding in, or investigation by, any judicial or administrative tribunal in a foreign country."
unresolved whether the statute is all-inclusive in the sense of depriving a foreign consul of the right to conduct his own and similar proceedings in the United States today. However, we believe that, insofar as the statute governs only active international judicial assistance, it does not necessarily repeal the existing rules with respect to passive international judicial assistance, so that the power of consuls to take testimony continues as before.68 Of course, the statute cannot be construed to extend the power of foreign consuls to compel testimony, a power which has never existed. Foreign consuls are not officers authorized to administer oaths in American proceedings, and, hence, are not within the sweep of the statute. 67 The statute itself gives us guidance as to the procedure to be followed in the taking of depositions by providing: "The practice and procedure in taking such depositions shall conform generally to the practice and procedure for taking depositions to be used in courts of the United States." 68

A witness submitting to examination in aid of a foreign criminal proceeding is entitled to claim the privilege against self-incrimination. The statute provides: "A witness shall not be required on examination under letters rogatory to disclose or produce any evidence tending to incriminate him under the laws of any state or territory of the United States or any foreign state." 69

The privilege extended under this provision is considerably more extensive than that granted to Americans before American criminal tribunals. For that reason, the Commission and Advisory Committee on International Rules of Judicial Procedure, would repeal it. 70 However, in view of the trend toward greater fairness in American criminal proceedings, 71 I would regard it as unfortunate if this extensive statutory privilege against self-incrimination were deleted thus leaving the matter entirely to judicial discretion.

If the testimony of witnesses in Italy is required for American criminal proceedings, American law itself provides us with the rules. Title 28 U.S.C. § 1203 authorizes secretaries of embassies or legations

66. That too, would be clarified by the redraft, note 65 supra, in accordance with the opinion here expressed.
67. The redraft, note 65, supra, would authorize the administration of oaths by any person designated by the court to take the testimony.
68. For a discussion of these problems, see Jones, supra note 16, at 542; Smit-Miller Report, 10-14. (However, the statement appearing on page 10 in the latter citation, "As initially enacted it (the statute) employed the term 'letters rogatory', but in 1949 the word 'deposition' was substituted" cannot be verified.)
70. Draft of October 7, 1961, Agenda Item XII, and reasoning there. After completion of the manuscript I was informed that efforts to repeal the extensive self-incrimination privilege had been dropped.
71. For summaries of the developments see Mueller, in 1958 ANN. SURVEY AM. L. 131-44; 1959 id. 127-44; 1960 id. 118-29; 1961 id.
and consular officers, to administer oaths and take depositions, which then are given full effect in the American proceeding, without further proof of the genuineness of the seal and signature.\textsuperscript{72}

Courts of the United States, under 28 U.S.C. § 1781, may issue letters rogatory or commissions for the taking of depositions in foreign countries. The statute envisages these to be sent directly to the foreign tribunal, and, after execution, to be endorsed by the nearest United States Minister or Consul, and transmitted to the clerk of the issuing court.\textsuperscript{73}

United States citizens and residents may be subpoenaed directly and personally by the United States Consul abroad,\textsuperscript{74} who will tender the witness his necessary travel and attendance expenses. Failure to comply with the subpoena constitutes contempt of court.\textsuperscript{75}

Italian law governing the execution of foreign, \textit{i.e.} 'American' letters rogatory for the taking of depositions corresponds to the previously discussed Italian law governing the service of process and documents on residents of Italy,\textsuperscript{76} except that Article 659, Code of Criminal Procedure, provides specifically for transfierral of the request for the taking of depositions to the competent district attorney, who then must serve notice on the person from whom the testimony is to be taken, in accordance with Article 175. Unless the foreign request states otherwise, the testimony will be obtained under oath.\textsuperscript{77}

In sharp contrast with the Italian and American local law provisions under which each nation may avail itself of the limited judicial assistance which the other is willing to provide in the matter of the execution of letters rogatory for the taking of depositions, the European Convention has an elaborate set of most liberal rules which are mutually binding on all convention parties. Each party must execute all foreign letters rogatory in accordance with the rules of its own local procedure, upon oath, if requested.\textsuperscript{78}

\textsuperscript{72} The Section contains its own perjury and forgery sanctions.
\textsuperscript{73} The proposed redraft of 28 U.S.C. § 1781 of the Commission and Advisory Committee on International Rules of Judicial Procedure, of October 7, 1961, Agenda Item No. XI, would greatly simplify and clarify the procedure, especially State Department participation in the transmittal, where heretofore the State Department refused to cooperate. But the new rule would leave direct contact between tribunals unaffected.
\textsuperscript{74} 28 U.S.C. § 1783 (1958).
\textsuperscript{76} See text accompanying notes 46-7 supra.
\textsuperscript{77} C.P.P. § 658 (ref. to § 449).
\textsuperscript{78} European Convention, arts. 3-6, (See appendix) which also govern requests for the procurement of documents and real evidence, obtainable through requested search and seizure.

The Convention has exception options, of which a number of governments have availed themselves upon signing.
C.

Obtaining Documentary Evidence Abroad.

In the United States the procedure for obtaining documentary evidence for foreign criminal cases, be it unofficial records or official documents, is much the same as that existing for civil cases, so that the Smit-Miller report may be incorporated by reference. One difference, however, is worth noting. The subpoena duces tecum to be used for the production of designated papers, books, documents, etc., under 28 U.S.C. § 1782, issues in accordance with Rule 17 (c) of the Federal Rules of Criminal Procedure, rather than Rule 45 (b) (1) of the Federal Rules of Civil Procedure.  

Rule 17 (c) of the Federal Rules of Criminal Procedure provides as follows:

For Production of Documentary Evidence and of Objects.

A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify that subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objections or portions thereof to be inspected by the parties and their attorneys.

State law, in general, lacks similar provisions so that foreign tribunals in need of such aid are well advised to avail themselves of the federal procedure.

But even the federal procedure, as provided by 28 U.S.C. § 1782, in conjunction with Rule 17 (c) of the Federal Rules of Criminal Procedure, is not fully satisfactory. It is only by a strained construction that a rule governing the taking of depositions can be used to subpoena documents and other evidence. The Commission and Advisory Committee on International Rules of Judicial Procedure have therefore proposed a substantial redrafting of 28 U.S.C. § 1782, which would

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79 Generally, the Smit-Miller Report states that the voluntary production of unofficial documents is permitted. If compulsory production of documents is required, it is suggested that the only method is by recourse to 28 U.S.C. § 1782. The second paragraph of that statute makes the practice and procedure for taking depositions employed in the federal courts applicable to the acquisition of depositions for use in foreign courts. Thus, it is suggested that the Federal Rules of Civil Procedure are applicable, specifically Rule 45 (d) (1) which entitled the complainant to a subpoena duces tecum.

The Smit-Miller Report further states that obtaining copies of official documents in the United States for use abroad "is not a difficult process."
make it clear for use in any foreign proceeding or investigation, judicial or administrative documents and tangible evidence may be subpoenaed. Under the new rule the request for judicial assistance would come either through letters rogatory or by direct application of an interested person.

Upon receipt of letters rogatory from abroad for the procurement of documents or other tangible evidence, the Italian courts are governed by the same rules which regulate the taking of depositions.

The Draft Convention, Article 8, Secs. 1 & 3, makes the same rules govern both the obtaining of testimonial evidence abroad and the procurement of documents and real evidence. Unfortunately, in sec. 2 of Article 8, the request for such evidence may be denied, if it is sought from a person who is accused of crime in the requesting state. This provision is not tenable among civilized nations. The European Convention, of course, has no such exception.

D.

REQUEST FOR OTHER PROCEDURAL ACTIVITIES ABROAD.

We are here principally concerned with the request, whether contained in letters rogatory or otherwise, by the judicial authorities of one nation, for the taking of active measures in the requested nation, in aid of proceedings pending in the requesting nation, i.e., measures going beyond the mere taking of depositions or the subpoenaing of documents or tangible evidence.

Aside from extradition cases, there seems to be little law on the extent to which the United States is bound to aid Italy or any other foreign nation in criminal investigations. Article 8 of the Draft Convention provides that any evidence required for criminal proceedings abroad may be obtained in the same manner as evidence to be obtained for civil proceedings. The same limitations are also applicable. In addition, as a matter of comity, nothing prevents an American court from ordering the surrender of records of convictions, photographs, fingerprints, and personal descriptions, to foreign prosecuting authorities, upon their request, whenever such records could be surrendered to domestic authorities.

82. Supra, note 50 and accompanying text.
83. European Convention, arts. 3-6. (See appendix.)
In military cases, the United States has rendered as well as sought and received, aid from foreign nations under the North Atlantic Treaty Organization Status of Forces Agreement. The agreement specifically provides for the mutual assistance of both the visiting and the host nation in carrying out all necessary investigations and in the collection and production of evidence, including the seizure of objects connected with the offense. Such aid is restricted to offenses committed by persons connected with the military. In addition, the nations are bound to aid each other in arresting members of the forces or civilian components or their dependents. Thus, whether the United States be the host or the visiting nation, it is bound to render assistance. The agreement also implied the rendering of at least passive quasi-judicial assistance, to the extent of suffering military police and shore patrols on the national territory, where necessary to police the armed forces of the visiting nation.

The NATO Status of Forces Agreement leaves much for inference and guess. Many years before this treaty, Congress had passed legislation implementing the jurisdiction of military tribunals with respect to the power of the members of friendly military forces in the United States. This statute provides that upon the request of an officer, commanding any friendly foreign force within the United States, American officials may arrest a member of the foreign force and deliver him to such force, with the proviso that if the offense was committed against a member of the civilian population, a prompt trial within the United States shall take place in open court. In addition, the statute vests the federal district courts with authority to compel a witness to testify. However, such witnesses are entitled to the same privileges and immunities they would enjoy before a United States court martial. Although this statute provides the legal basis on which to guarantee the validity of an American arrest on behalf of a foreign nation, by its own terms it does not become operative until the President of the United States issues a declaration to the effect that the provisions are necessary for the maintenance of discipline. Such declaration has been revoked by President Eisenhower on the ground that the Status of Forces Agreement itself obviated the need for that statute.

85. U.S.T. & O.I.A. 1792, T.I.A.S. No. 2846, (effective August 23, 1953) (both Italy and the United States are members.)
Aside from the assistance to be rendered under the Status of Forces Agreement, it appears that any assistance to be rendered by the United States to aid foreign criminal investigations would be a matter of comity.

As a practical matter, good working relations between arms of the courts of member nations exist, quite aside from the facilities provided by Interpol. Thus, the United States Department of the Treasury maintains an unofficial office and a staff of agents in Italy (and in several other foreign countries). These agents are constantly and closely cooperating with the national and local police authorities of the host country. In addition, the Federal Bureau of Investigation has cooperated extensively with the police judiciaire in other nations. Information on the movement of suspects engaged in international criminal transactions and of contraband — narcotics in the case of United States Treasury Agents — is being exchanged. Upon the request of the host country the American agents will relay information to the United States, warranting arrests, as well as searches and seizures in the host nation, under United States law, and vice versa. It is to be noted that these relations exist in the complete absence of any treaty, executive agreement or official government compact. Evidence of due process violations resulting from such procedures has not come to our attention. It appears that the officers will act only where the law of the country in which the act is to be performed will permit it.

To the extent that any nation permits law enforcement officers of another in any manner to execute the duties of their office in the host country, we would be confronted, in effect, with passive international judicial assistance, or judicial assistance at sufferance. However, except in case of shore patrols, policing the conduct of guest troops, instances of law enforcement activities by civilian law enforcement officers has not come to our attention. Nor would there seem to be any need for permitting foreign law enforcement personal to engage in arrests, searches and seizures, etc. However, there seems to be no reason for sovereign objections to the participation of foreign law enforcement officers in the official activities of local law enforcement agencies, if the foreign agents act merely in an advisory or observers' capacity, e.g., for purposes of identification. It is our understanding that such mutual cooperation is given as a matter of international courtesy, merely with the consent of supervisory police personnel.

Neither American positive law, beyond the range of subpoena, nor the Italian Code provide for the search for and seizure of evidence needed for criminal proceedings abroad. It is plain, that absent treaty or convention, no such aid is rendered. Indeed, not even the Draft Code proposed the giving of such aid. But the European Convention does expect each nation to execute letters rogatory for search and seizure which are received from another signatory nation. Article 5, however, permits member nations to avail themselves of an option restricting the execution of letters rogatory for search and seizure to (a) cases dealing with offenses punishable under the laws of both nations concerned, or (b) to offenses extraditable in the requested country, or (c) to cases not inconsistent with the internal laws of the requested nation. 88

This Convention which includes search and seizure within the sweep of international judicial assistance, constitutes a significant step forward in the development of a relation of trust among nations, and it is a powerful weapon in the suppression of international criminality.

E.

PASSIVE JUDICIAL ASSISTANCE.

Article 7 of the NATO Status of Forces Agreement gives the host country jurisdiction over the members of the visiting military force with respect to offenses under the law of the host country only. The Supreme Court of the United States now has in effect extended such jurisdiction to the civilian components as well, with respect to offenses committed in the territory of the receiving or host nation. 89

For example, if an act is committed by a member of a foreign armed force within the United States, and the act is a crime only within the United States, the offender may be punished only by the United States. Where the crime is subject to punishment solely by the foreign nation, the principle acts in reverse and the offender may be punished solely by the foreign nation. In such case we can speak of international judicial assistance by the host nation, which is in the nature of non-

88. European Convention, art. 5, para. 1. Article 5, para. 2 (See appendix) provides that any other nation may then deny the requests of the excepting nation, for want of reciprocity.

interference with a foreign judicial activity by the visiting nation in the host country.

However, where the exercise of jurisdiction is concurrent, the military authorities of the visiting state or guest state have the primary authority with respect to: (1) offenses solely against the property or security of that state, or offenses solely against the person and property of another member of the force or civilian component of that state or of a dependent; (2) offenses arising out of an act or omission done in a performance of official duty.\(^90\)

Although the negotiators of the Status of Forces Agreement contemplated that the military authorities of the sending state be permitted to determine the "official duty" aspects, the agreement itself is silent on this point. It is usually necessary to obtain the consent of both the host and the guest nation in each case. While France, England and Turkey have passed statutes, or issued decrees, consenting to the visiting state's determination, Italy has not passed such a statute nor has it issued any other type of decree to the effect that the visiting country's determination of "official duty" would be accepted. Although Snee and Pye relate that Italian authorities have informally agreed that such a determination is a military matter, to be decided by the military authorities, there have been incidents in which Italian prosecutors have attempted to make this determination themselves, in disregard of any possible military determination as to whether the particular harmful act was within the concept of "official duty". Therefore, "implementation on a national level will be necessary in Italy, so that all local authorities will recognize that the determination of this issue is exclusively a question for the military authorities of the sending state."\(^91\)

Some difficulties arise when the act involves two offenses, each of which is subject to the primary jurisdiction of a different state. These difficulties are generally resolved as follows: When the wrongful conduct involves two offenses of approximately equal gravity, each state exercises jurisdiction with respect to the offense over which it has primary jurisdiction. When the offenses are of unequal gravity,

\(^90\) In the case of any other offense the authorities of the receiving state shall have the primary right to exercise jurisdiction. Under a string of recent United States Supreme Court decisions, supra, note 89, it is now quite clear that the United States has relinquished its claims to criminal jurisdiction over the United States citizens abroad who are accompanying United States service personnel, and have there violated the criminal laws of the host country. With reference to offenses arising out of the performance of an official duty, the concept of "scope of employment" is usually applied in determining if the act was part of the offender's official duty.

\(^91\) SNEE & PYE, op. cit. supra note 87, at 53.
the nation possessing primary right over the more serious offense exercises jurisdiction over both offenses. Thus, in a case arising in Italy, an American serviceman who had wrongfully appropriated a United States government vehicle, went on a joy-ride and was involved in an accident in which an Italian national was killed. Since under Italian theory all aspects of a criminal case should be disposed of in one trial, the Italian officials waived the primary right of Italy to try the accused for the wrongful death of its national. The wrongful appropriation of the United States vehicle, subject to primary jurisdiction of the United States, was regarded as the more serious offense, since that act involved moral turpitude while negligent driving did not.92

The American practice as a host state with respect to visiting Italian forces could not be ascertained. Apparently, the personnel of Italian naval vessels in United States ports have always behaved in such an exemplary manner that no initiation of criminal proceedings was ever required.

So far the discussion has concerned itself solely with international judicial assistance at sufferance guaranteed by treaty. It has been impossible to ascertain the extent of additional international judicial assistance at sufferance. Positive law envisages such instances. Thus, while foreign merchant ships within United States waters are clearly within the special maritime and territorial jurisdiction of the United States,93 and of the state in question,94 it is not customary for American courts to bring offenders to trial for minor offenses committed aboard the foreign merchant ship unless the peace has been disturbed outside the ship as well.95

To the extent that any official or judicial action is taken against such a foreigner by his own authorities aboard his ship, the United States is granting international judicial assistance at sufferance, which, in some states, will go as far as the recognition of a foreign judgment of acquittal or conviction in a bar of later American prosecution for the same act.96

Beyond that, it is doubtful whether there are any other instances of American passive international judicial assistance. Indeed, it is believed that the United States would strenuously object to any infringement of its sovereignty by assertion of foreign authority. In-

92. See & Pye, op. cit. supra note 87, at 57.
95. Cf. STIMSON, CONFLICT OF CRIMINAL LAWS 149-50 (1956).
96. E.g., N.Y. Code Crim. Proc. § 139. Compare C.P.P. § 11 under which there is an Italian trial notwithstanding a previous foreign trial.
vasions of sovereignty, like that inflicted upon Argentina by Israeli government agents, would surely lead to as much protest in America as it did in Argentina. 97

From conversations with Italian colleagues we have gained the impression that Italian thinking on passive international judicial assistance does not differ to any material extent from our own.

F.

Proof of Foreign Law. 98

There is no material variation between the proof of United States criminal law and civil law. In the absence of official preparedness to render advisory opinions or to submit official memoranda on United States law for use by foreign tribunals, and in the further absence of a treaty or statute to that effect, foreign tribunals will have to rely on their own devices to obtain proof. Such proof may be offered by qualified American attorneys sojourning or residing in Italy or any other requesting country. However, such information may also come from university teachers and Universities or similar institutes. It has been our past experience that little difficulty is encountered in proof of foreign laws.

The Institute of Judicial Administration and the Comparative Criminal Law Project of New York University have always been willing, for little or no fee, to provide foreign governments, courts and agencies with information on the federal or state criminal law of the United States. Through both official and unofficial affiliations, American members of the International Advisory Board of the Comparative Criminal Law Project have in the past years rendered advice on American criminal law and criminology. A variety of contacts have been created for the rendering of mutual assistance. Members of the staff and the Advisory Board of the Comparative Criminal Law Project have participated in publications on American criminal law abroad and have rendered direct service to governmental agencies in France, Germany, Italy, Norway and other nations.

Moreover, through continued exchange of ideas between Italian and American criminal law scholars and judges, the personal basis and preparedness for continued assistance on an unofficial basis is


guaranteed. The Comparative Criminal Law Project of New York University has received repeated requests from foreign governments for information on American criminal law and has promptly supplied the requested information. In addition, the Project is engaged in the publication of an American Series of Foreign Penal Codes, in English translation (among them the Italian penal code),89 which will be helpful to American judges in solving problems calling for a knowledge of foreign criminal law.

Admissibility in court of testimony on foreign law by university institutes or scholars does not seem to have been tested, but it is unlikely to be questioned.

The Draft Convention, Part VII, Art. 12 provides as follows:

Section 1. When for purpose of any proceeding a tribunal of a State requires information on any question concerning the law of another State, a request for such information may be addressed by the tribunal to the government of the other State.

Section 2. The request for information should contain a statement of:

(a) The title and address of the tribunal requiring the information.

(b) The nature of the proceeding for which the information is required, the names and descriptions of the parties to the proceedings, and such information in regard to the proceeding as will enable a proper reply to be given; and

(c) The question upon which the information is required.

Section 3. The request for information shall be transmitted through the diplomatic channel.

Section 4. Upon receipt of the request for information a government shall promptly send a reply through the diplomatic channel, either

(a) Transmitting a response containing the information requested, prepared by its own law officers, or by one of its


The Comparative Criminal Law Project also publishes a separate series (Publications of the Comparative Criminal Law Project) of books on foreign and comparative criminal law.
tribunals, or by an expert of its own selection, the source of the response being stated; or

(b) Refusing to supply the information requested.

It is perhaps true that most judges have deplorably little knowledge of the laws of other nations, so that such a relatively formidable machinery for obtaining knowledge of foreign criminal law must be provided. A number of existing treatises do contain similar provisions, though as more and more nations create institutes of comparative criminal law, perhaps the day will come when information on foreign criminal law can be supplied with less exertion of official effort.

G. REQUESTING PROSECUTION.

It has been the custom among civilized nations to lodge, with any protest about an affrontery to the national sovereignty, a request for the criminal prosecution of those responsible. On a more friendly plane, the judicial and police authorities may aid each other in the informal or formal exchange of information leading to the prosecution of persons in the courts of the informed nation for violations of its criminal law.

While neither Italian nor American municipal law provides any machinery for the exchange of such unsolicited information, the European Convention specifically does so. Article 21 provides that the information is to be exchanged from Ministry of Justice to Ministry of Justice, and that the informed nation must notify the informing nation of all steps taken pursuant to the information supplied, including copies of the proceedings.

H. THE STATUS OF FOREIGN JUDGMENTS.

There are a variety of domestic issues on which foreign judgments may have a bearing. For example, our immigration laws provides for the exclusion of aliens convicted of certain crimes abroad.\textsuperscript{101}

\textsuperscript{100} Draft Convention, at 112-16.
\textsuperscript{101} 8 U.S.C. § 1182 (1958) which provides:
\textsuperscript{102} (a) Except as otherwise provided in this chapter the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:
\textsuperscript{103} (9) Aliens who have been convicted of a crime involving moral turpitude (other than a purely political offense), or aliens who admit having committed such a crime ..., except that aliens who have committed only
and government or private employment, and litigation involving such, may hinge on foreign convictions. �� Conceivably, criminal registration ordinances may require registration of subsisting foreign as well as domestic convictions. �� Statutes governing probation, parole, multiple offender laws �� and double jeopardy bars �� may refer to foreign as well as American convictions. Possibly, a foreign conviction may disqualify the ex-convict from testifying in an American court. �� Even problems of res judicata could be involved. ��

one such crime while under the age of eighteen years may be granted a visa and admitted if the crime was committed more than five years prior to the date of the application for a visa ... and more than five years prior to the date of application for admission to the United States, unless the crime resulted in confinement ... in which case such alien must have been released from such confinement more than five years prior to the date of application for a visa ... and for admission, to the United States.

(10) Aliens who have been convicted of two or more offenses (other than purely political offenses) regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct ...

(11) Aliens who are polygamists ...

(12) Aliens who are prostitutes ..."


102. E.g., N.Y. Civ. Serv. L. § 50 (4) (d).

Disqualification of applicants or eligibles:
The state civil service department and municipal commissions may refuse to examine an applicant, or after examination to certify an eligible ...

(d) who has been guilty of a crime or of infamous and notoriously disgraceful conduct.

Comment: Although no case could be found holding that the term "crime" included a foreign conviction, the addition of ". . . infamous and notoriously disgraceful conduct", would appear to make a foreign conviction the basis for disqualification, especially if the foreign conviction involved moral turpitude.

103. Cf. CAL. PEN. CODE § 200 provides that any person who has been convicted in any other state of any offense which, if committed or attempted in California would have been punishable in California, must register within 30 days of his coming into a city in California with the Chief of Police. If the word "state" is construed in the international law sense, foreign ex-convicts would have to register. There are no decisions in point. A parallel Los Angeles ordinance, since held unconstitutional for reasons not here material, did extend to foreign convictions. See Lambert v. Calif., 355 U.S. 225 (1957), referring to Sec. 52, 38 (4) L.A. Mun. Code.

104. E.g., State v. O'Day, 191 La. 380, 185 So. 290 (1938), a conviction for stealing, under Canadian law, could be introduced in order to prove defendant a multiple offender. However, since the Canadian law did not require that the stolen item be taken and carried away, which is necessary for conviction of larceny in Louisiana, the State had to prove that the defendant had in fact asported the item in Canada.

See, CAL. PEN. CODE § 688 which treats foreign and domestic convictions alike. An Oregon statute, since repealed, specifically required consideration of convictions "under the laws of any other state, government, or country, . . ." OR. GEN. LAWS, ch. 334 (1927).


107. While American authority is wanting, for Italian law see ROSSO, INTERNATIONAL JUDICIAL ASSISTANCE — PENAL REFLECTIONS (1961) quoting an Italian Supreme Court decision, Cass. April 2, 1936.
The Italian Penal Code is quite specific in listing the purposes for which a foreign criminal judgment may be recognized:

(1) For purposes of establishing recidivism or similar effects, in accordance with Arts. 99 et seq., Penal Code (C.P.); for application of sanctions for habitual (Arts. 102-104, C.P.) or professional (Art. 105, C.P.) criminals, or persons of criminal propensities (Art. 108, C.P.);

(2) for purposes of imposing Italian supplementary punishments;

(3) for imposition of police (safety) measures;

(4) for use in civil proceedings in Italy for damages or restitution.

Although foreign civil judgments are generally recognized in the courts of the United States, it is frequently stated that foreign judgments that are penal in nature will not be given effect here. The dictum is obviously too broad. Clearly, foreign convictions might be recognized here for all the purposes above enumerated and perhaps others, though frequently American courts have taken it upon themselves to refuse recognition to foreign criminal judgments rendered in absence of any one of the procedural safeguards regarded as essential in American jurisdictions or, indeed, merely so regarded by the judge in question.

For example, although the Fourteenth Amendment, as interpreted in recent Supreme Court cases, does not require a criminal defendant to be provided with assigned counsel in all cases, several federal courts have refused to recognize Canadian convictions after trial without assigned counsel.

Interestingly enough, Italian courts might not give recognition to a properly imposed American criminal judgment, if the defendant

108. C.P.P. art. 12. For an account as to Italian law on the application of foreign law by the national judge in military proceedings see D'Agata, L'Application de la Loi Pénale Étrangère par le Juge National (Sept. 1961).
109. But the provisions of Article 12 are generally applicable only to judgments from courts of nations with whom there exists an extradition treaty, and otherwise only upon demand of the Minister of Justice.
had been denied counsel or had not been personally served.\textsuperscript{114} Unfortunately, American courts have excelled in unfriendly attitudes toward all questions relating to foreign criminal proceedings, in the erroneous belief that ours alone is a system which guarantees fairness to a criminal defendant. The problem was particularly acute during the Senate debate of Article 7 of the NATO Status of Forces Agreement. The senators were strongly opposed to yielding criminal jurisdiction over United States servicemen to foreign courts, whom they suspected of employing medieval inquisitorial methods, devoid of enlightened procedural safeguards. Such fears cannot be substantiated. Many of the due process guarantees which the American layman takes for granted, are not constitutionally guaranteed for state trials,\textsuperscript{116} and many others promise greater protection than they grant in practice. While foreign criminal proceedings often grant no precise counterparts to our American institutions, many of them are perfectly comparable,\textsuperscript{116} and some European protections are entirely without American counterparts.\textsuperscript{117}

\textsuperscript{114} C.P.P. \textsuperscript{\textsection} 674 (1). Recognition will also be refused if the judgment is not yet final, if it contains provisions contrary to Italian law or order public, or if it comes from a nation with which Italy has no extradition treaty in force.


\textsuperscript{117} E.g., German Code of Criminal Procedure § 147:

"Upon completion of the preliminary investigation or, absent such, upon rendition of the accusation, the defense counsel is authorized to inspect the [complete] file [including the real evidence] before the court. In accelerated proceedings defense counsel may inspect the files as soon as the prosecution has moved for the conviction of the defendant in summary proceedings.

Even before this point of time, defense counsel must be permitted to inspect the file if such does not endanger the purpose of the investigation.

Defense counsel may never be denied inspection of the record, of the defendant's interrogation, the opinions of the experts and the minutes of court proceedings which defense counsel is authorized to attend.

Within the discretion of the presiding judge, the files, excepting attached real evidence, may be temporarily surrendered so that defense counsel may take them to his home or office."
Fortunately, a greater knowledge among the American judiciary of the true state of continental criminal procedure makes itself felt, so that the (supposed) reasons speaking against recognition of foreign criminal judgments have now disappeared. A more liberal rule of recognition could now be adopted. 118

Italy, too, might wish to reexamine its policy, which, of course, is not nearly as restrictive as ours. 119

The best solution would have to be found in a treaty resting on the mutual respect of both nations for each other's criminal proceedings and policies. 120

I.

Extradition.

Simply for the sake of completeness, brief mention must be made of extradition.

Extradition has been defined as "the surrender to another country of one individual accused of an offense against its laws, there to be tried and if found guilty punished." 121 Extradition differs from deportation, which is merely the expulsion of an alien from a country because his presence is deemed inconsistent with the public welfare, no punishment being contemplated either under the laws of the country from which he is expelled or the country to which he is sent. The United States generally will not extradite fugitives, unless extradition is provided for by treaty or Act of Congress. When extradition is possible, the nationality of the person extradited is immaterial. An extradition treaty, e.g., that with the Republic of Italy, customarily provides for extradition in cases of murder, robbery and other serious crimes, while excluding crimes of a political nature. 122

In the United States, the determination as to whether a specific individual be extradited is made by a commissioner, following a hear-

118. For further details see the Smit-Miller Report, 44.
119. Italy's elaborate court procedure for the recognition of foreign judgments is contained in C.P.P. §§ 672-75.
120. See European Convention, arts. 13, 22, providing for requested and automatic transmission of information from judicial records, for purposes of use by the requesting government. But the Convention lacks a specific recognition provision.
121. Fong Yee Ting v. United States, 149 U.S. 698, 709 (1893).
122. See Convention With the King of Italy for the Surrender of Criminals, art. III, 15 Stat. 629, T.I.A.S. 174 (1858). Other extradition treaties still in force between Italy and the United States:
A. Additional article to the convention for the surrender of criminals, Mar. 23, 1868, Jan. 21, 1869, 16 Stat. 767, T.S. 176.
B. Supplementary convention concerning the extradition of criminals, June 24 Stat. 1001, T.S. 181.
ing as provided by 18 U.S.C. § 3184. After the hearing, the decision rendered will be set aside on review only if it is shown to be completely erroneous. So far there has been no Supreme Court decision as to whether the use of the treaty power so as to provide for executive regulation of extradition is a denial of due process. The Court of Appeals in Gallina v. Fraser\(^ {123} \) refused to consider the question, even though the Italian government was requesting extradition of one who had been convicted in absentia. The court said that the circumstances under which a fugitive is to be extradited are to be determined solely by the non-judicial branches of government. Although the Secretary of State has sometimes required that there be a guarantee of a foreign retrial as a prerequisite to extradition of persons who have been convicted in absentia, there was thought to be no precedent for the court to consider the matter. However, the court did suggest that some foreign procedures or punishments might arise which would be so antipathetic to a federal court's sense of decency as to necessitate re-examination of the principle of complete executive control of the conditions of extradition. The court, nevertheless, concluded that this conviction in absentia was not such a violation of civilized standards, for the facts revealed that the defendant had been represented by counsel at one of his Italian trials, and that he was convicted with three co-defendants present at the other.\(^ {124} \)

**Conclusion.**

As a result of the reports which formed the basis of this article, as well as of the discussions of the Conference on International Judicial Assistance in Italy, in August, 1961, the following resolutions on International Judicial Assistance in Criminal Matters were adopted by the conference:

1. The Conference notes with satisfaction that judicial assistance in criminal matters is facilitated by the Italian Code of Criminal Procedure and by the United States Code, Title 28, as amended in 1949.

2. The Conference notes with satisfaction the existence in the United States of the Uniform Foreign Depositions Act, which, in effect, creates the possibility for the various states of the United States to adopt for State practice the Federal Rules relating to international judicial assistance. The Conference wishes to ex-

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123. Gallina v. Fraser, 278 F.2d 77 (2d Cir. 1960).
press the hope that those States which have not yet adopted this Act will follow the recommendations of the Commissioners on Uniform Laws and likewise adopt this Act so as to facilitate greater international judicial cooperation between American State Courts and the Criminal Courts of Italy.

3. The Conference is of the opinion that the possibility of even more satisfactory judicial assistance in criminal matters between the United States and Italy should be investigated.

Therefore it is

Resolved that a bilateral research commission be established to consider the utilization of the general principles of the existing European Convention on International Judicial Assistance in Criminal Matters of April 20, 1959, as well as the 1939 Draft Convention on Judicial Assistance drafted in the United States by the Research Group on International Law, especially insofar as pertaining to criminal matters, with a view toward the making, between the United States and Italy, of a Convention for Judicial Assistance in Criminal Matters.125

Besides resolving many outstanding problems in international judicial assistance in criminal matters, the Conference served as a superb lesson in comparative criminal law to Italian and American participants alike. Solutions cannot be found solely in written law. in accordance with the continental tradition, nor in the laissez-faire mode of the judge-made law to which we are accustomed in the common law. Here, as elsewhere, only a combination of statute or treaty and common law can provide us with satisfactory solutions. A treaty on international judicial assistance, however, and one which will codify the mutual respect for each other's system, is yet to be drafted.

APPENDIX

EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

(Appearing in Council of Europe, European Treaty Series No. 30)

PREAMBLE

The Governments signatory hereto, being Members of the Council of Europe, Considering that the aim of the Council of Europe is to achieve greater unity among its Members;
Believing that the adoption of common rules in the field of mutual assistance in criminal matters will contribute to the attainment of this aim;
Considering that such mutual assistance is related to the question of extradition, which has already formed the subject of a Convention signed on 13th December 1957,
Have agreed as follows:

CHAPTER I

GENERAL PROVISIONS

ARTICLE 1

1. The Contracting Parties undertake to afford each other, in accordance with the provisions of this Convention, the widest measure of mutual assistance in proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting Party.

2. This Convention does not apply to arrests, the enforcement of verdicts or offences under military law which are not offences under ordinary criminal law.

ARTICLE 2

Assistance may be refused:
(a) if the request concerns an offence which the requested Party considers a political offence, an offence connected with a political offence, or a fiscal offence;
(b) if the requested Party considers that execution of the request is likely to prejudice the sovereignty, security, ordre public or other essential interests of its country.

CHAPTER II

LETTERS ROGATORY

ARTICLE 3

1. The requested Party shall execute in the manner provided for by its law any letters rogatory relating to a criminal matter and addressed to it by the judicial authorities of the requesting Party for the purpose of procuring evidence or transmitting articles to be produced in evidence, records or documents.

2. If the requesting Party desires witnesses or experts to give evidence on oath, it shall expressly so request, and the requested Party shall comply with the request if the law of its country does not prohibit it.

3. The requested Party may transmit certified copies or certified photostat copies of records or documents requested, unless the requesting Party expressly requests the transmission of originals, in which case the requested Party shall make every effort to comply with the request.

ARTICLE 4

On the express request of the requesting Party the requested Party shall state the date and place of execution of the letters rogatory. Officials and interested persons may be present if the requested Party consents.

ARTICLE 5

1. Any Contracting Party may, by a declaration addressed to the Secretary-General of the Council of Europe, when signing this Convention or depositing its instrument of ratification or accession, reserve the right to make the execution of letters rogatory for search or seizure of property dependent on one or more of the following conditions:

(a) that the offence motivating the letters rogatory is punishable under both the law of the requesting Party and the law of the requested Party;
(b) that the offence motivating the letters rogatory is an extraditable offence in the requested country;
(c) That execution of the letters rogatory is consistent with the law of the requested Party.

2. Where a Contracting Party makes a declaration in accordance with paragraph 1 of this Article, any other Party may apply reciprocity.

ARTICLE 6

1. The requested Party may delay the handing over of any property, records or documents requested, if it requires the said property, records or documents in connection with pending criminal proceedings.

2. Any property, as well as original records or documents, handed over in execution of letters rogatory shall be returned by the requesting Party to the requested Party as soon as possible unless the latter Party waives the return thereof.

CHAPTER III

SERVICE OF WRITS AND RECORDS OF JUDICIAL VERDICTS—APPEARANCE OF WITNESSES, EXPERTS AND PROSECUTED PERSONS

ARTICLE 7

1. The requested Party shall effect service of writs and records of judicial verdicts which are transmitted to it for this purpose by the requesting Party. Service may be effected by simple transmission of the writ or record to the person to be served. If the requesting Party expressly so requests, service shall be effected by the requested Party in the manner provided for the service of analogous documents under its own law or in a special manner consistent with such law.

2. Proof of service shall be given by means of a receipt dated and signed by the person served or by means of a declaration made by the requested Party that service has been effected and stating the form and date of such service. One or other of these documents shall be sent immediately to the requesting Party. The requested Party shall, if the requesting Party so requests, state whether service has been effected in accordance with the law of the requested Party. If service cannot be effected, the reasons shall be communicated immediately by the requested Party to the requesting Party.

3. Any Contracting Party may, by a declaration addressed to the Secretary-General of the Council of Europe, when signing this Convention or depositing its instrument of ratification or accession, request that service of a summons on an accused person who is in its territory be transmitted to its authorities by a certain time before the date set for appearance. This time shall be specified in the aforesaid declaration and shall not exceed 50 days.

This time shall be taken into account when the date of appearance is being fixed and when the summons is being transmitted.

ARTICLE 8

A witness or expert who has failed to answer a summons to appear, service of which has been requested, shall not, even if summons contains a notice of penalty, be subjected to any punishment or measure of restraint, unless subsequently he voluntarily enters the territory of the requesting Party and is there again duly summoned.

ARTICLE 9

The allowances, including subsistence, to be paid and the travelling expenses to be refunded to a witness or expert by the requesting Party shall be calculated as from his place of residence and shall be at rates at least equal to those provided for in the scales and rules in force in the country where the hearing is intended to take place.

ARTICLE 10

1. If 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 invite the witness or expert to appear.

The requested Party shall inform the requesting Party of the reply of the witness or expert.

2. In the case provided for under paragraph 1 of this Article the request or the summons shall indicate the approximate allowances payable and the travelling and subsistence expenses refundable.
3. If a specific request is made, the requested Party may grant the witness or expert an advance. The amount of the advance shall be endorsed on the summons and shall be refunded by the requesting Party.

ARTICLE 11

1. A person in custody whose personal appearance as a witness or for purposes of confrontation is applied for by the requesting Party, shall be temporarily transferred to the territory where the hearing is intended to take place, provided that he shall be sent back within the period stipulated by the requested Party and subject to the provisions of Article 12 in so far as these are applicable.

Transfer may be refused:
(a) if the person in custody does not consent,
(b) if his presence is necessary at criminal proceedings pending in the territory of the requested Party,
(c) if transfer is liable to prolong his detention, or
(d) if there are other overriding grounds for not transferring him to the territory of the requesting Party.

2. Subject to the provisions of Article 2, in a case coming within the immediately preceding paragraph, transit of a person in custody through the territory of a third State, Party to this Convention, shall be granted on application, accompanied by all necessary documents, addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the Party through whose territory transit is requested.

A Contracting Party may refuse to grant transit to its own nationals.

3. The transferred person shall remain in custody in the territory of the requesting Party and, where applicable, in the territory of the Party through which transit is requested, unless the Party from whom transfer is requested applies for his release.

ARTICLE 12

1. A witness or expert, whatever his nationality, appearing on a summons before the judicial authorities of the requesting Party shall not be prosecuted or detained or subjected to any other restriction of his personal liberty in the territory of that Party in respect of acts or convictions anterior to his departure from the territory of the requested Party.

2. A person, whatever his nationality, summoned before the judicial authorities of the requesting Party to answer for acts forming the subject of proceedings against him, shall not be prosecuted or detained or subjected to any other restriction of his personal liberty for acts or convictions anterior to his departure from the territory of the requested Party and not specified in the summons.

3. The immunity provided for in this article shall cease when the witness or expert or prosecuted person, having had for a period of fifteen consecutive days from the date when his presence is no longer required by the judicial authorities an opportunity of leaving, has nevertheless remained in the territory, or having left it, has returned.

CHAPTER IV

JUDICIAL RECORDS

ARTICLE 13

1. A requested Party shall communicate extracts from and information relating to judicial records, requested from it by the judicial authorities of a Contracting Party and needed in a criminal matter, to the same extent that these may be made available to its own judicial authorities in like case.

2. In any case other than that provided for in paragraph 1 of this Article the request shall be complied with in accordance with the conditions provided for by the law, regulations or practice of the requested Party.

CHAPTER V

PROCEDURE

ARTICLE 14

1. Requests for mutual assistance shall indicate as follows:
(a) the authority making the request,
(b) the object of and the reason for the request,
(c) where possible, the identity and the nationality of the person concerned, and
(d) where necessary, the name and address of the person to be served.
2. Letters rogatory referred to in Articles 3, 4 and 5 shall, in addition, state the offence and contain a summary of the facts.

**ARTICLE 15**

1. Letters rogatory referred to in Articles 3, 4 and 5 as well as the applications referred to in Article 11 shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels.

2. In case of urgency, letters rogatory may be addressed directly by the judicial authorities of the requesting Party to the judicial authorities of the requested Party. They shall be returned together with the relevant documents through the channels stipulated in paragraph 1 of this article.

3. Requests provided for in paragraph 1 of Article 13 may be addressed directly by the judicial authorities concerned to the appropriate authorities of the requested Party, and the replies may be returned directly by those authorities. Requests provided for in paragraph 2 of Article 13 shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party.

4. Requests for mutual assistance, other than those provided for in paragraphs 1 and 3 of this article and, in particular, requests for investigation preliminary to prosecution, may be communicated directly between the judicial authorities.

5. In cases where direct transmission is permitted under this Convention, it may take place through the International Criminal Police Organization (Interpol.)

6. A Contracting Party may, when signing this Convention or depositing its instrument of ratification or accession, by a declaration addressed to the Secretary-General of the Council of Europe, reserve the right to stipulate that requests and annexed documents shall be addressed to it accompanied by a translation into its own language or into either of the official languages of the Council of Europe or into one of the latter languages, specified by it. The other Contracting Parties may apply reciprocity.

7. The provisions of this Article are without prejudice to those of bilateral agreements or arrangements in force between Contracting Parties which provide for the direct transmission of requests for assistance between their respective authorities.

**ARTICLE 16**

1. Subject to paragraph 2 of this article, translations of requests and annexed documents shall not be required.

2. Each Contracting Party may, when signing or depositing its instrument of ratification or accession, by means of a declaration addressed to the Secretary-General of the Council of Europe, reserve the right to stipulate that requests and annexed documents shall be addressed to it accompanied by a translation into its own language or into either of the official languages of the Council of Europe or into one of the latter languages, specified by it. The other Contracting Parties may apply reciprocity.

3. This article is without prejudice to the provisions concerning the translation of requests or annexed documents contained in the agreements or arrangements in force or to be made, between two or more Contracting Parties.

**ARTICLE 17**

Evidence or documents transmitted pursuant to this Convention shall not require any form of authentication.

**ARTICLE 18**

Where the authority which receives a request for mutual assistance has no jurisdiction to comply therewith, it shall, *ex officio*, transmit the request to the competent authority of its country and shall so inform the requesting Party through the direct channels, if the request has been addressed through such channels.

**ARTICLE 19**

Reasons shall be given for any refusal of mutual assistance.

**ARTICLE 20**

Subject to the provisions of Article 9, execution of requests for mutual assistance shall not entail refunding of expenses except those incurred by the attendance of experts in the territory of the requested Party or the transfer of a person in custody carried out under Article 11.
CHAPTER VI
LAYING OF INFORMATION IN CONNECTION WITH PROCEEDINGS

ARTICLE 21
1. Information laid by one Contracting Party with a view to proceedings in the courts of another Party shall be transmitted between the Ministries of Justice concerned unless a Contracting Party avails itself of the option provided for in paragraph 6 of Article 15.
2. The requested Party shall notify the requesting Party of any action taken on such information and shall forward a copy of the record of any verdict pronounced.
3. The provisions of Article 16 shall apply to information laid under paragraph 1 of this article.

CHAPTER VII
EXCHANGE OF INFORMATION FROM JUDICIAL RECORDS

ARTICLE 22
Each Contracting Party shall inform any other Party of all criminal convictions and subsequent measures in respect of nationals of the latter Party, entered in the judicial records. Ministries of Justice shall communicate such information to one another at least once a year. Where the person concerned is considered a national of two or more other Contracting Parties, the information shall be given to each of these Parties, unless the person is a national of the Party in the territory of which he was convicted.

CHAPTER VIII
FINAL PROVISIONS

ARTICLE 23
1. Any Contracting Party may, when signing this Convention or when depositing its instrument of ratification or accession, make a reservation in respect of any provision or provisions of the Convention.
2. Any Contracting Party which has made a reservation shall withdraw it as soon as circumstances permit. Such withdrawal shall be made by notification to the Secretary-General of the Council of Europe.
3. A Contracting Party which has made a reservation in respect of a provision of the Convention may not claim application of the said provision by another Party save in so far as it has itself accepted the provision.

ARTICLE 24
A Contracting Party may, when signing the Convention or depositing its instrument of ratification or accession, by a declaration addressed to the Secretary-General of the Council of Europe, define what authorities it will, for the purposes of the Convention, deem judicial authorities.

ARTICLE 25
1. This Convention shall apply to the metropolitan territories of the Contracting Parties.
2. In respect of France, it shall also apply to Algeria and to the overseas Departments, and, in respect of Italy, it shall also apply to the territory of Somaliland under Italian administration.
3. The Federal Republic of Germany may extend the application of this Convention to the Land of Berlin by notice addressed to the Secretary-General of the Council of Europe.
4. In respect of the Kingdom of the Netherlands, the Convention shall apply to its European territory. The Netherlands may extend the application of this Convention to the Netherlands Antilles, Surinam and Netherlands New Guinea by notice addressed to the Secretary-General of the Council of Europe.
5. By direct arrangement between two or more Contracting Parties and subject to the conditions laid down in the arrangement, the application of this Convention may be extended to any territory, other than the territories mentioned in paragraphs 1, 2, 3 and 4 of this article, of one of these Parties, for the international relations of which any such Party is responsible.

ARTICLE 26
1. Subject to the provisions of Article 15, paragraph 7, and Article 16, paragraph 3, this Convention shall, in respect of those countries to which it applies, supersede the provisions of any treaties, conventions or bilateral agreements governing mutual assistance in criminal matters between any two Contracting Parties.
JUDICIAL ASSISTANCE

2. This Convention shall not affect obligations incurred under the terms of any other bilateral or multilateral international convention which contains or may contain clauses governing specific aspects of mutual assistance in a given field.

3. The Contracting Parties may conclude between themselves bilateral or multilateral agreements on mutual assistance in criminal matters only in order to supplement the provisions of this Convention or to facilitate the application of the principles contained therein.

4. Where, as between two or more Contracting Parties, mutual assistance in criminal matters is practiced on the basis of uniform legislation or of a special system providing for the reciprocal application in their respective territories of measures of mutual assistance, these Parties shall, notwithstanding the provisions of this Convention, be free to regulate their mutual relations in this field exclusively in accordance with such legislation or system. Contracting Parties which, in accordance with this paragraph, exclude as between themselves the application of this Convention shall notify the Secretary-General of the Council of Europe accordingly.

ARTICLE 27

1. This Convention shall be open to signature by the Members of the Council of Europe. It shall be ratified. The instruments of ratification shall be deposited with the Secretary-General of the Council.

2. The Convention shall come into force 90 days after the date of deposit of the third instrument of ratification.

3. As regards any signatory ratifying subsequently the Convention shall come into force 90 days after the date of the deposit of its instrument of ratification.

ARTICLE 28

1. The Committee of Ministers of the Council of Europe may invite any State not a Member of the Council to accede to this Convention, provided that the resolution containing such invitation obtains the unanimous agreement of the Members of the Council who have ratified the Convention.

2. Accession shall be by deposit with the Secretary-General of the Council of an instrument of accession which shall take effect 90 days after the date of its deposit.

ARTICLE 29

Any Contracting Party may denounce this Convention in so far as it is concerned by giving notice of the Secretary-General of the Council of Europe. Denunciation shall take effect six months after the date when the Secretary-General of the Council received such notification.

ARTICLE 30

The Secretary-General of the Council of Europe shall notify the Members of the Council and the Government of any State which has acceded to this Convention of:

(a) the names of the Signatories and the deposit of any instrument of ratification or accession;

(b) the date of entry into force of this Convention;

(c) any notification received in accordance with the provisions of Article 5 - paragraph 1, Article 7 - paragraph 3, Article 15 - paragraph 6, Article 16 - paragraph 2, Article 24, Article 25 - paragraphs 3 and 4, or Article 26 - paragraph 4;

(d) any reservation made in accordance with Article 23, paragraph 1;

(e) the withdrawal of any reservation in accordance with Article 23, paragraph 2;

(f) any notification of denunciation received in accordance with the provisions of Article 29, and the date on which such denunciation will take effect.

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

Done at Strasbourg, this 20th day of April, 1959, in English and 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 the signatory and acceding Governments.

For the Government of the Republic of Austria:

Reservation to Article 1 (1)

Austria will only grant assistance in proceedings in respect of offences also punishable under Austrian law and the punishment of
which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities.

Reservation to Article 2 (a)
Austria will not lend assistance in the case of offences referred to under (a).

Reservation to Article 2 (b)
In "other essential interests of its country" Austria will include maintaining the secrecy stipulated by Austrian legislation.

Declaration concerning Article 5 (1)
Austria will make the execution of letters rogatory for search or seizure of property subject to the condition laid down in sub-paragraph (c).

Declaration concerning Article 16 (2)
Austria will require that requests for assistance and annexed documents which, in accordance with Article 15 (2), will be addressed directly to the Austrian judicial authorities or Department of Public Prosecution, shall be accompanied by a translation into German.

Declaration concerning Article 24
For the purposes of the Convention, Austria will regard as judicial authorities the Criminal Courts, the Department of Public Prosecution and the Federal Ministry of Justice.

Leopold Figl
For the Government of the Kingdom of Belgium:

On signing the European Convention on Mutual Assistance in Criminal Matters the Belgian Government declares:
1. that it will avail itself of the option provided for under Article 5 (1) b of the Convention and will not allow execution of letters rogatory for search or seizure except for extraditable offences:
2. that it makes the following reservations:
   (a) the temporary transfer of prisoners provided for in Article 11 will not be authorised;
   (b) the "subsequent measures" referred to in Article 22 will not be notified automatically; but the possibility of such notification will not be ruled out in particular cases and on the request of the authorities concerned;
   (c) the Belgian Government, notwithstanding the provisions of Article 26, reserves the right to maintain or to conclude with adjacent countries bilateral or multilateral agreements offering wider scope for mutual assistance in criminal matters.

P. Wigny
For the Government of the Kingdom of Denmark:

Kjeld Philip
For the Government of the French Republic:

The French Government declares that by reason of the internal organisation and functioning of the judicial records department in France, the authorities responsible are unable to inform automatically the Contracting Parties to the present Convention, under Article 22 thereof, of measures taken subsequently to the conviction of their nationals — such as measures of clemency, rehabilitation, or amnesty — which are entered in the judicial records.

The French Government gives, however, an assurance that the responsible authorities, if requested to do so in particular cases, will as far as possible supply the said Contracting Parties with details of the position of their nationals as regards the criminal law.

The French Government declares that the authorities to be considered for the purposes of this Convention as French judicial authorities are the following:

first presidents, presidents, counsellors and judges ("conseillers") of criminal courts,

examining magistrates ("juges d'instruction") of those courts,
members of the Department of Public Prosecution ("Ministère public") acting in those courts, namely:

- directors of Public Prosecution,
- deputy directors of Public Prosecution,
- Assistant Public Prosecutors,
- heads of the Prosecution Department in courts of first instance and their assistants,
- representatives of the Department of Public Prosecution in police courts,
- judge-advocates in courts martial.

For the Government of the Federal Republic of Germany:

von Merkatz

For the Government of the Kingdom of Greece:

The Greek Government formulates reservations with regard to Articles 4 and 11 of the Convention, which are incompatible with Articles 97 and 459 of the Greek Code of Criminal Procedure.

Cambalouris

For the Government of the Icelandic Republic:

For the Government of Ireland:

For the Government of the Italian Republic:

Pella

For the Government of the Grand Duchy of Luxembourg:

E. Schaus

For the Government of the Kingdom of the Netherlands:

For the Government of the Kingdom of Norway:

For the Government of the Kingdom of Sweden:

Leif Belfrage

For the Government of the Turkish Republic:

For the Government of the United Kingdom of Great Britain and Northern Ireland: